

Chapter Comm 106

WISCONSIN DEVELOPMENT FUND

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Note: Chapter DOD 6 was repealed and recreated by emergency rule effective 5-18-83. Chapter DOD 6 was renumbered chapter Comm 106 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, June, 1997, No. 498.

Subchapter I — Annual Public Facilities Competition

Comm 106.01 Purpose. The purpose of subchs. I, II and III is to set forth the criteria the department will use in administering the federal funds that the department receives pursuant to 42 USC 5301 to 5319 and 24 CFR Part 570.

History: Cr. Register, February, 1982, No. 314, eff. 3-1-82; emerg. am. eff. 10-6-87; am. Register, March, 1988, No. 387, eff. 4-1-88; am. Register, January, 1994, No. 457; am. Register, April, 1996, No. 484, eff. 5-1-96.

Comm 106.02 Eligibility. Any city, village or town with a population of less than 50,000 that is not eligible to apply for or participate in the federal block grant entitlement program and any county, other than an urban county as defined by the United States department of housing and urban development, may apply for federal funds under the Wisconsin development fund.

History: Cr. Register, February, 1982, No. 314, eff. 3-1-82; emerg. am. eff. 10-6-87; am. Register, March, 1988, No. 387, eff. 4-1-88.

Comm 106.03 Definitions. In subchs. I and II:

(1) "Application" means a request for funding for either economic development, public facilities economic development or public facility projects as provided in this chapter.

(1r) "CDBG funds" means community development block grant funds awarded to the department by the federal government pursuant to 42 USC 5301 to 5319.

(2) "Department" means the department of commerce.

(3) "Economic development program" means the continuous receipt and review of applications for economic development projects as provided in subch. II of this chapter.

(4) "Full value per capita" means the estimated market value of all taxable property in the municipality divided by the number of persons residing in the municipality.

(4r) "Local government" means a unit of general purpose local government that is eligible to apply for and receive CDBG funds under s. Comm 106.02.

(5) "Median household income" means the median household income as reported by the 1990 U.S. census and updated by the U.S. department of commerce.

(6) "Metropolitan area" means any county which is within a standard metropolitan statistical area.

(7) "Net mill rate" means the total of all property taxes levied by the local government for all purposes less general property tax relief payments divided by the estimated market value of taxable property in the local government.

(8) "Non-metropolitan area" means any county not within a standard metropolitan statistical area.

(9) "Public facilities competition" means the receipt and review of applications for public facilities projects as provided in this subchapter.

(10) "Public facilities economic development program" means the continuous receipt and review of applications for public

facilities projects that support economic development as provided in subch. II of this chapter.

(11) "Public facility system" means the land, right-of-ways, structures and equipment needed to meet a particular community need, such as water supply or storm drainage.

(12) "Residential utility rate" means the average annual household utility rate paid for water and sanitary sewer services determined by dividing the total gross annual residential water and sewer revenue collected for the preceding calendar year by the number of households served.

(13) "Service center" means an elderly center, center for the handicapped or similar facility which requires continued administrative funding to support the services provided by the facility.

(13r) "Small cities development fund grant" means a grant to an eligible local government for the purpose of undertaking economic development projects, public facilities projects that support economic development and public facilities projects.

(14) "Target area" means an area or areas within the municipality which contain a concentration of low- and moderate-income or minority households, and which include not more than 50% of the households of the municipality.

(14r) "Target population" means persons with low to moderate income.

(15) "Urgent local need" means that the proposed public facility project is beyond the ability of the applicant to finance, as measured by available obligation debt capacity, residential utility rate and timely availability of funds from other sources, and is either necessary to address an imminent public health, safety or welfare problem or, is required by an order of a state agency, federal agency or court.

History: Cr. Register, February, 1982, No. 314, eff. 3-1-82; cr. (3a), am. (6), Register, November, 1983, No. 335, eff. 12-1-83; renum. (1) to be (1m) and am., cr. (1) and (1q), r. (3a) and (11), Register, November, 1984, No. 347, eff. 12-1-84; emerg. cr. (1) (intro.), (1f) and (11), r. (1m), (6) and (13), renum. (1q), (14) to (16) to be (2m), (16), (14) and (15) and am. (2m), (14) and (16), eff. 10-6-87; cr. (1) (intro.), (1f) and (11), am. (1), r. (1m), (6) and (13), renum. (1q), (14), (15) and (16) to be (2m), (16), (14) and (15) and am. (2m), (14) and (16), Register, March, 1988, No. 387, eff. 4-1-88; renum. (1), (1f) to (5) and (12) to be (9), (2) to (6) and (13) and am. (2) and (9), cr. (1), (12), r. (4) and (9), r. and recr. (10) and (15), and am. (7), (16), Register, January, 1994, No. 457, eff. 2-1-94; r. (1), renum. (2) to (5) to be (1) to (4), cr. (5), Register, December, 1994, No. 468, eff. 1-1-95; cr. (1r), (4r) and (14r), renum. (16) to be (13r) and am., Register, April, 1996, No. 484, eff. 5-1-96.

Comm 106.04 National objectives. Each application and each project proposed in an application shall meet either of the following requirements:

(1) **BENEFIT TO LOW- AND MODERATE-INCOME PERSONS.** The percentage of requested funds to be used for the direct benefit of low- and moderate-income persons must meet at least the minimum requirements of 24 CFR 570.483 (b) (2).

(2) **URGENT LOCAL NEED.** For those applications which propose projects that have a local government-wide benefit and which are proposed in a local government that has a smaller percentage of low- and moderate-income persons than specified in the application manual prepared by the department, the projects must meet an urgent local need.

History: Cr. Register, February, 1982, No. 314, eff. 3-1-82; am. Register, November, 1984, No. 347, eff. 12-1-84; emerg. am. eff. 10-6-87; am. Register, March, 1988, No. 387, eff. 4-1-88; r. and recr., Register, January, 1994, No. 457, eff. 2-1-94.

Comm 106.05 Public facility scoring system. The allocation of Wisconsin development fund grants distributed under the public facility competition shall be based upon the comparative ranking of applications. Comparative ranking is established by respective points awarded pursuant to ss. Comm 106.06 to 106.11. A local government may submit one application during each public facility competition. After reviewing the applications received during any public facilities competition, the department may establish a minimum score of 275 for funding.

History: Cr. Register, February, 1982, No. 314, eff. 3-1-82; r. and recr., Register, January, 1994, No. 457, eff. 2-1-94.

Comm 106.06 Distress indicators. Distress indicators have a total value of 100 points as follows:

(1) **NET MILL RATE.** Scores shall range from 25 for those applicants with the highest net mill rates to 0 for those applicants with the lowest net mill rates. The 10% of applicants with the lowest net mill rates shall receive a score of 0. The remaining 90% of applicants will be sorted into 20 groups so that applicants in the group with the highest net mill rates receive 25 and applicants in each succeeding group receive a score 5% less than the score of the preceding group.

(2) **FULL VALUE PER CAPITA.** Scores shall range from 25 for those applicants with the lowest full values per capita to 0 for those applicants with the highest full values per capita. The 10% of applicants with the highest full value per capita shall receive a score of 0. The remaining 90% of applicants will be sorted into 20 groups so that applicants in the group with the lowest full value per capita receive 25 and applicants in each succeeding group receive a score 5% less than the score of the preceding group.

(3) **MEDIAN HOUSEHOLD INCOME.** Scores shall range from 50 for those applicants with the lowest median household income to 0 for those applicants with the highest median household income. The 10% of applicants with the highest median household income shall receive a score of 0. The remaining 90% of applicants will be sorted into 20 groups so that applicants in the group with the lowest median household income receive 50 points and applicants in each succeeding group receive a score 5% less than the score of the preceding group.

History: Cr. Register, February, 1982, No. 314, eff. 3-1-82; am. (intro.), (1) (a), (2) (a) and (3) (a), Register, November, 1983, No. 335, eff. 12-1-83; am. (intro.) and (2) (c) 2., r. (1), Register, November, 1984, No. 347, eff. 12-1-84; emerg. am. (intro.), (2) (a) 1. to 4., (b) 2. and 3., (3) (a) 1. to 3., (b) 1. to 3., (c) 1. to 3., r. and recr. (2) (c) 1. to 3., eff. 10-6-87; am. (intro.), (2) (a) 1. to 4., (b) 2. and 3., (3) (a) 1. to 3., (b) 1. to 3., (c) 1. to 3., r. and recr. (2) (c) 1. to 3., Register, March, 1988, No. 387, eff. 4-1-88; r. and recr., Register, January, 1994, No. 457, eff. 2-1-94; emerg. am. (3), eff. 2-2-94; am. (3), Register, May, 1994, No. 461, eff. 6-1-94; am. (3), Register, December, 1994, No. 468, eff. 1-1-95.

Comm 106.07 Needs assessment. Applicants shall receive 75, 50, 25 or 0 for describing and documenting the need for public facility projects as follows:

(1) An applicant shall receive 75 if it has identified, described and documented, by an outside agency, at the state level if possible, its public facility deficiencies, has proposed activities that will alleviate the problem and has shown that the activities are necessary to alleviate an urgent health and safety problem or are otherwise essential to the community.

(2) An applicant shall receive 50 if it has identified, described and documented the public facility deficiencies, has proposed activities that will alleviate the identified problems and has shown that the activities are necessary to alleviate an imminent health and safety problem or are otherwise essential to the community.

(3) An applicant shall receive 25 if it has identified, described and documented the public facility deficiencies and has proposed activities that will assist in alleviating the identified problem.

(4) An applicant which fails to meet the requirements of sub. (3) shall receive 0.

History: Cr. Register, February, 1982, No. 314, eff. 3-1-82; am. (intro.) and (1), Register, November, 1983, No. 335, eff. 12-1-83; emerg. am. (intro.) and (2), eff. 10-6-87; am. (intro.) and (2), Register, March, 1988, No. 387, eff. 4-1-88; r. and recr., Register, January, 1994, No. 457, eff. 2-1-94.

Comm 106.08 Planning. Applicants shall receive 50, 25 or 0 for planning as follows:

(1) An applicant shall receive 50 if it has submitted a public facility system plan describing total system needs including the proposed improvement and the specific project plan detailing the work to be completed and the cost.

(2) An applicant shall receive 25 if it has submitted a specific project plan detailing the work to be completed and the cost.

- (3) An applicant which does not meet the requirements of sub. (2) shall receive 0.

History: Cr. Register, January, 1994, No. 457, eff. 2-1-94.

Comm 106.09 Past effort. Applicants shall receive 25, 15 or 0 for past efforts to correct the identified deficiency as follows:

(1) An applicant shall receive 25 if it has described and documented past public facility construction activities that integrally relate to and support each proposed activity and that had a direct impact on alleviating the identified deficiency.

(2) An applicant shall receive 15 if it has described and documented past public facility maintenance or improvements that relate to the proposed activities including previous attempts to fund the activities.

- (3) An applicant which does not meet the requirements of sub. (2) shall receive 0.

History: Cr. Register, January, 1994, No. 457, eff. 2-1-94.

Comm 106.10 Ability to pay. Applicants shall receive 25, 15 or 0 for the relative rank of their residential utility rates and 25, 15 or 0 for their relative ability to incur additional general obligation indebtedness as follows:

(1) RESIDENTIAL UTILITY RATES. (a) An applicant shall receive 25 if its residential utility rate is among the top third of applicants or if it is establishing the initial rate of a new public utility.

(b) An applicant shall receive 15 if its residential utility rate is among the middle third of applicants.

(c) An applicant which does not meet the requirements of pars. (a) or (b) shall receive 0.

(2) GENERAL OBLIGATION DEBT. (a) An applicant shall receive 25 if its general obligation debt per capita is among the top third and its available general obligation debt per capita is among the lower third of applicants.

(b) An applicant shall receive 15 if its general obligation debt per capita and its available general obligation debt per capita are among the middle third of applicants.

(c) An applicant which does not meet the requirements of par. (a) or (b) shall receive 0.

History: Cr. Register, February, 1982, No. 314, eff. 3-1-82; r. and recr., Register, January, 1994, No. 457, eff. 2-1-94.

Comm 106.105 Leveraging. Applicants shall receive up to 100 points for leveraging or matching Wisconsin development funds with other funds that will either expand results or permit more aspects of need to be addressed. To receive credit for leveraging, there must be evidence of prior commitment of the availability of funds within the program period. Points shall be allocated under this section as follows:

(1) Applicants that leverage one or more dollars of other funds for each dollar of Wisconsin development funds shall receive 100 points. Applicants that leverage less than one dollar for each dollar of Wisconsin development funds shall receive points equal to the whole number equivalent of the ratio of other dollars to Wisconsin development fund dollars carried to 2 decimal places.

(2) Those applicants which receive a score of 20 or more under sub. (1) with adjusted gross incomes per capita below the median adjusted gross income per capita for all eligible applicants shall receive points as provided in sub. (1) plus the whole number equivalent of the percentage differential between the adjusted gross income per capita of the applicant and the median adjusted gross income for all eligible applicants up to a maximum of 100.

History: Cr. Register, January, 1994, No. 457, eff. 2-1-94.

Comm 106.11 Comparison of communities. (1) DISTRESS COMPARISON. For the purpose of determining the scores for distress indicators, all eligible applicants with a population of 5,000 or more, other than counties, shall compete against each other. All eligible non-metropolitan area applicants with a popu-

lation of less than 5,000 and all non-metropolitan area counties shall compete against each other to determine the scores for the distress indicators. All eligible metropolitan area applicants with a population of less than 5,000 and all metropolitan area counties shall compete against each other to determine the scores for the distress indicators.

(2) OVERALL COMPARISON. For the purpose of determining the overall ranking of applications, all applications shall be compared to and compete against each other.

History: Cr. Register, February, 1982, No. 314, eff. 3-1-82; emerg. am. (2), eff. 10-6-87; am. (2), Register, March, 1988, No. 387, eff. 4-1-88.

Comm 106.12 Distribution of funds. The maximum amount available to an applicant is \$750,000.

History: Cr. Register, February, 1982, No. 314, eff. 3-1-82; am. (2), Register, November, 1983, No. 335, eff. 12-1-83; emerg. r. and recr. eff. 10-6-87; r. and recr. Register, March, 1988, No. 387, eff. 4-1-88; am. (1), r. (2), Register, January, 1994, No. 457, eff. 2-1-94.

Comm 106.13 Application process. (1) MANUAL. The department shall annually prepare a manual that contains the Wisconsin development fund grant application procedures. The department may update the manual as needed. The manual shall be available to all eligible applicants not later than 2 months prior to the deadline for receipt of applications.

(2) SUBMISSION OF APPLICATIONS. Applications shall be submitted by the deadline and in accordance with the procedures and format contained in the manual.

History: Cr. Register, February, 1982, No. 314, eff. 3-1-82; emerg. am. (1), eff. 10-6-87; am. (1), Register, March, 1988, No. 387, eff. 4-1-88.

Subchapter II — Economic Development Program and Public Facilities Economic Development Program

Comm 106.15 Economic development program.

(1) The department may award a grant under the economic development program upon receipt and consideration of an application from an eligible local government if the department determines all of the following:

(a) The project serves a public purpose.

(b) The local government has a community development plan as required by 42 USC 5304 (m).

(c) The project costs are reasonable.

(d) All sources of project financing will be committed prior to the disbursement of the grant.

(e) The project is financially feasible.

(f) The business that will benefit from the economic development grant has the economic ability to repay the funds.

(g) The project will likely retain or create jobs in this state.

(h) The percentage of jobs retained or created that are made available to persons in the target population will likely exceed the percentage specified in the application manual.

(i) Financing for the project is unavailable from any other source on reasonably equivalent terms.

(j) The business that will benefit from the economic development grant will contribute at least 50% of the total cost of the project from private funding sources.

(k) The project includes job training, child care or transportation activities under 24 CFR 570.483 (b) (2) (v) designed to benefit low- and moderate-income persons, job creation or retention activities under 24 CFR 570.483 (b) (4) designed to benefit low- and moderate-income persons or other activities under 24 CFR Part 570 that meet the national objectives of benefit to low- and moderate-income persons through job creation.

(2) To make a determination under sub. (1) (a), the department shall consider all of the following:

(a) The extent of poverty and unemployment and other economic factors in the area of the project.

(b) The prospects for new investment and economic development in the area.

(c) The amount of investment that is likely to result from the project.

(d) The total cost per job created or retained.

(e) The amount of wages and benefits to be provided by the business.

(f) The willingness of the business to work cooperatively with local job service offices and private industry councils to identify and offer job opportunities to persons in the target population.

(g) The availability of satisfactory collateral and personal guarantees to assure repayment of the economic development grant.

(h) Whether the award will provide the business with an unreasonable competitive advantage over other similar Wisconsin businesses in the vicinity of the project.

(i) Whether the project will involve relocation of a business and displacement of jobs from one local government in Wisconsin to another local government in Wisconsin.

(3) The amount of funds requested for each job to be created or retained may not exceed \$20,000. The amount awarded shall depend upon the department's consideration of the factors in sub. (2).

History: Cr. Register, November, 1984, No. 347, eff. 12-1-84; am. Register, January, 1987, No. 373, eff. 2-1-87; emerg. am., eff. 10-6-87; am. Register, March, 1988, No. 387, eff. 4-1-88; am. Register, January, 1994, No. 457, eff. 2-1-94; r. and recr. Register, April, 1996, No. 484, eff. 5-1-96.

Comm 106.16 Public facilities economic development program. (1) The department may award a grant under the public facilities economic development program upon receipt and consideration of an application from an eligible local government if the department determines all of the following:

(a) Each of the items in s. Comm 106.15 (1) (a), (c), (d), (e), (g) and (h).

(b) The local government has a citizen participation plan as required under 24 CFR 570.486 (a).

(c) The local government will contribute at least 25% of the total cost of the project from funding sources other than the federal or state government.

(2) To make a determination under sub. (1) (a), the department shall consider each of the items in s. Comm 106.15 (2) (a) to (f), (h) and (i).

(3) The amount of public facility economic development program funds requested by an eligible local government may not exceed \$10,000 for each job created and retained. The amount awarded shall depend upon the department's consideration of the factors set forth in sub. (2).

History: Cr. Register, November, 1984, No. 347, eff. 12-1-84; am. (4) (intro.), (5) (intro.), (6) (intro.), (7) (intro.) and (8) (intro.), Register, January 1987, No. 373, eff. 2-1-87; emerg. r. and recr. eff. 10-6-87; r. and recr. Register, March, 1988, No. 387, eff. 4-1-88; cr. (1f), am. (intro.), (3) to (6), (4) (b), (c), (d), Register, January, 1994, No. 457, eff. 2-1-94; r. and recr. Register, April, 1996, No. 484, eff. 5-1-96.

Comm 106.17 Application manual. The department shall prepare application manuals which it may update as needed. The application manuals will contain the application procedures, requirements and instructions for funding under the economic development program and the public facilities economic development program.

History: Cr. Register, November, 1984, No. 347, eff. 12-1-84; emerg. am. eff. 10-6-87; am. Register, March, 1988, No. 387, eff. 4-1-88; am. Register, January, 1994, No. 457, eff. 2-1-94.

Comm 106.18 Distribution of funds. (1) Out of each annual grant of CDBG funds from the federal government, the department may set aside up to 75% for the economic development program, up to 20% for the public facilities economic development program, and up to 75% for the public facilities program administered under subch. I. The department shall report semi-annually to the chairs of the economic development standing committees of the legislature on the status of the program. Program income received by the department from repayments of

prior economic development program awards shall be allocated for economic development, public facilities economic development or public facilities program awards.

(2) (a) The maximum amount of CDBG funds that may be awarded to any local government for the purpose of making a loan to a business under the economic development program shall be \$1 million. The maximum amount available to any business during any 5 year period shall be \$1 million. The maximum aggregate amount of CDBG funds that may be awarded under the economic development program to any local government shall be \$1.5 million per calendar year.

(b) The maximum amount of CDBG funds that may be awarded to any local government for the benefit of a business under the public facilities economic development program shall be \$500,000. The maximum aggregate amount of CDBG funds that may be awarded to any local government under the public facilities economic development program shall be \$1 million per calendar year.

(3) Each eligible local government that is awarded economic development program funds may retain program income from all grants awarded subject to subs. (4), (5) and (6) to establish and capitalize an economic development revolving loan fund. A local government that establishes an economic development revolving loan fund shall administer and use the fund in accordance with all of the requirements established by the federal government and the department.

(4) (a) Subject to pars. (am) to (e) and subs. (5) and (6), retained cumulative program income may not exceed:

1. \$100,000 for a local government with a population of 1,000 or less

2. \$150,000 for a local government with a population of more than 1,000 but less than 2,000

3. \$250,000 for a local government with a population of 2,000 or more but less than 4,000

4. \$500,000 for a local government with a population of 4,000 or more but less than 10,000

5. \$750,000 for a local government with a population of 10,000 or more

(am) As an alternative to the cumulative program income limits in par. (a) a local government may elect to retain program income from grants received prior to January 1, 1987 in excess of the limits in par. (a). A local government shall make the election on a form prescribed by the department. Any local government that makes the election under this paragraph, may not retain program income generated after the effective date of this paragraph from grants received on January 1, 1987 or thereafter except as provided in sub. (5).

Note: The form required under s. Comm 106.18 (4) (am) may be obtained at no charge from the Department of Commerce, Bureau of Development Finance, P.O. Box 7970, Madison, WI 53707.

(b) All program income received by a local government in excess of the limits in par. (a) or (am), if the local government makes the election under par. (am), shall be paid to the department within 30 days of receipt. The department shall use such program income to fund eligible economic development, public facilities economic development and public facilities activities.

(c) A local government that will generate program income in excess of the amounts allowed in par. (a) or (am), if the local government makes the election under par. (am), shall not be eligible to retain the excess program income except as provided in sub (5).

(d) All program income shall be used by a local government in accordance with 24 CFR Part 570 and the local government's contract with the department.

(e) The department may require a local government to return program income if any of the following occurs:

1. The local government fails to use the funds in accordance with the requirements established by the federal government and the department.

2. The local government fails to comply with the recordkeeping and reporting requirements established by the federal government and the department.

3. The local government fails to make any economic development loans with the revolving loan fund for a period of two consecutive years and, after receiving a notice from the department, fails to make any economic development loans for a period of 6 months.

4. The local government discontinues its economic development program following the close out of its most recent contract with the department.

(5) (a) Any local government that desires to retain program income in excess of the limits established under sub. (4) (a) or (am) shall submit an application to the department setting forth the information as may be required by the department to justify the retention of 50% of the program income in excess of the limits.

(b) When evaluating applications under par. (a), the department shall consider the following factors:

1. Whether the local government has complied with the administrative, underwriting, recordkeeping and other requirements established by the federal government and the department.

2. The total number and amount of loans made by the local government using program income in the revolving loan fund.

3. The default rate on loans made by the local government using program income in the revolving loan fund.

4. The demonstrated need for an increase above the local government's program income limit.

(c) Any increase above a local government's original program income limit shall be made in increments equal to 25% of the limit established under sub. (4) (a) or (am).

(d) Local governments authorized by the department to retain excess program income may keep 50% of the excess program income received, subject to the program income limits in par. (c). The balance of such program income shall be paid to the department within 30 days of receipt.

(6) Any local government that establishes an economic development revolving loan fund pursuant to this subchapter shall report annually to the department on the use of such a fund on forms and at such times as prescribed by the department.

History: Cr. Register, November, 1984, No. 347, eff. 12-1-84; am. (1) and (3), cr. (4) to (6), Register, January, 1987, No. 373, eff. 2-1-87; emerg. am. (1), r. (2), renum. (3) to (6) to be (2) to (5) and am. (2), (3), (4) (a) 3., 4., 5. and (c), eff. 10-6-87; am. (1), r. (2), renum. (3) to (6) to be (2) to (5) and am. (2), (3), (4) (a) 3. to 5. and (c), Register, March, 1988, No. 387, eff. 4-1-88; am. (1), (2), (3), (4) (b), (c), (d), Register, January, 1994, No. 457, eff. 2-1-94; am. (1) to (4), cr. (4) (am), (e) and (5), renum. (5) to be (6) and am., Register, April, 1996, No. 484, eff. 5-1-96.

Comm 106.20 Employment commitments. Employers shall document job creation and job retention with a list of jobs or positions that specifies job titles, the number of full-time equivalent positions to be filled or retained under each title, job skills and wages or salaries.

History: Cr. Register, March, 1988, No. 387, eff. 4-1-88; renum. from DOD 6.24, Register, April, 1996, No. 484, eff. 5-1-96.

Subchapter III — Emergency Grants

Comm 106.30 Purpose. (1) The purpose of this subchapter is to set forth the criteria the department will use to determine how federal Wisconsin development funds will be distributed to provide emergency assistance to local governments which have experienced natural disasters or other catastrophic events that threaten the public health or safety of the community and lead to an urgent need for major infrastructure repairs or replacement.

(2) Sections Comm 106.01, 106.02 and 106.03 (4) and (13r) and the provisions of this subchapter apply to the emergency grants program.

History: Cr. Register, April, 1985, No. 352, eff. 5-1-85; emerg. renum. from DOD 6.20, eff. 10-6-87; renum. from DOD 6.20, Register, March, 1988, No. 387, eff. 4-1-88; am. cr. (2), Register, January, 1994, No. 457, eff. 2-1-94; correction made under s. 13.93 (2m) (b) 7., Stats., Register, April, 1996, No. 484.

Comm 106.31 Eligibility. In addition to meeting the provisions of s. Comm 106.02, to be eligible for funding under this subchapter a community must meet the requirements contained in subs. (1) through (3).

(1) The local government must have suffered a natural disaster or other catastrophic event.

(2) The community must have sustained damage which is beyond the financial capability of the local government to repair.

(3) The community must provide a match equal to one-third of the block grant funds requested.

History: Cr. Register, April, 1985, No. 352, eff. 5-1-85; emerg. renum. from DOD 6.21, eff. 10-6-87; renum. from DOD 6.21, Register, March, 1988, No. 387, eff. 4-1-88; am. (1), Register, January, 1994, No. 457, eff. 2-1-94.

Comm 106.32 Funding. (1) The activities which are eligible for funding under this subchapter are the same as those which were eligible under the public facilities competition except that they must in addition be related to recovery from the emergency, must be for items which are not covered by insurance or other funding sources and must be unable to await funding available through the next public facilities competition.

(2) Grants may be for up to \$500,000.

(3) In situations where the catastrophic event was caused by human activity, such as a spill of hazardous material, and funds to repair the damage are recovered from a responsible party, then the department shall be reimbursed for its proportionate share of the repair.

History: Cr. Register, April, 1985, No. 352, eff. 5-1-85; emerg. renum. from DOD 6.22, eff. 10-6-87; renum. from DOD 6.22, Register, March, 1988, No. 387, eff. 4-1-88; emerg. am. (2), eff. 9-27-93; am. (1), cr. (3), Register, January, 1994, No. 457, eff. 2-1-94.

Comm 106.33 Grant application. (1) A local government interested in applying for an emergency grant must provide the department with a written request dated not more than 90 days after the later of the issuance of the state or federal disaster declaration applicable to the local government, the occurrence of or the discovery of the catastrophic event, which includes:

(a) A description of the damage,

(b) Documentation of a state or federal disaster declaration or a description of the catastrophic event,

(c) A description of the activities the emergency grant will fund,

(d) A budget,

(e) Evidence of the one-third financial match to the emergency grant funds requested,

(f) A discussion of alternative remedies, and

(g) Evidence that the applicant can assume or identify other means to pay project costs in excess of \$666,666.

History: Cr. Register, April, 1985, No. 352, eff. 5-1-85; emerg. renum. from DOD 6.23, eff. 10-6-87; renum. from DOD 6.23, Register, March, 1988, No. 387, eff. 4-1-88; emerg. am. (1) (intro) and (e), eff. 9-27-93; am. (1), Register, January, 1994, No. 457, eff. 2-1-94.

Comm 106.34 Allocation. Each calendar year, up to \$1,000,000 of federal Wisconsin development funds may be expended by the department for emergency grants. The department may exceed this level of expenditure if it receives additional qualified applications.

History: Cr. Register, April, 1985, No. 352, eff. 5-1-85; emerg. renum. from DOD 6.24, eff. 10-6-87; renum. from DOD 6.24, Register, March, 1988, No. 387, eff. 4-1-88; emerg. am. eff. 9-27-93; am. Register, January, 1994, No. 457, eff. 2-1-94.

Subchapter IV — Customized Labor Training Fund

Comm 106.40 Purpose. The purpose of this subchapter is to establish the procedure for the administration of labor training fund grants or loans by the department of development, as provided by s. 560.63, Stats.

History: Cr. Register, March, 1988, No. 387, eff. 4-1-88

Comm 106.405 Policy and plan. (1) **APPLICABILITY.** The provisions of this section apply to this subchapter, subchs. V and VII and those provisions which relate to the recycling loan program.

(2) **POLICY STATEMENT.** As the state economic development agency, the department shall administer and coordinate economic and business development programs to foster investment, job creation, and diversification of the state's economy. The department shall provide financial and technical assistance to businesses for economic development, labor training, recycling, and technology related projects. The department shall place special emphasis on the financing needs of small businesses, women and minority owned businesses, and firms located in targeted areas of the state. Through the use of the Wisconsin development fund, the department shall seek to maximize the use of limited funds by leveraging private investment and utilizing other sources of available funds.

(3) **BIENNIAL PLAN.** The department shall develop and submit funding goals to the board for awarding grants and loans that allocate available funds for economic development, labor training, recycling and technology related projects for each fiscal biennium. The board shall consider the recommendations of the department based upon grant and loan criteria as provided in s. 560.605, Stats., and the goals established by other state administered financial assistance programs. Following board approval and before the commencement of each odd-numbered fiscal year the department shall submit the goals to the governor and chief clerk of each house.

History: Cr. Register, November, 1993, No. 455, eff. 12-1-93.

Comm 106.41 Definitions. The definitions in this section apply only in this subchapter.

(1) "Application" means a proposal from an eligible applicant as specified in s. Comm 106.42 containing all elements required in s. Comm 106.46.

(2) "Board" means the development finance board as defined in s. 15.155 (1), Stats.

(3) "Business" means a company located in this state, a company which has made a firm commitment to locate a facility in this state or a group of companies at least 80% of which are located in this state.

(4) "Department" means the department of commerce.

(5) "Financial audit" means an audit performed in accordance with the standards adopted by the American institute of certified public accountants on the revenues and expenditures made in association with a grant or loan under this fund.

(6) "Financing is unavailable from any other source on reasonably equivalent terms" means any of the following:

(a) Financing has been declined for the major economic development project.

(b) The maturity, rate or the amount of available financing or requirements related to the financing, such as collateral, equity, closing costs, service charges and repayment schedules offered on such financing are materially different from the financing available from the Wisconsin development fund.

(7) "Fund" means the labor training fund.

(8) "Job" means a position providing full-time equivalent employment for one individual for one year, beginning after a project is completed. It does not include initial training before an employment position begins.

(9) "Occupational classification" means a type of job for which the department of workforce development has certain descriptive specifications and maintains vacancy rate information on a substate regional basis which may be obtained from a local Wisconsin job service office.

(10) "Program report" means a report to the department describing progress made toward achieving goals specified under s. Comm 106.46.

(11) "Training" means to teach or to demonstrate skills necessary for successfully performing a task associated with a product, process or service of a business.

History: Cr. Register, March, 1988, No. 387, eff. 4-1-88.

Comm 106.42 Eligible applicants. Any business that has made a firm commitment to locate in Wisconsin, a business that is expanding within Wisconsin, or a business that is upgrading a product, process or service that requires training in new technology and industrial skills for its employees may apply for a grant or loan under this subchapter.

History: Cr. Register, March, 1988, No. 387, eff. 4-1-88.

Comm 106.43 Eligible providers. Applicant businesses may provide the training funded under the program utilizing their own resources, another business, a consultant or contractor, a local vocational, technical and adult education school, or a public or private secondary or post-secondary school.

History: Cr. Register, March, 1988, No. 387, eff. 4-1-88.

Comm 106.44 Grant and loan amounts and restrictions. (1) The amount of funding for a project and a determination as to whether the project will be funded as a grant or loan will be at the discretion of the board. Insofar as it is practical, the board will require repayment of the funds plus a reasonable return on the investment. The repayment provisions shall be determined on a case-by-case basis by the board.

(2) As provided by s. 560.63 (3), Stats., funds shall not be available for any of the following costs incurred by a vocational, technical and adult education district or by a public secondary or post-secondary institution:

(a) The cost, incurred before the beginning of the labor training program, of recruiting program instructors.

(b) The cost of developing a labor training program curriculum.

(c) The cost of recruiting, screening and counseling program trainees.

(d) The cost of a financial audit.

(e) The cost of renting instructional equipment and training facilities owned or leased by the district or institution, unless the equipment or facilities are rented only for the labor training program.

History: Cr. Register, March, 1988, No. 387, eff. 4-1-88.

Comm 106.45 Match requirements. The applicant shall provide a match for the grant or loan received. The match shall be in cash and shall not be less than 50% of the value of the training provided if the project for which funding is requested is located outside a targeted area. Up to 20% of the contribution of a participating business may consist of funds which the business receives under the federal job training partnership act, 29 USC 1501 to 1781.

History: Cr. Register, March, 1988, No. 387, eff. 4-1-88; am. Register, January, 1992, No. 433, eff. 2-1-92.

Comm 106.46 Application content. Applications from eligible businesses shall be submitted to the department. Each application shall contain all of the following:

(1) A description of a training program which details the kind of specialized training to be provided, the number of trainees, the name and qualifications of the proposed provider, the equipment and the facilities needed, and the location and duration of the proposed training.

(2) An explanation of why Wisconsin development fund assistance is needed.

(3) A statement, including supporting documentation, that the applicant is financially sound.

(4) An itemized estimate of the proposed cost of the training and a description of the proposed cash or in kind match.

(5) A statement guaranteeing a job in the state of Wisconsin for those successfully completing the training program supported by the proposed grant or loan.

(6) An explanation of how the proposed training project addresses the standards established in s. Comm 106.47.

(7) A statement that the proposed training is not available to the applicant through the applicant's existing training programs and that the training will not supplant training provided by any other federal, state or local public or private program.

(8) A plan for conducting a financial audit of the grant and for submitting program reports to the department on the results of the training.

(9) A statement that job orders for new hires will be placed with the Wisconsin job service, and that, to the extent possible, new hires will be recruited through the job service.

(10) A statement regarding the repayment of the grant or loan including proposed terms.

(11) Documentation from a financial institution that financing is unavailable from any other source on reasonably equivalent terms.

(12) Employers shall document job creation and job retention with a list of jobs or positions that specifies job titles, the number of full-time equivalent positions to be filled or retained under each title, job skills and wages or salaries both before and after the proposed training.

(13) Other information as may be required by the board.

History: Cr. Register, March, 1988, No. 387, eff. 4-1-88.

Comm 106.47 Evaluation criteria. (1) The board shall determine the following before funding a project:

(a) That the project serves a public purpose.

(b) That the project will retain or increase employment in this state.

(c) That the project is not likely to occur in this state without the grant or loan.

(d) That financing is unavailable from any other source on reasonably equivalent terms.

(e) That funds from the grant or loan under this subchapter will not be used to pay overhead costs or to replace funds from any other source.

(f) That the project will not displace any workers in this state.

(2) The board shall consider the following before funding a project:

(a) The extent to which the project will contribute to the economic growth of this state and the well-being of the residents of this state.

(b) Whether the project will be located in an area of high unemployment or low average income.

(c) The financial soundness of the business.

(d) The intention of the eligible recipient to repay the grant or loan.

(e) The ratio of state dollars requested to the number of jobs created or retained by the project.

(f) The ratio of the annual wages resulting from the project to the state dollars requested.

(g) The ratio of capital investment to the state dollars requested.

(h) The ratio of the state dollars requested to the private dollars committed to the project.

(i) The extent to which the business exports goods or services outside state borders.

(j) The likely economic benefits of the project compared with the public costs of the project.

(k) The extent to which the project is likely to contribute to the growth of existing Wisconsin businesses or is likely to spur the creation of new Wisconsin business.

(L) Whether the project is in a targeted area based on the following indices.

1. The level of unemployment in the area.

2. The average household income in the area.

3. The percentage of households in the area receiving aid to families with dependent children under s. 49.19, Stats.

4. The rate of decline in the population in the area.

5. The reduction of property values in the area.

6. The number of workers in the area that have been permanently laid off by their employers or the existence of public notice by an employer of either a plant closing or a substantial reduction in work force that will result in a significant number of workers in the area being laid off permanently.

7. Designation of the area as a development zone under s. 560.71, Stats.

History: Cr. Register, March, 1988, No. 387, eff. 4-1-88; cr. (2) (l), Register, January, 1992, No. 433, eff. 2-1-92.

Comm 106.48 Contracts. Successful applicants shall be required to enter into a contract with the department for the purpose of implementing the proposed grant or loan. The contracts shall be signed by the secretary of development and the chief executive officer of the business, or by their authorized representatives. The department may void a contract and seek a return of funds released under the contract for failure by the business to perform its obligations under the contract. Amendments to these contracts may be adopted by the consent of both of the original signatories. However, no change may be authorized if the jobs for which the training is provided are to be moved out of state or the job classification or the skill levels are to be downgraded. Any relocation from Wisconsin to any other state of the jobs for which the training is provided or any change in the job classifications or skill level involved shall void the contract and all funds paid to date shall be refunded to the department for use in support of other applications to the fund. These restrictions apply only to jobs described in the training application provided in s. Comm 106.46 and apply only for a term subject to negotiation between the successful applicant and the department.

History: Cr. Register, March, 1988, No. 387, eff. 4-1-88.

Comm 106.49 Reporting and auditing. Successful applicants will be required to provide the department periodic financial and program reports. A financial audit and final program report shall be submitted at the end of the contract. The cost of the audit may be covered by the grant or loan except as provided under s. Comm 106.44 (2) (d). The financial reports, audit and the program reports shall be submitted to the department as specified in the contract. The financial audit and the program reports become the property of the department and are open to public inspection.

History: Cr. Register, March, 1988, No. 387, eff. 4-1-88.

Comm 106.50 Administration. The department shall be responsible for soliciting applications for the fund, reviewing applications, making recommendations to the board on the disposition of applications, authorizing payments and otherwise implementing contractual obligations entailed in grants or loans made under the terms of this subchapter, monitoring the provision of the training, receiving and reviewing the financial reports and program reports submitted under s. Comm 106.49 and for collecting any repayments of grants and loans from successful applicants. The department shall report semiannually to the chairs of the economic development standing committees of the legislature on the status of the program.

History: Cr. Register, March, 1988, No. 387, eff. 4-1-88.

Comm 106.51 Board operations. The board shall consider the recommendation of the department relating to the criteria under s. Comm 106.47. The board shall approve an application before the department can enter into a contract under the terms of the fund. The department shall maintain records of its proceedings and provide other staff support as may be necessary to the board.

History: Cr. Register, March, 1988, No. 387, eff. 4-1-88; am. Register, January, 1992, No. 433, eff. 2-1-92.

Subchapter V — Technology Development

Comm 106.60 Purpose. The purpose of this subchapter is to establish the procedure for the administration of technology development grants and loans and technology development follow-up loans by the department, as provided by ss. 560.605 and 560.62, Stats.

History: Cr. Register, March, 1988, No. 387, eff. 4-1-88; r. and recr. Register, February, 1991, No. 422, eff. 3-1-91; r. and recr. Register, May, 1994, No. 461, eff. 6-1-94.

Comm 106.61 Definitions. In this subchapter:

(1) "Application" means a proposal from an eligible applicant as specified in s. Comm 106.62 (1) or (2) containing all applicable elements required in s. Comm 106.65.

(2) "Board" has the meaning provided in s. 560.60 (1s), Stats.

(3) "Business" has the meaning provided in s. 560.60 (2), Stats.

(4) "Consortium" has the meaning provided in s. 560.60 (3), Stats.

(5) "Department" means the department of development.

(6) "Financial audit" means an audit performed to the satisfaction of the department.

(7) "Financing is unavailable from any other source on reasonably equivalent terms" means any of the following:

(a) Financing has been declined for the project.

(b) The maturity, rate or the amount of available financing or requirements related to the financing, such as collateral, equity, closing costs, service charges and repayment schedules offered on such financing are materially different from the financing available from the Wisconsin development fund.

(8) "Fund" means the technology development fund.

(9) "Higher educational institution" has the meaning provided in s. 560.60 (8), Stats.

(10) "Job" has the meaning provided in s. 560.60 (10), Stats.

(11) "Program report" means a report to the department describing the results of the project supported by a technology development grant or loan or technology development follow-up loan.

(12) "Project" has the meaning provided in s. 560.60 (14), Stats.

(13) "Royalty" means a share of future profits from, or an interest in, a product or process.

(14) "Targeted area" means an area identified under s. 560.605 (2) (f) and (2m), Stats.

(15) "Technology development follow-up loan" means a loan made under this subchapter as described in s. Comm 106.62 (2).

(16) "Technology development fund" means the total of all grant and loan funds awarded under s. 560.62, Stats., and this subchapter.

(17) "Technology development grant or loan" means a grant or loan made under this subchapter as described in s. Comm 106.62 (1).

History: Cr. Register, March, 1988, No. 387, eff. 4-1-88; r. and recr. Register, February, 1991, No. 422, eff. 3-1-91; r. and recr. Register, May, 1994, No. 461, eff. 6-1-94.

Comm 106.62 Eligible applicants. (1) Any consortium with a proposed technical research project that is intended to result in the development of a new, or the improvement of, an

existing industrial product or process may apply for a technology development grant or loan under this subchapter.

(2) Any business which, as part of a consortium, received funding under s. Comm 106.63 and which, with such funding, developed a new or improved an existing industrial product or process may apply for a technology development follow-up loan under this subchapter.

History: Cr. Register, March, 1988, No. 387, eff. 4-1-88; r. and recr. Register, February, 1991, No. 422, eff. 3-1-91; r. and recr. Register, May, 1994, No. 461, eff. 6-1-94.

Comm 106.63 Grant and loan amounts. (1) Wisconsin development funds expended or encumbered under this subchapter in any fiscal year for grant or loan projects located outside a targeted area may not exceed 40% of the total budgets of all grant and loan projects located outside a targeted area which are awarded grants or loans under this subchapter.

(2) A determination as to whether a technology development fund project shall be funded as a grant or loan shall be at the discretion of the board. Insofar as it is practical, the board shall require repayment of technology development fund loans and technology development follow-up loans plus a reasonable return on the investment. The repayment provision shall be determined on a case by case basis by the board.

(3) The proceeds of a technology development follow-up loan may be used only to pay those costs identified in s. 560.62 (1) (b) and (2m), Stats., and only in accordance with the terms of the contract required under s. Comm 106.67. The terms and conditions of each technology development follow-up loan, including repayment terms, shall be determined on a case by case basis by the board.

History: Cr. Register, March, 1988, No. 387, eff. 4-1-88; r. and recr. Register, February, 1991, No. 422, eff. 3-1-91; am. (1), Register, January, 1992, No. 433, eff. 2-1-92; r. and recr. Register, May, 1994, No. 461, eff. 6-1-94.

Comm 106.64 Match requirements. (1) The consortium shall provide a match for the technology development grant or loan received. The match shall not be less than 25% of the value of the research project. The board may establish a higher match requirement to the extent that the financial documentation in the application indicates the ability on the part of the consortium to finance a greater share of the project.

(2) The business shall provide a match for the technology development follow-up loan received. The match shall not be less than 25% of the cost of the project. The board may require a higher match to the extent that the financial documentation in the application indicates the ability on the part of the business to finance a greater share of the project.

History: Cr. Register, March, 1988, No. 387, eff. 4-1-88; r. and recr. Register, February, 1991, No. 422, eff. 3-1-91; am. (2), Register, January, 1992, No. 433, eff. 2-1-92; r. and recr. Register, May, 1994, No. 461, eff. 6-1-94.

Comm 106.65 Application content. (1) Each technology development grant and loan application shall be in such form as the department may require and shall contain all of the following:

(a) The composition of the consortium including the location of the businesses and the higher educational institution and the extent of participation of each in the consortium.

(b) A written agreement specifying all of the following:

1. The ownership of any patents or licenses which result from the technical research.

2. Dissemination of information relating to the technical research.

3. The responsibilities of persons conducting the technical assistance.

(c) A timetable for completion of grant or loan supported activities.

(d) A description of the new product or process and of the research and development activities to be supported by the consortium and a budget for those activities.

(e) An estimate of the potential benefit to the economy of the state of Wisconsin in terms of new jobs, increased productivity, expansion into new markets inside or outside the state or the initiation of new enterprises within the state.

(f) An explanation of why Wisconsin development fund assistance is needed.

(g) A description of the proposed match to be provided by the business.

(h) A schedule for repayment of the funds.

(i) A pledge by the applicant business to maintain operations in the state after completion of activities supported by the grant or loan.

(j) A summary of related research indicating the uniqueness of the proposed research and development activities.

(k) An explanation of how the proposed project addresses the standards under s. Comm 106.66.

(L) A plan for evaluating and reporting on the effectiveness of the activities supported by the award as measured by the production or introduction of a new process or of a saleable new product into the market and for reporting progress in completing activities described in the timetable.

(m) Documentation from a financial institution that financing is unavailable from any other source on reasonably equivalent terms.

(n) Other information the board may require to make a determination under this subchapter and s. 560.62, Stats.

(2) Each technology development follow-up loan application shall be in such form as the department may require and shall contain all of the following:

(a) An analysis of the need for funds for the production, marketing or sales of the new or improved product or process resulting from a technology development grant or loan project.

(b) A market analysis which shows demand for the product or process.

(c) Any other information the department may require to make a determination in accordance with the provisions of this subchapter and s. 560.62, Stats.

History: Cr. Register, March, 1988, No. 387, eff. 4-1-88; r. and recr. Register, February, 1991, No. 422, eff. 3-1-91; r. and recr. February, 1994, No. 461, eff. 6-1-94.

Comm 106.66 Evaluation criteria. (1) The board shall determine that the project meets the requirements of ss. 560.605 (1) (a) to (h) and 560.62 Stats., before making a technology development grant or loan.

(2) The board shall consider the following before making a technology development grant or loan:

(a) Each of the items contained in s. 560.605 (2) (a) to (f), (4), (5) and (5m), Stats.

(b) The extent to which the business pledges to maintain operations in this state after completion of the technical research supported by grant or loan funds.

(c) The technical soundness of the proposed research.

(d) The degree to which technological developments likely to come from the proposed research will be used in and be of benefit to the economy of this state.

(e) The time frame for repayment of the grant or loan funds and the amount of any additional royalties.

(f) The likely economic benefits of the project compared with the public cost of the project.

(g) The extent to which the project is likely to contribute to the growth of existing Wisconsin businesses or is likely to spur the creation of new Wisconsin businesses.

(3) The board shall determine that the project meets the requirements of ss. 560.605 (1) (a) to (h) and 560.62, Stats. before making a technology development follow-up loan.

(4) The board shall consider the following before making a technology development follow-up loan:

(a) Each of the items contained in s. 560.605 (2) (a) to (f), (4), (5) and (5m), Stats.

(b) The market for the product or process.

(c) The competition in the market for the product or process.

(d) The potential commercial success of the product or process.

History: Cr. Register, March, 1988, No. 387, eff. 4-1-88; r. and recr. Register, February, 1991, No. 422, eff. 3-1-91; cr. (2) (n), Register, January, 1992, No. 433, eff. 2-1-92; r. and recr. Register, May, 1994, No. 461, eff. 6-1-94.

Comm 106.67 Contracts. Each successful applicant shall enter into a contract with the department for the purpose of implementing the proposed grant or loan under this subchapter. Each contract shall be signed by the secretary of development and the chief executive officer of the eligible recipient, or by the authorized representative of the eligible recipient. The department may void a contract and seek a return of any funds released under the contract for failure by the grant or loan recipient to perform its obligations under the contract.

History: Cr. Register, March, 1988, No. 387, eff. 4-1-88; r. and recr. Register, February, 1991, No. 422, eff. 3-1-91; r. and recr. Register, May, 1994, No. 461, eff. 6-1-94.

Comm 106.68 Reporting and auditing. A successful applicant for a grant or loan under this subchapter shall provide the department periodic financial and program reports. A financial audit and final program report shall be submitted at the end of each contract. The cost of the audit may be covered by the grant or loan. The financial audit and the program reports become the property of the department and are open to public inspection.

History: Cr. Register, March, 1988, No. 387, eff. 4-1-88; r. and recr. Register, February, 1991, No. 422, eff. 3-1-91; r. and recr. Register, May, 1994, eff. 6-1-94.

Comm 106.69 Administration. The department is responsible for soliciting applications from eligible applicants; reviewing applications; making recommendations to the board on the disposition of applications; entering into contracts with successful applicants; authorizing payments and otherwise implementing contractual obligations entailed in grants or loans made under this subchapter; receiving the financial reports and program reports submitted under s. Comm 106.68 and for collecting any repayments of loans from successful applicants. The department shall report semiannually to the chairs of the economic development standing committees of the legislature on the status of the technology development fund program.

History: Cr. Register, March, 1988, No. 387, eff. 4-1-88; r. and recr. Register, February, 1991, No. 422, eff. 3-1-91; r. and recr. Register, May, 1994, No. 461 eff. 6-1-94.

Comm 106.70 Board operations. The board shall consider the recommendation of the department relating to the criteria under s. Comm 106.66. The board shall approve an application before the department can enter into a contract for a grant or loan under this subchapter. The department shall maintain records of its proceedings and provide other staff support as may be necessary to the board.

History: Cr. Register, March, 1988, No. 387, eff. 4-1-88; r. and recr. Register, February, 1991, No. 422, eff. 3-1-91; am. Register, January, 1992, No. 433, eff. 2-1-92; r. and recr. Register, May, 1994, No. 461, eff. 6-1-94.

Subchapter VI — Major Economic Development Fund

Comm 106.80 Purpose. The purpose of this subchapter is to establish a procedure for the administration of major economic development grants or loans by the department of development, as provided by s. 560.62, 560.63 or 560.66, Stats., that are funded under s. 20.143 (1) (d), Stats.

History: Cr. Register, March, 1988, No. 387, eff. 4-1-88.

Comm 106.81 Definitions. The definitions in this section apply only in this subchapter.

(1) "Application" means a proposal from an eligible applicant as specified in s. Comm 106.82 containing all elements required in s. Comm 106.84.

(2) "Board" means the development finance board as defined in s. 15.155 (1), Stats.

(3) "Business" means a company located in this state, a company which has made a firm commitment to locate a facility in this state or a group of companies at least 80% of which are located in this state.

(4) "Consortium" means an association of a business and a higher educational institution or the Great Lakes composites consortium, which association is subject to an agreement complying with this chapter.

(5) "Department" means the department of commerce.

(6) "Financial audit" means an audit performed in accordance with the standards adopted by the American institute of certified public accountants on the revenues and expenditures made in association with a grant or loan under this fund.

(7) "Financing is unavailable from any other source on reasonably equivalent terms" means any of the following:

(a) Financing has been declined for the major economic development project.

(b) The maturity, rate or the amount of available financing or requirements related to the financing, such as collateral, equity, closing costs, service charges and repayment schedules offered on such financing are materially different from the financing available from the Wisconsin development fund.

(8) "Governing body" means a county board, city council, village board, town board, regional planning commission or transit commission under s. 59.967 or 66.943, Stats.

(9) "Higher educational institution" means any of the following:

(a) The university of Wisconsin system.

(b) An institution which is located in this state and offers a post-baccalaureate or professional degree program.

(10) "Job" means a position providing full-time equivalent employment for one individual for one year, beginning after a project is completed. It does not include initial training before an employment position begins.

(11) "Local infrastructure" means the real property, buildings and improvements owned, constructed, managed, or operated by a political subdivision.

(12) "Major economic development project" means a project to which any of the following applies:

(a) The program [project] is necessary to retain a significant number of jobs in a political subdivision.

(b) The project is necessary to significantly increase the number of jobs in a political subdivision.

(c) The project will lead to significant capital investment in this state by a business.

(d) The project will make a significant contribution to the economy of this state.

(13) "Political subdivision" means a county, city, town or village.

(14) "Project" means a business development that increases the productivity of a business or its employees in this state, leads to significant capital investment in a business in this state, leads to the retention of existing jobs in this state or creates new jobs in this state.

History: Cr Register, March, 1988, No. 387, eff. 4-1-88; am (4), Register, January, 1992, No. 433, eff. 2-1-92.

Comm 106.82 Eligible applicants. Any business, consortium, nonprofit business development organization as defined

in s. 560.60 (12), Stats. or governing body that is not eligible for a grant or loan under subchs. IV and V may apply for a grant or loan under this subchapter.

Note: Written instruction for technology development, technology-based incubator and applied research in technology grant and loan applications may be obtained at no charge from the Department of Commerce, Bureau of Development Finance, P.O. box 7970, Madison, Wisconsin 53707.

History: Cr Register, March, 1988, No. 387, eff. 4-1-88; r. and recr. Register, February, 1991, No. 422, eff. 3-1-91.

Comm 106.83 Match requirements. Applicants shall provide a match for the grant or loan received. The match shall be in cash and shall be a minimum of 25% of the projected cost. The board may establish a higher match requirement. A determination as to whether the project will be funded as a grant or loan will be at the discretion of the board. Insofar as it is practical, the board will require repayment of the funds plus a reasonable return on the investment. The repayment provisions shall be determined on a case-by-case basis by the board.

History: Cr Register, March, 1988, No. 387, eff. 4-1-88; am Register, January, 1992, No. 433, eff. 2-1-92.

Comm 106.84 Application content. Applications from eligible applicants shall be submitted to the department. Each application shall contain all of the following:

(1) The name, address and designated contact person of the eligible applicant.

(2) A description of the proposed project, including all of the following:

(a) The location and duration of the project.

(b) The number of jobs to be created or retained.

(c) The value of the capital investment which the eligible applicant will make in the project.

(d) The value of the expenditures required for local infrastructure relating to the project.

(e) The immediate and continuing effects of the project upon the political subdivisions within which it will be located.

(3) A statement, including supporting documentation, that the applicant is financially sound.

(4) An itemized estimate of the proposed cost of the project and a description of the proposed match.

(5) An explanation of how the proposed project addresses the standards established in s. Comm 106.85.

(6) An explanation of why Wisconsin development fund assistance is required.

(7) Statements that funding is not available at reasonably equivalent terms from any other source, that any state funds received under this subchapter will not replace funds from any other source, and that the project is not likely to take place without the grant or loan.

(8) A statement that the proposed project will not displace any workers in Wisconsin.

(9) A plan for conducting a financial audit of the grant or loan and for submitting program reports to the department on the results of the project.

(10) A statement that job orders for new hires will be placed with the Wisconsin job service, and that, to the extent possible, new hires will be recruited through the job service.

(11) A statement regarding the repayment of the grant or loan including proposed terms.

(12) Documentation from a financial institution that financing is unavailable from any other source on reasonably equivalent terms.

(13) Employers shall document job creation and job retention with a list of jobs or positions that specifies job titles, the number of full-time equivalent positions to be filled or retained under each title, job skills and wages or salaries.

(14) For applicants requesting \$1 million or more of funds, the following additional information shall be supplied.

(a) An explanation as to how this project fosters the short-term and long-term economic growth of this state.

(b) An explanation of each of the other alternatives the applicant has explored for financing the project.

(c) A discussion of possible risks associated with the project and a comparison of those risks with the benefits to the state for providing the assistance.

(d) A discussion of any residual benefits to the state if the specified project benefits are not attained.

(e) An explanation of any undesirable effects the project may have on the environment, land use policies, public and private utility services and adjacent residential, commercial or industrial areas.

(f) A detailed explanation of all the assumptions used in arriving at the information provided under s. Comm 106.84.

(15) Other information as may be required by the board.

History: Cr. Register, March, 1988, No. 387, eff. 4-1-88.

Comm 106.85 Evaluation criteria. (1) The board shall determine the following before funding a project:

(a) That the project serves a public purpose.

(b) That the project will retain or increase employment in this state.

(c) That the project is not likely to occur in this state without the grant or loan.

(d) That financing is unavailable from any other source on reasonably equivalent terms.

(e) That funds from the grant or loan under this subchapter will not be used to pay overhead costs or to replace funds from any other source.

(f) That the project will not displace any workers in this state.

(2) The board shall consider the following before funding a project:

(a) The extent to which the project will contribute to the economic growth of this state and the well-being of the residents of this state.

(b) Whether the project will be located in an area of high unemployment or low average income.

(c) The financial soundness of the applicant.

(d) The intention of the eligible recipient to repay the grant or loan.

(e) The ratio of state dollars requested to the number of jobs created or retained by the project.

(f) The ratio of the annual wages resulting from the project to the state dollars requested.

(g) The ratio of capital investment to the state dollars requested.

(h) The ratio of the state dollars requested to the private dollars committed to the project.

(i) The extent to which the business exports goods or services outside state borders.

(j) The unemployment and poverty rates of the political subdivision in which the project is located, if available.

(k) The likely economic benefits of the project compared with the public costs of the project.

(L) The extent to which the project is likely to contribute to the growth of existing Wisconsin businesses or is likely to spur the creation of new Wisconsin business.

(m) The value of the expenditures required for local infrastructure relating to the major economic development project.

(n) The immediate and continuing effects of the major economic development project upon the affected political subdivisions within which it will be located.

(o) Whether the project is in a targeted area based on the following indices.

1. The level of unemployment in the area.

2. The average household income in the area.

3. The percentage of households in the area receiving aid to families with dependent children under s. 49.19, Stats.

4. The rate of decline in the population in the area.

5. The reduction of property values in the area.

6. The number of workers in the area that have been permanently laid off by their employers or the existence of public notice by an employer of either a plant closing or a substantial reduction in work force that will result in a significant number of workers in the area being laid off permanently.

7. Designation of the area as a development zone under s. 560.71, Stats.

(3) In awarding grants and loans under this section, the board may consider the effects of the project upon jobs, school, transportation, and law enforcement services and facilities.

(4) On projects where the applicant is requesting \$1 million or more of funds, the board shall also consider the information provided under s. Comm 106.84 (14).

History: Cr. Register, March, 1988, No. 387, eff. 4-1-88; cr. (2) (o), Register, January, 1992, No. 433, eff. 2-1-92.

Comm 106.86 Contracts. Successful applicants shall be required to enter into a contract with the department for the purpose of implementing the proposed grant or loan. The contracts shall be signed by the secretary of development and the chief executive officer of the successful applicant, or by their authorized representatives. The department may void a contract and seek a return of any funds released under the contract for failure by the business to perform its obligations under the contract. Amendments to these contracts may be adopted by the consent of both of the original signatories. Any relocation from Wisconsin to any other state of the jobs created or retained through the project shall void the contract, and all funds paid to date shall be refunded to the department for use in support of other applications to the Wisconsin development fund. These restrictions apply only to jobs described in the project application provided in s. Comm 106.84, and apply only for a term subject to negotiation between the successful applicant and the department.

History: Cr. Register, March, 1988, No. 387, eff. 4-1-88.

Comm 106.87 Reporting and auditing. Successful applicants will be required to provide the department periodic financial and program reports. A financial audit and final program report shall be submitted at the end of the contract. The cost of the audit may be covered by the grant or loan. The financial reports, audit and the program reports shall be submitted to the department by a date specified in the contract. The financial audit and the program reports become the property of the department and are open to public inspection.

History: Cr. Register, March, 1988, No. 387, eff. 4-1-88.

Comm 106.88 Administration. The department shall be responsible for soliciting applications, reviewing applications, making recommendations to the board on the disposition of applications, authorizing payments and otherwise implementing contractual obligations entailed in grants or loans made under the terms of this subchapter, monitoring project activities, receiving and reviewing the financial reports and program reports submitted under s. Comm 106.87, and for collecting any repayments of grants and loans from successful applicants. The department shall report semiannually to the chairs of the economic development standing committees of the legislature on the status of the program.

History: Cr. Register, March, 1988, No. 387, eff. 4-1-88.

Comm 106.89 Board operations. The board shall consider the recommendations of the department relating to the criteria under s. Comm 106.85. The board shall approve an application before the department can enter into a contract under s. Comm

106.86. The department shall maintain records of the board's proceedings and provide other staff support as may be necessary to the board.

History: Cr. Register, March, 1988, No. 387, eff. 4-1-88; am. Register, January, 1992, No. 433, eff. 2-1-92.

Subchapter VII — Small Business Innovation Research Bridge Financing

Comm 106.90 Purpose. The purpose of this subchapter is to establish the procedure for the administration of a small business innovation research bridge financing program by the department of development, under the provisions of s. 560.625, Stats., which authorizes the department to award research grants and loans to small businesses.

History: Cr. Register, June, 1989, No. 402, eff. 7-1-89.

Comm 106.91 Definitions. In this subchapter:

(1) "Application" means a proposal from an eligible applicant as specified in s. Comm 106.92 containing all elements required by s. Comm 106.96.

(2) "Board" means the development finance board as defined in s. 15.155 (1), Stats.

(3) "Bridge award" means an award made by the department of development to a small business which has submitted a proposal for a Phase II award under the federal small business innovation research program.

(4) "Business" means a company operating for profit, which is either incorporated in Wisconsin or has Wisconsin as the principal place of business, and which has 250 or fewer employees, including employees of any subsidiary or affiliated organization.

(5) "Consumable item" means any item used and consumed as part of the scope of work available which no longer exists or which has no useful value at the end of the work effort and for which an invoice is available.

(6) "Department" means the department of commerce.

(7) "Financial audit" means an audit performed in accordance with the standards adopted by the American Institute of Certified Public Accountants on the revenues and expenditures made in association with a grant or loan made under this subchapter.

(8) "Overhead" means any expense incurred for the normal conduct of business, but which, for practical reasons, is not allocated to a specific task.

(9) "Phase I award" means an award made by a federal agency to a small business to conduct a feasibility study under the federal small business innovation research program.

(10) "Phase II award" means an award made by a federal agency to a small business to further develop the results of Phase I research under the federal small business innovation research program.

(11) "Program report" means a report to the department describing progress made toward achieving goals specified under s. Comm 106.96.

(12) "Small business innovation research program" means the federal program, enacted pursuant to 15 USC 638, which provides funds to small businesses to conduct innovative research having commercial application.

History: Cr. Register, June, 1989, No. 402, eff. 7-1-89.

Comm 106.92 Eligible applicants. A business shall be eligible for a bridge award if it is a recipient of a Phase I award, has completed its Phase I research, has submitted a proposal for a Phase II award, intends to perform the research work primarily in Wisconsin and meets the applicable grant and loan eligibility criteria set forth in s. 560.605, Stats.

History: Cr. Register, June, 1989, No. 402, eff. 7-1-89.

Comm 106.93 Award amounts. The bridge awards may not exceed \$40,000 nor cover more than 12 months of work effort.

The board may consider the following factors in determining the actual award amount:

(1) Whether the business is applying for more than one bridge award and whether the business is currently receiving bridge financing

(2) The financial need of the business for the bridge award.

(3) The potential commercial application and economic benefits to Wisconsin of the research results.

(4) The follow-on funding commitment for further development of the commercial potential after Phase II.

(5) The participation in the research work by a Wisconsin institution of higher education.

History: Cr. Register, June, 1989, No. 402, eff. 7-1-89.

Comm 106.94 Repayment of bridge awards. The bridge award, plus a reasonable return on the investment as determined by the board, shall be repaid to the Wisconsin development fund upon commercialization of the research conducted under the small business innovation research program.

History: Cr. Register, June, 1989, No. 402, eff. 7-1-89.

Comm 106.95 Match requirements. The business shall provide a match equal to 25% of the bridge award received. The match shall be in cash or in kind.

History: Cr. Register, June, 1989, No. 402, eff. 7-1-89.

Comm 106.96 Application contents. Applications submitted to the department shall contain all of the following:

(1) A copy of the final Phase I report, after it has been submitted to the federal agency.

(2) A copy of the Phase II proposal, after it has been submitted to the federal agency.

(3) A brief scope of work, including a timetable, covering the research activities to be performed with the bridge award. This work shall be related to the small business innovation research program and may include, but is not limited to, research into new applications of the technology developed under Phase I and research which represents an extension of the Phase I work but which is distinct and non-duplicative of the proposed Phase II work.

(4) A project budget, including a description of the proposed match to be provided by the business.

(5) Evidence that the project meets the criteria set forth in s. 560.605, Stats.

(6) A statement that the business intends to perform the research work primarily in Wisconsin.

(7) Other information as may be required by the department.

History: Cr. Register, June, 1989, No. 402, eff. 7-1-89.

Comm 106.97 Eligible and ineligible expenditures.

(1) The following expenditures are eligible for funding:

(a) Salaries of research personnel who will be engaged in the research activity supported by the bridge award and in the Phase II research project.

(b) Other expenditures which are directly related to the research activity supported by the bridge award and which are segregated from other research activities. These expenditures may include, but are not limited to, consumable items and the use of equipment.

(2) Travel and overhead are not eligible for funding.

History: Cr. Register, June, 1989, No. 402, eff. 7-1-89.

Comm 106.98 Reporting. (1) The business shall submit quarterly reports to the department which include a brief description of accomplishments over the previous three-month period, and a project financial report covering the previous three-month period.

(2) The business shall submit a final report to the department which includes the following:

(a) A discussion of research methodology, successful and unsuccessful technical approaches, accomplishments achieved and research conclusions.

(b) A one paragraph abstract of the project and its results, suitable for publication.

(c) A project financial report and a financial audit of the bridge award.

History: Cr. Register, June, 1989, No. 402, eff. 7-1-89.

Comm 106.99 Administration. (1) The application, and accompanying reports, shall be reviewed to determine:

(a) Whether the Phase I final report and Phase II proposal were properly submitted to the federal agency.

(b) Whether the conclusions of the Phase I final report support the continuation of the research effort.

(c) Whether the proposed state funded research is directly related to the small business innovation research program. The proposed state funded research shall be considered to be related if it includes either research into new applications of the technology developed under Phase I or research which represents an extension of the Phase I work but which is distinct and non-duplicative of the proposed Phase II work.

(d) Whether the project meets the criteria set forth in s. 560.605, Stats.

(e) Whether the business intends to perform the research work primarily in Wisconsin.

(2) Successful applicants shall be required to enter into a contract with the department for the purpose of implementing the proposed bridge award. The contract shall be signed by the secretary of development and the chief executive officer of the eligible recipient, or by their authorized representatives.

(3) The bridge award shall terminate when any of the following occur:

(a) The maximum bridge award amount awarded under the contract has been expended.

(b) The time limit for bridge award support under the contract has been reached.

(c) The end of the business week in which the effective date of the Phase II grant or contract occurs.

(d) The end of the business week in which the business is notified of the denial of the Phase II award.

(e) The department determines that the work performed or to be performed with the bridge award is inconsistent with the application.

History: Cr. Register, June, 1989, No. 402, eff. 7-1-89.