

ORDER OF THE DEPARTMENT OF COMMERCE

**EMERGENCY RULE RELATING TO EMERGENCY ASSISTANCE GRANTS IN THE COMMUNITY
DEVELOPMENT BLOCK GRANT PROGRAM**

Finding of Emergency and Rule Analysis

The Department of Commerce finds that an emergency exists and that adoption of the rule included in this order is necessary for the immediate preservation of public health, safety, and welfare. The facts constituting the emergency are as follows.

Currently under sections Comm 108.06, 108.07, and 108.22 of the Wisconsin Administrative Code, as promulgated under sections 560.04, 560.045, and 560.9809 of the Statutes, the Department may annually use up to 5 percent of its federal Community Development Block Grant (CDBG) funds to repair or replace public infrastructure or facilities, or for emergency services necessitated by a natural disaster or catastrophic event. Also under sections Comm 108.07 and 108.22, the maximum amount of CDBG funds that the Department can award to any local government for a natural disaster or catastrophic event is \$500,000.

Currently under section Comm 154.06, as promulgated under sections 560.02 (4) and 560.9809 (2) of the Statutes, the Department may annually use up to \$2,000,000 of CDGB funds to address emergency housing needs caused by natural disasters or catastrophic events.

Because of the unprecedented levels of damage to public infrastructure and facilities from the severe storms and widespread flooding that occurred throughout the State in June 2008, the need for emergency assistance to communities far exceeds the \$1.35 Million of CDBG funding that results from the above 5-percent limit, and the need for emergency housing assistance for low and moderate income households far exceeds the above \$2,000,000. Communities and households in 28 of the 30 counties where the Governor has declared a state of emergency are eligible for this CDBG program assistance.

This emergency rule repeals the above limits of 5 percent, \$500,000 and \$2,000,000. This will enable the Department to (1) use any available CDBG funds for emergency assistance with repairing or replacing public infrastructure and facilities, and with repairing or replacing homes damaged by the severe storms and flooding; and (2) base the award amounts on the scope of the damages and destruction in the community and on the funds available.

Pursuant to section 227.24 of the Statutes, this rule is adopted as an emergency rule to take effect upon publication in the official state newspaper and filing with the Legislative Reference Bureau.

Rule Summary

1. Statutes Interpreted.

Sections 560.02 (4), 560.04, 560.045, and 560.9809

2. Statutory Authority.

Sections 560.02 (4), 560.04, 560.045, and 560.9809

3. Explanation of Agency Authority.

The Department is the designated agency to administer the federally funded Small Cities Community Development Block Grant (CDBG) Program for Wisconsin. These CDBG funds can be used statewide, except in “entitlement” communities that also receive annual CDBG funding directly from the US Department of Housing and Urban Development (cities with populations above 50,000 and, with only a few exceptions, Milwaukee, Dane, and Waukesha Counties). Federal regulations require that the Department submit an Annual Plan describing the State’s intended use and distribution of the CDBG funds based on any State regulations and public input. The Wisconsin administrative rules that are authorized by the above statutes set forth the criteria, process, and limitations for distributing CDBG funds.

4. Related Statute or Rule.

The Department has statutes and rules for other programs associated with housing assistance and community development, but none of these programs fund emergency assistance for housing repair or public infrastructure/facility repair or replacement.

5. Plain Language Analysis.

The rules in this order repeal current limits on emergency assistance grants in the CDBG Program. This will enable the Department to (1) use any available CDBG funds for emergency assistance with repairing or replacing public infrastructure and facilities, and with repairing or replacing homes damaged by the severe storms and flooding; and (2) base the award amounts on the scope of the damages and destruction in the community and on the funds available.

6. Summary of, and Comparison With, Existing or Proposed Federal Regulations.

24 CFR 570.483(d) allows the Department to use CDBG funds for activities that address the national objective of meeting an “urgent local need.” The criteria under this objective specify that the funded activities must be designed to alleviate existing conditions which pose a serious and immediate threat to the health or welfare of the community, and which are of recent origin or recently became urgent. In addition, the Department must determine that the state grant recipient is unable to finance the activity on its own, and that other sources of funding are not available to carry out the activity.

7. Comparison With Rules in Adjacent States.

Michigan

Michigan does not set aside or limit the use of CDBG funds for emergency assistance in either state statute or administrative rule or in their Annual Plan submittal to HUD. In the event of a disaster, Michigan amends their Annual Plan to enable CDBG funds to be used for emergency assistance as needed.

Minnesota

Minnesota does not set aside CDBG funds for emergency assistance in either state statute or administrative rule or in their Annual Plan submittal to HUD. In the event of a disaster, Minnesota amends their Annual Plan to enable CDBG funds to be used for emergency assistance. The Minnesota Small Cities Development Program does have a policy to limit CDBG funding to \$1.4 million per community for each event.

Iowa

Iowa does not set aside or limit the use of CDBG funds for emergency assistance by state statute or administrative rule. The current Iowa Annual Plan sets aside 5 percent of the CDBG annual allocation for emergency assistance. Iowa amends their Annual Plan if additional funds are needed.

Illinois

Illinois does not set aside or limit the use of CDBG funds for emergency assistance in either state statute or administrative rule or in their Annual Plan submittal to HUD. In the event of a disaster, Illinois amends their Annual Plan to enable CDBG funds to be used for emergency assistance as needed.

8. Summary of Factual Data and Analytical Methodologies.

There were no factual data or analytical methodologies used to develop the proposed rules.

9. Analysis and Supporting Documents Used to Determine Effect on Small Business or in Preparation of an Economic Impact Report.

The proposed rules should have a minimal effect on small business. There were no supporting documents used to determine the effect on small business, and an economic impact report was not prepared.

10. Effect on Small Business.

The amended rules are not expected adversely effect small business. Grants to repair or replace public infrastructure and facilities would only have a positive impact.

11. Agency Contact Person.

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Text of Emergency Rule:

SECTION 1. Comm Table 108.6–1 is amended to read:

(Partial table)

Grant Program	Percent of CDBG Funds Set Aside
Emergency grant program (CDBG-EMER)	Up to 5% <u>Available Funds</u>

SECTION 2. Comm 108.07 (5) is amended to read:

Comm 108.07 (5) The maximum amount of CDBG funds that may be awarded to any local government for a natural disaster or catastrophic event as specified under subch. VI shall be ~~\$500,000 per~~ based on the scope of the event and funds available.

SECTION 3. Comm 108.22 (1) is amended to read:

Comm 108.22 (1) The maximum amount of CDBG funds that may be awarded to any local government under this subchapter shall be ~~\$500,000 for each~~ based on the scope of the natural disaster or catastrophic event and funds available.

SECTION 4. Comm 154.06 (intro.) is amended to read:

Comm 154.06 Emergency grants. The department may use ~~up to \$2,000,000 annually from the program funds~~ for emergency housing needs arising from a natural disaster or catastrophic event. A local government interested in applying for an emergency grant under this section shall provide the department with written notice of intent to apply within 90 days after the natural disaster or catastrophic event. The department shall develop emergency fund application requirements as necessary. Applications will be evaluated based on: