

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 851

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 9-7-82
DATE FOR REVIEW 9-16-82
DATE DUE 9-21-82

Adopted w/a hearing _____
Adopted w/o hearing ✓
Temporary rule _____

Approved 9-21-82 Disapproved _____ Returned to Agency 9-27-82

Resubmitted _____ Due _____
Approved _____ Disapproved _____ Returned to Agency _____

Date filed w/Secretary of State 9-24-82 Revisor approved 9/1/82 disapproved _____

✓ Rule as Adopted

✓ Rule as Proposed see SR

✓ Order Adopting 8.31.82 Date

✓ Notice of Intent to Solicit Outside Opinion SR. 9.14.81 + comments SR. 12.14.81 + Comments

✓ Order for rulemaking
N/A date of Hearing

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
✓ Sufficiency

✓ Affidavit of Mailing Notice or rulemaking
7.14.82 At least 30 days prior to ~~hearing~~/adoption

✓ Mailing list Certificate

✓ Publication in State Register
7.19.82 At least 30/~~20~~ days prior to ~~hearing~~/adoption

N/A Hearing Examiner's Report

N/A Chief Hearing Examiner's Report(s)
_____ Approving H.E.'s Report
_____ Approving agency action

✓ Agency's Findings of Fact

N/A LCRAR Report or agency Affidavit

N/A Certificate of Board's Resolution Adopting Rules

N/A Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness

N/A Petition for Adoption of a Rule

✓ Record (includes transcript or tape, exhibits, comments received by agency, requests for a hearing, and other relevant materials)

✓ Certificate of Compliance w/Rulemaking Procedures

N/A Affidavit of Mailing Notice of Submission to Attorney General

✓ Notice of Submission to the Attorney General

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO KENT E. EKLUND
Commissioner of Energy, Planning & Development

DATE: 9/21/82

ATTN: MICHAEL J. BRADLEY, Assistant Atty. Gen.

FROM : LARRY D. STARNS
Special Assistant
Attorney General

PHONE: 297-3493

SUBJECT: In the Matter of the Proposed Adoption of Rules of the State Department of Energy, Planning and Development Governing the Community Development Block Grant Program

Enclosed herewith are the rules you have submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Please note that they have not been filed with the State Register. This must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of stamps of the Attorney General and Secretary of State;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages to the rules in the approved set.

If you have any questions in this regard, please contact me.

LDS:drw
Encs.

cc: Ms. Kathy Burek
Mr. Duane Harves

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT Energy, Planning & Development

Office Memorandum

TO : Michael Miles
Asst. Attorney General

DATE: 9/07/82

FROM : Leland E. Newman, Director
Office of Local Government

PHONE: 296-2102

SUBJECT: Adoption of Rules for Community Development Block Grant Program

In accordance with Minn. Stat. § 15.0412, enclosed please find the following documents regarding the adoption of rules for the Community Development Block Grant program.

1. Rules as Adopted (4 copies).
2. Order Adopting Rules (2 copies).
3. Notice of Intent to Solicit outside Opinion Concerning proposed rules governing the Small Cities CDBG program and written comments.
4. Extension of Notice of Intent to Solicit Outside Opinion and written comments.
5. Notice of Intent to Adopt Rules without a Public Hearing.
6. Order for Notice of Intent to Adopt Rules without a Public Hearing.
7. Affadavit of mailing and enclosures.
8. Mailing list certificate.
9. Rule as proposed.
10. Statement of Need and Reasonableness.
11. Written comments on the Rule.
12. Statement of Compliance with Rulemaking Procedures.

The Department received six requests for public hearing during the 30-day period. A seventh request was dated, postmarked and received after the close of the comment period. Changes to the rule are clarfying changes and are supported by the Statement of Need and Reasonableness. These rules are not adopted in response to a petition and no requests for notification of submission of the rules to the Attorney General were received.

Your earliest response to the documents is appreciated. If you should have any questions or concerns, please contact Denise Beigbeder at 296-2262.

/cak

Department of Energy, Planning and Development

Office of Local Government of the Planning Division

Adopted Rules Governing the Community Development Block Grant Program

Rules as Adopted

10 MCAR S 1.500 Small cities community block grant program; general provisions.

A. Purpose of these rules. Rules 10 MCAR SS 1.500-1.565 give procedures for evaluating applications for grants and awarding them to eligible applicants by the Department of Energy, Planning and Development under United States Code, title 42, sections 5301-5136 (1981), and regulations adopted in Code of Federal Regulations, title 24, part 570.

B. Objective of the program. The primary objective of this program is to develop viable urban communities by providing decent housing and a suitable living environment and by expanding economic opportunities, principally for persons of low and moderate income. Activities funded under this program shall not benefit moderate-income persons to the exclusion of low-income persons. All funded activities must be designed to:

1. benefit low- and moderate-income persons;

2. prevent or eliminate slums and blight; or

3. alleviate urgent community development needs caused by existing conditions which pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet those needs.

C. Definitions. As used in 10 MCAR SS 1.500-1.565, the following terms have the meanings given them.

1. "Community development need" means a demonstrated deficiency in housing stock, public facilities, economic opportunities, or other services which are necessary for developing or maintaining viable communities.

2. "Comprehensive program" means a combination of at least two interrelated projects which are designed to address

community development needs which by their nature require a coordination of housing, public facilities, or economic development activities. A comprehensive program must be designed to benefit a defined geographic area, otherwise known as a program area.

3. "Eligible activities" means those activities so designated in United States Code, title 42, section 5305 (1981) and as described in Code of Federal Regulations, title 24, sections 570.200-570.207 (1981).

4. "General purpose local government" means townships as described in Minn. Stat. ch. 365; cities as described in Minn. Stat. chs. 410 and 412; and counties.

5. "Grant" means an agreement between the state and an eligible recipient through which the state provides funds to carry out specified programs, services, or activities.

6. "Grant close-out" means the process by which the office determines that all applicable administrative actions and all required work have been completed by the grant recipient and the department.

7. "Grant year" means any period of time during which the United States Department of Housing and Urban Development makes funds from any federal fiscal year available to the state for distribution to local governments under United State Code, title 42, sections 5301-5316 (1981), and includes the period of time during which the office solicits applications and makes grant awards.

8. "Infrastructure" means the basic physical systems, structures, and facilities, such as roads, bridges, water, and sewer, which are necessary to support a community.

9. "Low and moderate income" means income which does not exceed 80 percent of the median income for the area, with adjustments for smaller and larger families.

10. "Metropolitan city" means a city over 50,000 population or a central city of a standard metropolitan statistical area that receives entitlement grants under United States Code, title 42, section 5306 (1981) directly from the

United States Department of Housing and Urban Development.

11. "Nonentitlement area" means an area that is not a metropolitan city or part of an urban county.

12. "Office" means the Office of Local Government in the Department of Energy, Planning and Development.

13. "Per capita assessed valuation" means the adjusted assessed valuation divided by population.

14. "Population" means the number of persons who are residents in a county, city, or township as established by the last federal census, by a census taken pursuant to Minn. Stat. S 275.53, subd. 2, by a population estimate made by the Metropolitan Council, or by the population estimate of the state demographer made under Minn. Stat. S 4.12, subd. 7, clause (10), whichever is most recent as to the stated date of count or estimate, up to and including the most recent July 1.

15. "Poverty persons" means individuals or families whose incomes are below the poverty level as determined by the most current data available from the United States Department of Commerce, taking into account variations in cost of living for the area affected.

16. "Program" means the community development block grant program for nonentitlement areas.

17. "Program area" means a defined geographic area within which an applicant has determined that, based on community plans or other studies, there exists a need for community development activities. A program area may be a neighborhood in a community or an entire community.

18. "Program income" means gross income earned by the grant recipient from grant-supported activities, excluding interest earned on advances.

19. "Project" means one or more activities designed to meet a specific community development need.

20. "Regional or community development plans" means written documents, resolutions, or statements which describe goals, policies, or strategies for the physical, social, or economic development of a neighborhood, community, or substate

area. Regional or community development plans include comprehensive plans and elements of comprehensive plans, including land use plans, which have been approved by the governing boards of townships, counties, or cities, and also include regional development plans adopted under Minn. Stat. S 462.381, where applicable.

21. "Slums and blight" means areas or neighborhoods which are characterized by conditions used to describe deteriorated areas in Minn. Stat. S 462.421 or which are characterized by the conditions used to describe redevelopment districts in Minn. Stat. S 273.73, subd. 10.

22. "Single purpose project" means one or more activities designed to meet a specific community development need.

23. "Urban county" means a county which is located in a metropolitan area and is entitled to receive grants under United States Code, title 42, section 5306 (1981), directly from the United States Department of Housing and Urban Development.

10 MCAR S 1.505 Types of grants available.

A. Single purpose grants. The office shall approve grants for single purpose projects for funding from a single grant year. The office shall place single purpose grant applications in one of the following categories for purposes of evaluation:

1. housing projects which include one or more activities designed to increase the supply or quality of dwellings suited to the occupancy of individuals and families;

2. public facilities projects which include one or more activities designed to acquire, construct, reconstruct, or install buildings or infrastructure which serve a neighborhood area or community; or

3. economic development projects which include one or more activities designed to create new employment, maintain existing employment, or otherwise increase economic activity in a community.

B. Comprehensive grants. The office shall approve comprehensive grants for two or more projects which constitute a comprehensive program. Comprehensive grants shall be approved

for funding from one, two, or three grant years. In the case of grants approved for funding from more than one grant year, the office shall make funds available to the grant recipient in the second or third year only after the recipient submits an approved application. ~~The office must also find~~ Approval shall be subject to a finding by the office that the grant recipient has made normal progress and is in compliance with 10 MCAR SS 1.500-1.565.

C. Previous grant commitments. The provisions of B. apply to three-year comprehensive grant commitments made by the United States Department of Housing and Urban Development in 1981 under United States Code, title 42, section 5306 (1980).

10 MCAR S 1.510 Application process and requirements.

A. Grant application manual. The office shall prepare a manual for distribution to eligible applicants no later than 120 days before the application closing date. The manual must instruct applicants in the preparation of applications and describe the method by which the office will evaluate and rank applications. If 10 MCAR SS 1.500-1.565 are not adopted before September 15, 1982, the 120-day period is waived for the 1983 grant year but the office shall make the manual available no later than 60 days before the application closing date.

B. Eligibility requirements. Any unit of general purpose local government, including cities, counties, and townships located in a nonentitlement area or electing exclusion from an urban county under United States Code, title 42, section 5302 (1981), may apply for a grant. An eligible applicant may apply on behalf of other eligible applicants. Applications submitted on behalf of other applicants must be approved by the governing body of all local governments party to the application. An eligible applicant may apply for only one grant per grant year and no eligible applicant shall be included in more than one application.

C. Disqualification of applicants. Applications from otherwise eligible applicants shall be disqualified where for previously awarded grants under these rules or awarded by the

Department of Housing and Urban Development under United States Code, title 42, section 5306 (1981), it is determined by the office that any of the following conditions exist:

1. there are outstanding audit findings on previous community development grants and the grantee has not objected on a reasonable basis to the findings or demonstrated a willingness to resolve the findings;

2. previously approved projects have passed scheduled dates for grant close-out and the grantee's ability to complete the project in an expeditious manner is in question; or

3. the applicant has not made scheduled progress on previously approved projects and the grantee's ability to complete the project in an expeditious manner is in question.

D. Contents of application. The contents of the application must be consistent with the informational requirements of 10 MCAR SS 1.500-1.565 and must be on a form prescribed by the office. The application must be accompanied by:

1. an assurance, signed by the chief elected official, that the applicant will comply with all applicable state and federal requirements;

2. an assurance signed by the chief elected official certifying that at least one public hearing was held at least ten days but not more than 30 days before submitting the application; and

3. a copy of a resolution passed by the governing body approving the application and authorizing execution of the grant agreement if funds are made available.

The office may request additional information from the applicant if it is necessary to clarify and evaluate the application.

E. Time limit for submitting applications. Applications must be received in the office or postmarked by the closing date. The office shall give notice of the period during which applications will be accepted. The notice must be published in the State Register at least 120 days before the closing date.

F. Regional review. The applicant must submit a complete

copy of the application to the Regional Development Commission, where such a commission exists, or the Metropolitan Council, where it has jurisdiction, for review and comment in accordance with Minn. Stat. S 462.391, subd. 3, or Minn. Stat. S 473.171, respectively.

10 MCAR S 1.515 Evaluation of applications; in general. All applications shall be evaluated by the office. A fixed amount of points shall be established as the maximum score attainable by any application. Points shall be made available within each class of rating criteria in accordance with the percentages and fractions indicated in 10 MCAR SS 1.520-1.545.

10 MCAR S 1.520 Comparison of all applications; general competition.

A. Points available. Thirty percent of the total available points shall be awarded by the office based on a general competition involving a comparison of all applications.

B. Evaluation of community need. Two-thirds of the points in the general competition shall be awarded based on evaluation of community need, which shall include:

1. the number of poverty persons in the area under the applicant's jurisdiction;

2. the percentage of persons resident in the area under the applicant's jurisdiction who are poverty persons; and

3. the per capita assessed valuation of the area under the jurisdiction of the applicant, such that points are awarded in inverse relationship to applicants' per capita assessed valuation.

C. Evaluation of other factors. One-third of the points in the general competition shall be awarded based on evaluation of:

1. the extent to which the proposed activities are compatible with regional or community development plans; and

2. adequacy of the applicant's management and financial plan.

10 MCAR S 1.525 Comparison of applications within categories. After completing the general competition described in 10 MCAR S

benefiting household is reasonable.

10 MCAR S 1.535 Evaluation of public facilities projects.

A. Project need. Three-sevenths of the points available in the public facilities category competition shall be awarded by the office based on evaluation of the extent to which the proposed activities are necessary to improve provision of public services to low- and moderate-income persons or to eliminate an urgent threat to public health or safety.

B. Project impact. Three-sevenths of the points available in the public facilities category competition shall be awarded by the office based on evaluation of the extent to which the proposed activities will reduce or eliminate the need identified under A., and, in the case of activities designed to improve the provision of public services to low- and moderate-income persons, an evaluation of the extent to which the proposed activities directly benefit low- and moderate-income persons.

C. Project cost-effectiveness. One-seventh of the points available in the public facilities category competition shall be awarded by the office based on evaluation of the extent to which the proposed activities will make cost-effective and efficient use of grant funds, including consideration of:

1. the extent to which the requested grant funds are necessary to finance all or a portion of the costs;

2. evidence that the cost of the proposed activities per benefiting household or person is reasonable; and

3. the extent to which the project benefits existing, rather than future, population, except in cases where the proposed activities are necessary due to expected development or growth which is beyond the applicant's control.

10 MCAR S 1.540 Evaluation of economic development projects.

A. Project need. Three-sevenths of the points available in the economic development category competition shall be awarded by the office based on evaluation of the applicant's need for economic development assistance, as evidenced by:

1. long-term employment problems;

2. unusual dependence on a small number of industries or employers; or

3. other documented conditions which give evidence of ~~the~~ reasonable need for economic development assistance.

B. Project impact. Three-sevenths of the points available in the economic development category competition shall be awarded by the office based on evaluation of the extent to which the proposed activities will benefit low- and moderate-income persons and will reduce or eliminate the need identified under A., and shall include consideration of:

1. the immediacy of the project's impact;

2. the beneficial effect on personal income in the area;

3. the extent to which the proposed activities are reasonably expected to result in long-term improvement in the economic base of the area; and

4. the number and quality of permanent jobs created or maintained.

C. Project cost-effectiveness. One-seventh of the points available in the economic development category competition shall be based on evaluation of the extent to which the proposed activities will make cost-effective and efficient use of grant funds, including consideration of:

1. the cost per job created or maintained;

2. coordination with, and use of, other public and private funds; and

3. the economic viability of any business being assisted.

10 MCAR S 1.545 Evaluation of comprehensive program projects.

A. Program need. Three-sevenths of the points available in the comprehensive program category competition shall be awarded by the office based on evaluation of need for the proposed comprehensive program, including consideration of:

1. the number of low- and moderate-income persons in the program area;

2. the percentage of residents in the program area which are of low or moderate income; and

3. the need for the proposed comprehensive program as

1.520, the office shall place each application in the appropriate grant category in accordance with 10 MCAR S 1.505. The categories are housing projects, public facilities projects, economic development projects, and comprehensive programs. Seventy percent of the total points available for each application shall be awarded based on a comparison of the applications within each of the categories as further described in 10 MCAR SS 1.530-1.545.

10 MCAR S 1.530 Evaluation of housing projects.

A. Project need. Three-sevenths of the points available in the housing category competition shall be awarded by the office based on evaluation of the need for improvements or additions to the housing stock serving low- and moderate-income persons as evidenced by:

1. housing units which are occupied by low- and moderate-income persons and are either substandard or pose a threat to the health or safety of the occupants;

2. an inadequate supply of affordable housing for low- or moderate-income persons; or

3. other documented conditions which give evidence of the need for improvements or additions to the housing stock serving low- and moderate-income persons.

B. Project impact. Three-sevenths of the points available in the housing category competition shall be awarded by the office based on evaluation of the extent to which the proposed activities will eliminate or reduce the need for improvements or additions to the housing stock serving low- and moderate-income persons.

C. Project cost-effectiveness. One-seventh of the points available in the housing category competition shall be awarded by the office based on:

1. evaluation of the extent to which the proposed activities will make cost-effective and efficient use of grant funds including coordination with, and use of, funds from other public and private sources; and

2. evidence that the cost of the proposed activities per

evidenced by at least two of the following: the need for improvements or additions to the housing stock serving low- and moderate-income persons, the need for new or improved public facilities in the program area, or employment problems in the program area.

B. Program impact. Three-sevenths of the points available in the comprehensive program category competition shall be awarded by the office based on evaluation of the extent to which the proposed comprehensive program will eliminate or reduce the need identified under A., and the extent to which the proposed program will improve the long-term physical or economic condition of the program area and its residents.

C. Program cost-effectiveness. One-seventh of the points available in the comprehensive program category competition shall be based on evaluation of the extent to which the proposed comprehensive program will make cost-effective and efficient use of grant funds, including consideration of coordination with, and use of, funds from other public and private sources.

10 MCAR S 1.550 Determination of grant awards.

A. Funds available for grants. The amount of funds available for grants shall be equal to the total allocation of federal funds made available to the State under United States Code, title 42, section 5306 (1981), after subtracting an amount for costs incurred by the office for administration of the program, as allowed by that law. The office is not liable for any grants under 10 MCAR SS 1.500-1.565 until funds are received from the United States Department of Housing and Urban Development.

B. Division of funds.

1. Of the funds available for grants in each grant year, 45 percent shall be reserved by the office to fund single purpose grants, and 55 percent shall be reserved by the office to fund comprehensive grants, including the second and third years of comprehensive grants approved for funding under 10 MCAR S 1.505 B. and C., and 10 MCAR S 1.545. However, the office may modify the proportions of funds available for single purpose and

comprehensive grants if, after review of all applications, it determines that there is a shortage of fundable applications in either category.

2. At least 20 percent of the funds made available for single purpose grants shall be awarded for applications in each of the three categories: housing, public facilities, and economic development. However, no application with a rating below the median score for its category shall be funded by the office solely for the purpose of meeting this requirement.

C. Funding list. Within each grant category, a list of applications shall be prepared in rank order of the scores received after evaluation pursuant to 10 MCAR SS 1.515-1.545. Based on these lists, and subject to the availability of funds within each category, applications with the highest rank shall be recommended to the commissioner for funding. In the case of a tie between any two applications within any category, the application with the highest score in the general competition shall receive the higher ranking on the list.

D. Approval by commissioner. The list of applications recommended for funding, including recommended grant awards, shall be submitted by the office to the commissioner for approval. A decision by the commissioner not to approve any application recommended for funding must be made in writing to the applicant, giving reasons for disapproval.

E. Reduction in amount requested. The office may recommend an application for funding in an amount less than requested if, in the opinion of the office, the amount requested is more than is necessary to meet the applicant's need. If the amount of the grant is reduced, the reasons for the reduction shall be given to the applicant.

F. Grant ceilings. No single purpose grant may be approved for an amount over $600,000. No comprehensive grant may be approved for an amount over $700,000 from any single grant year or for more than a total of $1,400,000 over three grant years.

10 MCAR S 1.555 Grant agreements.

A. Grant contract required. A grant contract shall be

offered to each applicant whose application is approved for funding. The contract must be signed by a person authorized to commit the applicant to legally binding agreements and to execute the contract.

B. Contents of grant contract. The grant contract must include:

1. a work program which indicates completion dates for major parts of the project and a projected budget supporting the work program;

2. a description of the manner in which payments will be made to grant recipients with the condition that five percent of the grant award will not be paid until successful completion of all activities in the work program; and

3. assurances that the grant recipient will comply with all applicable state and federal laws, including at least the federal laws or regulations for which the state is made responsible for enforcement in Code of Federal Regulations, title 24, sections 570.495 and 570.496.

C. Use of program income. Program income from sources such as reimbursements to and interest from a grant recipient's loan program, proceeds from disposition of real property, and proceeds from special assessments must be used for project-related costs within 12 months from the time it is earned. The office shall reduce future grant payments by the amount of any unobligated program income which an applicant has and shall take whatever additional action is necessary to recover any remaining amounts owed.

D. Grant account required. Grant recipients must establish and maintain separate accounts for grant funds. In accordance with Code of Federal Regulations, title 24, section 570.494, clause 4, interest earned by grant recipients on grant funds before disbursement is not program income, and it must be returned to the United States Treasury.

E. Restrictions on use of funds. No grant funds shall be used to finance activities not included in the grant agreement. If it is determined that an improper use of funds has occurred,

the office will take whatever action is necessary to recover improperly spent funds.

F. Suspension of payments. The office shall suspend payments of funds to grant recipients which are not in compliance with applicable state and federal laws, rules, and regulations. Grant recipients must return funds which are improperly expended.

G. Amendments to the agreement. Amendments to the grant agreement must be in writing.

10 MCAR S 1.560 Record keeping and monitoring.

A. Financial records. Grant recipients shall maintain financial records which identify the source and application of funds for grant-supported activities. These records must contain information about grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, income, and other information required by the office under the responsibilities it assumes under Code of Federal Regulations, title 24, section 570.497, clause b. Financial records, supporting documents, statistical records, and all other records pertinent to a grant must be retained by the grant recipient for three years from the date of submitting the final financial report. No such records or documents may be disposed of while audits, claims, or litigations involving the records are in progress.

B. Audits. Grant recipients must arrange for and pay for an audit before grant close-out. Audits will usually be done annually, but no less frequently than every two years. In the case of two- and three-year comprehensive programs, the office shall require an audit after two years; costs incurred pursuant to this requirement are eligible under this program.

C. Financial status report. Grant recipients shall file financial status reports at the close of each reporting period as designated by the office and shall file a final financial report before grant close-out. Financial status reports must be on forms prescribed by the office. The office may not require these reports more often than quarterly.

D. Performance report. Grant recipients shall also file performance reports at the close of each reporting period as designated by the office and shall file a final performance report before grant close-out. Performance reports shall be on forms prescribed by the office. The office may not require these reports more often than quarterly.

E. Access to records. Representatives of the office, either the State Auditor or Legislative Auditor as is appropriate, and federal auditors shall have access to all books, records, accounts, reports, files, and other papers, things, or property belonging to grant recipients which are related to the administration of grants and necessary for audits and monitoring compliance with 10 MCAR SS 1.500-1.565.

10 MCAR S 1.565 Application of federal law. If it is determined that any provisions of 10 MCAR SS 1.500-1.560 are inconsistent with federal law, then federal law controls to the extent necessary to eliminate the conflict.

APPROVED AS TO LEGALITY
September 21, 1982
WARREN SPANNAUS, ATTORNEY GENERAL
BY Jerry D. Jones
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
SEP 24 1982
Joan Anderson Growe
Secretary of State

2:30 PM

AG copy

Department of Energy, Planning and Development

Office of Local Government of the Planning Division

Adopted Rules Governing the Community Development Block Grant Program

Rules as Adopted

10 MCAR S 1.500 Small cities community block grant program; general provisions.

A. Purpose of these rules. Rules 10 MCAR SS 1.500-1.565 give procedures for evaluating applications for grants and awarding them to eligible applicants by the Department of Energy, Planning and Development under United States Code, title 42, sections 5301-5136 (1981), and regulations adopted in Code of Federal Regulations, title 24, part 570.

B. Objective of the program. The primary objective of this program is to develop viable urban communities by providing decent housing and a suitable living environment and by expanding economic opportunities, principally for persons of low and moderate income. Activities funded under this program shall not benefit moderate-income persons to the exclusion of low-income persons. All funded activities must be designed to:

1. benefit low- and moderate-income persons;

2. prevent or eliminate slums and blight; or

3. alleviate urgent community development needs caused by existing conditions which pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet those needs.

C. Definitions. As used in 10 MCAR SS 1.500-1.565, the following terms have the meanings given them.

1. "Community development need" means a demonstrated deficiency in housing stock, public facilities, economic opportunities, or other services which are necessary for developing or maintaining viable communities.

2. "Comprehensive program" means a combination of at least two interrelated projects which are designed to address

community development needs which by their nature require a coordination of housing, public facilities, or economic development activities. A comprehensive program must be designed to benefit a defined geographic area, otherwise known as a program area.

3. "Eligible activities" means those activities so designated in United States Code, title 42, section 5305 (1981) and as described in Code of Federal Regulations, title 24, sections 570.200-570.207 (1981).

4. "General purpose local government" means townships as described in Minn. Stat. ch. 365; cities as described in Minn. Stat. chs. 410 and 412; and counties.

5. "Grant" means an agreement between the state and an eligible recipient through which the state provides funds to carry out specified programs, services, or activities.

6. "Grant close-out" means the process by which the office determines that all applicable administrative actions and all required work have been completed by the grant recipient and the department.

7. "Grant year" means any period of time during which the United States Department of Housing and Urban Development makes funds from any federal fiscal year available to the state for distribution to local governments under United State Code, title 42, sections 5301-5316 (1981), and includes the period of time during which the office solicits applications and makes grant awards.

8. "Infrastructure" means the basic physical systems, structures, and facilities, such as roads, bridges, water, and sewer, which are necessary to support a community.

9. "Low and moderate income" means income which does not exceed 80 percent of the median income for the area, with adjustments for smaller and larger families.

what sort of adjustments?

10. "Metropolitan city" means a city over 50,000 population or a central city of a standard metropolitan statistical area that receives entitlement grants under United States Code, title 42, section 5306 (1981) directly from the

United States Department of Housing and Urban Development.

11. "Nonentitlement area" means an area that is not a metropolitan city or part of an urban county.

12. "Office" means the Office of Local Government in the Department of Energy, Planning and Development.

13. "Per capita assessed valuation" means the adjusted assessed valuation divided by population.

14. "Population" means the number of persons who are residents in a county, city, or township as established by the last federal census, by a census taken pursuant to Minn. Stat. S 275.53, subd. 2, by a population estimate made by the Metropolitan Council, or by the population estimate of the state demographer made under Minn. Stat. S 4.12, subd. 7, clause (10), whichever is most recent as to the stated date of count or estimate, up to and including the most recent July 1.

15. "Poverty persons" means individuals or families whose incomes are below the poverty level as determined by the most current data available from the United States Department of Commerce, taking into account variations in cost of living for the area affected.

? what variations

16. "Program" means the community development block grant program for nonentitlement areas.

17. "Program area" means a defined geographic area within which an applicant has determined that, based on community plans or other studies, there exists a need for community development activities. A program area may be a neighborhood in a community or an entire community.

18. "Program income" means gross income earned by the grant recipient from grant-supported activities, excluding interest earned on advances.

19. "Project" means one or more activities designed to meet a specific community development need.

20. "Regional or community development plans" means written documents, resolutions, or statements which describe goals, policies, or strategies for the physical, social, or economic development of a neighborhood, community, or substate

area. Regional or community development plans include comprehensive plans and elements of comprehensive plans, including land use plans, which have been approved by the governing boards of townships, counties, or cities, and also include regional development plans adopted under Minn. Stat. S 462.381, where applicable.

21. "Slums and blight" means areas or neighborhoods which are characterized by conditions used to describe deteriorated areas in Minn. Stat. S 462.421 or which are characterized by the conditions used to describe redevelopment districts in Minn. Stat. S 273.73, subd. 10.

22. "Single purpose project" means one or more activities designed to meet a specific community development need.

23. "Urban county" means a county which is located in a metropolitan area and is entitled to receive grants under United States Code, title 42, section 5306 (1981), directly from the United States Department of Housing and Urban Development.

10 MCAR S 1.505 Types of grants available.

A. Single purpose grants. The office shall approve grants for single purpose projects for funding from a single grant year. The office shall place single purpose grant applications in one of the following categories for purposes of evaluation:

1. housing projects which include one or more activities designed to increase the supply or quality of dwellings suited to the occupancy of individuals and families;

2. public facilities projects which include one or more activities designed to acquire, construct, reconstruct, or install buildings or infrastructure which serve a neighborhood area or community; or

3. economic development projects which include one or more activities designed to create new employment, maintain existing employment, or otherwise increase economic activity in a community.

B. Comprehensive grants. The office shall approve comprehensive grants for two or more projects which contitute a comprehensive program. Comprehensive grants shall be approved

for funding from one, two, or three grant years. In the case of grants approved for funding from more than one grant year, the office shall make funds available to the grant recipient in the second or third year only after the recipient submits an approved application. ~~The office must also find~~ Approval shall be subject to a finding by the office that the grant recipient has made normal progress and is in compliance with 10 MCAR SS 1.500-1.565.

C. Previous grant commitments. The provisions of B. apply to three-year comprehensive grant commitments made by the United States Department of Housing and Urban Development in 1981 under United States Code, title 42, section 5306 (1980).

10 MCAR S 1.510 Application process and requirements.

A. Grant application manual. The office shall prepare a manual for distribution to eligible applicants no later than 120 days before the application closing date. The manual must instruct applicants in the preparation of applications and describe the method by which the office will evaluate and rank applications. If 10 MCAR SS 1.500-1.565 are not adopted before September 15, 1982, the 120-day period is waived for the 1983 grant year but the office shall make the manual available no later than 60 days before the application closing date.

B. Eligibility requirements. Any unit of general purpose local government, including cities, counties, and townships located in a nonentitlement area or electing exclusion from an urban county under United States Code, title 42, section 5302 (1981), may apply for a grant. An eligible applicant may apply on behalf of other eligible applicants. Applications submitted on behalf of other applicants must be approved by the governing body of all local governments party to the application. An eligible applicant may apply for only one grant per grant year and no eligible applicant shall be included in more than one application.

C. Disqualification of applicants. Applications from otherwise eligible applicants shall be disqualified where for previously awarded grants under these rules or awarded by the

Department of Housing and Urban Development under United States Code, title 42, section 5306 (1981), it is determined by the office that any of the following conditions exist:

1. there are outstanding audit findings on previous community development grants and the grantee has not objected on a reasonable basis to the findings or demonstrated a willingness to resolve the findings;

2. previously approved projects have passed scheduled dates for grant close-out and the grantee's ability to complete the project in an expeditious manner is in question; or

3. the applicant has not made scheduled progress on previously approved projects and the grantee's ability to complete the project in an expeditious manner is in question.

D. Contents of application. The contents of the application must be consistent with the informational requirements of 10 MCAR SS 1.500-1.565 and must be on a form prescribed by the office. The application must be accompanied by:

1. an assurance, signed by the chief elected official, that the applicant will comply with all applicable state and federal requirements;

2. an assurance signed by the chief elected official certifying that at least one public hearing was held at least ten days but not more than 30 days before submitting the application; and

3. a copy of a resolution passed by the governing body approving the application and authorizing execution of the grant agreement if funds are made available.

The office may request additional information from the applicant if it is necessary to clarify and evaluate the application.

E. Time limit for submitting applications. Applications must be received in the office or postmarked by the closing date. The office shall give notice of the period during which applications will be accepted. The notice must be published in the State Register at least 120 days before the closing date.

F. Regional review. The applicant must submit a complete

copy of the application to the Regional Development Commission, where such a commission exists, or the Metropolitan Council, where it has jurisdiction, for review and comment in accordance with Minn. Stat. S 462.391, subd. 3, or Minn. Stat. S 473.171, respectively.

10 MCAR S 1.515 Evaluation of applications; in general. All applications shall be evaluated by the office. A fixed amount of points shall be established as the maximum score attainable by any application. Points shall be made available within each class of rating criteria in accordance with the percentages and fractions indicated in 10 MCAR SS 1.520-1.545.

10 MCAR S 1.520 Comparison of all applications; general competition.

A. Points available. Thirty percent of the total available points shall be awarded by the office based on a general competition involving a comparison of all applications.

B. Evaluation of community need. Two-thirds of the points in the general competition shall be awarded based on evaluation of community need, which shall include:

1. the number of poverty persons in the area under the applicant's jurisdiction;

2. the percentage of persons resident in the area under the applicant's jurisdiction who are poverty persons; and

3. the per capita assessed valuation of the area under the jurisdiction of the applicant, such that points are awarded in inverse relationship to applicants' per capita assessed valuation.

C. Evaluation of other factors. One-third of the points in the general competition shall be awarded based on evaluation of:

1. the extent to which the proposed activities are compatible with regional or community development plans; and

2. adequacy of the applicant's management and financial plan.

10 MCAR S 1.525 Comparison of applications within categories. After completing the general competition described in 10 MCAR S

1.520, the office shall place each application in the appropriate grant category in accordance with 10 MCAR S 1.505. The categories are housing projects, public facilities projects, economic development projects, and comprehensive programs. Seventy percent of the total points available for each application shall be awarded based on a comparison of the applications within each of the categories as further described in 10 MCAR SS 1.530-1.545.

10 MCAR S 1.530 Evaluation of housing projects.

A. Project need. Three-sevenths of the points available in the housing category competition shall be awarded by the office based on evaluation of the need for improvements or additions to the housing stock serving low- and moderate-income persons as evidenced by:

1. housing units which are occupied by low- and moderate-income persons and are either substandard or pose a threat to the health or safety of the occupants;

2. an inadequate supply of affordable housing for low- or moderate-income persons; or

3. other documented conditions which give evidence of the need for improvements or additions to the housing stock serving low- and moderate-income persons.

B. Project impact. Three-sevenths of the points available in the housing category competition shall be awarded by the office based on evaluation of the extent to which the proposed activities will eliminate or reduce the need for improvements or additions to the housing stock serving low- and moderate-income persons.

C. Project cost-effectiveness. One-seventh of the points available in the housing category competition shall be awarded by the office based on:

1. evaluation of the extent to which the proposed activities will make cost-effective and efficient use of grant funds including coordination with, and use of, funds from other public and private sources; and

2. evidence that the cost of the proposed activities per

benefiting household is reasonable.

10 MCAR S 1.535 Evaluation of public facilities projects.

A. Project need. Three-sevenths of the points available in the public facilities category competition shall be awarded by the office based on evaluation of the extent to which the proposed activities are necessary to improve provision of public services to low- and moderate-income persons or to eliminate an urgent threat to public health or safety.

B. Project impact. Three-sevenths of the points available in the public facilities category competition shall be awarded by the office based on evaluation of the extent to which the proposed activities will reduce or eliminate the need identified under A., and, in the case of activities designed to improve the provision of public services to low- and moderate-income persons, an evaluation of the extent to which the proposed activities directly benefit low- and moderate-income persons.

C. Project cost-effectiveness. One-seventh of the points available in the public facilities category competition shall be awarded by the office based on evaluation of the extent to which the proposed activities will make cost-effective and efficient use of grant funds, including consideration of:

1. the extent to which the requested grant funds are necessary to finance all or a portion of the costs;

2. evidence that the cost of the proposed activities per benefiting household or person is reasonable; and

3. the extent to which the project benefits existing, rather than future, population, except in cases where the proposed activities are necessary due to expected development or growth which is beyond the applicant's control.

10 MCAR S 1.540 Evaluation of economic development projects.

A. Project need. Three-sevenths of the points available in the economic development category competition shall be awarded by the office based on evaluation of the applicant's need for economic development assistance, as evidenced by:

1. long-term employment problems;

2. unusual dependence on a small number of industries or employers; or

3. other documented conditions which give evidence of ~~the~~ reasonable need for economic development assistance.

B. Project impact. Three-sevenths of the points available in the economic development category competition shall be awarded by the office based on evaluation of the extent to which the proposed activities will benefit low- and moderate-income persons and will reduce or eliminate the need identified under A., and shall include consideration of:

1. the immediacy of the project's impact;

2. the beneficial effect on personal income in the area;

3. the extent to which the proposed activities are reasonably expected to result in long-term improvement in the economic base of the area; and

4. the number and quality of permanent jobs created or maintained.

C. Project cost-effectiveness. One-seventh of the points available in the economic development category competition shall be based on evaluation of the extent to which the proposed activities will make cost-effective and efficient use of grant funds, including consideration of:

1. the cost per job created or maintained;

2. coordination with, and use of, other public and private funds; and

3. the economic viability of any business being assisted.

10 MCAR S 1.545 Evaluation of comprehensive program projects.

A. Program need. Three-sevenths of the points available in the comprehensive program category competition shall be awarded by the office based on evaluation of need for the proposed comprehensive program, including consideration of:

1. the number of low- and moderate-income persons in the program area;

2. the percentage of residents in the program area which are of low or moderate income; and

3. the need for the proposed comprehensive program as

evidenced by at least two of the following: the need for improvements or additions to the housing stock serving low- and moderate-income persons, the need for new or improved public facilities in the program area, or employment problems in the program area.

B. Program impact. Three-sevenths of the points available in the comprehensive program category competition shall be awarded by the office based on evaluation of the extent to which the proposed comprehensive program will eliminate or reduce the need identified under A., and the extent to which the proposed program will improve the long-term physical or economic condition of the program area and its residents.

C. Program cost-effectiveness. One-seventh of the points available in the comprehensive program category competition shall be based on evaluation of the extent to which the proposed comprehensive program will make cost-effective and efficient use of grant funds, including consideration of coordination with, and use of, funds from other public and private sources.

10 MCAR S 1.550 Determination of grant awards.

A. Funds available for grants. The amount of funds available for grants shall be equal to the total allocation of federal funds made available to the State under United States Code, title 42, section 5306 (1981), after subtracting an amount for costs incurred by the office for administration of the program, as allowed by that law. The office is not liable for any grants under 10 MCAR SS 1.500-1.565 until funds are received from the United States Department of Housing and Urban Development.

B. Division of funds.

1. Of the funds available for grants in each grant year, 45 percent shall be reserved by the office to fund single purpose grants, and 55 percent shall be reserved by the office to fund comprehensive grants, including the second and third years of comprehensive grants approved for funding under 10 MCAR S 1.505 B. and C., and 10 MCAR S 1.545. However, the office may modify the proportions of funds available for single purpose and

comprehensive grants if, after review of all applications, it determines that there is a shortage of fundable applications in either category.

2. At least 20 percent of the funds made available for single purpose grants shall be awarded for applications in each of the three categories: housing, public facilities, and economic development. However, no application with a rating below the median score for its category shall be funded by the office solely for the purpose of meeting this requirement.

C. Funding list. Within each grant category, a list of applications shall be prepared in rank order of the scores received after evaluation pursuant to 10 MCAR SS 1.515-1.545. Based on these lists, and subject to the availability of funds within each category, applications with the highest rank shall be recommended to the commissioner for funding. In the case of a tie between any two applications within any category, the application with the highest score in the general competition shall receive the higher ranking on the list.

D. Approval by commissioner. The list of applications recommended for funding, including recommended grant awards, shall be submitted by the office to the commissioner for approval. A decision by the commissioner not to approve any application recommended for funding must be made in writing to the applicant, giving reasons for disapproval.

E. Reduction in amount requested. The office may recommend an application for funding in an amount less than requested if, in the opinion of the office, the amount requested is more than is necessary to meet the applicant's need. If the amount of the grant is reduced, the reasons for the reduction shall be given to the applicant.

F. Grant ceilings. No single purpose grant may be approved for an amount over $600,000. No comprehensive grant may be approved for an amount over $700,000 from any single grant year or for more than a total of $1,400,000 over three grant years.

10 MCAR S 1.555 Grant agreements.

A. Grant contract required. A grant contract shall be

offered to each applicant whose application is approved for funding. The contract must be signed by a person authorized to commit the applicant to legally binding agreements and to execute the contract.

B. Contents of grant contract. The grant contract must include:

1. a work program which indicates completion dates for major parts of the project and a projected budget supporting the work program;

2. a description of the manner in which payments will be made to grant recipients with the condition that five percent of the grant award will not be paid until successful completion of all activities in the work program; and

3. assurances that the grant recipient will comply with all applicable state and federal laws, including at least the federal laws or regulations for which the state is made responsible for enforcement in Code of Federal Regulations, title 24, sections 570.495 and 570.496.

C. Use of program income. Program income from sources such as reimbursements to and interest from a grant recipient's loan program, proceeds from disposition of real property, and proceeds from special assessments must be used for project-related costs within 12 months from the time it is earned. The office shall reduce future grant payments by the amount of any unobligated program income which an applicant has and shall take whatever additional action is necessary to recover any remaining amounts owed.

D. Grant account required. Grant recipients must establish and maintain separate accounts for grant funds. In accordance with Code of Federal Regulations, title 24, section 570.494, clause 4, interest earned by grant recipients on grant funds before disbursement is not program income, and it must be returned to the United States Treasury.

E. Restrictions on use of funds. No grant funds shall be used to finance activities not included in the grant agreement. If it is determined that an improper use of funds has occurred,

the office will take whatever action is necessary to recover improperly spent funds.

F. Suspension of payments. The office shall suspend payments of funds to grant recipients which are not in compliance with applicable state and federal laws, rules, and regulations. Grant recipients must return funds which are improperly expended.

G. Amendments to the agreement. Amendments to the grant agreement must be in writing.

10 MCAR S 1.560 Record keeping and monitoring.

A. Financial records. Grant recipients shall maintain financial records which identify the source and application of funds for grant-supported activities. These records must contain information about grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, income, and other information required by the office under the responsibilities it assumes under Code of Federal Regulations, title 24, section 570.497, clause b. Financial records, supporting documents, statistical records, and all other records pertinent to a grant must be retained by the grant recipient for three years from the date of submitting the final financial report. No such records or documents may be disposed of while audits, claims, or litigations involving the records are in progress.

B. Audits. Grant recipients must arrange for and pay for an audit before grant close-out. Audits will usually be done annually, but no less frequently than every two years. In the case of two- and three-year comprehensive programs, the office shall require an audit after two years; costs incurred pursuant to this requirement are eligible under this program.

C. Financial status report. Grant recipients shall file financial status reports at the close of each reporting period as designated by the office and shall file a final financial report before grant close-out. Financial status reports must be on forms prescribed by the office. The office may not require these reports more often than quarterly.

D. Performance report. Grant recipients shall also file performance reports at the close of each reporting period as designated by the office and shall file a final performance report before grant close-out. Performance reports shall be on forms prescribed by the office. The office may not require these reports more often than quarterly.

E. Access to records. Representatives of the office, either the State Auditor or Legislative Auditor as is appropriate, and federal auditors shall have access to all books, records, accounts, reports, files, and other papers, things, or property belonging to grant recipients which are related to the administration of grants and necessary for audits and monitoring compliance with 10 MCAR SS 1.500-1.565.

10 MCAR S 1.565 Application of federal law. If it is determined that any provisions of 10 MCAR SS 1.500-1.560 are inconsistent with federal law, then federal law controls to the extent necessary to eliminate the conflict.

OFFICE OF THE REVISOR OF STATUTES

Certificate of Approval of Adopted Rules

Agency: Department of Energy, AR0224
Planning and Development

Division: Local Government

Agency Contact: J. H. Fonkert

Rule Numbers: 10 MCAR SS 1.500, 1.505, 1.510, 1.515, 1.520, 1.525, 1.530, 1.535, 1.540, 1.545, 1.550, 1.555, 1.560, 1.565.

Title: Adopted Rules Relating to the Application Process for Grants Under the Small Cities Community Development Block Grant Program

Type of Rules: Permanent

Incorporations by Reference: None

Rule Number: Material Incorporated:

Duplication of Statutory Language: None

Rule Number: Statutory Section Duplicated:

The attached rules are approved as to form, subject to the following editorial changes:

APPROVED AS TO LEGALITY
September 21, 19 82
WARREN SPANNAUS, ATTORNEY GENERAL
BY [signature]
SPECIAL ASSISTANT ATTORNEY GENERAL

[signature] [signature]

Steven C. Cross Name: Theresa M. Lauterbach Date: 9/1/82

Revisor of Statutes Title: Assistant Revisor Phone: 296-0956

STATE OF MINNESOTA

DEPARTMENT OF ENERGY, PLANNING AND DEVELOPMENT

In the Matter of the Proposed Adoption of Rules of the State Department of Energy, Planning and Development Governing the Community Development Block Grant Program

ORDER ADOPTING RULES

Notice of the Commissioner's intent to adopt the above-entitled rules without a public hearing was published in the State Register on July 19, 1982 and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes, Section 15.0412, subdivision 4 on July 14, 1982. After affording interested and affected persons an opportunity to submit comments for 30 days after Notice, receiving fewer than seven written requests for a public hearing within the 30 day comment period, reviewing and considering the comments, and determining the need for and reasonableness of the above-captioned rules.

NOW, THEREFORE, IT IS ORDERED that these rules identified as Administrative Rules for the Community Block Grant Program are adopted this 31st day of August, 1982 pursuant to authority invested in me by Minnesota Statutues, Sections 4.13 and 4.17.

STATE OF MINNESOTA

Kent E. Ekhardt

COMMISSIONER OF DEPARTMENT OF ENERGY, PLANNING AND DEVELOPMENT

51227/384 In the Matter of Arbitration between Ramsey County v. American Federation of State, County and Municipal Employees, Council 91, Local 8, Appellant. Ramsey County.

An arbitrator does not exceed his powers within the meaning of Minn. Stat. § 572.19 subd. 1(3) (1980) if the award draws its essence from the collective bargaining agreement, viewed in light of its language, its context and any other indicia of the parties' intent, including past practice.

A broad "no additions or modifications" provision contained in a written collective bargaining agreement does not prevent enforcement of an arbitrator's award based on factors outside of the written agreement so long as the essence test is met.

If the award meets the standards enunciated herein, the fact that we may or may not agree with the arbitrator's decision is of no consequence.

Reversed and remanded. Amdahl, J. Dissenting, Peterson, J., and Otis, J.

51213/138 Bankers Standard Insurance Company, Appellant, v. Wanda Olwell, *et al.*, Jenny Lesjcher, Larry E. Walters, *et al.*, defendants and third party plaintiffs, Holmbeck & Associates, Inc., third party defendant. Hennepin County.

The care and supervision of children in the home for compensation are activities which are ordinarily incident to non-business pursuits.

Affirmed. Amdahl, J. Dissenting, Otis, J., and Peterson, J.

50717/182 Lindsay Carter Page, Appellant, v. Phyllis M. Blake, *et al.* Hennepin County.

Reversed. Per Curiam.

OFFICIAL NOTICES

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

Department of Economic Development Office of the Commissioner

Notice of Intent to Solicit Outside Opinion Regarding Rules for Administration of Small Cities Community Development Block Grant

Notice is hereby given that the Minnesota Department of Economic Development is seeking information or opinions from sources outside the agency in preparing to propose rules governing administration of the Small Cities Community Development Block Grant under Omnibus Reconciliation Bill P.L. 97.35. The promulgation of these rules is authorized by Minnesota Statutes, § 4.13, which permit the commissioner to apply for, receive, and expend money made available from federal sources for the purpose of carrying out the duties and responsibilities of the commissioner relating to local and urban affairs, and by Minnesota Statutes, § 4.17, which requires the commissioner to promulgate rules prescribing the criteria, standards, and procedures to govern the expenditure of such money.

The Department of Economic Development requests information and comments concerning the subject matter of these rules. Interested or affected persons may submit statements of information in writing. Written statements should be addressed to:

Wes Cochrane
Commissioner, Department of Economic Development
480 Cedar Street
St. Paul, Minnesota 55101
(612) 296-4039

All statements of information and comment shall be accepted until November 1, 1981. Any written material received by the Department of Economic Development shall become part of the record in the event the Rules are promulgated.

September 4, 1981

W. Wesley Cochrane
Commissioner

OFFICIAL NOTICES

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

Minnesota Energy Agency
Data and Analysis Division

Recertification of the Sherburne County Generating Unit No. 3 as Proposed by Northern States Power Company, Southern Minnesota Municipal Power Agency, and United Minnesota Municipal Power Agency, Joint Applicants

Supplemental Order Revising Hearing Schedule

On November 20, 1981, Minnesota Public Interest Research Group (MPIRG), a party in the above-entitled matter, filed its Motion for Change of Hearing Location. MPIRG asserted cost savings to the state and the parties as reasons for eliminating out-state evidentiary hearings. After polling the parties, the hearing examiner partially granted the motion on December 4, 1981.

Now, therefore, it is ordered and notice is given that the dates, times and places for the hearings in the above-entitled matter shall be held as indicated in the

Revised Schedule

Date (1982)	Time	Place
Feb. 8	1:00 and 7:00 p.m.	City Council Chambers, City Hall, Becker
Feb. 9-11	9:00 a.m. & 1:00 p.m.	City Council Chambers, City Hall, Becker
Feb. 16	1:00 and 7:00 p.m.	Public Library, Mora
Feb. 17 & Feb. 18-19	1:00 p.m. 9:00 a.m. & 1:00 p.m.	Room 584, Federal Building 316 North Robert Street Saint Paul
Feb. 22	1:00 and 7:00 p.m.	City Council Chambers, Municipal Building, Austin
Feb. 25	1:00 and 7:00 p.m.	City Council Chambers, City Hall, Rochester
March 1	1:00 and 7:00 p.m.	City Council Chambers, City Hall, Owatonna
March 8	1:00 and 7:00 p.m.	Highland Senior High School, 1015 S. Snelling, St. Paul

Additional hearing sessions which are needed will be scheduled by the hearing examiner. The hearing examiner may cancel any session except those dedicated to receiving public input and scheduled for February 8—Becker, February 16—Mora, February 22—Austin, February 25—Rochester, March 1—Owatonna, and March 8—Saint Paul. Information on additional hearings scheduled may be obtained from the energy information center at 296-5175 or (800) 652-9747 (toll free).

Michael J. Murphy, Director

Department of Energy, Planning and Development
Office of the Commissioner

Extension of Notice of Intent to Solicit Outside Opinion Regarding Rules for Administration of Small Cities Community Development Block Grant

Notice is hereby given that the Minnesota Department of Energy, Planning and Development has extended the time period

STATE OF MINNESOTA

DEPARTMENT OF ENERGY, PLANNING AND DEVELOPMENT

In the Matter of the Proposed Adoption of Rules of the State Department of Energy, Planning and Development, Office of Local Government Governing the Community Development Block Grant Program	ORDER FOR NOTICE OF INTENT TO ADOPT RULES WITHOUT PUBLIC HEARING

IT IS ORDERED this 9th day of July, 1982 that a Notice of Intent to Adopt Rules Without Public Hearing in the above-entitled matter be given to all persons who have registered their names with the State Department of Energy, Planning and Development for that purpose and be published in the State Register.

STATE OF MINNESOTA

Kent Eklund

Kent Eklund, Commissioner
Department of Energy, Planning and Development

Department of Energy, Planning and Development

Office of Local Government of the Planning Division

In the Matter of the Proposed Adoption of Rules of the State Department of Energy, Planning and Development Governing the Community Development Block Grant Program

Notice of Intent to Adopt Rules Without a Public Hearing

Notice is hereby given that the State Department of Energy, Planning and Development proposes to adopt the above-entitled rules without a public hearing. The Commissioner has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes section 15.0412, subdivision 4h (1980).

Persons interested in these rules shall have 30 days to submit comments on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes section 15.0412, subdivisions 4-4f.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to:

D. Beigbeder, Department of Energy, Planning and Development
100 Hanover Building, 480 Cedar Street, St. Paul, Minnesota
55101 (612) 296-2262

Authority for the adoption of these rules is contained in Minnesota Statutes section 4.13 and 4.17. Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied

upon to support the proposed rules has been prepared and is available from D. Beigbeder upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to D. Beigbeder at the address listed above.

(A copy of the proposed rules is attached to this Notice.)

Copies of this Notice and the proposed rules are available and may be obtained by contacting D. Beigbeder either in writing or by telephone.

STATE OF MINNESOTA

Kent Eklund

Kent Eklund, Commissioner
Department of Energy, Planning and Development

In the Matter of the Proposed Adoption
of Rules of the State Department of Energy,
Planning and Development Governing the
Community Development Block Grant Program

AFFIDAVIT OF
MAILING

STATE OF MINNESOTA)
)
COUNTY OF RAMSEY) ss.

Leland Newman, being first duly sworn deposes and says:

That on the 14th day of July, 1982, at the City of St. Paul, County of Ramsey, State of Minnesota, he served the attached Notice of Intent to Adopt Rules Without a Public Hearing by depositing in the State of Minnesota Central Mail System for United States mailing at said City of St. Paul, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who have requested that their names be placed on file with the State Department of Energy, Planning and Development for the purpose of receiving notice of the proposed adoption of rules by this department.

Leland Newman

Subscribed and sworn to before me
this 14th day of July, 1982.

Madeline Harris

MADELINE HARRIS
NOTARY PUBLIC - MINNESOTA
CHISAGO COUNTY
My Commission Expires Sep. 17, 1985

STATE OF MINNESOTA

COUNTY OF RAMSEY

CERTIFICATE

In the Matter of the Proposed Adoption
Of Rules of the State Department of Energy,
Planning and Development
Governing the Community Development Block
Grant Program

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minn. Stat. § 15.0412, subd. 4, that their names be placed on file with and maintained by the State Department of Energy, Planning and Development for the purpose of receiving notice of the proposed adoption of rules by this Department is accurate and complete as of 10:00 A.M., this 14th day of July, 1982.

Leland Newman

Leland E. Newman, Director
Office of Local Government

Rule as Proposed

6 MCAR § 2.3120 Motor fuel emergency measures. Upon declaration of an energy supply emergency based upon a petroleum shortage, the Governor shall select from the following measures to reduce a motor fuel shortage.

A. (Unchanged.)

B. Employer-based motor fuel conservation measure.

1. The purpose of this measure is to conserve motor fuel by requiring certain employers to reduce employee commuting and business-related motor fuel consumption in an energy supply emergency. The department shall inform affected employers before May 25, 1983 of the requirements for participating in the employer-based conservation measure. The governor may not implement this measure before May 25, 1983.

2.-10. (Unchanged.)

C. School conservation measure.

1. and 2. (Unchanged.)

3. The governor may not implement the school conservation measure before October 1, 1982. School boards shall submit to the department ~~within 18 months after the effective date of these rules~~ before April 1, 1984, or within 45 days after declaration of an energy supply emergency, whichever comes first, an emergency motor fuel conservation plan as defined in paragraphs 6. or 7.

4.-9. (Unchanged.)

D.-H. (Unchanged.)

Department of Energy, Planning and Development Office of Local Government of the Planning Division

Proposed Rules Governing the Community Development Block Grant Program

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the State Department of Energy, Planning and Development proposes to adopt the above-entitled rules without a public hearing. The commissioner has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes § 15.0412, subdivision 4h (1980).

Persons interested in these rules shall have 30 days to submit comments on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes § 15.0412, subdivisions 4-4f.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to:

D. Beigbeder, Department of Energy, Planning and Development
100 Hanover Building, 480 Cedar Street, St. Paul, Minnesota
55101 (612) 296-2262

Authority for the adoption of these rules is contained in Minnesota Statutes §§ 4.13 and 4.17. Additionally, a statement of need and reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies

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the data and information relied upon to support the proposed rules has been prepared and is available from D. Beigbeder upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this notice, the statement of need and reasonableness, all written comments received, and the final rules as adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to D. Beigbeder at the address listed above.

(A copy of the proposed rules is attached to this notice.)

Copies of this notice and the proposed rules are available and may be obtained by contacting D. Beigbeder either in writing or by telephone.

Kent Eklund, Commissioner
Department of Energy, Planning and Development

Rules as Proposed (all new material)

10 MCAR § 1.500 Small cities community block grant program; general provisions.

A. Purpose of these rules. Rules 10 MCAR §§ 1.500-1.565 give procedures for evaluating applications for grants and awarding them to eligible applicants by the Department of Energy, Planning and Development under United States Code, title 42, sections 5301-5136 (1981), and regulations adopted in Code of Federal Regulations, title 24, part 570.

B. Objective of the program. The primary objective of this program is to develop viable urban communities by providing decent housing and a suitable living environment and by expanding economic opportunities, principally for persons of low and moderate income. Activities funded under this program shall not benefit moderate-income persons to the exclusion of low-income persons. All funded activities must be designed to:

1. benefit low- and moderate-income persons;

2. prevent or eliminate slums and blight; or

3. alleviate urgent community development needs caused by existing conditions which pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet those needs.

C. Definitions. As used in 10 MCAR §§ 1.500-1.565, the following terms have the meanings given them.

1. "Community development need" means a demonstrated deficiency in housing stock, public facilities, economic opportunities, or other services which are necessary for developing or maintaining viable communities.

2. "Comprehensive program" means a combination of at least two interrelated projects which are designed to address community development needs which by their nature require a coordination of housing, public facilities, or economic development activities. A comprehensive program must be designed to benefit a defined geographic area, otherwise known as a program area.

3. "Eligible activities" means those activities so designated in United States Code, title 42, section 5305 (1981) and as described in Code of Federal Regulations, title 24, sections 570.200-570.207 (1981).

4. "General purpose local government" means townships as described in Minn. Stat. ch. 365; cities as described in Minn. Stat. chs. 410 and 412; and counties.

5. "Grant" means an agreement between the state and an eligible recipient through which the state provides funds to carry out specified programs, services, or activities.

6. "Grant close-out" means the process by which the office determines that all applicable administrative actions and all required work have been completed by the grant recipient and the department.

7. "Grant year" means any period of time during which the United States Department of Housing and Urban Development makes funds from any federal fiscal year available to the state for distribution to local governments under United State Code, title 42, sections 5301-5316 (1981), and includes the period of time during which the office solicits applications and makes grant awards.

8. "Infrastructure" means the basic physical systems, structures, and facilities, such as roads, bridges, water, and sewer, which are necessary to support a community.

9. "Low and moderate income" means income which does not exceed 80 percent of the median income for the area, with adjustments for smaller and larger families.

10. "Metropolitan city" means a city over 50,000 population or a central city of a standard metropolitan statistical area that receives entitlement grants under United States Code, title 42, section 5306 (1981) directly from the United States Department of Housing and Urban Development.

11. "Nonentitlement area" means an area that is not a metropolitan city or part of an urban county.

12. "Office" means the Office of Local Government in the Department of Energy, Planning and Development.

13. "Per capita assessed valuation" means the adjusted assessed valuation divided by population.

14. "Population" means the number of persons who are residents in a county, city, or township as established by the last federal census, by a census taken pursuant to Minn. Stat. § 275.53, subd. 2, by a population estimate made by the Metropolitan Council, or by the population estimate of the state demographer made under Minn. Stat. § 4.12, subd. 7, clause (10), whichever is most recent as to the stated date of count or estimate, up to and including the most recent July 1.

15. "Poverty persons" means individuals or families whose incomes are below the poverty level as determined by the most current data available from the United States Department of Commerce, taking into account variations in cost of living for the area affected.

16. "Program" means the community development block grant program for nonentitlement areas.

17. "Program area" means a defined geographic area within which an applicant has determined that, based on community plans or other studies, there exists a need for community development activities. A program area may be a neighborhood in a community or an entire community.

18. "Program income" means gross income earned by the grant recipient from grant-supported activities, excluding interest earned on advances.

19. "Project" means one or more activities designed to meet a specific community development need.

20. "Regional or community development plans" means written documents, resolutions, or statements which describe goals, policies, or strategies for the physical, social, or economic development of a neighborhood, community, or substate area. Regional or community development plans include comprehensive plans and elements of comprehensive plans, including land use plans, which have been approved by the governing boards of townships, counties, or cities, and also include regional development plans adopted under Minn. Stat. § 462.381, where applicable.

21. "Slums and blight" means areas or neighborhoods which are characterized by conditions used to describe deteriorated areas in Minn. Stat. § 462.421 or which are characterized by the conditions used to describe redevelopment districts in Minn. Stat. § 273.73, subd. 10.

22. "Single purpose project" means one or more activities designed to meet a specific community development need.

23. "Urban county" means a county which is located in a metropolitan area and is entitled to receive grants under United States Code, title 42, section 5306 (1981), directly from the United States Department of Housing and Urban Development.

10 MCAR § 1.505 Types of grants available.

A. Single purpose grants. The office shall approve grants for single purpose projects for funding from a single grant year. The office shall place single purpose grant applications in one of the following categories for purposes of evaluation:

1. housing projects which include one or more activities designed to increase the supply or quality of dwellings suited to the occupancy of individuals and families;

2. public facilities projects which include one or more activities designed to acquire, construct, reconstruct, or install buildings or infrastructure which serve a neighborhood area or community; or

3. economic development projects which include one or more activities designed to create new employment, maintain existing employment, or otherwise increase economic activity in a community.

B. Comprehensive grants. The office shall approve comprehensive grants for two or more projects which constitute a comprehensive program. Comprehensive grants shall be approved for funding from one, two, or three grant years. In the case of grants approved for funding from more than one grant year, the office shall make funds available to the grant recipient in the

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second or third year only after the recipient submits an approved application. The office must also find that the grant recipient has made normal progress and is in compliance with 10 MCAR §§ 1.500-1.565.

10 MCAR § 1.510 Application process and requirements.

A. Grant application manual. The office shall prepare a manual for distribution to eligible applicants no later than 120 days before the application closing date. The manual must instruct applicants in the preparation of applications and describe the method by which the office will evaluate and rank applications. If 10 MCAR §§ 1.500-1.565 are not adopted before September 15, 1982, the 120-day period is waived for the 1983 grant year but the office shall make the manual available no later than 60 days before the application closing date.

B. Eligibility requirements. Any unit of general purpose local government, including cities, counties, and townships located in a nonentitlement area or electing exclusion from an urban county under United States Code, title 42, section 5302 (1981), may apply for a grant. An eligible applicant may apply on behalf of other eligible applicants. Applications submitted on behalf of other applicants must be approved by the governing body of all local governments party to the application. An eligible applicant may apply for only one grant per grant year and no eligible applicant shall be included in more than one application.

C. Disqualification of applicants. Applications from otherwise eligible applicants shall be disqualified where for previously awarded grants under these rules or awarded by the Department of Housing and Urban Development under United States Code, title 42, section 5306 (1981), it is determined by the office that any of the following conditions exist:

1. there are outstanding audit findings on previous community development grants and the grantee has not objected on a reasonable basis to the findings or demonstrated a willingness to resolve the findings;

2. previously approved projects have passed scheduled dates for grant close-out and the grantee's ability to complete the project in an expeditious manner is in question; or

3. the applicant has not made scheduled progress on previously approved projects and the grantee's ability to complete the project in an expeditious manner is in question.

D. Contents of application. The contents of the application must be consistent with the informational requirements of 10 MCAR §§ 1.500-1.565 and must be on a form prescribed by the office. The application must be accompanied by:

1. an assurance, signed by the chief elected official, that the applicant will comply with all applicable state and federal requirements;

2. an assurance signed by the chief elected official certifying that at least one public hearing was held at least ten days but not more than 30 days before submitting the application; and

3. a copy of a resolution passed by the governing body approving the application and authorizing execution of the grant agreement if funds are made available.

The office may request additional information from the applicant if it is necessary to clarify and evaluate the application.

E. Time limit for submitting applications. Applications must be received in the office or postmarked by the closing date. The office shall give notice of the period during which applications will be accepted. The notice must be published in the *State Register* at least 120 days before the closing date.

F. Regional review. The applicant must submit a complete copy of the application to the Regional Development Commission, where such a commission exists, or the Metropolitan Council, where it has jurisdiction, for review and comment in accordance with Minn. Stat. § 462.391, subd. 3, or Minn. Stat. § 473.171, respectively.

10 MCAR § 1.515 Evaluation of applications in general. All applications shall be evaluated by the office. A fixed amount of points shall be established as the maximum score attainable by any application. Points shall be made available within each class of rating criteria in accordance with the percentages and fractions indicated in 10 MCAR §§ 1.520-1.545.

10 MCAR § 1.520 Comparison of all applications; general competition.

A. Points available. Thirty percent of the total available points shall be awarded by the office based on a general competition involving a comparison of all applications.

B. Evaluation of community need. Two-thirds of the points in the general competition shall be awarded based on evaluation of community need, which shall include:

1. the number of poverty persons in the area under the applicant's jurisdiction;

2. the percentage of persons resident in the area under the applicant's jurisdiction who are poverty persons; and

3. the per capita assessed valuation of the area under the jurisdiction of the applicant, such that points are awarded in inverse relationship to applicants' per capita assessed valuation.

C. Evaluation of other factors. One-third of the points in the general competition shall be awarded based on evaluation of:

1. the extent to which the proposed activities are compatible with regional or community development plans; and

2. adequacy of the applicant's management and financial plan.

10 MCAR § 1.525 Comparison of applications within categories. After completing the general competition described in 10 MCAR § 1.520, the office shall place each application in the appropriate grant category in accordance with 10 MCAR § 1.505. The categories are housing projects, public facilities projects, economic development projects, and comprehensive programs. Seventy percent of the total points available for each application shall be awarded based on a comparison of the applications within each of the categories as further described in 10 MCAR §§ 1.530-1.545.

10 MCAR § 1.530 Evaluation of housing projects.

A. Project need. Three-sevenths of the points available in the housing category competition shall be awarded by the office based on evaluation of the need for improvements or additions to the housing stock serving low- and moderate-income persons as evidenced by:

1. housing units which are occupied by low- and moderate-income persons and are either substandard or pose a threat to the health or safety of the occupants;

2. an inadequate supply of affordable housing for low- or moderate-income persons; or

3. other documented conditions which give evidence of the need for improvements or additions to the housing stock serving low- and moderate-income persons.

B. Project impact. Three-sevenths of the points available in the housing category competition shall be awarded by the office based on evaluation of the extent to which the proposed activities will eliminate or reduce the need for improvements or additions to the housing stock serving low- and moderate-income persons.

C. Project cost-effectiveness. One-seventh of the points available in the housing category competition shall be awarded by the office based on:

1. evaluation of the extent to which the proposed activities will make cost-effective and efficient use of grant funds including coordination with, and use of, funds from other public and private sources; and

2. evidence that the cost of the proposed activities per benefiting household is reasonable.

10 MCAR § 1.535 Evaluation of public facilities projects.

A. Project need. Three-sevenths of the points available in the public facilities category competition shall be awarded by the office based on evaluation of the extent to which the proposed activities are necessary to improve provision of public services to low- and moderate-income persons or to eliminate an urgent threat to public health or safety.

B. Project impact. Three-sevenths of the points available in the public facilities category competition shall be awarded by the office based on evaluation of the extent to which the proposed activities will reduce or eliminate the need identified under A., and, in the case of activities designed to improve the provision of public services to low- and moderate-income persons, an evaluation of the extent to which the proposed activities directly benefit low- and moderate-income persons.

C. Project cost-effectiveness. One-seventh of the points available in the public facilities category competition shall be awarded by the office based on evaluation of the extent to which the proposed activities will make cost-effective and efficient use of grant funds, including consideration of:

1. the extent to which the requested grant funds are necessary to finance all or a portion of the costs;

2. evidence that the cost of the proposed activities per benefiting household or person is reasonable; and

3. the extent to which the project benefits existing, rather than future, population, except in cases where the proposed activities are necessary due to expected development or growth which is beyond the applicant's control.

10 MCAR § 1.540 Evaluation of economic development projects.

A. Project need. Three-sevenths of the points available in the economic development category competition shall be awarded by the office based on evaluation of the applicant's need for economic development assistance, as evidenced by:

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1. long-term employment problems;

2. unusual dependence on a small number of industries or employers; or

3. other documented conditions which give evidence of the need for economic development assistance.

B. Project impact. Three-sevenths of the points available in the economic development category competition shall be awarded by the office based on evaluation of the extent to which the proposed activities will benefit low- and moderate-income persons and will reduce or eliminate the need identified under A., and shall include:

1. the immediacy of the project's impact;

2. the beneficial effect on personal income in the area;

3. the extent to which the proposed activities are reasonably expected to result in long-term improvement in the economic base of the area; and

4. the number and quality of permanent jobs created or maintained.

C. Project cost-effectiveness. One-seventh of the points available in the economic development category competition shall be based on evaluation of the extent to which the proposed activities will make cost-effective and efficient use of grant funds, including consideration of:

1. the cost per job created or maintained;

2. coordination with, and use of, other public and private funds; and

3. the economic viability of any business being assisted.

10 MCAR § 1.545 Evaluation of comprehensive program projects.

A. Program need. Three-sevenths of the points available in the comprehensive program category competition shall be awarded by the office based on evaluation of need for the proposed comprehensive program, including consideration of:

1. the number of low- and moderate-income persons in the program area;

2. the percentage of residents in the program area which are of low or moderate income; and

3. the need for the proposed comprehensive program as evidenced by at least two of the following: the need for improvements or additions to the housing stock serving low- and moderate-income persons, the need for new or improved public facilities in the program area, or employment problems in the program area.

B. Program impact. Three-sevenths of the points available in the comprehensive program category competition shall be awarded by the office based on evaluation of the extent to which the proposed comprehensive program will eliminate or reduce the need identified under A., and the extent to which the proposed program will improve the long-term physical or economic condition of the program area and its residents.

C. Program cost-effectiveness. One-seventh of the points available in the comprehensive program category competition shall be based on evaluation of the extent to which the proposed comprehensive program will make cost-effective and efficient use of grant funds, including consideration of coordination with, and use of, funds from other public and private sources.

10 MCAR § 1.550 Determination of grant awards.

A. Funds available for grants. The amount of funds available for grants shall be equal to the total allocation of federal funds made available to the State under United States Code, title 42, section 5306 (1981), after subtracting an amount for costs incurred by the office for administration of the program, as allowed by that law. The office is not liable for any grants under 10 MCAR §§ 1.500-1.565 until funds are received from the United States Department of Housing and Urban Development.

B. Division of funds.

1. Of the funds available for grants in each grant year, 55 percent shall be reserved by the office to fund comprehensive grants, including the second and third years of comprehensive grants approved for funding under 10 MCAR § 1.545. However, the office may modify the proportions of funds available for single purpose and comprehensive grants if, after review of all applications, it determines that there is a shortage of fundable applications in either category.

2. At least 20 percent of the funds made available for single purpose grants shall be awarded for applications in each of the three categories: housing, public facilities, and economic development. However, no application with a rating below the median score for its category shall be funded by the office solely for the purpose of meeting this requirement.

C. Funding list. Within each grant category, a list of applications shall be prepared in rank order of the scores received after evaluation pursuant to 10 MCAR §§ 1.515-1.545. Based on these lists, and subject to the availability of funds within each category, applications with the highest rank shall be recommended to the commissioner for funding. In the case of a tie between

any two applications within any category, the application with the highest score in the general competition shall receive the higher ranking on the list.

D. Approval by commissioner. The list of applications recommended for funding, including recommended grant awards, shall be submitted by the office to the commissioner for approval. A decision by the commissioner not to approve any application recommended for funding must be made in writing to the applicant, giving reasons for disapproval.

E. Reduction in amount requested. The office may recommend an application for funding in an amount less than requested if, in the opinion of the office, the amount requested is more than is necessary to meet the applicant's need. If the amount of the grant is reduced, the reasons for the reduction shall be given to the applicant.

F. Grant ceilings. No single purpose grant may be approved for an amount over $600,000. No comprehensive grant may be approved for an amount over $700,000 from any single grant year or for more than a total of $1,400,000 over three grant years.

10 MCAR § 1.555 Grant agreements.

A. Grant contract required. A grant contract shall be offered to each applicant whose application is approved for funding. The contract must be signed by a person authorized to commit the applicant to legally binding agreements and to execute the contract.

B. Contents of grant contract. The grant contract must include:

1. a work program which indicates completion dates for major parts of the project and a projected budget supporting the work program;

2. a description of the manner in which payments will be made to grant recipients with the condition that five percent of the grant award will not be paid until successful completion of all activities in the work program; and

3. assurances that the grant recipient will comply with all applicable state and federal laws, including at least the federal laws or regulations for which the state is made responsible for enforcement in Code of Federal Regulations, title 24, sections 570.495 and 570.496.

C. Use of program income. Program income from sources such as reimbursements to and interest from a grant recipient's loan program, proceeds from disposition of real property, and proceeds from special assessments must be used for project-related costs within 12 months from the time it is earned. The office shall reduce future grant payments by the amount of any unobligated program income which an applicant has and shall take whatever additional action is necessary to recover any remaining amounts owed.

D. Grant account required. Grant recipients must establish and maintain separate accounts for grant funds. In accordance with Code of Federal Regulations, title 24, section 570.494, clause 4, interest earned by grant recipients on grant funds before disbursement is not program income, and it must be returned to the United States Treasury.

E. Restrictions on use of funds. No grant funds shall be used to finance activities not included in the grant agreement. If it is determined that an improper use of funds has occurred, the office will take whatever action is necessary to recover improperly spent funds.

F. Suspension of payments. The office shall suspend payments of funds to grant recipients which are not in compliance with applicable state and federal laws, rules, and regulations. Grant recipients must return funds which are improperly expended.

G. Amendments to the agreement. Amendments to the grant agreement must be in writing.

10 MCAR § 1.560 Record keeping and monitoring.

A. Financial records. Grant recipients shall maintain financial records which identify the source and application of funds for grant-supported activities. These records must contain information about grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, income, and other information required by the office under the responsibilities it assumes under Code of Federal Regulations, title 24, section 570.497, clause b. Financial records, supporting documents, statistical records, and all other records pertinent to a grant must be retained by the grant recipient for three years from the date of submitting the final financial report. No such records or documents may be disposed of while audits, claims, or litigations involving the records are in progress.

B. Audits. Grant recipients must arrange for and pay for an audit before grant close-out. Audits will usually be done

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annually, but no less frequently than every two years. In the case of two- and three-year comprehensive programs, the office shall require an audit after two years; costs incurred pursuant to this requirement are eligible under this program.

C. Financial status report. Grant recipients shall file financial status reports at the close of each reporting period as designated by the office and shall file a final financial report before grant close-out. Financial status reports must be on forms prescribed by the office. The office may not require these reports more often than quarterly.

D. Performance report. Grant recipients shall also file performance reports at the close of each reporting period as designated by the office and shall file a final performance report before grant close-out. Performance reports shall be on forms prescribed by the office. The office may not require these reports more often than quarterly.

E. Access to records. Representatives of the office, either the State Auditor or Legislative Auditor as is appropriate, and federal auditors shall have access to all books, records, accounts, reports, files, and other papers, things, or property belonging to grant recipients which are related to the administration of grants and necessary for audits and monitoring compliance with 10 MCAR §§ 1.500-1.565.

10 MCAR § 1.565 Application of federal law. If it is determined that any provisions of 10 MCAR §§ 1.500-1.560 are inconsistent with federal law, then federal law controls to the extent necessary to eliminate the conflict.

ADOPTED RULES

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 15.0412, subd. 4, have been met and five working days after the rule is published in the *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strike outs and new language will be underlined, and the rule's previous *State Register* publication will be cited.

A temporary rule becomes effective upon the approval of the Attorney General as specified in Minn. Stat. § 15.0412, subd. 5. Notice of his decision will be published as soon as practicable, and the adopted temporary rule will be published in the manner provided for adopted rules under subd. 4.

Department of Commerce
Office of Consumer Services

Temporary Rules Governing Cosmetology Schools, Licensing and License Fee

Notice of Continuance of Temporary Rules

Notice is hereby given that the Office of Consumer Services is reissuing the temporary rules, which became effective on January 11, 1982, governing cosmetology schools, licensing and licensing fees, temporarily amending 4 MCAR §§ 10.004, 10.021, 10.026, 10.028 and 10.041, as authorized by Minn. Stat. ch. 155A.05 (Supp. 1981). These rules shall continue in effect for an additional 180 days from July 11, 1982.

June 24, 1982

Krista Sanda, Director
Office of Consumer Services

Department of Commerce
Office of Consumer Services

Adopted Temporary Rules Governing Sanitation in Cosmetology Schools, School License Renewals, Instructor License Renewals, Sanitation in Cosmetology Salons, Cosmetology Salon License Renewals, and Professional Liability Insurance

The rules as proposed and published at *State Register*, Volume Number 6, pages 1905-1906, Monday, May 17, 1982 (6 S.R. 1905) were approved by the Attorney General's Office on July 6, 1982, and are now adopted as approved.

July 7, 1982

Krista Sanda, Director
Office of Consumer Services

STATE OF MINNESOTA
DEPARTMENT OF ENERGY, PLANNING AND DEVELOPMENT

In the Matter of the Proposed Adoption of the Rules of the State Department of Energy, Planning and Development Governing the Community Development Block Grant Program

FINDINGS OF FACT AND CONCLUSIONS

Pertaining to the above entitled matter, the Department certifies that all notice and procedural requirements for Adopting Rules Without a Public Hearing pursuant to Minn. Stat. § 15.0412 have been satisfied. Supporting documentation is appended.

The Department received six requests for public hearing during the thirty-day period. A seventh request was dated, postmarked and received after the close of the comment period. In addition comments were received from four parties during this same period. The Department is adopting the Statement of Need and Reasonableness as previously prepared. Changes in the Rule are all clarifying changes and are supported by the Statement of Need and Reasonableness.

Written comments and Department response are summarized as follows:

1. Categorical Percentage Reservation of Funds. The Department received four hearing requests with regard to the percentage of funds to be set aside for funding single purpose projects and comprehensive programs. Two cities argued that a greater proportion of funds be reserved for single purpose grants in order to fund a greater number of applicants and to allow smaller cities to participate more competitively. Conversely, two organizations requested that a greater proportion of funds be reserved for comprehensive programs in order to more fully address overall community development needs.

The Department finds that although both arguments have merit, the 45% single purpose/55% comprehensive program reservation of funds proposed in the rule will

be maintained. This split of funds is in some ways more favorable to small cities than it has been in the past under HUD administration; however the Department believes that the nearly equal division of funds is fair and will not bias a community's decision to apply in one category or the other because the odds of being funded appear to be higher. Further justification for this rule may be found in the Statement of Need and Reasonableness, 10 MCAR § 1.550B (p. 31).

The rule change associated with this section clarifies the intent of the proposed rule as reflected in the Statement by stating that 45 percent of the funds will be reserved for single purpose grants.

2. Merits of Impact Versus Need in Evaluation of Applications. Several comments were received, notably from associations, regarding the relative importance of project impact and need in the rating system. The thrust of the argument is based upon perceptions that community need is a much stronger determinent of funding success than is a worthy project.

The Department believes that this comment stems from the parties' previous experience with the rating system designed by HUD. HUD's rating system, however, is not directly comparable to that proposed by the state in these rules. The state rating system more explicitly distinguishes between the concepts of need and impact. Some of the factors that HUD included in its rating of impact such as cost effectiveness, adequacy of management and financial plans, the relationship of the project to local planning, and leveraging of private funds, the state considers within its evaluation of community need, project need and elsewhere. In effect, the state will be awarding approximately 50% of the total points for "impact" as compared with 41%-67% awarded by HUD during previous grant cycles. Project quality, therefore, will continue to receive equally strong emphasis under state administration.

For these reasons and others cited in the Statement of Need and Reasonableness, the Department finds that there is insufficient reason to modify the rule as proposed.

3. Notification of Closing Date for Applications. Two parties raised concern about the length of time communities will have to prepare applications and advised that the 120-day notice period proposed in the rule is insufficient for good programs to be developed.

The Department believes that federal regulations for this program coupled with state administrative rules will make it highly unlikely for the program to change in a capricious manner. Furthermore, the 120-day period specified in the rules under 10 MCAR § 1.510 is the minimum length of time the manual will be available prior to the closing date, and it is intended as protection or legal guarantee, against any less notice. While the Department believes that four months is sufficient, we are committed to providing as early a notice as possible.

4. Consultation Process. Two parties requested clarification on the process the State will use to consult with eligible applicants and to provide for the continued involvement of interested parties in the development of program guidelines.

It is the policy of the Office of Local Government to keep the design and implementation of the CDBG program open and to consult with eligible applicants and other interested parties on an on-going basis. We fully intend to continue an advisory process so that we can more thoroughly assess any need for modifications to the program, including amendments to the rules. On the other hand, we do not believe that it is necessary, and could even prove detrimental, to establish an elaborate process for providing input to the program.

5. Eligibility. Leech Lake Indian Reservation requested that Indian Tribal Governments be included as eligible applicants. The Department finds that this is beyond state jurisdiction. Under federal law, tribal governments are not eligible under the part of the program administered by the state; they are eligible under Section 107 of the Act.

The City of Thief River Falls objected to disqualification where previoulsy approved projects fail to meet scheduled close-out dates (10 MCAR § 1.510 C), since

most projects pass scheduled closeout. The Department believes that communities with projects that have not progressed in a mutually agreed upon manner may not be able to undertake the additional responsibility; this does not preclude justified amendments to timelines and/or scheduled closeouts nor does it unnecessarily penalize the community who may be able to complete the project in an expeditious manner. The Statement of Need and Reasonableness provides further discussion of disqualification; previously identified under HUD regulations as threshhold requirements.

6. Evaluation Indicators. One query was raised concerning per capita assessed valuation as an indicator of community need. The Department finds that this is a justified measure and has presented its reasons in the Statement of Need and Reasonableness 10 MCAR § 1.520 B (p. 19).

7. Other Comments relate to matters which the Department believes are more appropriately addressed in the application manual currently being prepared, and in subsequent informational workshops which will be held throughout the state, rather than in the rules of this program.

These rules are not adopted in response to a petition and no requests have been made to be notified of submission of the rules to the Attorney General.



Minnesota Department of Energy, Planning and Development

In the Matter of the Proposed Rules of the Minnesota Department of Energy, Planning and Development for Administering the Community Development Block Grant Program.

STATEMENT OF NEED AND REASONABLENESS.

Introduction

The Housing and Community Development Act of 1974, as amended, established a Small Cities Community Development Block Grant program for cities under 50,000 population. The primary objective of the program is "the development of viable urban communities by providing decent housing and a suitable living environment, and expanding economic opportunities, principally for persons of low and moderate income." The U.S. Department of Housing and Urban Development has promoted this objective through grants administered by its area offices for housing, public facilities and economic development projects.

In 1981 the federal law was amended to give state governments the option to administer the program. The rules that follow are set forth to provide procedures for evaluating applications for funds and awarding grants to eligible applicants by the Department of Energy, Planning and Development as provided by Title 1 of the Housing and Community Development Act of 1974, as amended. These rules have been developed to give local units of government the flexibility to design projects to address unique local needs in accordance with that law. The proposed rules are the result of recommendations made by local government officials, representatives of special interest groups, and other interested parties in consultation with the Department of Energy, Planning and Development.

Rule Justification

The format used in preparing this Statement of Need and Reasonableness is as follows: each rule is stated first, followed by a discussion of the intent of the proposed rule, the need for the proposed rule, and its reasonableness.

10 MCAR § 1.500 Small cities community block grant program; general provisions.

A. Purpose of these rules. Rules 10 MCAR §§ 1.500-1.565 give procedures for evaluating applications for grants and awarding them to eligible applicants by the Department of Energy, Planning and Development under United States Code, title 42, sections 5301-5136 (1981), and regulations adopted in Code of Federal Regulations, title 24, part 570.

Discussion: Federal regulations state that "states are free to develop purposes and procedures for distributing funds..." (CFR 570.489 (b)). Administrative rules describing the conditions under which the State will solicit applications, evaluate applications, enter into grant agreements and monitor the progress of grant recipients are necessary because no state laws or regulations currently exist which apply to the

administration of the Community Development Block Grant (CDBG) program. The proposed rules are necessary to assure that the program will be administered equitably and in a timely fashion. M.S. 4.13 authorizes the Department to apply for, receive and expend federal funds. As provided for in M.S. 4.07, subd. 2, the Governor has designated the Department to receive federal Community Development Block Grant funds. It is, therefore, reasonable for the department to promulgate rules for the CDBG program. The statutory authority to adopt these rules is contained in M.S. 4.17.

B. Objective of the program. The primary objective of this program is to develop viable urban communities by providing decent housing and a suitable living environment and by expanding economic opportunities, principally for persons of low and moderate income. Activities funded under this program shall not benefit moderate-income persons to the exclusion of low-income persons. All funded activities must be designed to:

1. benefit low- and moderate-income persons;

2. prevent or eliminate slums and blight; or

3. alleviate urgent community development needs caused by existing conditions which pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet those needs.

Discussion: Federal regulations for state administration of the Small Cities CDBG program were designed to "maximize the legislative thrust to provide states sufficient flexibility in administering the program," however the state must comply with the primary objective of the Housing and Community Development Act of 1974, as amended (hereinafter referred to as the Act) which is stated in the rule above.

In order to achieve the overall primary objective of the Act as evidenced by the Small Cities CDBG program, grant recipients must assure that the activities they undertake will meet one of the three purposes listed above (Housing and Community Development Act of 1974, Section 104 (b) (3)). The State must assure compliance and is responsible for monitoring projects undertaken by recipients. Therefore, it is necessary and reasonable to inform prospective applicants of the purposes of the program.

C. Definitions. As used in 10 MCAR §§ 1.500-1.565, the following terms have the meanings given them.

1. "Community development need" means a demonstrated deficiency in housing stock, public facilities, economic opportunities, or other services which are necessary for developing or maintaining viable communities.

Community development need is a broadly used term which necessitates

clarification for use in this program. The definition establishes the categories of deficiencies the office will consider as community development needs. The definition is reasonable because it is consistent with generally accepted indicators of community vitality, with federally designated eligible activities and with the types of projects that are encouraged through this program while allowing local governments the freedom to describe more specifically the types of deficiencies that comprise local need for community development.

2. "Comprehensive program" means a combination of at least two interrelated projects which are designed to address community development needs which by their nature require a coordination of housing, public facilities, or economic development activities. A comprehensive program must be designed to benefit a defined geographic area, otherwise known as a program area.

Discussion: Local units of government may apply for comprehensive grants that may be awarded for one, two or three year periods or for single purpose, single year grants. Therefore, a definition of comprehensive program is necessary to clarify this term to prospective applicants and to distinguish a comprehensive program from a single purpose project. The purpose of a comprehensive approach is to address two or more community development needs in a coordinated manner in a target area. It is reasonable to define comprehensive program in this manner because it details the requirements necessary to qualify for funding under this category and eliminates the need to clarify the term within the text of these rules.

3. "Eligible activities" means those activities so designated in United States Code, title 42, section 5305 (1981) and as described in Code of Federal Regulations, title 24, sections 570.200-570.207 (1981).

Discussion: Federal regulations specify the types of activities eligible for funding under the CDBG programs. States are permitted to make federal regulations more restrictive. However, in the interest of program flexibility, the office has determined that the breadth of activities permissible under federal guidelines allows the diversity necessary to address local needs of Minnesota communities and that this is reasonable because community needs vary widely.

4. "General purpose local government" means townships as described in Minn. Stat. ch. 365; cities as described in Minn. Stat. chs. 410 and 412; and counties.

Discussion: General purpose local governments are eligible to apply for funding under the CDBG program. Therefore it is necessary to clarify this term and to make a distinction between general purpose and special purpose units of government which are authorized to provide only limited services. Minnesota Statutes 365, 410 and 412 establish the criteria for definition of townships and cities. Counties, because of their geographic boundary designations, do not require additional clarifica-

tion. This definition is reasonable because it is consistent with precedent established by state law.

5. "Grant" means an agreement between the state and an eligible recipient through which the state provides funds to carry out specified programs, services, or activities.

Discussion: A grant will be made to communities whose applications have been approved for funding under the CDBG program. This definition is necessary to establish that the grant is more than a transfer of funds; it is a legally binding relationship between the state and the recipient to undertake specific activities in accordance with the program. The definition is reasonable because a failure to expend the money in a proper fashion may require a repayment to the federal government.

6. "Grant close-out" means the process by which the office determines that all applicable administrative actions and all required work have been completed by the grant recipient and the department.

Discussion: This term is necessary to refer to the process by which a contractual grant agreement between the office and a grant recipient is terminated. It is reasonable because it is a commonly used term and is consistent with the obligation to ensure the proper accounting of these federal funds.

7. "Grant year" means any period of time during which the United States Department of Housing and Urban Development makes funds from any federal fiscal year available to the state for distribution to local governments under United States Code, title 42, sections 5301-5316 (1981), and includes the period of time during which the office solicits applications and makes grant awards.

Discussion: While federal funds are usually appropriated by fiscal year beginning October 1st and ending September 31st, the period of time during which federal funds are made available to the states for distribution to local units of government may vary from this standard. Therefore it is necessary to distinguish the period of time funds are available from the period that they are appropriated at the federal level. This definition is reasonable because it provides greater flexibility in the expenditure of these federal funds.

8. "Infrastructure" means the basic physical systems, structures, and facilities, such as roads, bridges, water, and sewer, which are necessary to support a community.

Discussion: The dictionary definition for infrastructure is "a substructure or underlying foundation; especially the basic economic, social, or military facilities and installations of a community, state, etc.." Although the term is popularly used in conjunction with the pro-

vision of basic services by the community, the concept is too imprecise for use in this context. It is therefore necessary to provide a more strict interpretation of the term in order to clarify its use as an indicator of ability to support additional facilities. It is reasonable because it establishes a definition within the context it is used.

9. "Low and moderate income" means income which does not exceed 80 percent of the median income for the area, with adjustments for smaller and larger families.

Discussion: U. S. Department of Housing and Urban Development (HUD) regulations for state administered CDBG programs do not specifically define the term "low and moderate income." States are free to adopt their own definitions, providing they are consistent with Congressional intent. Since 1974, HUD has defined the term to include families whose incomes do not exceed the Section 8 housing assistance eligibility limits of 80 percent of median family income in the area (Housing and Community Development Act of 1974, Title I, Section 201). It is HUD's intent to continue to use this definition for programs which it administers, and states may use the same definition. Because this definition is familiar to local units of government, and because it allows variation by geographic area, the office has determined that this definition is reasonable.

10. "Metropolitan city" means a city over 50,000 population or a central city of a standard metropolitan statistical area that receives entitlement grants under United States Code, title 42, section 5306 (1981) directly from the United States Department of Housing and Urban Development.

Discussion: This definition is necessary because the term is used in the definition of "non-entitlement area." The Act specifically states that each metropolitan city and urban county is entitled to receive an annual grant from funds allocated in accordance with the act and defines "metropolitan city" as (A) a city within a metropolitan area, as defined and used by the Department of Commerce, or (B) any other city, within a metropolitan area, which has a population of 50,000 or more except that any city which has been classified as a metropolitan city under clause (B) of this paragraph shall continue to be so classified until the decentennial census indicates that the population of such city is less than 50,000 or until September 30, 1982, whichever is later. For the purposes of this program, the office has determined that the definition is reasonable because metropolitan cities are ineligible, pursuant to federal law, to apply for funding under this aspect of the program.

11. "Nonentitlement area" means an area that is not a metropolitan city or part of an urban county.

Discussion: This definition is necessary because the term is used to describe eligible applicants in these rules. The Act (Section 106 (d)) establishes that funds shall be allocated among the states for use in non-entitlement areas. It is reasonable to adopt the definition used by HUD in its previous administration of this program because it is in compliance with federal intent.

12. "Office" means the Office of Local Government in the Department of Energy, Planning and Development.

Discussion: The Office of Local Government in the Department of Energy, Planning and Development is the body designated by the Governor to administer the CDBG program. The term "office" is a necessary and reasonable abbreviation and conforms to standard legal language.

13. "Per capita assessed valuation" means the adjusted assessed valuation divided by population.

Discussion: This term is used as one of the indicators of the level of community need in the context of these rules. The definition of this term is necessary to clarify the term to prospective applicants and to establish the method that the office will use to determine per capita assessed valuation. The definition is reasonable because it is consistent with definitions used in other state programs, and takes into account differences in local property assessment practices.

14. "Population" means the number of persons who are residents in a county, city, or township as established by the last federal census, by a census taken pursuant to Minn. Stat. § 275.53, subd. 2, by a population estimate made by the Metropolitan Council, or by the population estimate of the state demographer made under Minn. Stat. § 4.12, subd. 7, clause (10), whichever is most recent as to the stated date of count or estimate, up to and including the most recent July 1.

Discussion: Although population is a commonly understood term, it is necessary to establish the types of population counts and estimates which the office considers valid for this program. The definition is reasonable because it establishes the framework the office considers essential to assure comparability of information for equitable administration of the program and because it is consistent with procedures established in state law.

15. "Poverty persons" means individuals or families whose incomes are below the poverty level as determined by the most current data available from the United States Department of Commerce, taking into account variations in cost of living for the area affected.

Discussion: Extent of poverty has been used as an indicator of the need for federal community development assistance since the inception of this program. The office has determined that the method for determining the extent of poverty through a count of the number of poverty persons residing in the community covered by the application is valid. The definition for poverty persons is necessary to establish the way poverty level will be determined and to assure that the determination will be made in an equitable manner. It is reasonable because it is a statistically accurate measure that is widely used in establishing extent of poverty.

16. "Program" means the community development block grant program for nonentitlement areas.

Discussion: This term is necessary to provide an abbreviation for state administration of the CDBG program and all applicable rules and regulations. It is reasonable because it is a standard abbreviation for the program governed by these proposed rules.

17. "Program area" means a defined geographic area within which an applicant has determined that, based on community plans or other studies, there exists a need for community development activities. A program area may be a neighborhood in a community or an entire community.

Discussion: This term is necessary to clarify to prospective applicants that the geographical and social boundaries within which community development needs will be addressed are largely self determined based on prior assessments and studies of the community. It is reasonable for communities to designate the boundaries of their program area because they are highly correlated to the identification of community needs. It would be inappropriate for the state to make such a designation.

18. "Program income" means gross income earned by the grant recipient from grant-supported activities, excluding interest earned on advances.

Discussion: Under the federal regulations governing the administration of this program by the states, states may determine how program income may be used. Therefore, it is necessary to provide a definition of the term to clarify to prospective applicants what monies are considered to be program income, and to distinguish monies earned from activities made possible by program funds from interest earned on funds granted. The definition is reasonable because it is consistent with the intent of federal guidelines with which the state must comply as provided for in Federal Management Circular A-87.

19. "Project" means one or more activities designed to meet a specific community development need.

Discussion: This definition is necessary to describe what qualifies as a project. Because comprehensive grants require that communities engage in two or more projects designed to address community development needs, it is reasonable to define a project in relation to a single need. For example, a housing project may consist of grants for energy-conserving home improvements (one activity) or grants and loans for weatherization improvements (two activities) but because they are related activities undertaken to address housing needs, they constitute a single purpose. If, for example, street, curb, or gutter improvement activities are performed in addition to home improvement activities in the same neighborhood, the effort would be comprehensive as opposed to single purpose.

20. "Regional or community development plans" means written documents, resolutions, or statements which describe goals, policies, or strategies for the physical, social, or economic development of a neighborhood, community, or substate area. Regional or community development plans include comprehensive plans and elements of comprehensive plans, including land use plans, which have been approved by the governing boards of townships, counties, or cities, and also include regional development plans adopted under Minn. Stat. § 462.281, where applicable.

Discussion: Evaluation and ranking of applications shall include an assessment of how the proposed activities fit with regional or community development plans. Because these plans are an essential component of grant award determination, it is necesary for the office to specify which types of written documents are acceptable and may be used in support of this criterion. The term and subsequent definition are reasonable because they permit a relatively broad range of options yet are specific as to adoption/endorsement by the local unit of government. Regional comprehensive plans are required under Minn. Stat. § 462.281, Subd. 3 (1978). Therefore it is reasonable for this definition to include such regional development plans.

21. "Slums and blight" means areas or neighborhoods which are characterized by conditions used to describe deteriorated areas in Minn. Stat. § 462.421 or which are characterized by the conditions used to describe redevelopment districts in Minn. Stat. § 273.73, subd. 10.

Discussion: One of the stated purposes of the federal CDBG program is the prevention or elimination of slums and blight. Therefore it is necessary to describe to prospective applicants the existing conditions for which real property is considered by the office to be a community development problem. It is reasonable because it encompasses a wide range of conditions for which precedent has been set through state legislation, and includes:

> "Deteriorated area" means any area, including slum areas, with buildings or improvements which, by reason of dilapidation, obsolescence, overcrowding, faulty arrangement or design, lack of ventilation, light, and sanitary facilities, excessive land coverage or deleterious land use or obsolete layout, or any combination of these or other factors, are detrimental to the safety, health, morals, or welfare of the community. (Minn. Stat. § 462.421)
>
> "Redevelopment district" means a type of tax increment financing district consisting of a project, or portions of a project, within which the authority finds by resolution that one of the following conditions, reasonably distributed throughout the district, exists:
>
> > 70 percent of the parcels in the district are occupied by buildings, streets, utilities or other improvements and more than 50 percent of the buildings, not including outbuildings, are structurally substandard to a degree requiring substantial renovation or clearance; or

70 percent of the parcels in the district are occupied by buildings, streets, utilities or other improvements and 20 percent of the buildings are structurally substandard and an additional 30 percent of the buildings are found to require substantial renovation or clearance in order to remove such existing conditions as: inadequate street layout, incompatible uses or land use relationships, overcrowding of buildings on the land, excessive dwelling unit density, obsolete buildings not suitable for improvement or conversion, or other identified hazards to the health, safety and general well being of the community; or

less than 70 percent of the parcels in the district are occupied by buildings, streets, utilities or other improvements, but due to unusual terrain or soil deficiencies requiring substantial filling, grading or other physical preparation for use at least 80 percent of the total acreage of such land has a fair market value upon inclusion in the redevelopment district which, when added to the estimated cost of preparing that land for development, excluding costs directly related to roads as defined in section 160.01 and local improvements as described in section 429.021, subdivision 1, clauses 1 to 7, 11 and 12, and section 430.01, if any, exceeds its anticipated fair market value after completion of said preparation; provided that no parcel shall be included within a redevelopment district pursuant to this paragraph (3) unless the authority has concluded an agreement or agreements for the development of at least 50 percent of the acreage having the unusual soil or terrain deficiencies, which agreement provides recourse for the authority should the development not be completed; or

the property consists of underutilized air rights over a public street, highway or right-of-way; or

the property consists of vacant, unused, underused, inappropriately used or infrequently used railyards, rail storage facilities or excessive or vacated railroad rights-of-way. (Minn. Stat. § 273.73)

22. "Single purpose project" means one or more activities designed to meet a specific community development need.

Discussion: Units of local government may apply for funding to address a single community need or for a range of activities that address more than one purpose in a coordinated manner. This definition is necessary to clarify that single purpose projects are directed toward only one type of community development need (i.e., housing, economic development or public facilities). It is reasonable because it permits flexibility at the local level; it does not unduly restrict the applicant to a specific type of activity; and it is consistent with the program as it previously has been administered by HUD.

23. "Urban county" means a county which is located in a metropolitan area and is entitled to receive grants under United States Code, title 42, section 5306 (1981), directly from the United States Department of Housing and Urban Development.

Discussion: This definition is necessary because the term is used to describe applicant eligibility. As designated under the Act, urban counties which are in entitlement areas are ineligible to apply for and receive funds through this program, therefore it is necessary to clarify the term to prospective applicants. It is reasonable to adopt the criterion established by HUD in its previous administration of this program because it is in compliance with federal intent and the regulations governing state administration of this program. It also prevents urban counties from selecting this program over the HUD administered program and thereby thwart Congressional determination of how much money to allocate to each program.

10 MCAR § 1.505 Types of grants available.

A. Single purpose grants. The office shall approve single purpose grants for funding from a single grant year for single purpose projects. The office shall place single purpose grant applications in one of the following categories for purposes of evaluation:

1. housing projects which include one or more activities designed to increase the supply or quality of dwellings suited to the occupancy of individuals and families;

2. public facilities projects which include one or more activities designed to acquire, construct, reconstruct, or install buildings or infrastructure which serve a neighborhood area or community; or

3. economic development projects which include one or more activities designed to create new employment, maintain existing employment, or otherwise increase economic activity in a community.

Discussion: The purpose of this rule is to identify and distinguish between the types of grants for which eligible applicants may apply. Designation of grant categories is necessary to make possible objective and equitable evaluation of grant applications. A very broad range of activities are eligible for funding. If applications were not placed in different categories for purposes of evaluation, it would be difficult to score and rank them.

The establishment of two major grant categories (single purpose and comprehensive) is reasonable because it permits communities to design projects which are best suited to community development needs in each community. In communities which have severe development problems, those problems often stem from complex and multifaceted causes which can best be dealt with through comprehensive programs. On the other hand, many communities have more specific problems and needs which can be more meaningfully dealt with through single purpose projects.

The distinction between comprehensive and single purpose grants is also reasonable because it is consistent with, and a continuation of, the types of grants made available under the Small Cities program while the program was administered by HUD during the past seven years.

It is necessary to place single purpose applications in one of the three categories because of the difficulty of evaluating the broad range of eligible single purpose activities. For instance, in the absence of any federal or state policy declaring one or the other to be a priority, it is very difficult to evaluate and rank a housing rehabilitation project compared with a public facilities project such as a sewer project. The use of the three categories--housing, public facilities and economic development--is reasonable for two reasons. First, the three categories together encompass virtually all community development activities which are eligible for funding, but are distinct enough and internally homogenous enough so as to be practical categories within which to compare similar applications. Second, the same three categories have been used by HUD for purposes of evaluating applications and potential applicants are therefore familiar with them.

The description of housing projects is reasonable because it encompasses all activities which have as a primary purpose an increase in the supply or quality of dwellings for families and persons. It focuses on the provision of livable dwellings, rather than on any particular type of housing for any particular type of household unit. It includes improvements to existing housing as well as activities designed to facilitate creation of new housing stock.

The description of public facilities projects is reasonable because it is based on widely understood definitions of public facilities. Public facilities are usually owned by a political subdivision, and include buildings and other physical infrastructures which are necessary to deliver public services. Thus, sewer lines are necessary for provision of sanitation services and streets are necessary for provision of transportation. The description of public facilities is broad enough to include such facilities as neighborhood centers which facilitate delivery of public services to neighborhood residents.

The description of economic development projects is reasonable because it provides a sufficient basis for grouping together for evaluation projects which have as their purpose the improvement of communities' economic situation. The description focuses on the goal of increasing economic activity, but is broad enough to include a wide variety of methods for achieving the goal.

B. Comprehensive grants. The office shall approve comprehensive grants for two or more projects which constitute a comprehensive program. Comprehensive grants shall be approved for funding from one, two, or three grant years. In the case of grants approved for funding from more than one grant year, the office shall make funds available to the grant recipient in the second or third year only after the recipient submits an approved application. The office must also find

that the grant recipient has made normal progress and is in compliance with 10 MCAR §§ 1.500-1.565.

Discussion: This paragraph is necessary to describe the conditions under which comprehensive grants will be made, and to distinguish how comprehensive grants are different from single purpose grants. Comprehensive grants are made for "comprehensive programs" which are defined in MCAR § 1.500 c. 2., and described above. The distinguishing characteristic of a comprehensive program is that it must include two or more projects which include a combination of housing, public faciltiies, and economic development activities. It is reasonable to make grants available for comprehensive programs because many communities have community development needs which, because of their complex causes, are most effectively addressed by a multifaceted program. For example, a housing rehabilitation project in a deteriorated neighborhood may be a necessary part of a neighborhood betterment program, but may not be sufficient of itself to address underlying problems of inferior public infrastructure or lack of economic opportunities. In such a case, a single purpose project may only address "symptoms" of the problem; a comprehensive program may more effectively deal with underlying causes.

It is reasonable to make grant funds for comprehensive programs available from one, two or three years because comprehensive programs often involve activities which are staged over more than one year and typically involve more activities and projects than can be undertaken in a single year. Comprehensive grant applications may request funds from up to three grant years. In cases where approved, the office will reserve funds from the state's allocation in successive years for existing multiyear grants. It is reasonable to condition payment of second and third year grant funds on a finding that the grant recipient has made normal progress in order to assure efficient use of limited grant funds. The requirement that recipients file an application before receiving second or third year grant payments is a reasonable way of making necessary information available to the office to make such a finding.

10 MCAR § 1.510 Application process and requirements.

A. Grant application manual. The office shall prepare a manual for distribution to eligible applicants no later than 120 days before the application closing date. The manual must instruct applicants in the preparation of applications and describe the method by which the office will evaluate and rank applications. If 10 MCAR §§ 1.500-1.565 are not adopted before September 15, 1982, the 120-day period is waived for the 1983 grant year but the office shall make the manual available no later than 60 days before the application closing date.

Discussion: This rule is necessary to describe the process by which the office will make information available to eligible applicants concerning the grant application process and the way in which applications will be evaluated. The rule commits the office to make the manual available at least 120 days prior to the closing date for filing applications. This is a reasonable rule because it guarantees that applicants will have at least 120 days for preparation of applications. A longer period of time

would be difficult to achieve because of the amount of time required after the award of grants in each grant cycle to revise and publish the manual prior to the next grant cycle. A longer time period would require a larger state staff, thereby increasing administrative costs and reducing the amount of funds available for grants.

The provision that this requirement be waived if these rules are not adopted before September 15, 1982 is necessary to guarantee that grant awards are made in a timely fashion in FY 1983. The office has verbally pledged recipients that in all events the manual will be made available as long as possible before the grant closing date; however, imposition of the 120-day requirement could cause undesirable delay in the timing of grant awards in the program's first year.

B. Eligibility requirements. Any unit of general purpose local government, including cities, counties, and townships located in a nonentitlement area or electing exclusion from an urban county under United States Code, title 42, section 5302 (1981), may apply for a grant. An eligible applicant may apply on-behalf of other eligible applicants. Applications submitted on-behalf of other applicants must be approved by the governing body of all local governments party to the application. An eligible applicant may apply for only one grant per grant year and no eligible applicant shall be included in more than one application.

Discussion: This rule is necessary to identify the entities which may apply for grants. It is necessary because no other state law or rule describes who is eligible for this program. Subd. (d)(2)(A) of the above federal law requires that the state distribute grant funds to units of general local government located in nonentitlement areas of the state. "Unit of general local government" is defined to include "any city, county, town, township, parish, village or other general purpose political subdivisions of the state." The proposed rule does not make any further restrictions in eligibility beyond that provided for in federal law. This is reasonable because there is no a priori reason to exclude any type of general purpose local government. Although not stated in the rules, the only restriction in eligibility of general purpose local governments is their legal powers; a local unit, such as a township, would be precluded from receiving funds if it did not have the authority to conduct the activities for which it applied for funds.

Only local governments in nonentitlement areas or local governments which are located in urban counties but which have elected not to receive funds through the HUD-administered urban county program, are eligible. This is necessary because cities over 50,000 population, urban counties and cities in urban counties receive "entitlement" community development block grants through Sec. 106 (9)-(c) of the Housing and Community Development Act. Urban counties are counties within metropolitan areas which are authorized by state law to undertake community development activities in their unincorporated areas and which have populations of 200,000 or more, excluding the population of metropolitan cities therein [see 102 (a)(6) of the law cited]. The combined effect of these provisions is that all general purpose local governments which are not eligible to receive entitlement grants are eligible to

apply for small cities grants under these rules; no unit may receive grants from both programs.

The office recognizes that some communities may not have the administrative capacity to undertake community development activities and also that some projects may require a coordinated effort that involves more than one community (e.g., upgrading county sewer facilities). It is, therefore, reasonable to allow applications to be submitted on-behalf of eligible applicants and necessary to inform prospective applicants that on-behalf of applications are acceptable. Furthermore, it is necessary to state that on-behalf of applications be approved by the governing body of all local governments party to the application in order to ensure that there is consent by the community. It is reasonable to require that each party involved secure the approval of their governing bodies in order to ensure that each participant has knowledge of the project(s); to avoid duplication; and because it is the grant recipient who is responsible for meeting the terms of the contract (10 MCAR § 1.555). It is reasonable for all parties to declare their support through formal action.

Grants under the CDBG program will be awarded on a competitive basis (10 MCAR § 1.515). In order for the greatest number of communities to have equal access to grant funds, it is necessary to limit communities to the submission of only one application per grant year and to assure that other applications, such as those submitted on-behalf of communities, do not include projects by communities submitting applications during the current grant year. Limiting submission to one application per grant year is reasonable because it is equitable; it encourages local determination and prioritization of community development needs; and because small communities with lesser grant writing capacity are not penalized or discriminated against.

C. Disqualification of applicants. Applications from otherwise eligible applicants shall be disqualified where for previously awarded grants under these rules or awarded by the Department of Housing and Urban Development under United States Code, title 42, section 5306 (1981), it is determined by the office that any of the following conditions exist:

1. there are outstanding audit findings on previous community development grants and the grantee has not objected on a reasonable basis to the findings or demonstrated a willingness to resolve the findings;

2. previously approved projects have passed scheduled dates for grant close-out and the grantee's ability to complete the project in an expeditious manner is in question; or

3. the applicant has not made scheduled progress on previously approved projects and the grantee's ability to complete the project in an expeditious manner is in question.

Discussion: The purpose of these paragraphs is to inform prospective applicants of the terms under which applications may be disqualified. The state is responsible to the federal government (through HUD) for the proper expenditure of CDBG funds. This rule establishes the conditions which will signal further investigation into the applicant's previous experience with community development grants. These terms are reasonable because applicants should honor prior commitments before taking on new responsibilities. Outstanding audit findings for which there has been no reasonable objection or willingness to resolve findings can be indicative of fiscal irresponsibility. Communities in which prior projects have not progressed in a mutually agreed upon manner or where the scheduled dates for closeout have passed, raise some doubt as to their ability to undertake additional responsibility. Furthermore, it is not equitable for those communities which have not met requirements to compete equally with those which have been fiscally responsible.

D. Contents of application. The contents of the application must be consistent with the informational requirements of 10 MCAR §§ 1.500-1.565 and must be on a form prescribed by the office. The application must be accompanied by:

1. an assurance, signed by the chief elected official, that the applicant will comply with all applicable state and federal requirements;

2. an assurance signed by the chief elected official certifying that at least one public hearing was held at least ten days but not more than 30 days before submitting the application; and

3. a copy of a resolution passed by the governing body approving the application and authorizing execution of the grant agreement if funds are made available.

The office may request additional information from the applicant if it is necessary to clarify and evaluate the application.

Discussion: This paragraph is necessary to inform prospective applicants of the contents of the application and the documentation which must accompany it. It is reasonable because the application format will be prepared by the office based on state and federal regulations, policies, and guidelines. As the granting authority, it is reasonable for the office to develop the prescribed form. Assurances regarding compliance and citizen participation are required by federal regulation. The resolution is reasonable to assure support for the application and intent to implement the project(s) if funded.

It is necessary to inform prospective applicants that the office may ask for information if the application is incomplete, if there are questions concerning documentation or justification or in cases where supplementary information is needed. While the office believes that the need to request additional information will be minimal, it is necessary to include this provision. This paragraph is reasonable because it allows the office to request and applicants to provide added information that can improve the quality of the application.

E. Time limit for submitting applications. Applications must be received in the office or postmarked by the closing date. The office shall give notice of the period during which applications will be accepted. The notice must be published in the State Register at least 120 days before the closing date.

Discussion: A time limit for submitting applications is necessary for the efficient administration of the program and to establish that applications will be accepted after the closing date only if they have been postmarked on or before the specified date. It is reasonable because it treats all applications equally and does not penalize applications intended for submission on time.

While the office recognizes that communities may desire a greater period of time to prepare and submit applications for funding under the CDBG program, it is necessary and reasonable to establish a minimum period of time and an established method for providing notice. The length of time is reasonable because it allows sufficient time for communities to prepare and submit applications. For example, other grant programs administered by the office, such as LAWCON, establish minimum notice at 45 days.

F. Regional review. The applicant must submit a complete copy of the application to the Regional Development Commission, where such a commission exists, or the Metropolitan Council, where it has jurisdiction, for review and comment in accordance with Minn. Stat. § 462.391, subd. 3, or Minn. Stat. § 473.171, respectively.

Discussion: In 1969 the Minnesota Legislature passed the Regional Development Act, Minn. Stat. § 462.381 to 462.396 (1978). The purpose of the Act is "to facilitate intergovernmental cooperation and to insure the orderly and harmonious coordination of state, federal, and local comprehensive planning and development programs for the solution of economic, social, physical and governmental problems of the state and its citizens by providing for the creation of regional development commissions." Minn. Stat. § 462.391, Subd. 3, states in part that "the commission shall review all applications of governmental units...operating in the region for a loan or grant from the United States of America or any agency, including state agencies,...for public facilities, studies or any other purpose if the application clearly is related to the region... Minn. Stat. § 473.171, Subd. 2 relating to the Metropolitan Council review of applications for federal and state aid states in part "that the council shall review all applications or requests of...local government units for state funds allocated or

granted for proposed matters of metropolitan significance, and all other applications...for state funds if review by a regional agency is required by state law or the granting state agency." This paragraph is necessary to establish and comply with state statutes as well as to identify areas where conflict may arise between communities. It is reasonable because it is consistent with legislation establishing the review bodies.

10 MCAR § 1.515 Evaluation of applications; in general. All applications shall be evaluated by the office. A fixed amount of points shall be established as the maximum score attainable by any application. Points shall be made available within each class of rating criteria in accordance with the percentages and fractions indicated in 10 MCAR §§ 1.520-1.545.

Discussion: This section is necessary to describe the general procedure for evaluating applications. Full responsibility for evaluating applications rests with the Office of Local Government. This is reasonable because the office is the recipient of the federal funds from which grants will be made, and is thereby accountable to the federal government for the proper and prudent use of funds. It is also reasonable for the office to evaluate applications because the office is a neutral party with no conflicting interests as to which local governments receive funds. The office is staffed by civil service professionals with training in community development and local government affairs.

It is necessary for the office to evaluate proposals for funding in order to assess compatibility with federal program objectives, as well as to assess the need for and feasibility of the proposed activities. Since the office expects more applications for funds than will be available for distribution, it is both necessary and reasonable to evaluate applications so that they can be ranked for purposes of making grant award decisions.

Federal regulations give states authority to develop purposes and procedures for distributing funds (CFR 570.489 (b)). Since no state laws or rules currently exist in Minnesota which pertain to distribution of these funds, it is necessary for the office to adopt procedures and criteria for evaluating and ranking applications.

The Secretary of HUD is directed to "give maximum feasible deference to the State's interpretation of the statutory requirements consistent with the Secretary's obligation to enforce compliance with the manifest intent of Congress as declared in the Act" (CFR 570.489 (b)). The primary objective of the Act is "the development of viable urban communities, by providing decent housing and a suitable living environment, and expanding economic opportunities, principally for persons of low and moderate income" (CFR 570.489 and Title I, Section 101 (c). The process (described below) for evaluating and ranking applications is consistent with this federal objective.

Applications will be given quantitative ratings based on the criteria described below. This is both necessary and reasonable because it makes it possible to rank applications for purposes of determining funding priority. A fixed amount of points will be established for each cri-

terion as the maximum score attainable. Applications which, upon evaluation by the office, closely approach each criterion will receive higher numerical scores than those which do not as closely approach each criterion. The maximum points available within each class of rating criteria will be apportioned in accordance with the fractions cited below.

The proportional weighting of classes of rating criteria is necessary to indicate the relative emphasis which the office will give to each class of rating criteria. It makes it possible for potential applicants to know, prior to the decision to apply, the general manner in which their applications would be evaluated.

MCAR § 1.520 and 1.525 below together provide that 30 percent of the total available points will be awarded based on a comparison of all applications, and that 70 percent of the points will be awarded based on comparisons of applications within each grant category as described in MCAR § 1.530-1.545. This is reasonable because it allows a direct comparison of all applications on criteria (such as community need, project compatibility with planning, and financial and management capacity) which are common to all projects, while taking into account the variable nature of the different grant categories by providing for separate competitions within each category.

The overall rating system which is described in MCAR §§ 1.515-1.545 is designed to afford the maximum feasible flexibility to local governments in their project design. Within each class of rating criteria, the rules do not establish a definite set of quantitative measures for purposes of evaluation. This reflects a judgment by the office that community development needs are very diverse among communities. Therefore, these rules allow local governments considerable latitude to document unique community development needs and to design projects which are most appropriate to those needs. A more specific and "directive" rating system would likely inhibit consideration of many legitimate needs which did not "fit" the rating system. Local governments might be tempted to formulate needs and design projects that matched the department's arbitrary notion of community development needs rather than design projects which are most appropriate to local situations. This approach is particularly appropriate in the absence of any more specific state policy on the use of community development funds.

The flexible nature of the rating system requires the office to make judgements in the process of rating applications. The basis for the judgements, however, are prescribed in the rules. While some reservations may be expressed concerning the amount of discretion this permits, the office believes that the trade-off between more directive and inflexible rating criteria versus more discretionary flexibility is reasonable and necessary for the prudent operation of the program.

The rating system provides for consideration of basic factors:

1. community need (20%)
2. adequacy of management and financial plans, and
3. compatibility with local and regional plans (10%)
4. project need (30%)

5. project impact (30%)
6. project cost-effectiveness (10%)

The first three factors broadly relate to the applicant. Community need is not directly related to a specific project, but it addresses the applicant's overall need for community development assistance.

Adequacy of financial and management plans refers to the applicants demonstrated ability to carry out the project to completion according to the terms imposed by these rules and federal laws and regulations. Compatibility with local and regional plans involves the extent to which the applicant has designed a project which is consistent with existing local or regional plans.

The second three factors are project-specific. Project need refers to the community development problems to be addressed by a specific proposed project. Project impact refers to the suitability of the project to the project need and the degree to which the proposed activities can be expected to actually eliminate or reduce the need. Project cost-effectiveness involves an analysis of how effectively scarce CDBG funds will be used and how well the applicant makes use of other available funds to achieve the greatest result.

10 MCAR § 1.520 Comparison of all applications; general competition.

A. Points available. Thirty percent of the total available points shall be awarded by the office based on a general competition involving a comparison of all applications.

Discussion: MCAR § 1.520 is necessary to describe the criteria which will be used to award the 30 percent of total available points which are based on a comparison of all applications received. It is a reasonable percentage which is based on the more specific arguments that follow.

B. Evaluation of community need. Two-thirds of the points in the general competition shall be awarded based on evaluation of community need, which shall include:

1. the number of poverty persons in the area under the applicant's jurisdiction;

2. the percentage of persons resident in the area under the applicant's jurisdiction who are poverty persons; and

3. the per capita assessed valuation of the area under the jurisdiction of the applicant, such that points are awarded in inverse relationship to applicants' per capita assessed valuation.

Discussion: Part B provides that two-thirds of the general competition points (20 percent of total available points) will be based on evaluation of community need. Community need is distinguished from "project need" (MCAR §§ 1.530-1.545 below) in that community need refers to the general need of the community for financial assistance. Project need refers to the specific community development need for the applicant's

proposed project. Rating of community need is reasonable based on the premise that if all else is equal the applicant with the greater community need should be assisted. For example, two communities may have essentially similar needs for a housing project evidenced by similar numbers of substandard dwellings and low-income persons who cannot afford the standard housing in the community. However, one community may be less able financially to address the need without a grant or may have greater poverty which would indicate greater need for assistance.

The emphasis (20 percent of total points) given to community need relative to other rating criteria is reasonable because it is a large enough percentage of the available points to influence the final ranking of applications but is given less weight than project need (see below). This reflects the judgment expressed by many individuals familiar with the program that community development block grants should be used to fund needed and effective projects rather than ameliorate disparities among communities in fiscal capacity. Yet, consideration of community need is legitimate as a way to direct funds to communities most in need of outside assistance since an important objective of the program is to make grants to those local governments with high levels of need. It is appropriate to base a significant portion of the evaluation on criteria which are objective, comparable among jurisdictions, and measure need on a jurisdiction-wide basis.

The three indicators which will be included in evaluation of community need measure different aspects of community need. The use of three measures is reasonable because any single measure may not give an accurate comparison; each indicator captures a slightly different dimension of need. On the other hand, it is reasonable to limit the number of indicators used.

The number of poverty persons in a community is a widely used measure of need. Several federal grant formulas use some measure of the number of poverty persons. HUD currently uses poverty persons in its need ruling for the CDBG Small Cities program. The number of poverty persons is a useful indicator of community need because it is indicative of the size of the community's population which can benefit from an improved living environment. To the extent that poverty populations are geographically concentrated, a large poverty population can indicate an area of a community in need of community development assistance.

The percentage of persons in a community who are poverty persons indicates the relative size of the poverty population. A larger community may have a large absolute number of poverty persons, but its percentage of persons in poverty may be small. The use of the percentage measure is reasonable because it compensates for the bias toward larger communities in the absolute measure. A smaller community may have a relatively small number of poverty persons, but they may represent a relatively large portion of the community's population.

The per capita assessed valuation of a community is a measure of a community's ability to finance community development activities. Per capita assessed valuation compares the amount of property tax base available for each person in a community. Property wealth is only one dimension of a community's ability to pay. A shortcoming of assessed

valuation is that it does not directly reflect variations in personal income. However, there is a positive, albeit imperfect, correlation between income and property value. While property may not be a reliable indicator of an individual's ability to pay, when used in aggregate it is a reasonable measure of relative community-wide well-being.

Per capita assessed valuation is also a reasonable measure of community well-being because the property tax is the single largest source of locally-controlled revenue. Local control is diminished by state-imposed property tax levy limitations; yet, the property tax base remains an important factor in determining a community's ability to incur debt. This is an important consideration in evaluating fiscal capacity for community development projects since many community development improvements are low financed in part through borrowing. A local government with a small assessed valuation will have a greater difficulty in raising significant funds through borrowing.

Per capita assessed valuation data is readily available for all jurisdictions on an annual basis using data from the Department of Revenue and the State Demographer.

C. Evaluation of other factors. One-third of the points in the general competition shall be awarded based on evaluation of:

1. the extent to which the proposed activities are compatible with regional or community development plans; and

2. adequacy of the applicant's management and financial plan.

Discussion: Part C describes the method for awarding one-third of the general competition points (10 percent of total available points). A portion of these points will be awarded based on evaluation of the applicant's management and financial plan. Inclusion of this element in the evaluation process is reasonable because of the need to promote the effective and efficient use of scarce public funds. While the primary intent of the rating system is to select for funding well-designed projects in communities with high need, it is also desirable to give priority to applicants with strong management capacity.

Consideration will also be given to the extent to which the proposed activities are compatible with regional or community development plans. It is state policy to encourage local and regional planning (Regional Development Act, M.S. 462.381-462.398; municipal planning, M.S. 462.351-462.365; metropolitan land use planning, M.S. 473.851-473.872). It would be inconsistent for the state to give priority to projects which are incompatible with local plans. This provision in the rules does not require either local or regional planning.

10 MCAR § 1.525 Comparison of applications within categories. After completing the general competition described in 10 MCAR § 1.520, the office shall place each application in the appropriate grant category in accordance with 10 MCR § 1.505. The categories are housing projects, public facilities projects, economic development projects, and comprehensive programs. Seventy percent of the total points available for each application shall be awarded based on a comparison of the applica-

tions within each of the categories as further described in 10 MCAR §§ 1.530-1.545.

Discussion: MCAR § 1.525 describes the process which will be used to group together similar sorts of applications for purposes of evaluation. It is necessary to group applications into the four categories to facilitate meaningful comparison and rating of applications. Because a wide variety of activities are eligible for funding, it would be difficult to evaluate and rank projects if applications were not placed in more homogeneous categories.

The four categories which are proposed for purposes of evaluating applications are housing, public facilities, economic development and comprehensive programs. Housing, public facilities, and economic development, as defined in the proposed rules, are inclusive of the range of eligible activities for which the State proposes to make grants available. The comprehensive program category includes applications which, by virtue of the scope of activities proposed, does not fall within one of the other three categories, but rather combines the attributes of at least two of the categories. The proposed categories are reasonable because they are inclusive of the range of eligible activities for which the State proposes to make grants available, and because they are consistent with the categories previously used by the HUD area office and with which applicants are familiar.

10 MCAR § 1.530 Evaluation of housing projects.

A. Project need. Three-sevenths of the points available in the housing category competition shall be awarded by the Office based on evaluation of the need for improvements or additions to the housig stock serving low- and moderate-income persons as evidenced by:

   1. housing units which are occupied by low- and moderate-income persons and are either substandard or pose a threat to the health or safety of the occupants;

   2. an inadequate supply of affordable housing for low- or moderate-income persons; or

   3. other documented conditions which give evidence of the need for improvements or additions to the housing stock serving low- and moderate-income persons.

Discussion: This paragraph describes the criteria the office will use to evaluate applications and award points based on need to communities submitting single purpose applications for housing projects. The housing category is necessary because housing is specifically identified in the objectives of the federal program. Moreover, state policy as evidenced by the Minnesota Housing Finance Agency Act of 1971 (M.S. 462A) makes reference to the need to assure decent, safe and sanitary housing at prices or rentals within the means of persons and families of low- and moderate-income. It is necessary to inform prospective applicants of the criteria, the maximum proportion of points that may be received based on the criteria, and who will determine and award the points. Therefore, it is reasonable for the office to establish cri-

teria for ranking applications relative to community need for improvements or additions to the housing stock serving low- and moderate-income persons in order to direct limited funds where the need is greatest. The characteristics stated by the rule are reasonable and are generally accepted indicators or tools used to measure housing quality that have been used by HUD, the Minnesota Housing Finance Agency and other housing groups to determine the need for improvement of the housing stock.

Allowing for other documented conditions providing evidence of the need to expand or improve upon housing stock serving low- and moderate-income persons maximizes flexibility for communities to provide an alternative, documented case for using other criteria. For example, a community may have an inadequate supply of housing units for larger families creating a situation of overcrowding, housing units unsuitable to the handicapped or elderly; or units requiring energy conservation rehabilitation measures.

B. Project impact. Three-sevenths of the points available in the housing category competition shall be awarded by the office based on evaluation of the extent to which the proposed activities will eliminate or reduce the need for improvements or additions to the housing stock serving low- or moderate-income persons.

Discussion: There are numerous kinds of eligible activities within the housing category including but not limited to: removal of architectural barriers, acquisition for rehabilitation, relocation, and rehabilitation to improve housing quality, energy efficiency and designated historic sites. Determination of which eligible activities funding is requested for should not be made indiscriminately, but should be based on the need to eliminate or reduce specific housing deficiencies in the community. Therefore, rating housing project applications and awarding a specified proportion of total points based on the impact the project has on the need described in 10 MCAR § 1.530 A. above is a necessary and reasonable evaluation tool. Communities that have designed the most appropriate approaches to the housing needs they identified will earn a greater number of points. Those applications for housing projects where the design is not appropriate and where the impact is minimal will receive fewer points. By using impact of the project as a measure, limited funds can be directed to where they can achieve the most good.

C. Project cost-effectiveness. One-seventh of the points available in the housing category competition shall be awarded by the office based on:

1. evaluation of the extent to which the proposed activities will make cost-effective and efficient use of grant funds including coordination with, and use of, funds from other public and private sources; and

2. evidence that the cost of the proposed activities per benefitting household is reasonable.

Discussion: This is necessary to describe how the office will evaluate project cost-effectiveness and award a proportion of points assigned to the housing project category. In the instance where two housing project applications are judged to be of equivalent quality with regard to project need and impact (10 MCAR § 1.535 A and B), it is reasonable to award a proportion of the total points to communities that plan to use funds prudently. It is necessary to inform prospective applicants that, in the absence of other over-riding state policy objectives, projects acheiving the greatest benefit at the least cost, will receive a greater number of points. Because the amount of money available through the CDBG program is limited, it is reasonable to give funding priority to projects that are cost-effective and use funds efficiently by leveraging or coordinating with other public and private money, or because the cost per benefitting household is minimized but sufficient to acheive projects objectives.

10 MCAR § 1.535 Evaluation of public facilities projects.

A. Project need. Three-sevenths of the points available in the public facilities category competition shall be awarded by the office based on evaluation of the extent to which the proposed activities are necessary to improve provision of public services to low- and moderate-income persons or to eliminate an urgent threat to public health or safety.

Discussion: This paragraph describes the criteria the office will use to evaluate applications and award points for public facilities applications based on project need. The public facilities category is identified in the objectives of the program (10 MCAR § 1.500 B) and is consistent with objectives of the federal statute (P.L. 97-35) creating the program. It is necessary for the office to inform prospective applicants of this criterion, the proportion of points to be based on this criteria and who will award the points. It is reasonable for the office to establish criteria for ranking applications relative to how the proposed project relates to the community's need in order to insure that program funds are targeted to communities having the highest need.

B. Project impact. Three-sevenths of the points available in the public facilities category competition shall be awarded by the office based on evaluation of the extent to which the proposed activities will reduce or eliminate the need identified under A., and, in the case of activities designed to improve the provision of public services to low- and moderate-income persons, an evaluation of the extent to which the proposed activities directly benefit low- and moderate-income persons.

Discussion: This paragraph describes how the office will evaluate the impact of public facilities applications on the need cited in 10 MCAR § 1.535 A. Those applications that demonstrate greater benefit to low- and moderate-income persons and/or improved services to eliminate threats to public health and safety will receive a greater proportion of points than applications that demonstrate a lesser impact. This criterion is needed in order to assure that limited program funds are directed to those projects that best benefit low- and moderate-income persons and/or eliminate threats to public health and safety.

C. Project cost-effectiveness. One-seventh of the points available in the public facilities category competition shall be awarded by the office based on evaluation of the extent to which the proposed activities will make cost-effective and efficient use of grant funds, including consideration of:

1. the extent to which the requested grant funds are necessary to finance all or a portion of the costs;

2. evidence that the cost of the proposed activities per benefitting household or person is reasonable; and

3. the extent to which the project benefits existing, rather than future, population, except in cases where the proposed activities are necessary due to expected development or growth which is beyond the applicant's control.

Discussion: This paragraph describes the criteria the office will use to evaluate the cost-effectiveness of public facilities applications and how points will be awarded based on the efficient use of grant funds. It is necessary to include this paragraph in order to inform perspective applicants of the importance of cost-effectiveness criteria in a competitive grant program and to award points accordingly. Those applications that demonstrate an efficient use of grant funds, demonstrate a reasonable cost per benefitting household; and/or are intended to serve existing rather than future populations (except in cases beyond the applicant's control) will be given priority under this criterion.

10 MCAR § 1.540 Evaluation of economic development projects.

A. Project need. Three-sevenths of the points available in the economic development category shall be awarded by the office based on evaluation of the applicant's need for economic development assistance, as evidenced by:

1. long-term employment problems;

2. unusual dependence on a small number of industries or employers; or

3. other documented conditions which give evidence of the need for economic development assistance.

Discussion: This section is necessary to describe the conditions which will be considered by the office in evaluating, and subsequently ranking, applications for economic development assistance. Expansion of economic opportunities is one part of the primary objective of the Act (Sec. 101 (c)). More specifically, the Act lists as one of its objectives the "alleviation of physical and economic distress through the stimulation of private investment and community revitalization in areas with population outmigration and/or a stagnating and declining tax base."

This section proposes that the office consider evidence of long-term employment problems and dependence on a small number of industries or employers as indicative of the need for economic development assistance. It is reasonable to consider long-term employment problems because they are indicative of basic imbalances in a local economy. Short-term employment problems caused by cyclical economic fluctuations create serious hardship, but they are not effectively dealt with by the types of projects which can be funded by this program. Longer-term employment problems result because of a surplus of labor or a labor supply which is mismatched with available jobs, or because of changes in a local commercial and industrial base. These types of problems are more effectively dealt with by a program such as this.

Dependence of a community on a small number of industries or employers makes a community more vulnerable to cyclical changes in the national economy or changes in a local or regional economic base. Such communities can be strengthened by projects which diversify the local economy. CDBG project funds can be effectively used to promote new industry or business.

It is reasonable also to take into consideration other documented conditions which give evidence of the need for economic development assistance. Although the department considers long-term employment problems and an undiversified industrial base as leading symptoms of the need for economic development assistance, it also recognizes that other unique conditions may prevail in individual communities. By allowing for consideration of other documented conditions, these rules give individual applicants the opportunity to present pertinent facts which may be unique to their own situations. Facts, however, must be reasonably documented to receive consideration.

B. Project impact. Three-sevenths of the points available in the economic development category competition shall be awarded by the office based on evaluation of the extent to which the proposed activities will benefit low- and moderate-income persons and will reduce or eliminate the need identified under A., and shall include:

1. the immediacy of the project's impact;

2. the beneficial effect on personal income in the area;

3. the extent to which the proposed activities are reasonably expected to result in long-term improvement in the economic base of the area; and

4. the number and quality of permanent jobs created or maintained.

Discussion: This paragraph is necessary to describe the criteria which the office will use to evaluate the project's expected impact. It is reasonable to expect a proposed project to significantly reduce or eliminate the need for which the applicant is seeking funds. It would be wasteful to award scarce public funds to a project which cannot reasonably be expected to reduce or eliminate the community development need.

The immediacy of a project's impact is a reasonable consideration because more immediate benefits are inherently more desired than less immediate benefits.

The expected effect of the projects on personal income is a reasonable criterion because an important goal of increasing economic activity is to raise levels of income.

It is also reasonable to consider the extent to which a project will result in long-term improvements in economic base. Projects which have lasting impact are inherently more desirable uses of scarce funds than are projects which have short-term impact.

The number and quality of jobs created or maintained by a project is a reasonable measure of the impact of an economic development project. It is compatible with consideration of impact on personal income and improvement in economic base. While the number of jobs created or maintained is a reasonable indicator of the number of persons benefiting from the project, the quality (compensation, permanency, etc.) of the jobs is also an important consideration. Although it is not easy to compare a project creating many lesser quality jobs with one creating fewer higher quality jobs, it is necessary to consider both the number and quality of jobs created or maintained.

C. Project cost-effectiveness. One-seventh of the points available in the economic development category competition shall be based on evaluation of the extent to which the proposed activities will make cost-effective and efficient use of grant funds, including consideration of:

1. the cost per job created or maintained;

2. coordination with, and use of, other public and private funds; and

3. the economic viability of any business being assisted.

Discussion: Part C provides that one-seventh of the points made available in the economic development category competition (10 percent of total available points) will be awarded based on an evaluation of the efficient use of CDBG funds. In the absence of other over-riding state policy objectives, it is reasonable to give priority to projects which achieve the greatest benefit for the least cost. In the case of two projects competing against one another; it is reasonable that the project with the lowest cost to benefit ratio, or which most effectively combines CDBG funds with other public or private funds, should receive funding priority.

The three specific factors which will be considered are all widely accepted criteria for award of economic development assistance. When the primary purpose of an economic development project is to create or maintain jobs, the amount of public funds needed to create or preserve a job is an important consideration. If too high a public subsidy is required, it suggests that the enterprise being assisted may not be viable enough to attract private investment. Also, with limited funds

available for assistance, it is reasonable that projects with lower costs per job created or maintained be favored, since they will yield more jobs per dollar of CDBG funds.

Consideration of coordination with and use of other public and private funds is reasonable because such coordination is indicative of two favorable circumstances. The willingness of a community to commit other local public or private funds to a project is a demonstration of community support which is often necessary to the long-term success of the project. Secondly, the commitment of other private funds often demonstrates that the project is strong enough to attract private investment. Still, some investment of public funds such as CDBG funds may be necessary to stimulate some worthwhile projects. Nevertheless, a smaller CDBG investment and larger resultant private investment are desirable.

The ability to attract other private funds for a project is often related to the economic viability of a project being assisted. If given existing market conditions, the expected rate of return on a private investment were great enough, a CDBG (or other public) contribution would not be necessary. This is one way of judging economic viability. However, in many cases the cost of an investment of public funds to assist an economic development project is justified by the prospect of achieving broader public goals. Still, it is not reasonable to give equal priority to all projects regardless of their economic viability. It would not be a prudent use of scarce CDBG resources to assist a business which cannot be expected to compete beyond the short-term.

Some economic development projects will not involve the direct assistance of a business or industry. Rather, they will involve preparation of land and public facilities which are necessary to attract or maintain businesses. These criteria for project cost-effectiveness do not apply as clearly to such projects. Nonetheless, such economic development projects (those which have as a primary purpose to create or maintain employment or otherwise increase economic activity) will be evaluated in the same manner. For example, it would not be a cost-effective use of CDBG funds to assist creation of an industrial park unless there was a reasonable expectation that the project would in fact eventually result in new jobs, maintain existing jobs or otherwise increase economic activity to the benefit of the community and its residents.

10 MCAR § 1.545 Evaluation of comprehensive program projects.

Discussion: This section is necessary to describe the criteria which will be used to compare and rate applications for grants for comprehensive programs. Because comprehensive programs combine housing, public facilities, and economic development elements, it is necessary to provide for a separate set of evaluation criteria which takes into account the greater complexity of comprehensive applications.

A. Program need. Three-sevenths of the points available in the comprehensive program category competition shall be awarded by the office based on evaluation of need for the proposed comprehensive program, including consideration of:

1. the number of low- and moderate-income persons in the program area;

2. the percentage of residents in the program area which are of low- or moderate-income; and

3. the need for the proposed comprehensive program as evidenced by at least two of the following: need for improvements or additions to the housing stock serving low- and moderate-income persons, the need for new or improved public facilities in the program area, or employment problems in the program area.

Discussion: Part A provides that three-sevenths of the points available in the comprehensive program category competition (30 percent of total available points) will be awarded based on an evaluation of need for the proposed activities which comprise the comprehensive program. The evaluation will include consideration of both the number and percentage of persons in the program area (defined at 10 MCAR § 1.500 C (17)) which are low- or moderate-income persons. Comprehensive programs are justified by the fact that many community development problems are multi-dimensional. Comprehensive programs are designed to address a substantial portion of the community development problems in a defined program area. Since the primary objective of the program is "the development of viable urban communities, by providing decent housing and suitable living environment and expanding economic opportunities, principally for persons of low- and moderate-income," it is reasonable that comprehensive programs which benefit low- and moderate-income persons should be favored.

The number of low- and moderate-income persons in a program area is an indicator of the number of such persons who will benefit from improvements to the program area. However if only the absolute number of low- and moderate-income persons were used, smaller communities might be disadvantaged. Also, applicants could be tempted to design unreasonably large program areas in order to increase the numbers of low- and moderate-income persons in the area. Therefore, it is reasonable also to consider the percentage of persons in a program area who are of low- or moderate-income. Some legitimate comprehensive program areas may be relatively small in size, and thus have relatively small numbers of low- and moderate-income persons; yet, due to patterns of residence, a large percentage of the area's residents may be of low- or moderate-income. A well-designed comprehensive program in such an area might not benefit a large absolute number of low- and moderate-income persons, but the expected rates of lower-income persons benefited to higher-income benefited persons would be relatively high.

The need for the proposed comprehensive program will also be evaluated based on evidence that the program responds to at least two of the three categories of need for which single purpose grants are available. This is consistent with the definition of "comprehensive program" at 10 MCAR § 1.500 (C). If the applicant cannot document needs in at least two of the three areas, a single purpose application is more appropriate.

B. Program impact. Three-sevenths of the points available in the comprehensive program category competition shall be awarded by the

office based on evaluation of the extent to which the proposed comprehensive program will eliminate or reduce the need identified under A., and the extent to which the proposed program will improve the long-term physical or economic condition of the program area and its residents.

Discussion: Part B provides that three-sevenths of the points in the comprehensive category competition (30 percent of the total available points) will be awarded based on an evaluation of the extent to which the proposed comprehensive program can be expected to eliminate or reduce the needs which the applicant documented. Consideration of program impact is reasonable because of the need to effectively spend scarce CDBG funds.

Because a comprehensive program is designed to address community development needs in a defined geographic area, it is reasonable that programs which can be expected to improve the long-term condition of the area, as well as its current residents, should be given priority. A program which cannot be expected to contribute significantly toward long-term improvement of conditions in the program area would not be an effective use of scarce resources.

C. Program cost-effectiveness. One-seventh of the points available in the comprehensive program category competition shall be based on evaluation of the extent to which the proposed comprehensive program will make cost-effective and efficient use of grant funds, including consideration of coordination with, and use of, funds from other public and private sources.

Discussion: Part C provides that one-seventh of the points available in the comprehensive program competition (10 percent of total available points) will be awarded based on an evaluation of the efficient use of scarce CDBG funds. In the absence of other over-riding state policy objectives, it is reasonable to give priority to programs which achieve the most benefit for the least cost whether because of lower costs or coordination with and use of other public and private resources.

10 MCAR § 1.550 Determination of grant awards.

A. Funds available for grants. The amount of funds available for grants shall be equal to the total allocation of federal funds made available to the State under United States Code, title 42, section 5306 (1981), after subtracting an amount for costs incurred by the office for administration of the program, as allowed by that law. The office is not liable for any grants under 10 MCAR §§ 1.500-1.565 until funds are received from the United States Department of Housing and Urban Development.

Discussion: Federal statutes require that states perform those actions previously the responsibility of the Secretary of HUD (Section 104 (f)(4)). These responsibilities include those imposed by the Environmental Protection Act of 1969. Federal regulations state that "primary and direct responsibility for overall administration of funds...is vested in the state." (CFR 570.489 (b)). "The State shall assume such responsibilities for environmental review, decisionmaking,

and action (and shall require the assumption of such responsibilities by units of general local government receiving CDBG funds from the State...) as shall be specified and required in regulations issued by the Secretary pursuant to Section 104 (f) of the Act" (CFR 570.495). The federal law permits the state to deduct an amount not to exceed 50 percentum of administrative expenses incurred in carrying out its responsibilities, provided that the amounts so deducted not exceed 2 percentum of the amount allocated to the State.

This paragraph is necessary to make clear to potential applicants how the amount of funds available for grants will be determined. It is both necessary and reasonable to declare that the office is not liable for any grants until funds are received from the federal government because no other funds are available to the office for grants under these rules. It is necessary to provide funds to the department to be applied toward the cost of soliciting grant applications, evaluating applications, executing grant agreements, and monitoring grant recipient progress.

It is reasonable to establish by rule the maximum amount which the office may deduct. Access to such federal funds is necessary for the State to pay for costs incurred in conduct of its responsibilities. It is reasonable for the State to deduct such funds because without them the state would not be able to administer the program in a manner appropriate to the needs of Minnesota communities.

B. Division of funds.

1. Of the funds available for grants in each grant year, 55 percent shall be reserved by the office to fund comprehensive grants, including the second and third years of comprehensive grants approved for funding under 10 MCAR § 1.545. However, the office may modify the proportions of funds available for single purpose and comprehensive grants if, after review of all applications, it determines that there is a shortage of fundable applications in either category.

Discussion: There is no objective method for ranking single purpose grant applications against comprehensive grant applications, therefore separate categories of grants have been established according to the criteria presented in 10 MCAR § 1.505. For this reason, it is necessary to allocate available grant funds between the comprehensive and single purpose grant categories.

The HUD area office has previously reserved 65 percent of available grant funds for comprehensive grants and 35 percent for single purpose grants. HUD has counted monies used to fund the second or third years of previous multiyear grant commitments toward achieving this division of funds. Furthermore, the area office reserved the right to alter the division if there was a shortage of fundable, quality comprehensive grant applications or if there was a shortage or surplus of demand for either category.

The office proposes to reserve 55 percent of available funds for comprehensive grants. This is a compromise between acceptance of the previous HUD practice and the office's strong conviction, based on consultation

with interested persons, that neither type of grant is a priori more worthy of funding. The office believes that it is desirable that applicants, to the maximum possible extent, base their decision of what type of grant to apply for on their own judgement of which type of grant--single purpose or comprehensive--best addresses their community development needs. The office believes that it is undesirable to bias applicants' decisions by unduly influencing the odds of one or the other type of application being funded by making a substantially larger percentage of funds available for one or the other grant category.

Some have suggested that a larger percentage be set aside for comprehensive grants. They argue that comprehensive programs are more meritorious because they require a community to undertake a comprehensive approach to addressing its community development problems. While such a goal may in fact be desirable, the office finds that it is not of itself a sufficiently primary goal of the federal law to set aside a larger portion of the funds for comprehensive grants.

Others have argued for making more funds available for single purpose grants. They argue that, because comprehensive grants are generally for larger amounts, favoring comprehensive grants results in fewer applicants being funded.

While precedent may argue for making a larger share of the funds available for comprehensive grants, the office finds no compelling reason to do so. The Act and federal regulations give no guidance on the matter.

The office also finds that smaller communities have not fared well in competition for comprehensive grants. Between 1979 and 1981 only nine of 34 comprehensive grants went to communities under 2,500 population; no communities under 1,000 received comprehensive grants. Thirty-six percent of the comprehensive applicants under 2,500 population were successful, compared to 75 percent of larger communities. At the same time, smaller communities were more apt to apply for single purpose grants. Eighty-two percent of the applicants under 2,500 population applied for single purpose grants, compared to 68 percent of larger communities which did so. The office, therefore, feels that the proposed allocation of funds is reasonable.

2. At least 20 percent of the funds made available for single purpose grants shall be awarded for applications in each of the three categories: housing, public facilities, and economic development. However, no application with a rating below the median score for its category shall be funded by the office solely for the purpose of meeting this requirement.

Discussion: This paragraph is necessary to inform potential applicants that a minimum amount of funds will be made available in each grant category. This is reasonable and desirable because it assures a potential applicant that funds will be available within whatever category it chooses to apply. The selection of 20 percent is reasonable because it is high enough to give applicants a reasonable expectation of success. A higher percentage, however, would be undesirable because it could result in the funding of poorer quality applications solely for the pur-

pose of meeting the set-aside target. The use of 20 percent in each of the three single purpose categories as the set-aside means that the remaining 40 percent of the funds reserved for single purpose grants can be awarded to higher ranking applications regardless of category.

It is necessary to provide that no application below the median score for its category be automatically funded solely for the purpose of meeting this requirement in order to assure implementation of higher quality projects. This does not mean that an application below the median score in its category cannot be funded. Such an application could still be funded if funds remain available for single purpose grants and it ranked higher than remaining unfunded applications from the other two categories. The median score is a reasonable threshold for operation of this provision because it is the middle-ranking score; only applications ranking in the lower half of their category may be denied funding because of this provision.

C. Funding list. Within each grant category, a list of applications shall be prepared in rank order of the scores received after evaluation pursuant to 10 MCAR §§ 1.515-1.545. Based on these lists, and subject to the availability of funds within each category, applications with the highest rank shall be recommended to the commissioner for funding. In the case of a tie between any two applications within any category, the application with the higher score in the general competition shall receive the higher ranking on the list.

Discussion: This paragraph is necessary to describe the manner in which applications will be recommended for funding. The evaluation process pursuant to 10 MCAR §§ 1.515-1.545 is designed so that the applications receiving higher numerical scores will be those considered by the office to be most worthy of funding. It is necessary to provide a means of breaking ties between two applications in the event that available funds are committed before both are funded. It is reasonable that the application receiving the higher score from the general competition pursuant to 10 MCAR 1.520 receive priority for funding because it is in the general competition where all applications are directly compared.

D. Approval by commissioner. The list of applications recommended for funding, including recommended grant awards, shall be submitted by the office to the commissioner for approval. A decision by the commissioner not to approve any application recommended for funding must be made in writing to the applicant, giving reasons for disapproval.

Discussion: This paragraph is necessary to describe the process for making final approval for tendering of grant awards. It is reasonable for the commissioner to approve grant awards since he is the chief executive officer of the department with authority to expend funds. It is reasonable to require any decision by the commissioner not to approve a recommended grant award be explained to the applicant in writing so that the applicant can know the reasons for disapproval and make appropriate changes in future applications.

E. Reduction in amount requested. The office may recommend an application for funding in an amount less than requested if, in the opinion of the office, the amount requested is more than is necessary to meet the applicant's need. If the amount of the grant is reduced, the reasons for the reduction shall be given to the applicant.

Discussion: This paragraph is necessary to inform potential applicants that an application for funding under this program may be recommended for a grant award of less than the amount requested. In the evaluation of applications submitted in accordance with 10 MCAR §§ 1.500-1.565, it is reasonable for the office to evaluate the proposed budgets for work programs designed to meet the applicants' community development needs. 10 MCAR § 1.555 B. states that the grant contract between the State and a grant recipient will include a work program and a projected budget supporting the work program. In the office's experience with other federal grant programs (e.g., LAWCON, LEAA, JJDPA), during the evaluation of grant applications, changes in work programs and supporting budgets frequently are negotiated between the office and the applicant. This paragraph allows the office to recommend funding at a reduced level, if in the opinion of the office, the amount of funds requested is more than is necessary to support the work program approved for meeting an applicant's community development need. This is a reasonable management approach for a program with scarce resources and is in accord with the office's objective of funding as many worthy CDBG applications as possible each grant year. This management approach supports the proper and prudent expenditure of program funds. It is further reasonable for the office to provide the applicant with an explanation of any budget reduction recommended by the office.

F. Grant ceilings. No single purpose grant may be approved for an amount over $600,000. No comprehensive grant may be approved for an amount over $700,000 from any single grant year or for more than a total of $1,400,000 over three grant years.

Discussion: It is necessary to restrict the maximum size of grant awards to prevent a single applicant from receiving the total amount of funds available. The proposed grant limits are reasonable because they are expected to result in at least 20 to 40 applicants receiving funds. The limits are also reasonable because they allow grants of sufficient size to significantly contribute to the costs of eligible community development projects, but are low enough for most eligible recipients to manage. The office also considered proposing a rule requiring a local financial matching contribution, in part to stretch the number of applicants which could be funded.* Without a matching requirement, the proposed limits are even more necessary.

*After consultation with units of local government, the office determined that a local financial matching requirement would not significantly further the objectives of the program.

The reasonableness of the proposed limits is supported by the fact that the HUD area office has established limits of $600,000 for single purpose grants and $1,200,000 for comprehensive program grants in 1982. In 1981 HUD allowed single purpose grants of $600,000 and comprehensive grants of $750,000 for a single year or a maximum of $1,400,000 over three years.

While it can be argued that higher grant limits be proposed to account for inflation-induced increases in costs of community development projects, the office does not believe this is a compelling argument. The office believes that maximizing the number of grants is a more worthy objective.

10 MCAR § 1.555 Grant agreements.

A. Grant contract required. A grant contract shall be offered to each applicant whose application is approved for funding. The contract must be signed by a person authorized to commit the applicant to legally binding agreements and to execute the contract.

Discussion: This rule is needed and reasonable in order to make clear to prospective applicants the requirements for accepting a grant award.

It is needed and reasonable to provide that grant awards are made on a contract basis so that all parties involved are fully aware of their rights and obligations under this program. The contract for a grant award under this program is a legally binding agreement between the office and the local unit of government accepting the grant. It is needed and reasonable to require that the contract be signed by a person authorized to commit the applicant to legally binding agreements in order to protect the rights and obligations of both the office and the applicant. In order to ensure that the provisions of the contract are followed, it is also needed and reasonable that the person signing the contract on behalf of the applicant have authority to execute the contract.

B. Contents of grant contract. The grant contract must include:

1. a work program which indicates completion dates for major parts of the project and a projected budget supporting the work program;

2. a description of the manner in which payments will be made to grant recipients with the condition that five percent of the grant award will not be paid until successful completion of all activities in the work program; and

3. assurances that the grant recipient will comply with all applicable state and federal laws, including at least the federal laws or regulations for which the state is made responsible for enforcement in Code of Federal Regulations, title 24, sections 570.495 and 570.496.

Discussion: This section is needed to make grant recipients aware of the required elements of a contract for a grant award in this program.

It is needed and reasonable to require a work program with completion dates as a part of the grant contract. The work program identifies the activities which the grant recipient agrees to undertake and accomplish in return for the grant award. It is reasonable that these activities be identified in the contract. 10 MCAR § 1.505 states that single purpose grants will be awarded from a single grant year and comprehensive grants may be awarded from 1-3 grant years. It is needed and reasonable to include a schedule of completion dates for work program activities in the contract in order to clarify the obligations of the office and the grant recipient. The schedule will identify the period of the grant award.

The projected budget will indicate how the grant award will support work program activities. This budget will be based upon the amount of the grant award. 10 MCAR § 1.550 E. indicates the grant award may be less than the applicant requested and 10 MCAR § 1.550 F. identifies grant ceilings. It is needed and reasonable to require that the contract include a budget based upon the grant award which will support the work program.

10 MCAR § 1.555 B. 2. is needed and reasonable in order for the grant recipient to understand how grant payments will be made. It is reasonable to require that the office make clear its payment obligations to the grant recipient. In order to ensure that the work program activities are completed as required by the contract, it is reasonable to withhold five percent of the grant award until all activities are completed.

As a public program funded by federal funds and administered by the State of Minnesota, it is both needed and reasonable to require that grant recipients agree to comply with all applicable state and federal laws. Section 104 (f) (4) of the federal law makes the State responsible for enforcement of applicable provisions of the National Environmental Policy Act of 1969. Under Section 104 (b) (2) the State must certify compliance with P.L. 88-352 and P.L. 90-284. Section 104 (b) (4) requires the State to certify compliance with other applicable federal laws. In order to indicate to grant recipients what federal regulations apply to this program it is reasonable to include in the contract those laws and regulations for which the state is made responsible for enforcement in Code of Federal Regulations, title 24, sections 570.495 and 570.496. It is needed and reasonable for grant recipients to agree to comply with these laws and regulations as a condition of accepting grant awards under this program.

C. Use of program income. Program income from sources such as reimbursements to and interest from a grant recipient's loan program, proceeds from disposition of real property, and proceeds from special assessments must be used for project-related costs within 12 months from the time it is earned. The office shall reduce future grant payments by the amount of any unobligated program income which an applicant has and shall take whatever additional action is necessary to recover any remaining amounts owed.

Discussion: This section is needed to indicate to grant recipients how program income derived from costs initially paid for by grant funds may be used. It is reasonable that program income be used for project-related costs. Code of Federal Regulations, title 24, section 570.494 (G) (2) allows the state to require grant recipients to return program income to the state. However, the office believes it is reasonable to allow grant recipients to use program income for project-related costs for a period of up to 12 months from the time it is earned. It is also reasonable for the office to reduce future grant payments by the amount of unobligated program income because unobligated program income would be available for project-related costs. It is also reasonable for the office to require that unobligated program income which is not required for project-related costs be returned to the State in accordance with Code of Federal Regulations, title 24, § 570.494 (b) (3). Program income is defined in these rules at 10 MCAR § 1.500 C. 18.

D. Grant account required. Grant recipients must establish and maintain separate accounts for grant funds. In accordance with Code of Federal Regulations, title 24, section 570.494, clause 4, interest earned by grant recipients on grant funds before disbursement is not program income, and it must be returned to the United States Treasury.

Discussion: This section is needed to make grant recipients aware of the requirement to establish and maintain separate accounts for grant funds. According to Code of Federal Regulations, title 24, § 570.494 (b) (4), interest earned by units of general local government on program funds prior to disbursement is not program income and must be returned to the United States Treasury. In order to be able to identify interest earned on grant funds prior to disbursement, it is needed and reasonable to require grant recipients to establish and maintain separate accounts for grant funds.

E. Restrictions on use of funds. No grant funds shall be used to finance activities not included in the grant agreement. If it is determined that an improper use of funds has occurred, the office will take whatever action is necessary to recover improperly spent funds.

Discussion: This section is needed to make grant recipients aware of restrictions on the use of grant funds. Under this program grant awards are made to units of local government based upon the budget needed to carry out the activities identified in the applicant's work program. To ensure that grant funds are spent on work program activities, it is needed and reasonable to restrict the expenditure of grant funds to these activities. If grant funds are expended on activities which are not included in the grant agreement, it is reasonable for the office to take steps necessary to recover improperly spent funds.

F. Suspension of payments. The office shall suspend payments of funds to grant recipients which are not in compliance with applicable state and federal laws, rules, and regulations. Grant recipients must return funds which are improperly expended.

Discussion: This section is needed to make grant recipients aware of the conditions under which the office will suspend payments of grant funds. Under 10 MCAR § 1.555 B. 3. grant recipients agree to comply with all applicable state and federal laws and regulations when entering into a contract with the office under this program. It is needed and reasonable for the office to suspend payments of grant funds if the grant recipient is in violation of the contract. It is also needed and reasonable for the office to require that improperly expended grant funds be returned. Failure by the office to seek return of improperly spent funds would make the State vulnerable to legal action by the federal government.

G. Amendments to the agreement. Amendments to the grant agreement must be in writing.

Discussion: It is needed and reasonable to require that grant amendments be made in writing so that both parties to the contract will be aware of their rights and obligations. Grant recipients must be aware that changes made without approval by the office and not in writing will not be recognized.

10 MCAR § 1.560 Record keeping and monitoring.

A. Financial records. Grant recipients shall maintain financial records which identify the source and application of funds for grant-supported activities. These records must contain information about grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, income, and other information required by the office under the responsibilities it assumes under Code of Federal Regulations, title 24, section 570.497, clause b. Financial records, supporting documents, statistical records, and all other reports pertinent to a grant must be retained by the grant recipient for three years from the date of submitting the final financial report. No such records or documents may be disposed of while audits, claims, or litigations involving the records are in progress.

Discussion: This rule is needed in order to ensure that grant recipients are fully aware of their obligations under this program.

Code of Federal Regulations, title 24, section 570.497 (b) requires states to "establish record keeping requirements for units of general local government receiving assistance which shall be sufficient to facilitate such reviews and audits of such recipients as may be necessary or appropriate to determine whether they have carried out their activities in accordance with the requirements and the objectives of the Act and other applicable laws." 10 MCAR § 1.560 A. is needed and reasonable in order for the State of Minnesota to comply with this regulation and to identify the record keeping responsibilities of grant recipients in accordance with this regulation. In order to provide sufficient time in which to conduct reviews and audits of grant activities and expenditures, it is reasonable to require grant recipients to retain all pertinent records for a period of three years following submission of the final financial report. This schedule is in accord with Minn.

Stat. § 138.17 and with the office's retention schedule for other federal grant programs. It is also needed and reasonable to require grant recipients to retain any records involved in audits or litigation.

B. Audits. Grant recipients must arrange for and pay for an audit before grant close out. Audits will usually be done annually, but no less frequently than every two years. In the case of two- and three-year comprehensive programs, the office shall require an audit after two years; costs incurred pursuant to this requirement are eligible under this program.

Discussion: This section is needed to make grant recipients aware of the audit requirements under this program. The state is required to review and audit grant activities funded under this federal grant program in accordance with Code of Federal Regulations, title 24, sections 570.497 and 570.498. It is reasonable to comply with the audit requirements by having each grant recipient arrange for and pay for an audit provided that the costs for the audit are eligible grant expenditures which do not place a financial burden on grant recipients.

C. Financial status reports. Grant recipients shall file financial status reports at the close of each reporting period as designated by the office and shall file a final financial report before grant closeout. Financial status reports must be on forms prescribed by the office. The office may not require these reports more often than quarterly.

Discussion: This section is needed to inform grant recipients of their obligation to file financial status reports with the office and of the office's obligation to determine the form and schedule of such reports. Financial status reports are needed and reasonable in order for the office to process grant payments in accordance with the projected budget required in 10 MCAR § 1.555 B. 1. and the use of program income in 10 MCAR § 1.555 C. It is reasonable that financial status reports be required no more frequently than on a quarterly basis. This office recognizes that requiring reports more frequently would be administratively inappropriate; however, because of the nature of some projects quarterly reporting is desirable for efficient monitoring.

D. Performance report. Grant recipients shall also file performance reports at the close of each reporting period as designated by the office and shall file a final performance report before grant closeout. Performance reports shall be on forms prescribed by the office. The office may not require these reports more often than quarterly.

Discussion: This section is needed to inform grant recipients of their obligation to file performance reports with the office and of the office's obligation to determine the form and schedule of such reports. Performance reports are needed and reasonable in order for the office to monitor grant activities relative to the work program and to identify which grant recipients may need assistance in accomplishing their objectives. It is reasonable that performance reports be required no more frequently than on a quarterly basis. The office recognizes that requiring reports more frequently would be administratively

inappropriate; however, because of the nature of some projects quarterly reporting is desirable for effective monitoring.

E. Access to records. Representative of the office, either the State Auditor or Legislative Auditor as is appropriate, and federal auditors shall have access to all books, records, accounts, files, and other papers, things, or property belonging to grant recipients which are related to the administration of grants and necessary for audits and monitoring compliance with 10 MCAR §§ 1.500-1.565.

Discussion: This section is needed to indicate to grant recipients who will have access to their records under this program. The office is responsible for administering this program in Minnesota. It is needed and reasonable that representatives of the office have access to all records pertinent to a grant recipient's administration of a grant under this program. It is needed and reasonable for the Legislative Auditor to have access to grant recipients' records in accordance with Minn. Stat. § 3.971. It is also needed and reasonable that the State Auditor have access to grant recipients' records in accordance with Minn. Stat. Chapter 6. It is further needed and reasonable that federal auditors have access to grant recipients' records as required by Code of Federal Regulations, title 24, section 570.497 (c).

10 MCAR § 1.565 Application of federal law. If it is determined that any provisions of 10 MCAR §§ 1.500-1.560 are inconsistent with federal law, then federal law controls to the extent necessary to eliminate the conflict.

Discussion: This section is necessary to describe the relationship of these rules to federal law. The State will administer this program under an option provided it by federal law. All funds made available for grants are federal funds. State administration of the program is subject to the provisions of the Housing and Community Development Act of 1974 as amended, and other applicable federal laws. Under section 104 (d) of the law, the State is subject to reviews and audits by the Secretary of the U. S. Department of Housing and Urban Development. CFR 570.499 describes actions which the Secretary may take if it is found that a state has failed to comply in a substantial or serious manner with any requirement of the law. Therefore, it is reasonable and necessary to declare that in cases of conflict between these rules and federal law, that federal law controls to the extent necessary to eliminate the conflict.

In the Matter of the Proposed Adoption of Rules of the State Department of Energy, Planning and Development Governing the Community Development Block Grant Program

STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, Assistant Attorney General Michael J. Bradley, do hereby declare that I have examined the rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedure Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed. Any exceptions are noted below.

Michael J. Bradley
Assistant Attorney General

Dated: Sept 3, 1982