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CLEARINGHOUSE RULE 94-197

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

2. Form, Style and Placement in Administrative Code

a. The amendment to s. NR 190.02 does not include the word “and” before “public inland lake protection.” The amendment must show the stricken-through “and” to show the deletion. Also, the last sentence of s. NR 190.02 should be rewritten to read:

Qualified nonprofit conservation organizations also are eligible when state statutes are amended to specify their eligibility.

b. In s. NR 190.02, the list of entities to whom the chapter applies does not include other local governmental units, although they are included in the list in s. 144.253 (3) (a), Stats.

c. In s. NR 190.07 (3), the phrase “per annum” should be replaced by the phrase “in one calendar (or fiscal) year.”

d. In s. NR 190.03 (5), the material following the statutory reference is merely a restatement of the statutory definition and is not necessary.

e. The rule-making order repeals s. NR 119.08 (3) and then creates a similar provision in s. NR 190.08 (3). However, the introductory material of s. NR 119.08 (3) is not retained in s. NR 190.08 (3). Consequently, there is no explicit direction to the department to rank proposals.

f. Section NR 190.08 (3) (a) includes an introduction that does not lead grammatically into the following subunits. The introduction should be restructured. Also, in subd. 2, the use

of the notation “etc.” should be avoided. [See ss. 1.01 (1) and 1.03 (8), Manual. The entire rule should be reviewed for these problems.]

g. In s. NR 191.04 (3), the phrase “water safety patrols” should be replaced by the phrase “water safety patrol units” to more accurately reflect s. 30.79 (1) (b), Stats.

h. In s. NR 191.04 (2), par. (c) does not follow from the introduction and should be placed in a separate subunit of the rule.

i. In the Note to s. NR 191.06 (2) (b) 10, the word “and” should conclude par. (c).

4. Adequacy of References to Related Statutes, Rules and Forms

a. In s. NR 190.03 (5), the correct statutory cross-reference is s. 23.0955 (1), Stats. [See 1993 Wisconsin Act 343.]

b. Section NR 190.07 (1) must be amended to replace the cite to s. NR 119.08 with a cite to s. NR 190.08. The new ch. NR 190 should be reviewed for correct internal cross-references.

c. Section NR 190.08 (1) must be amended to replace the cite to s. NR 119.07 with a cite to s. NR 190.07.

d. Section NR 191.02 should cite s. 23.0955 (1), Stats., instead of s. 23.0955.

e. In s. NR 191.03 (7), the correct statutory cross-reference is s. 23.0955 (1), Stats. [See 1993 Wisconsin 343.]

f. In s. NR 191.105 (3) (f) 3, the statute referenced in this provision defines neither the term “pollution” nor the term “long-range environmental pollution.” This provision should be reviewed.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In the second to last paragraph of the analysis, the word “believes” is incorrectly spelled. Also, the phrase “best interests are in” is unclear and should be rewritten.

b. Section NR 190.03 (5) would be clearer if “is an organization” was added before “whose bylaws, charter or incorporation papers reflect...” [But see comment 2, above.]

c. In s. NR 190.06 (3) (intro), a comma should be added after “In addition.” Also in that subsection, it is unclear where the nonprofit conservation organization is to include the listed information. Is it supposed to be included in the application? This should be specified.

d. In s. NR 190.06 (3) (e), a comma should be added before “if any.”

e. Section NR 190.06 (3) (f) would be clearer if it read: “A list of any conservation lands currently owned...”

f. In s. NR 190.06 (3) (g) (intro.), the second sentence would be clearer if it read: “Organizations that have been in existence for less than 3 years shall provide information from the date of the organization’s origination to the dated of the application.”

g. In s. NR 190.06 (3) (g) 2, the phrase “the most recent year’s” is vague. Does it mean a year from the date of application, the most recent calendar year, the most recent fiscal year for the organization? This should be clarified. The phrase is also used in s. NR 191.06 (2) (a) 3 g.

h. In s. NR 190.08 (3), items are listed which are worth a certain number of points. However, the subsection does not discuss a scoring system or explain how these points will be used once they are awarded. The subsection should explain the scoring system and explain whether these factors are an exhaustive list of what the department will consider when prioritizing planning projects.

i. Section NR 190.08 (3) (a) 1 to 3 mention a “comprehensive lake management plan.” Does this term need to be defined or explained?

j. In s. NR 190.08 (3) (a) 4, the phrase “is being used as state matching funds” is unclear. Does the phrase mean that the project qualifies for state matching funds? Also in that subdivision, “protection” should be corrected.

k. Section NR 190.08 (3) (c) 3 is confusing. It could be changed to, “Delineate watershed boundary, map land uses and associated acreage, estimate annual phosphorus load using runoff coefficients, identify surface runoff patterns and delineate...”

l. In s. NR 190.08 (3) (h) 1, is the term “basin plan” a known term or should it be explained?

m. In s. NR 190.08 (3) (h) 2, it appears that the term “lakes element” is vague. Does it need to be explained?

n. In s. NR 191.04 (2) (intro.), the phrase “called for” is vague. The provision would be clearer if the phrase were replaced by “included” or “required by a department approved plan.”

o. In s. NR 191.04 (2) (a), “and;” could be deleted and replaced with a period. This would facilitate amending the subsection in the future and would not effect the meaning. [See comment 2, above.]

p. In s. NR 191.04 (2) (c), “where” is vague. The word could be replaced with a phrase such as, “which the department determines meets all of the following criteria.”

q. Also in that paragraph, subdivisions 1 and 2 could each end with a period and “and” could be deleted from subd. 2. This would facilitate amending the list in the future.

r. Section NR 191.06 (2) (a) 3 (intro.) should be rewritten to read: “Nonprofit conservation organizations shall include all of the following information in applications:”.

s. In s. NR 191.06 (2) (a) 3. e., a comma should be added before “if any.”

t. In s. NR 191.06 (2) (a) 3 g, the second sentence might be clearer if it read: “Organizations that have been in existence for less than 3 years shall provide information from the date of the organization’s origination to the date of application.”

u. In s. NR 191.06 (2) (b) 10, the phrase “separate from” in the note is unclear. Would “before or during” be accurate?

v. In s. NR 191.105 (2) (a), the first sentence is wordy. It could be changed to: “Labor costs for activities identified in the grant agreement if the activities require additional staff or increased hours of existing staff.” The second sentence in that paragraph is unclear. Does it mean that sponsors will be reimbursed for the labor costs of additional staff who are needed so that existing staff may work on the activities identified in the grant agreement? This should be clarified.

w. In s. NR 191.105 (2), pars. (a) and (b) should each end with a period or par. (b) should conclude with “; and.”

x. In s. NR 191.105 (2) (b), “similar items” is vague. It seems that it could encourage sponsors to ask to be reimbursed for any expense. Perhaps it should be changed to something like “other items approved by the department” or the list should be exhaustive.

y. Section NR 191.105 (3) (intro) is unclear. Does it mean that under the listed conditions, a lake improvement project must prepare a project plan based upon or responding to any recommended alternatives in a department approved diagnostic/feasibility study? This should be clarified.

z. In s. NR 191.105 (3) (a), it appears that the word “exists” should be inserted after the phrase “sufficient information.”

aa. In s. NR 191.105 (3) (d), the last sentence should be rewritten to read:

If an EA is required, formal adoption of a proposed plan by sponsor or resolution cannot take place until the EA has been completed and circulated; the period for public comment has ended; and the EA has been certified at being in compliance with the Wisconsin Environmental Policy Act (WEPA).

Appropriate citations should be included in the reference to the Wisconsin Environmental Policy Act.

ab. Section NR 191.105 (3) (e) should be rewritten to read:

When the department certifies that a lake improvement project plan complies with the provisions of WEPA, the sponsor may submit the lake improvement project plan to the department for its approval.

ac. In s. NR 191.105 (3) (h), should the phrase “, whichever is later” conclude the first sentence?

ad. In s. NR 191.105 (4), is there a difference between lake improvement project activities that are approved by the department and considered for lake protection grants and the implementation of lake improvement activities that are considered for grant awards? The second sentence appears to restate the first sentence. The intent of this subsection should be clarified.