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# WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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## CLEARINGHOUSE RULE 02-060

### 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 September 1998.]**

#### **2. Form, Style and Placement in Administrative Code**

a. Section NR 549.05 (1) should indicate, using the active voice, that it applies to a responsible unit that the department has determined has an effective recycling program.

b. The rule routinely makes incorrect use of the introduction format. Provisions that introduce a list of subsequent subunits should end with a phrase such as “all of the following” or “any of the following” and a colon. [See s. 1.03 (8), Manual.] A few of the provisions where this convention is *not* followed are ss. NR 549.07 (1) (intro.), (e) (intro.) and (j) (intro.) and (2) (intro.) and (g) (intro.).

c. In ss. NR 549.07 (1) (intro.), and (2) (intro.) and (g) (intro.), the phrase “but is not limited to” should be omitted; this is implied by the use of the word “includes” and so is redundant.

d. In s. NR 549.07 (1) (e) 1., “shall” should replace “will.”

e. Rules should not refer to the definitions of terms when using the terms; it is redundant. For example, the “as defined in” clauses in s. NR 549.08 (2) (a) 1. and 2., should be omitted. The definitions in ch. NR 549 are made applicable to the entire chapter by s. NR 549.03 (intro.).

f. Similarly, it is usually not necessary to refer to substantive provisions that define a concept, unless the provision or concept is obscure and a reference to the provision enhances

clarity. For example, in s. NR 549.08 (1), it is definitely not necessary to indicate that eligible applicants are those described in s. NR 549.05 (1), nor is it necessary to reiterate that the grants for which those applicants may apply are grants for the purposes specified in s. NR 549.02--in fact, the only new requirement created by that subsection, and so the only part that is needed, is the requirement that applications for grants under ch. NR 549 be made on forms provided by the department.

g. In s. NR 549.08 (2) (intro.), “has been” should be inserted before “achieved.”

h. There appears to be no difference between s. NR 549.08 (2) (a) 1. and 2., apart from the dates. They should be combined in a single provision that simply states: “The responsible unit has joined with one or more other responsible units to form a consolidated responsible unit.” The reference to s. 287.09 (1), Stats., is not necessary, although the note that follows may be helpful to the reader.

i. Drafter’s notes imbedded in a rule are not a part of the accepted format. The drafter’s note following s. NR 549.08 (2) either should be converted to a note, which will appear in the published rule, or should be moved to the rule analysis.

j. Section NR 549.08 (3) makes incorrect use of the introduction format, since par. (b) does not follow grammatically from the introduction. The introduction and two paragraphs should be collapsed into an undivided subsection, and the introduction and par. (a) should be combined into a single sentence.

k. The organization of ch. NR 549 should be reconsidered. In a process-oriented rule such as this, provisions should be arranged in the order in which they apply to the process being described, so that the rule as a whole presents a logical, step-wise and chronological overview of the process. [See s. 1.02 (3), Manual.] In particular, s. NR 549.09, **Department review**, includes material that is not related to the department’s review of applications: s. NR 549.09 (2) relates to who may apply when; and s. NR 549.09 (3) relates to what an application must contain (although it could be recast as review criteria). Also, there is a suggestion in s. NR 549.09 (3) that there are required application dates, but those dates are not established explicitly anywhere in the rule.

l. Section NR 549.09 (3) (a) (intro.) requires that efficiencies have been implemented in the year prior to the grant year, but s. NR 549.09 (3) (a) 1. allows for efficiencies that were implemented as much as three years before the grant year. The rule must either remove this inconsistency or insert the phrase “except as provided in subd. 1.” at an appropriate location in the introduction.

m. Section NR 549.09 (3) (a) 3. is adequately described in subd. 4., and so is not needed; that subdivision should be omitted, while subd. 4. should be renumbered 3. and modified to refer to 2004 and subsequent grant periods.

n. Section NR 549.09 (3) (b) should be reformatted. The introduction should end in a colon. Subdivision 1. a. should be numbered subd. 1. and should end with a period after “revenues”; the material that is in subd. 2. a. should be added to this subdivision. Subdivisions

1. b. and 2. b. should be treated in the same manner. Subdivision 3. should be renumbered par. (c).

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

a. The rule-making order should cite ss. 287.03 (1) (f) and 227.11 (2) as granting authority to promulgate this rule. Section 287.235 should *not* be cited in this context, as it does not contain an explicit grant of rule-making authority.

b. It appears that the reference in s. NR 549.01 should be to all of s. 287.235, not just to sub. (1) of that section.

c. It appears that the cross-reference in s. NR 549.09 (2) (b) should be to s. NR 549.08 (2) (b).

d. In s. NR 549.18 (2) (a), the reference to ch. NR 549 should be replaced by a reference to “this chapter.” [See s. 1.07 (2), Manual.]

e. In s. NR 549.18 (2) (c) (intro.), the reference should be to s. NR 549.07 (2). Also, “described” should replace “defined.”

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

a. Section 549.07 (1) (intro.) refers to the costs of administering recycling programs. “Administering” could be interpreted to include only office functions and not actual operations, such as collection, processing and marketing of recyclable materials. If the department wants all operational costs to be eligible costs, it should use broader language, such as “costs of operating the program.”

b. In the note following s. NR 549.08 (1), the web address given only gets the reader to the first page of a large and complex web site. It might be easier for readers to find the form if the address given was to the form itself or to a page that contains a direct link to the form.

c. As written, s. NR 549.08 (2) (a) 4. refers to a responsible unit that is not a large county (“a county with a population of 50,000 or more”). However, it appears that that provision is intended to refer to a large responsible unit (one with a population of at least 50,000) that is not a county. If this is a correct interpretation, then the rule should state: “The responsible unit is not a county and has a population of at least 50,000.”

d. Section NR 549.08 (2) (b) 1. (intro.) should begin with a phrase such as: “The responsible unit has entered into . . . .” Also, how many of the listed topics must be addressed in the agreement--any one? all four? This can be clarified with language such as: “The cooperative agreement shall address, at a minimum, all of the following:” if that is what is intended.

e. In s. NR 549.08 (2) (a) 3., “the” should be deleted from the second sentence. In par. (b) 3., “a” should replace the final “an.”

f. Section NR 549.08 (4) fails to indicate what body is required to adopt the authorizing resolution.

g. In s. NR 549.09 (2) (b) 2., the applicant is only required to state that efficiencies are expected. (See the last sentence.) Does the department want the applicant to make any estimate of the magnitude of the expected efficiencies? Similarly, in s. NR 549.09 (3) (a) (intro.), applicants are merely required to “indicate” that an efficiency has been implemented. Should the applicant not be required to demonstrate this through some form of evidence, rather than simply saying that it is so?

h. In the second item numbered 2. in the note following s. NR 549.09 (3) (b) 2. b., the word “which” should be replaced by the word “that.”

i. In s. NR 549.14 (3), the first occurrence of the word “mail” appears superfluous, and should be deleted.

j. Section NR 549.17 states that either the department or a grant recipient may initiate the termination of a grant award and specifies procedures for terminations initiated by the department. What procedures apply if a grant recipient initiates the termination?

k. Section NR 549.17 (2) (c) allows termination of a grant for any of three listed reasons. However, s. NR 549.18 (1) (a) allows termination for noncompliance with any provision of ch. NR 549. These provisions should be reconciled.

l. In s. NR 549.18 (3) (b), “their” should be replaced by “his or her” or simply “an.”