



WISCONSIN LEGISLATIVE COUNCIL

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CLEARINGHOUSE RULE 05-087

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 January 2005.]

2. Form, Style and Placement in Administrative Code

a. The preface to the rule does not include the headings contained in s. 1.02 (2) (a) 8. and 9., Manual. If these topics are not applicable to the formation of the rule, the preface of the rule simply should make a statement to that effect.

b. The rule does not contain an effective date provision.

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

a. The statutory authority references to provisions of s. 77.82, Stats., in the rule preface should contain the notation “as affected by 2005 Wisconsin Act 25.” Also, it appears that several other statutory provisions affected by 2005 Wisconsin Act 25 should be cited as statutory authority for the rule, such as s. 77.81 (2m) and s. 77.82 (2) (i), Stats. The analysis should be revised to include references to all appropriate statutory provisions that provide authority for the rule.

b. In s. NR 46.15 (20) (s), the notation “NR” should be inserted before the reference to “46.18.” [See, also, s. NR 46.18 (8) (b).]

c. In the note to s. NR 46.18 (7), a period should follow the notation “sub” and the notation “; Stats.” should be inserted before the word “after.” [See, also, s. 46.18 (8) (a).] [With respect to s. NR 46.18 (8) (a), the first sentence does not grammatically lead into the following subunits and, therefore, it should be renumbered as subdivision 1. and the remaining subdivisions should be renumbered accordingly.]

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

a. Section NR 46.15 (20s) should indicate that only one type of petition need be included in a “management plan packet.” As written, the rule would require a packet to include four different types of petitions. The clarification can be made by replacing the third occurrence of the word “and” by the word “or.”

b. In s. NR 46.165 (4) (f), “submits” should be changed to “submit.”

c. Section. NR 46.18 (5) (b) should be modified to clarify what action the department will take if a petition under s. NR 46.16 (1) (b) is submitted on or before May 15 without a management plan. Will s. NR 46.18 (7) apply in that case? Or will any petition under s. NR 46.16 (1) (b) that is submitted on or before May 15 without a management plan be automatically denied?

d. Section NR 46.18 (7) (a) should be rewritten in the active voice to specify that the department must place certain petitions on a referral list. Also, “will” should be replaced with “shall.” This comment also applies to s. NR 46.18 (8) (a). See s. 1.01 (2) of the Manual. Finally, the analysis to the rule should specify that only petitions that do not include management plans are placed on the referral list.

e. In s. NR 46.18 (7) (a), “petitions” should be changed to “A petition.”

f. Section NR 46.18 (7) (c) should specify that offers shall be made directly to the landowner, not to the department. Section NR 46.18 (7) (d) should specify who must notify that department that an offer has been made. Section NR 46.18 (7) (e) should specify how a landowner will be notified of the department’s decision regarding preparation of a management plan.

g. In stating that the department may “agree” to prepare a management plan, s. NR 46.18 (7) (e) implies that a landowner must ask the department to prepare a plan. The rule should clarify whether a landowner must request preparation of a plan or if simply submitting a petition without a plan constitutes a request that the department prepare a plan.

h. In s. NR 46.18 (8) (a) 2., “post marked” should be changed to “postmarked.”

i. In s. NR 47.85 (2) (a) 2., a new comma should be inserted after the word “rule” or the word “regulation” should be deleted, if the phrase “rule regulation” is used to denote one form of law.

j. The initial applicability provision states that the treatment of certain sections of ch. NR 46 will first apply to management plans that are filed on or after November 1, 2005. Since it is unlikely that this rule will take effect prior to or on that date, the department should rethink specifying this date in the rule due to its retroactive impact.

k. The analysis states that the rule lowers the cost share rate under the Forest Landowner Grant Program to 50% and reduces the amount set aside for statewide forestry emergencies from 20% to 10%. However, the rule does not amend the pertinent rule provision (s. NR 47.86 (1) (a) and (3) (c) 1.) If it is the intention of the department to make these changes in practice but not change the text of the rule, that should be clearly stated in the analysis.