



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 10-032

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated September 2008.]

1. Statutory Authority

a. Section NR 335.03 (18) provides that a municipality means any town, village, city, county, or tribe in this state. Section 31.01 (4), Stats., provides that a municipality means any town, village, city, or county in the state. What is the source of the department’s authority to expand the definition of municipality to include a tribe?

b. Section NR 335.05 (1) provides that the state share may not exceed 50% of the first \$400,000 of eligible project costs nor more than 25% of the eligible project costs that exceed \$400,000. Section 31.385 (2) (a) 1. a. and b., Stats., provides that the financial assistance for a dam safety project is limited to the sum of the following:

- (1) No more than 50% of the first \$400,000 of costs of the project.
- (2) No more than 25% of the costs of the project that exceed \$400,000.

It appears that the rule requires a choice between two provisions instead of the sum of the two provisions. Is that the department’s intent? If so, what is the statutory authority for this?

c. In s. NR 335.08 (1) (e), the department may reimburse the actual and reasonable costs for activities other than the maintenance, repair, or modification of the dam (structural alternative) only if the cost of that activity will be less than the cost of the structural alternative. Section 31.385 (2) (bm), Stats., provides that the department may provide financial assistance for an activity other than the maintenance, repair, modification, abandonment, or removal of the dam

only if the cost of that activity will be less than the cost of the maintenance, repair, modification, or removal of the dam. What is the source of the department's authority for the provision in the rule?

d. In ss. NR 335.03 (6) and 336.03 (4), the definition of "dam safety project" is different than the definition provided in s. 31.385 (1b), Stats. The statute uses "or" while the rules use "and." Why are these definitions different?

2. Form, Style and Placement in Administrative Code

a. In s. NR 335.03 (10), the notation "i.e." should be removed and replaced with "such as". Also, the parentheses should be removed. [See s. 1.01 (9) Manual.]

b. In s. NR 335.06 (1), "will" should be changed to "shall." This problem also occurs in sub. (8). The entire rule should be checked for this problem. Also in sub. (1), "must" should be changed to "shall."

c. In s. NR 335.06 (11), "can" should be changed to "may". The entire rule should be checked for this problem.

d. In s. NR 335.07 (2) (b), "municipality(s)" should be changed to "municipality or municipalities."

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

a. In s. NR 335.03 (5), "Stat." should be changed to "Stats."

b. In s. NR 335.06 (1), it appears that the last instance of the word "and" should be changed to "an."

c. In s. NR 335.06 (2), it appears that "April 1" should be deleted. Subsections (3) (a) and (b) should be removed from SECTION 11 and inserted after the appropriate material in SECTION 10.

d. In s. NR 335.07 (1) (c), it appears that "A" should not be stricken through and "Requires a" should be deleted.

e. In the introductory material in SECTION 19, "ANNOT." should be deleted and replaced with "Note." The same problem occurs in the introductory material in SECTIONS 20, 21, and 44. In the Note after s. NR 335.07, the first semi-colon should be changed to a colon. This problem also occurs in the second Note to s. NR 335.07 created in SECTION 20.

f. In s. NR 335.09 (5), the first semi-colon should be deleted.

g. In SECTION 27, does the department intend to delete the material in the table following s. NR 335.09 (3)? If so, the introductory material of the rule should be changed.