



Wisconsin Legislative Council

RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 22-065

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Council Staff and the Legislative Reference Bureau, dated November 2020.]

2. Form, Style and Placement in Administrative Code

a. In general, the proposed rule repeals administrative code provisions that govern identified grant programs in specific ways, and it creates administrative code provisions that apply more generally across multiple, unnamed grant programs. Although avoiding duplication that currently exists in ch. ATCP 161 is laudable, the agency should consider whether its approach unintentionally fails to carry forward to new ch. ATCP 163 any desirable grant-specific requirements or limitations currently contained in ch. ATCP 161. For instance, under s. 93.07 (18) (b) 1. and 2., Stats., the agency must establish clear and measurable goals and at least one quantifiable benchmark for each economic development program. Presumably those goals and benchmarks are contained in current ch. ATCP 161? If so, should they be included in new ch. ATCP 163? Similarly, current s. ATCP 161.63 (2) prohibits the use of a “grow Wisconsin dairy producer” grant from being used for capital acquisition, administrative or overhead expenses not directly related to the grant program, or repayment of loans or mortgages. Should those prohibitions be included in new ch. ATCP 163?

b. In the introductory clause, punctuation, capitalization, and abbreviation should mirror the example shown in s. 1.01 (1) of the Manual, in addition to the “serial” comma for a series of three or more items as shown in s. 1.06 (1) (b) of the Manual. The introductory clause could be revised to read as follows:

An order of the Department of Agriculture, Trade and Consumer Protection **to repeal** subchs. I, IV, V, and VI of ch. ATCP 161; **to repeal and recreate** ch. ATCP 161 (title); and **to create** ch. ATCP 163, relating to grants.

The above stylistic changes should be applied also to the treatment clauses of SECTIONS 1, 2, and 3 of the proposed rule.

c. In the rule summary's comparison with rules in adjacent states, in the last sentence of the information about Minnesota, there may be text missing between the words "commissioner" and "do". Should a word like "may" or "shall" appear there?

d. In the list of definitions in s. ATCP 163.01:

- (1) In sub. (3), "grants" is defined as "grants for agricultural or economic development". A note indicates that these are grants administered by the Division of Agricultural Development. First, should this definition more clearly identify the range of grants covered by new ch. ATCP 163? For instance, current s. ATCP 161.50 (3) cross-references s. 93.07 (18) (a), Stats., and also recites a list of illustrative programs. Should that sort of delineation be carried forward to new ch. ATCP 163? Second, is the note intended to place a substantive limitation on the definition of "grants"? If so, that limitation should be placed in the rule text rather than in a note. [s. 1.12 (1) (b), Manual.] Third, "grants" should be changed to "grant". The singular form of a word is preferred to the plural. [s. 1.05 (1) (c), Manual.]
- (2) In sub. (4), "grant applicant" could be shorted to "applicant". This usage would match the choice of "recipient" rather than "grant recipient" in sub. (7). In any event, the agency should review the proposed rule for consistency in usage as between "grant applicant" (e.g., s. ATCP 163.03 (2) (e)) and "applicant" (e.g., s. ATCP 163.02 (1) (d)).
- (3) In sub. (5):
 - (a) The term "grant award recipient" in the first sentence should be shortened to "recipient", which is a defined term.
 - (b) The second sentence introduces the new term "matching contribution". That term is not defined by the proposed rule, but it appears once in s. ATCP 163.03 (2) (h). It would be better either to define the term "matching contribution" or to revise the second sentence so that the information there is more clearly a part of the definition of "matching funds". A corresponding change, if needed, should be made to the usage of "matching contribution" in s. ATCP 163.03 (2) (h).
 - (c) Insert a comma after the word "equipment" in the second sentence. [s. 1.06 (1) (b), Manual.]
 - (d) Is there a difference between a "project" as used in the first sentence and a "grant project" as used in the second sentence? Note that "project" is used throughout ch. ATCP 163, save s. ATCP 163.04 (3) (c) 4.

e. In s. ATCP 163.04 (title), the word "contract" should not start with a capital letter. [s. 1.10 (2) (b) 2., Manual.]

f. In s. ATCP 163.04 (1):

- (1) The terms "recipient of a grant" and "grant recipient" (which appears twice) each should be changed to "recipient", which is a defined term.

- (2) What is the purpose of the final sentence, which appears to authorize the agency official to sign a grant contract after the recipient signs? Is it necessary to state that? Rather, is it intended to prevent the agency official from signing **before** the recipient signs? If so, the language should be clarified, such as by adding the word “only” before the word “after”. Relatedly, given that grant funding is not final until the signing of a contract, the agency could revisit the requirement in s. ATCP 163.03 (3) that an agency official sign the grant award. Is that separate signature a meaningful aspect of a grant program?

g. Consider adding an initial applicability clause to identify whether the revised rule has any applicability to applications, grants, or contracts in being. If the agency intends the proposed rule to apply only to new applications, the clause could state: “This rule first applies to grant applications that are submitted on the effective date of this rule.”. [s. 1.03 (3), Manual.]

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

a. In the rule summary’s listing of statutes interpreted, should s. 93.46 (2), Stats., be cited? That grant program for agricultural and forestry research and development is contained in a subchapter of ch. ATCP 161 that is repealed by the proposed rule. Is that grant program included in the grant programs covered by new ch. ATCP 163? If so, the statutory basis for that program should be cited.

b. In the rule summary’s listing of statutory authority, a citation to s. 19.36 (5), Stats., could be added. That statute authorizes a record authority to withhold from public disclosure a record containing a trade secret as defined in s. 134.90 (1) (c), Stats. In the proposed rule, s. ATCP 163.06 authorizes the agency to withhold such records from public disclosure.

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

a. In s. ATCP 163.04 (3) (intro.), the introductory language does not cleanly align with the verb syntax of the three paragraphs that follow it. Instead of “The grant contract shall include all of the following:”, the agency could consider something like “The grant contract shall do all of the following:” or “The grant contract shall include provisions that do all of the following:”.

b. In s. ATCP 163.04 (4) (a) 5., the phrase “recipient to attesting to” should be changed to “recipient attesting to”.

c. In s. ATCP 163.04 (5) (a) 2., changing “may withhold payments to be made to the recipient to which the recipient would otherwise be entitled” to “may withhold payments to which the recipient would otherwise be entitled” would simplify the language without sacrificing meaning.

d. In s. ATCP 163.05, there may be text missing after the word “annually” and before the comma. Should a word like “determine” appear there?