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CLEARINGHOUSE RULE 95-100

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. This rule package and the underlying rules in ch. NR 50 tend to jumble together provisions relating to all aspects of grants, including provisions regarding eligible costs, project design standards and application procedures. For example, both s. NR 50.09 (4) (c) 4. and 5. and s. NR 50.09 (5) (bn) include provisions regarding project design standards, while the latter section is primarily related to eligible costs. Section NR 50.09 (4) (g) and s. NR 50.09 (5) (bp) are similar. This makes the rule unnecessarily confusing and leads to duplication of language.

b. In s. NR 50.03 (22), both occurrences of the word “described” should be replaced by the word “defined.” In addition, the material “as defined in s. 23.0955 (1), Stats.” and “as defined in s. 350.138 (1) (e), Stats.” should both be underscored, since they are new material. The article “a” should be inserted following the word “means” and commas should be inserted following the abbreviation “Stats.”

c. The term defined in s. NR 50.03 (19) presumably should be either “snowmobile trail maintenance” or “trail maintenance.” If the word “snowmobile” is included in the term, then the department may want to include that word also in the terms defined in s. NR 50.03 (24) and (25). The second sentence of s. NR 50.03 (19) should begin “‘Snowmobile trail maintenance’ includes....” Similarly, the second sentence of s. NR 50.03 (24) should begin “‘Trail development’ includes....”

d. The treatment clause and text of SECTION 8 show different subsections being created. This difference should be corrected.

e. In s. NR 50.05 (27), the phrase “reserves the right to” should be replaced by the word “may.”

f. An underscored period should be shown at the end of s. NR 50.06 (3) (a) 1. Alternatively, s. NR 50.06 (3) (a) could be repealed and recreated as a single sentence stating that “LAWCON funds apportioned to Wisconsin each fiscal year shall be divided equally between local governments and state agencies.”

g. In s. NR 50.06 (3) (c), “use under this section” should replace “the LAWCON program.”

h. It is not necessary to renumber rules to maintain sequential numbering of sections or subunits of sections, as is done in SECTIONS 16 and 17.

i. In renumbered s. NR 50.06 (6) (b), the word “will” should be replaced by the word “shall.”

j. Section NR 50.09 (4) (b) 2. unnecessarily duplicates language contained in s. NR 50.09 (4) (b) 1. The latter section could be modified to apply to both short-term and long-term easements, leases, permits or other agreements.

k. In s. NR 50.09 (4) (c) 4., the word “will” should be replaced by the word “shall.” In s. NR 50.09 (4) (e) 3., the word “are” should be replaced by the word “shall.”

l. The treatment clause of SECTION 26 should read as follows: “NR 50.09 (4) (f) (title) and 1. (intro.) are amended to read:”. Also, since this SECTION and the following two SECTIONS apply the same treatment to subunits of the same section and since there are no intervening subunits affected by the rule, these three SECTIONS could be drafted as a single SECTION. In that case, the treatment clause would read as follows: “NR 50.09 (4) (f) (title) and 1. (intro.), a., c. and d. are amended to read:”. Similarly, SECTIONS 12 to 14 could be combined in one SECTION. Finally, the title to s. NR 50.09 (4) (f) should be underscored.

m. In s. NR 50.09 (4) (f) 2., there are problems with the reference “nongrooming activities listed in s. NR 50.03 (11).” First, it appears from conversations with department staff that this should refer to s. NR 50.03 (19), the definition of snowmobile trail maintenance. Also, the definition only lists examples of activities that are included in the meaning of the term, which is correct drafting, since definitions do not create substantive rule provisions. It would be more appropriate to list specific eligible costs in a separate provision, and to refer in s. NR 50.09 (4) (f) 2. to the specific eligible costs intended. This would also remove any ambiguity regarding which activities are grooming-related and which are nongrooming activities.

n. When material is renumbered and amended, the amendment should take place in the same SECTION in which the renumbering is accomplished. Therefore, if s. NR 50.09 (4) (f) 2. and 3. are to be renumbered, then the treatment clause of SECTION 29 should read: “NR 50.09 (4) (f) 2. and 3. are renumbered NR 50.09 (4) (f) 3. and 4. and amended to read:”. This would be followed by the text contained in SECTIONS 31 and 32.

o. SECTION 32 shows a reference to s. 350.12 (4) (bg), Stats. The current rule [s. NR 50.09 (4) (f) 3.] shows a reference to s. 350.12 (4) (b) 1m., Stats. If the department intends to

change the cross-reference in this provision, it should be done by striking through the existing reference and underlining the new reference.

p. In s. NR 50.09 (5) (bn) 1. and 2., the words “the following” should be inserted before the colons.

q. In this rule, s. NR 50.16 (5) (b) refers to “acquisition and development,” while the existing rule refers to “acquisition or development.” If this is not a typographical error, then the change from “or” to “and” should be accomplished through strike-throughs and underscoring. Also, the text of this provision begins with an incomplete cite to the rule; “(5)” is omitted.

r. Section NR 50.16 (5) (i) 1. (intro.) should be renumbered NR 50.16 (5) (i) (intro.) and subdivision paragraphs a. to e. should be renumbered subs. 1. to 5. Also, the introduction does not follow the correct format for introductory material. [See s. 1.03 (8), Manual.] One option is to insert the phrase “subject to all of the following:” at the end of the introduction. This latter comment also applies to s. NR 190.09 (5).

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

a. In s. NR 50.10 (3) (a) 1. am., the reference “D11-8, Wisconsin Department of Transportation” is an insufficient reference. Is this a part of the Wisconsin Highway Maintenance Manual? The rule should fully identify the referenced document and indicate where copies may be obtained. Also, the citation should be placed in a note rather than in parentheses. The second occurrence of the phrase “the combination snowmobile and all-terrain vehicle route sign” may be replaced by the word “sign.”

The first two comments above apply to the reference “M7 Series, Wisconsin Department of Transportation,” in s. NR 50.10 (3) (a) 1. b.

b. Section NR 50.16 (5) (i) 1. d. should include a cross-reference to the rules that establish the Department of Transportation county highway rates for equipment. Also, “Department of Transportation County” should also be lower case.

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

a. The phrase “receiving assistance” in s. NR 50.03 (22) is vague. The phrase should either be stricken or replaced with a more descriptive phrase, such as “receiving assistance under this chapter.”

b. In s. NR 50.03 (24), does “trail development” include trail planning and design activities? Should this be clarified in the definition?

c. The Note following s. NR 50.03 (25) refers to repairs and renovations. However, the preceding definitions refer to maintenance, development and rehabilitation. The Note should be redrafted to more clearly relate to the preceding definitions. Also, “such as” should replace “e.g.”.

d. The term “substantiated value” in s. NR 50.05 (15) is unclear. The rule should at least indicate who is to substantiate the value and it may be appropriate to establish standards or procedures for substantiation of value.

e. In s. NR 50.05 (27), the terms “properties assisted with these funds” and “assisted properties” are vague. A more specific term might be “properties for which assistance has been provided under this section.”

f. In s. NR 50.09 (4) (b) (title), the term “rights of way” should be hyphenated. Also, in subs. 1. (intro.) and 2. (intro.), what does “fee value” refer to?

g. In the first sentence of s. NR 50.09 (4) (b) 3., the word “to” should be inserted after the words “public access.”

h. Should s. NR 50.09 (4) (g) 1. refer to “a minimum of 10 years before the date of application except where a natural event or other circumstances beyond the control of the county prevented inclusion of the trail segment in its funded trail system during this 10-year period” (emphasis added)?

i. Section NR 50.09 (5) authorizes reimbursements of up to 100% of certain expenses and advance payments of up to 75% of certain amounts. Under what circumstances will these amounts be less than 100% or 75%, and how will this be determined?

j. In the inserted material in s. NR 50.10 (1), the word “and” should be replaced by a comma.

k. In s. NR 50.12 (3) (b) 4., the title is incorrectly shown as referring to Form 8700-64; the reference should be to Form 8700-63.

l. The unnumbered line of text at the end of SECTION 47 appears to be surplusage and should be omitted. It repeats subdivision paragraph c.

m. There are typographical errors in the section numbers cited in both the treatment clause and text of SECTION 56. It appears that the paragraph being created should be numbered s. NR 50.165 (5) (i).