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RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 97-152

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.]

1. Statutory Authority

a. The analysis to the rule incorrectly cites s. 23.097 (2), Stats., as a statute authorizing promulgation of the rule. The analysis should cite s. 26.38, Stats., as created by 1997 Wisconsin Act 27. In addition, the analysis contains incorrect citations of statutes interpreted by the rule. The correct cite is to s. 26.38, Stats., as created by 1997 Wisconsin Act 27.

b. The rule should be rewritten to comply with the statutory requirements regarding the provision of matching contributions by grant recipients. Specifically, s. 26.38 (2m) (b), as created by 1997 Wisconsin Act 27, requires each landowner receiving a grant to provide a matching contribution and sub. (3) requires the department to promulgate rules that establish criteria for determining the amount of a matching contribution. In addition, s. NR 47.86 (1) (d), which appears to permit the department to provide a grant for the total cost of the development and implementation of a forest stewardship management plan, appears to conflict with the matching contribution requirement.

c. The rule does not comply with the requirement, set forth in s. 26.38 (2m) (c), Stats., as created by 1997 Wisconsin Act 27, that the department promulgate by rule minimum standards that a forest stewardship management plan must meet in order to be eligible for a grant.

d. Section 26.38 (2m) (c), Stats., as created by 1997 Wisconsin Act 27, provides that a forest stewardship management plan developed or implemented with a private forest grant must contain practices that protect and enhance *all* of the following: soil and water quality;

endangered, threatened or rare forest communities; sustainable forestry; habitat for fish and wildlife; and the recreational, aesthetic and environmental benefits that the forest land provides. It appears that s. NR 47.84 (2) (a) conflicts with this requirement by permitting the department to provide grants for the development or implementation of plans that address only one of the factors listed in the statute. For example, s. NR 47.84 (2) (a) 4. would permit the department to provide a grant for the implementation of a plan that would provide for protection and improvement of soil and water but would not address any of the other factors listed in the statute.

e. Section 26.38 (2m) (a), Stats., as created by 1997 Wisconsin Act 27, states that grants shall be awarded for “. . . developing and implementing forest stewardship management plans . . .” Section 26.38 (2m) (c), Stats., as created by 1997 Wisconsin Act 27, requires a forest stewardship management plan that is developed or implemented with a private forest grant to contain practices that protect and enhance certain aspects of forests. The rule does not seem to be written with the same scheme in mind. Rather, it appears that under the rule, the department intends to select “practices” for grant assistance on a piecemeal basis rather than reviewing a forest stewardship management plan as a whole. For example, s. NR 47.86 (2) (a) states, in part, “In selecting *practices* for grant assistance . . .” (emphasis added). It appears that the department lacks statutory authority to provide grant funding for individual practices but rather may provide grant funding only for forest stewardship management plans that contain certain practices within them.

f. The requirement in s. NR 47.86 (3) (c) 1. that an applicant for a grant must provide verification that the applicant has an approved landowner forest stewardship plan, appears to conflict with s. 26.38 (2m) (a), Stats., which provides that grants are available for the *development* of forest stewardship management plans. Likewise, s. NR 47.85 (1) (c) should state that the development of a forest stewardship management plan is an eligible cost.

2. Form, Style and Placement in Administrative Code

- a. In s. NR 47.84 (1) (b), “is” should be replaced with “consists of.”
- b. In s. NR 47.84 (2) (a) 3., “tree” should be inserted before “quality.”
- c. In s. NR 47.85 (1) (a) (intro.), “prepared” is redundant and should be deleted. Should “a prepared” be replaced with “an approved”?
- d. Throughout the rule, all subunits, except introductory material, should end with a period. In s. NR 47.85 (1) (a) 1. and 2., “; and” should be replaced by periods. Also see ss. NR 47.85 (2) (a) 1. and 2. and 47.87 (4) (a) 1.
- e. In s. NR 47.86 (1) (e), “agency” is misspelled. Also, “State Forester” should be lower case.
- f. Section NR 47.86 (3), relating to application and approval, should set forth time lines for the submission of applications, department review of applications and notification to applicants of the department’s decision.

g. Section NR 47.86 (3) (b) states that the *state forester* shall make basic eligibility determinations. Paragraph (c) of that subsection states, in part, that the *department* shall review applications. Presumably, this means that the department will make final grant awards to certain applicants whose applications the state forester has determined meet basic eligibility determinations. However, s. NR 47.88 states, in part, that any landowner who is dissatisfied with *any* determination made under the program may request reconsideration *by the state forester*. Thus, it is unclear who is to make the final grant award decision. This point should be clarified.

h. Section NR 47.86 (3) (a) refers to the “designated agent” of the department. Can the designated agents be listed in the rule or elsewhere so interested landowners will know where to send applications? What are the criteria for selecting agents? Should the rule set forth the duties of and procedures to be followed by designated agents?

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

a. Section NR 47.83 refers to “the authorizing statute.” An appropriate cite for that statute should be substituted.

b. In s. NR 47.85 (2) (a) 2., “rule,” should be inserted before “regulation.”

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

a. The statement in s. NR 47.86 (3) (c) 4. that “(a)pplications will be approved provided grant funds are available” implies that a grant will be provided to every applicant, on a first-come, first-served basis. Does the department intend to utilize a first-come, first-served policy for the disbursement of grant funds under the program? In the alternative, when the demand for grant funds exceeds the supply, will the department award grants based on the statutorily stated goals of the program?

b. Section NR 47.87 (1) states that a landowner must complete each practice within the 18 months of approval, unless a six-month extension period is granted. However, s. NR 47.87 (6) states that the minimum length of time that a landowner shall be required to maintain a practice is 10 years, and sub. (7) states that to be eligible to receive a grant, a landowner must agree to maintain program practices for 10 years. These discrepancies should be clarified.

c. There appears to be some conflict between s. NR 47.87 (2) and (8). Specifically, s. NR 47.87 (2) provides that grant payments shall be disbursed to landowners only upon certification by the department that a practice *has been completed* in accordance with specifications. However, s. NR 47.87 (8) establishes liability for reimbursement of payments to the department if a landowner sells, conveys or loses control of lands upon which there is a continuing obligation to maintain a practice and the new landowner does not agree to maintain that practice. This implies that the department may disburse grant funds to an applicant before the applicant has completed a practice. In addition, s. NR 47.89 (2) implies that grant funds may be disbursed before a practice is completed or as reimbursement of costs already incurred. The rule should clarify whether grant funds may be disbursed prior to the completion of a practice or whether they may be disbursed only as reimbursement for costs already incurred.