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CLEARINGHOUSE RULE 98-084

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. Section 29.598 (2) (b), Stats., requires the department to promulgate various rules relating to the Wildlife Damage Abatement and Claims Program (WDACP). The statute requires that the rule must establish all of the measures and procedures listed in s. NR 19.775 (1) to (5). However, s. NR 19.775 provides that those measures and procedures will be specified in a technical manual and not in the rule. In light of the mandate of s. 29.598 (2) (b), Stats., under what authority does the department seek to circumvent rule-making relating to these measures and procedures via the technical manual? Also see s. 227.10 (1), Stats., which requires agencies to promulgate as rules each statement of general policy and each interpretation of a statute that it specifically adopts to govern its enforcement or administration of the statute.

b. Section 29.598 (7m) (a), Stats., appears to require that land in the WDACP be open for hunting. Further, the statutes also provide for penalties for persons who do not open their land pursuant to the statutory requirement. Under what authority does the rule, in s. NR 19.795 (3) (b) 6., allow an enrollee to refuse hunting access for “reasonable cause”?

2. Form, Style and Placement in Administrative Code

a. The introductory clause of the rule should contain a relating clause. [s. 1.02 (1), Manual.]

b. The definition of “lands suitable for hunting deer,” created in s. NR 12.001 (2) (b), should precede the definition of “lands suitable for hunting or trapping” in s. NR 12.001 (2) (a).

c. SECTION 8 of the rule creates s. NR 12.16 (2) (b) 2. However, there is no s. NR 12.16 (2) (b) 1. Accordingly, it appears that current s. NR 12.16 (2) (b) should be renumbered s. NR 12.16 (2) (b) 1.

d. The treatment clause of SECTION 11 should indicate that s. NR 19.76 (8) is also being created.

e. The material in the Note to s. NR 19.79 (5) (a) appears to contain substantive material. Accordingly, the material should be placed in a substantive provision of the rule. [s. 1.09 (1), Manual.]

f. In s. NR 19.79 (5) (b) (intro.), the words “which” and “are” should be deleted and “All of the following” should be inserted before “(c)osts.”

g. In s. NR 19.795 (1), “may not” should replace “shall not.”

h. Generally, if a title is used in a subunit of a particular rule section, then all similar subunits in that section should be titled. [s. 1.05 (1), Manual.] The subdivisions in s. NR 19.795 (3) (b) fail to meet this maxim. Accordingly, the rule should be revised so that titles are used consistently throughout par. (b).

i. Section NR 19.80 (6) contains a title while the other subsections in that section of the current rule do not. Titles should be used consistently. [s. 1.05 (1), Manual.]

j. Much of the Note to s. NR 19.81 (1) appears to be definitional and, consequently, substantive. Therefore, the definitional material should be placed in a substantive provision of the rule. [s. 1.09 (1), Manual.]

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

Section NR 19.795 (1) contains a reference to “(b) 2.” Presumably, this refers to par. (b) 2. However, sub. (1) has no par. (b). The accuracy of this reference should be checked.

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

a. In s. NR 12.15 (11) (b), is it necessary to have the requirements that a person apply for a license and possess a license? It would seem that if the person possesses a license, he or she has applied for it and, thus, the application requirement may be redundant. Also, for the sake of consistency, the word “hunting” should be inserted between “bear” and “license” in the last line.

b. The comma at the end of s. NR 12.15 (13) should be deleted.

c. Section NR 12.16 (2) (b) 2. requires more clarity. The subdivision is too long and covers too many different subject areas, with little cohesion. Its clarity would be enhanced if it were broken down into smaller subunits. In addition, it is not clear how the “significant effort” requirement is linked to the lack of deer to be shot, which appears to be the basis for an

exemption. This relationship should be clarified. The term “their agents” in the next-to-last sentence should be “its agents.” If the group considering the exemption includes the department, and consensus is reached, what is the purpose of the recommendation to the department?

Finally, the Note appears to contain a substantive definition. Accordingly, it should be included in the substantive portion of the rule.

d. In the definition of “land suitable for hunting” in s. NR 19.76 (4), the phrase “contiguous acres” should be “contiguous land.” Also, the Note contains a substantive requirement. It is suggested that it be deleted and the term defined be changed to “Land suitable for hunting species other than deer.”

e. In s. NR 19.76 (3m), it appears that the word “people” is unnecessary and should be deleted. In sub. (4m), the word “are” should be “means” and the word “or” should be “and.” In sub. (4t), the first word “are” should be “means.” Finally, in sub. (8), the definition should include a statutory or rule citation to clarify its meaning. For example, after “program,” the phrase “under s. 29.598, Stats., and this chapter” could be inserted.

f. In s. NR 19.78 (1) (a) and (b), it is not clear what “budget” is being referred to. Is it the county’s annual estimate of the abatement costs? If so, consistent terminology should be used. In any event, the rule should be clarified.

g. In s. NR 19.78 (3), the third quarter does not include the month of July. It is suggested that “July 1” replace “August 1.” Also, counties are generally given one month after the end of a quarter to submit reimbursement requests. However, after the fourth quarter, they are given two months. Is this intended?

h. It is not clear what criteria will be used by the department to determine other costs that are eligible for reimbursement under s. NR 19.79 (5) (b) 3.

i. It is not clear how subds. 1. to 8. of s. NR 19.795 (3) (b) tie in with par. (b) (intro.). A phrase such as the following could be added to par. (b) (intro.) to identify better the link: “The following provisions shall apply to the managed hunting access option:”.

j. In s. NR 19.795 (3) (b) 3., a comma should be inserted after the first use of the word “access” and the word “by” in the first sentence should be changed to “after.” The quotation marks around “participant” in the next-to-last sentence should be deleted.

k. In s. NR 19.795 (9), a “)” should be added after “7m” in the reference to “s. 29.598 (7m (am), Stats.”

l. Current s. NR 19.81 (3) relates to determining the priority of payment claims for certain fences. Paragraphs (a) to (c) consist of priority determining factors. It does not appear that the amendments made in SECTION 26 of the rule are related to establishing or determining priorities for payment claims and, therefore, the amendments should be placed in a different section of the current rule. In addition, pars. (d) and (e) do not follow from sub. (3) (intro.). [s. 1.03 (8), Manual.]