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CLEARINGHOUSE RULE 98-093

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

Section 29.595, Stats., authorizes a wildlife damage control program that appears to be intended for urban areas of the state. The program created by the rule, although identified as a grant program for urban communities, does not appear to limit the types of communities that may apply for the grants. Although the rule defines “urban area,” the term does not seem to come into play in limiting the communities eligible for the grants. In addition, the definition of “municipality” in s. NR 50.23 (3) (a) appears to be very broad since towns, villages, counties or tribal governments can be very small and remote communities that have no urban characteristics. Given the apparent intent of s. 29.595, Stats., to create a wildlife damage control program for urban communities, as opposed to just a wildlife damage control program for all communities, the rule should be reviewed to ensure that the Legislature’s intent has been met.

2. Form, Style and Placement in Administrative Code

- a. In s. NR 50.23, subs. (2) and (3) should precede sub. (1). [s. 1.02 (3), Manual.]
- b. In s. NR 50.23 (3), the phrase “In this section:” should be inserted after the title.

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

a. The analysis of the rule in the cover letter to the Rules Clearinghouse says that the program created by the rule has spending authority of \$225,000 annually. 1997 Wisconsin Act

27 set the yearly appropriation for the program at \$25,000. The rule's fiscal note correctly identifies this amount. The analysis to the rule should be corrected. [Also, unless the cover letter will accompany all future versions of the rule, a separate analysis of the rule should be included on the first page of the rule.]

b. If s. NR 50.23 (4) is intended to limit eligible projects to only those designed to control damage caused by white-tailed deer and Canada geese, it should be amended to reflect that intent. As currently drafted, it is not clear whether projects designed to control damage from other wildlife would qualify for program grants.

c. In s. NR 50.23 (5) (intro.), it appears that the word "of" should be inserted between "costs" and "wildlife" and that the phrase "do any of the following" should immediately precede the colon.

d. In s. NR 50.23 (5) (a), what populations are to be monitored and estimated? Wildlife populations? The rule should be clarified.

e. To improve its helpfulness, the Note to s. NR 50.23 (6) (a) could also include information on how to find the "appropriate department regional office" to which the applications must be sent.

f. Section NR 50.23 (6) (b) (intro.) requires plans to be completed within "2 years of the date of an approved grant." Is the date of an approved grant the date on which an application is accepted, a grant agreement is entered into or a grant is made by the department? The rule should be clarified as to exactly when the two-year time period begins. [This comment also applies to s. NR 50.23 (6) (f).] Also, is it the intent of the rule to require that the application for a wildlife control grant include the applicant's proposed wildlife control plan so that the department can approve it? Sub. (6) (b) (intro.) should be clarified accordingly. Finally, in sub. (6) (b) (intro.), the phrase "all of" should be inserted before the phrase "the following."

g. In s. NR 50.23 (6) (b) 2. and 3., the use of the phrase "and/or" should be avoided. [See s. 1.01 (9) (a), Manual.]

h. Section NR 50.23 (6) (c) requires applicants to comply with applicable laws. Does this requirement also apply to municipalities that have been awarded grants? Also, the word "regulations" should be replaced by the word "rules."

i. The first sentence of s. NR 50.23 (6) (d) should be rewritten as follows: "The department shall notify a successful applicant and send a grant agreement to the applicant." Also, is there a time period in which notifications must be made to successful grant applicants?

j. In s. NR 50.23 (6) (f), the phrase "that was" should be inserted before the word "inappropriately." In addition, par. (f) requires repayment of the grant plus "interest accrued." How is the interest determined? What is the applicable interest rate? The rule should be clarified.

k. In s. NR 50.23 (7) (intro.), the rule, by using the term "include," implies that it is possible that other criteria exist that must be considered by the department when awarding

grants. Is this the rule's intent? If so, who determines what the other criteria are? If not, the rule should be clarified. Also, once criteria are identified, they should be promulgated as administrative rules.

1. In s. NR 50.23 (7) (a), the phrase "on human safety, health" should be replaced by the phrase "to human safety or health."