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CLEARINGHOUSE RULE 98–146

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 September 1998.]

2. Form, Style and Placement in Administrative Code

a. In s. NR 167.03 (1), the material after the word "program" is unnecessary substantive material that should be deleted. If the brownfield environmental assessment program needs to be better identified, a statutory or code cross-reference could be provided. [See s. 1.01 (7) (b), Manual.]

b. Subsections (11) and (12) of s. NR 167.03 could be combined. [See s. 1.01 (8), Manual.]

c. In s. NR 167.07, subs. (1) and (3) have titles. Subsection (2) does not have a title. Titles should be used consistently throughout a unit of a rule. [See s. 1.05 (1), Manual.]

d. In s. NR 167.07 (2) (a) and (b), and elsewhere throughout the rule, the acronyms in parentheses should be deleted. If the acronyms must be used, they should be defined in the definitions section of the rule. If they merely enhance the understanding of the rule, they should be placed in a note to the rule. [See s. 1.01 (6) and (8), Manual.] The entire rule should be reviewed to eliminate this use of parenthetical acronyms.

e. The Note to s. NR 167.09 (1) is substantive material that should be placed in a substantive provision of the rule.

f. The Note to s. NR 167.11 (1) appears to be substantive material and should be placed in a substantive provision of the rule rather than in a note. [See s. 1.09 (1), Manual.]

g. The Note to s. NR 167.14 contains substantive material that should be placed in a substantive provision of the rule rather than in a note. In addition, the term "current rate" should be replaced by a more appropriate term. [See s. 1.01 (9) (b), Manual.]

h. Although the Note to s. NR 167.15 helps the reader understand the substantive provisions of s. NR 167.15, it also contains substantive provisions of its own, e.g., the rate of the servicing fee. Accordingly, it should be placed in a substantive provision of the rule rather than in a note.

i. The Note to s. NR 167.17 (1) contains nothing but substantive material which should be removed from the Note and placed in a separate substantive provision of the rule.

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

a. The definition of "BEAP" in s. NR 167.03 (1) should include a reference to the statute or rule that establishes this program.

b. Section NR 167.03 (18) defines "landfill" by referencing a statute that, in turn, references another statute. The definition in the second statute is short and the rule could be simplified by merely writing sub. (10) as follows: "(10) "Landfill" means a solid waste facility for solid waste disposal."

c. The cross-references in s. NR 167.08 (1) and (2) should include the statutory paragraph letters.

d. The Notes after ss. NR 167.08 (1) and 167.09 (1) refer to forms. Has the department complied with the requirement of s. 227.14 (3), Stats.?

e. Section NR 167.12 (6) requires a political subdivision to agree to comply with provisions specified in the statutes. However, s. 281.60 (8m) (b), Stats., requires the department to specify the federal requirements that apply to political subdivisions. The rule does not make this specification.

f. Section NR 167.12 (9) refers to the "federal single audit act." The rule should provide a U.S. Code reference for this act. The reference to the named federal act could then be included in a note. [See s. 1.07 (3) (a), Manual.]

g. Section NR 167.13 (1) refers to "applicable federal internal revenue service reimbursement regulations covering the use of tax-exempt bond or note proceeds." What are these? An appropriate cross-reference should be provided to better identify the referenced provisions.

h. Section NR 167.19 requires certain requests to be submitted "in the form" specified by the department. Where are the submittal requirements specified? An appropriate cross-reference should be provided.

i. An appropriate cross-reference should be provided to better identify the "U.S. treasury regulations" that must be complied with, as provided in s. NR 167.20.

j. The cross-reference to ch. 19, Stats., in s. NR 167.23 (1) should be more specific, referencing the specific section that applies.

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

a. "Eligible" in s. NR 167.03 (4) is superfluous. This word can be deleted wherever the phrase is used in the rule. For example, see s. NR 167.03 (8).

b. The Note after s. NR 167.03 (11) could be improved by substituting "s. 281.60, Stats." for "this section."

c. Is there any reason for the differences between the definitions of "minority owned business enterprise" and "woman owned business" in s. NR 167.03 (14) and (19)? The former refers to a sole proprietorship, partnership, joint venture or corporation, while the latter refers to an independent business concern. The former requires that the enterprise be currently performing a useful business function, while the latter does not.

d. In s. NR 167.03 (14), the term "currently" should be replaced by a more appropriate term. [See s. 1.01 (9) (b), Manual.]

e. Sections NR 167.04 and 167.05 are written in permissive terms. However, s. 281.60 (7), Stats., ***requires*** a grant to be provided if the specific conditions in the statute are met. How do these provisions in the rule relate to the statutory requirement? Also, should s. NR 167.09 (3) be rewritten to conform with the statute, which requires the department to issue a grant if the criteria in the statute are met?

f. In s. NR 167.07 (2) (intro.), it does not appear that the phrase "scoring system" should appear where it does. Is this phrase necessary? Also, in this provision and elsewhere in the rule, "an" rather than "a" should precede the acronym "LRLP."

g. In s. NR 167.07 (2) (e), there are gaps between the categories. For example, a site that is 3.05 acres is not included in either subd. 2. or subd. 3. Subdivisions 2. to 4. should be rewritten. Subdivision 2. should be rewritten as follows: "2. Greater than 1 acre, but not greater than 3 acres = 2 points."

h. The phrase "but not limited to" in s. NR 167.07 (2) (g) is redundant because it is implied in the word "including." Therefore, the phrase should be deleted.

i. The phrase "in agreement with" in s. NR 167.07 (2) (f) is unclear. Could this be improved by substitution of "consistent with"?

j. The word "in" is misspelled in the Note after s. NR 167.07 (2) (k). Also, at the end of that Note, should the areas designated by the Environmental Protection Agency be areas designated as ***environmentally*** sensitive?

k. The Note after s. NR 167.09 (2) provides that the department may establish an alternate application date. "Alternate" suggests that there would be two different application

dates. Is "different" a more accurate word? Also, the Note is substantive and should be placed in the text of the rule.

l. Should the Note after s. NR 167.09 (3) be rewritten? The second point references eligibility requirements of "this chapter," which is a reference to ch. NR 167. The statute requires compliance with s. 281.59 (9) (b). Also in that Note, in the third point, should "determines" be substituted for "is satisfied"? See also s. NR 167.12 (4).

m. "Political subdivisions" should be substituted for "eligible applicants" in s. NR 167.10 (1). Also, "as" should be inserted after "except."

n. In s. NR 167.12 (4), "demonstrated that it has" is superfluous.

o. In several locations throughout the rule, the term "political subdivision" is referred to without the modifier "eligible." [See for example ss. NR 167.11, 167.12 and 167.13.] Since "eligible political subdivision" is defined in the rule as a city, village, town or county, what is a "political subdivision"? Perhaps the rule should just define "political subdivision" and then provide criteria by which a political subdivision becomes eligible for a loan.

p. Section NR 167.12 (8) requires a political subdivision to submit "written materials required" by the department. What are these materials and how do they become required? Can a cross-reference to the requirement be provided to better identify these written materials?

q. In s. NR 167.12 (9), the term "OMB" should be better identified. Also, the department should ensure that it has complied with s. 2.08, Manual, with regard to the incorporation of the circular by reference.

r. Section NR 167.13 (1) refers to the "internal funds" of a political subdivision. It is not clear what is meant by this term.

s. In s. NR 167.13 (2) (a) and (c), the word "will" should be changed to "shall."

t. The word "the" should be used instead of "said" in s. NR 167.16. [See s. 1.01 (9) (c), Manual.] Also, "LRLP" is not a proper subject for the last sentence. Either the department or the Department of Administration would accept prepayments. Also, it is not clear what is meant by applying the prepayment "pro rata."

u. In s. NR 167.18 (4) (intro.), the word "It" in the second sentence should be replaced by the phrase "This subsection." Also, in par. (a), what does it mean to be required "to use" minority or woman owned businesses "to the extent possible"? Is this a requirement to award contracts to these entities to the exclusion of all others regardless of bid competitiveness? The meaning of par. (a) should be clarified.

v. In s. NR 167.18 (4) (b), the phrase "but are not limited to" should be deleted.

w. Should the rule indicate how the portion of the project costs to be financed at market rate is determined under s. NR 167.18 (4) (e)? Also, what is the relevance of the Note to s. NR 167.18 (4) (e)?

x. A definition of "force account" would be appropriate to clarify the meaning of s. NR 167.18 (5).

y. In s. NR 167.18 (6) (b), are "(r)easonableness reviews" the review of architectural and engineering services referred to in par. (a)? The rule should be clarified.

z. The phrase "in any event" in the last sentence of s. NR 167.18 (7) (a) is superfluous. Also, the clarity of the rule may be enhanced if a note were included better identifying the "cost-plus-a-percentage-of-cost" method of contracting.

aa. Is s. NR 167.20 (3) accurate? Are bonds or notes sold "to" the land recycling loan program, or are these bonds or notes sold by the state to provide capital for the land recycling loan program? If the bonds or notes are sold by the state, the U.S. Treasury regulations would apparently apply to the state, and not to the political subdivisions that receive loans. If there are specific requirements that a political subdivision must meet in order to maintain the tax-exempt status of bonds or notes, it would be useful for the rule to specify what action the political subdivision must take.

ab. Section NR 167.23 (2) does not explicitly provide that the records of contractors are only those records related to a project funded under the land recycling loan program. If this is the meaning of the rule, that should be expressly stated.