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CLEARINGHOUSE RULE 00-136

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 the first paragraph of the analysis, the terms “preliminary dam hazard rating” and “dam hazard rating” should be enclosed by quotation marks.

b. In the second paragraph of the analysis, could the reference to “the required report” be replaced with a more specific description of the report to which the analysis refers?

c. In s. NR 116.08 (3) (a), the phrase “the requirements in this paragraph are met” should be changed to “all of the following requirements are met:”. Also, because the material in s. NR 116.08 (3) (a) 3., 4. and 6. are not affected by the rule, that material should not be set forth in the rule. The treatment clause of SECTION 1 should be rewritten to specify which subdivisions of (3) (a) are affected by the rule and only those subdivisions should be set forth.

However, the department should consider replacing the semicolons at the end of each subdivision with periods. This is the preferred drafting style. [See s. 1.03 (intro.), Manual.] This comment applies also to s. NR 333.04 (1).

d. In s. NR 116.08 (3) (b) (intro.), the phrase “as provided in this paragraph:” should be changed to “as follows:”.

e. In the treatment clause in SECTION 4, the second occurrence of “as” should be changed to “are.”

f. SECTIONS 3, 4 and 5 should be carefully reviewed to ensure that they accomplish what is intended. For example, SECTION 4 rennumbers a subsection to be sub. (4), while SECTION 5 creates a new sub. (4). Also, while SECTIONS 3 and 4 do not affect current sub. (13), SECTION 5 creates a new sub. (13).

A simpler approach for inserted definitions is to use a number and letter combination for a subsection. For example, the new definition of “development” could be placed in a new sub. (3m). This would eliminate the need for the large-scale renumbering of the current subsections in s. NR 333.03. [See s. 1.03 (7), Manual.]

g. In s. NR 333.04 (1) (intro.), “will” should be changed to “shall.” [See s. 1.01 (2), Manual.]

h. In s. NR 333.05 (2), the introductory material does not lead grammatically into the material contained in the paragraphs following that introductory material. In addition, the requirement that analyses be submitted in the form of a report which “addresses” the items set forth in the succeeding paragraphs is vague. Should “addresses” be replaced with “contains” or “includes”? In addition, what is meant by “purpose” in par. (a)?

In par. (b), an explanation of what is meant by “coordination with other agencies” should be provided. Specifically, what must be coordinated with those agencies? Who is responsible for facilitating the coordination? What objective measures are to be used to determine whether coordination has occurred?

In par. (f), it is unclear what the “3 required hydraulic conditions” are. Should this paragraph be rewritten to specify that the report must contain hydraulic modeling of the floodplain during the regional flood assuming: (1) that the dam is in existence and fails; (2) that the dam is in place and does not fail; and (3) that the dam is nonexistent?

i. In s. NR 333.05 (2) (L) 7., does the phrase “the 3 modeled conditions” refer to the “hydraulic conditions” in pars. (f) and (g)? If so, consistent terminology should be used. If not, the rule should specify what is meant by this phrase.

j. Several provisions of the rule inappropriately use parenthetical material or slashed alternatives. [See s. 1.01 (6) and (9) (a), Manual.] For example, see s. NR 333.05 (2) (c), (d), (k) and (L).

k. In the treatment clause in SECTION 11, the reference to “NR 333.06” should be changed to “NR 333.06 (1).” SECTION 11 of the rule should be rewritten to comply with the requirement that underscoring is not used when creating an entire rule unit and strike-throughs are not used when repealing an entire rule unit. [See s. 1.06 (1), Manual.]

l. In SECTION 13 of the rule, s. NR 333.07 (3) (intro.), (a) and (b) should not be shown because those paragraphs are not amended by the rule. Rather, the treatment clause of that section should specify the paragraphs that are affected and only those paragraphs should be set forth in the rule. In addition, Table 1, set forth in that SECTION, would be easier to read if it were

repealed and recreated rather than amended as shown in the rule. [See s. 1.06 (5), Manual.] Finally, the title to s. NR 333.07 should not be shown.

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

In s. NR 333.04 (2) (b), a cross-reference to the rule section under which an order assigning a hazard rating is issued should be added.

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

a. The analysis to the rule should explain precisely how ch. NR 116 is amended to eliminate the “existing paradox” referred to in the last paragraph of the analysis.

b. It appears that the material added to s. NR 116.08 (1) would be more appropriately placed in the provision of the rule relating to flood studies and related mapping.

c. The rule should set forth the standards that will be applied under s. NR 116.08 (2) to determine whether a dam is likely to endanger life, health or property. In addition, is there a procedure for an appeal of a department determination under this section?

d. The analysis to the rule should explain the change made to s. NR 116.08 (5) (a).

e. The term defined in s. NR 333.03 (9), “land use controls,” is a noun. However, the definition of that term describes a condition. Either the defined term should be changed to a condition, such as “subject to land use controls,” or the definition should be changed to correctly reflect the nature of the term defined.

f. Section NR 333.04 (1) (intro.) refers to a “dam failure analysis,” while par. (c) refers to a “dam break analysis.” Do these terms refer to the same thing? If so, consistent terminology should be used. If not, the rule should explain the difference between these two terms.

g. In s. NR 333.06 (1) (a), the phrase “development unrelated to allowable open space” is confusing and vague.

h. In s. NR 333.07 (3) (c) 4., it is unclear what affected property owners must be notified of. In addition, that subdivision should require the names of affected property owners to be included.