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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 03-027

#### 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 2002.]**

#### 2. Form, Style and Placement in Administrative Code

a. It appears that the text of the new ch. NR 162 is largely the same, or the same in large portions, as the text of the current chs. NR 162 and 165. (A side-by-side comparison of the entire current and proposed texts has not been made; however, this is the impression from comparing selected provisions.) If this is the case, there is little if any reason to repeal and recreate the entire chapter. Rather, the changes being made to ch. NR 162 should be made by amending the provisions that are actually changed and the placement of ch. NR 165 into subch. V of ch. NR 162 should be accomplished by renumbering the provisions of the existing chapter, with specific amendments as necessary. The advantage of this approach is, most likely, a much shorter rule-making order that shows exactly how the existing rules are being changed. Reading the proposed rule, it is virtually impossible to determine what changes are being made.

b. The analysis of the rule is extremely brief. If the modifications to the rule are truly extensive enough to warrant repealing and recreating the chapter, it should take a more extensive analysis to describe them.

c. Numerous forms are referred to throughout the rule. The agency should assure that the requirements of s. 227.14 (3), Stats., are met.

d. The use of definitions is quite excessive. The purpose of definitions is to clarify the meaning of terms used in a rule when the intended meaning is not commonly known, cannot be determined by consulting a standard dictionary, or differs from the commonly understood or standard dictionary definition. Definitions should not be provided for terms whose meanings can

easily be discerned based on standard usage and context. Examples of defined terms whose meanings appear sufficiently clear in the context of the rule include “applicant,” “commercial facility,” “contractor,” “debt,” “financial assistance,” “financial assistance agreement,” “government facility,” “hardship financial assistance,” and many others.

e. Also, definitions should not be provided for terms used only once or twice in a rule. Most often, these terms can be replaced in the text of the rule by more descriptive text that does not require definition. For example, the term “closeout date” is used only once in the text of the rule and could easily be replaced by a more descriptive phrase. “Project ranking” is used only once in the title of s. NR 162.33; its meaning is not hard to guess and at any rate is made absolutely clear by the text that follows. “Residential percentage” is used just twice in the definition of terms used in formulae; it should be explained more fully there. (Note that the definition of this term is inadequate--it doesn’t fully explain the term’s meaning and the use of the word “figure” is obscure.) “7-day Q10” is used only in the definition of “dilution ratio,” and could be incorporated into that definition. There are likely other examples.

f. The list of section titles that precedes the text of the rule should be amended to make the title of s. NR 162.66 consistent with the title used in the text of the rule.

g. The note following s. NR 162.003 (19) appears out of place. If not, then its meaning is obscure--what is its significance?

h. The rule frequently uses introductory material that is not harmonious with the wording of the language that follows it. Each item that follows an introductory clause must flow from the introduction both conceptually and grammatically. For example, s. NR 162.003 (48) (a) to (d) should each be a full sentence, starting with “The conveyance system is....” Alternatively, the introduction could be modified to end with the phrase, “... that is all of the following:”. In this case, the word “is” would be omitted from pars. (c) and (d).

Similarly, s. NR 162.03 (1) (intro.) should end with the word “criteria” and pars. (a) to (e) should each start with the phrase “The project is necessary to....” Alternatively, the introduction could be modified to end with the phrase, “... that is necessary for any of the following purposes:”. In this case, the words “Is necessary” would be omitted from each paragraph. The same comment applies to s. NR 162.61 (1).

Also, a number of introductory clauses require that an agreement or other document “include” or “comply with” the listed items, but the listed items are actions, not things. In these cases, the introductory language should require that the agreement “do” all of the listed actions. See, for example, ss. NR 162.06 (3) (g), 162.08 (3) and (4), 162.09 (3), 162.18 (1), and others.

Finally, the rule contains numerous instances of unnumbered introductory material that does not grammatically lead into following subunits. These unnumbered introductions should be appropriately numbered, the following subunits should be renumbered accordingly, and internal cross-references should be corrected. [See for example, s. NR 162.04 (1) (c).]

i. The detailed definition of “planning and design” hardly seems necessary, especially in light of the exhaustive detail regarding cost eligibility found on pages 14 to 21 of the rule.

j. The term “project completion” is used only twice, both times in the context of a project completion date. If the department feels that a definition is needed, then s. NR 162.003 (61) (intro.) should be modified to read: “‘Project completion date’ means the earliest date on which all of the following apply:”

k. Requirements should be written in the active voice, for clarity. For example, the last sentence of s. NR 162.02 (1) should read: “The department shall hold a public hearing regarding the funding policy prepared under this subsection.” Also, s. NR 162.15 (2) would be much clearer in the active voice, stating who must do what, and who may do what.

l. What performance standards are referred to in s. NR 162.03 (1) (d) 2.? Can they be identified by a cross-reference? This comment also applies to later references to performance standards.

m. Notes are not a part of a rule; they are only explanatory and so do not create substantive requirements. It appears that some notes in the rule intend to create substantive provisions, such as the notes following ss. NR 162.04 (1) (a) 32. and 42. and (3) (b), and 162.30 (2) (e) 2. b. and (3) (d) 2. b. If this is the case, they should be placed in the text of the rule.

n. In s. NR 162.04 (1) (b) 8., the word “through” should be replaced by the word “to.”

o. The percentage in s. NR 162.04 (3) (b) should be written as “0.5%” and the sentence should conclude with a period.

p. Since all other paragraphs of s. NR 162.04 (3) have titles, s. NR 162.04 (3) (e) should also be given a title. Also, in sub. (3) (g) 4. and 5., the phrase “shall be” should be replaced by the word “are” and the word “is,” respectively.

q. Since signing the agreement occurs last in the application process, it should be described last in the rules describing that process (s. NR 162.06), not at the beginning of that section.

r. In s. NR 162.09 (3) (intro.), the second occurrence of “subcontractor” should be replaced by “contractor.”

s. Section NR 162.09 (3) (e) does not follow from the preceding introduction; it should be placed in a separate subsection.

t. In s. NR 162.09 (4) (a), the word “that” should be omitted. Also, this provision should either indicate to what the force account method is being compared--such as, to other methods--or that the force account method is the most economical method.

u. In s. NR 162.09 (5) (c), “which cannot be exceeded” should be replaced by “that the contractor may not exceed.”

v. Since ss. NR 162.16 to NR 162.21 apply to more than one subchapter, they could be placed in subch. I or in a subchapter of their own with a title such as “Remedies” and could be made applicable to the entire chapter.

w. Some formulae in the rule indicate multiplication with an “x” while others indicate it with an asterisk. These should be made consistent. (An “x” seems to be the most common convention for this function.)

x. In s. NR 162.30 (3) (b) 2., the words “water quality” should be inserted before the first occurrence of “classification.” Also, the second sentence should refer to “the dilution point value determined under subd. 3 and the classification point value determined under subd. 4.”

y. The acronym “PERF” is unnecessary jargon. It is used only four times, and two of those times it is accompanied by the full term it represents. It should not be used.

z. In s. NR 162.42 (4) (a) (intro.), it appears that the word “one” should be replaced by the word “any.” Also, subd. 2. of that paragraph should end with either “and any of the following applies” or “and all of the following apply,” as appropriate.

aa. Section NR 162.46 (4) should refer to s. NR 162.17, rather than the rules established in that section. This comment applies also to ss. NR 162.53 and NR 162.54. Also, it appears that a more consistent format could be used for s. NR 162.46 (2) to (4).

bb. Section NR 162.47 could be better organized. First, the title should indicate that the section addresses both the type and amount of hardship assistance. It is suggested that sub. (1), titled “General,” consist of two paragraphs, the material currently numbered s. NR 162.47 (1) and (2) (a). It is suggested that sub. (2), titled “Determination of Hardship Financial Assistance,” consist of four paragraphs. The first paragraph would be titled “Determining the Value of ‘H’” and would consist of the material currently numbered s. NR 162.47 (2) (a) 1. In the first sentence, the phrase “the following method shall be used:” would be replaced by “the department shall calculate the value of the variable ‘H’ according to the following formulae:”. (Note that it would be preferable to replace references to “H” with a term that describes what “H” represents.) The next three paragraphs would be titled “‘H’ greater than zero,” “‘H’ equal to zero,” and “‘H’ less than zero,” and would specify the type and amount of hardship financial assistance allowed under each of those circumstances. What is now numbered s. NR 162.47 (2) (b) could be made either a third subsection or a fifth paragraph of sub. (2), with an appropriate title in either case.

cc. Section NR 162.52 should be rewritten using the active voice and less contorted phrasing: “A municipality may not sell a treatment works that received financing under this subchapter unless the municipality receives the prior written consent of the department.” Also, is there a need for additional material specifying how to request approval and the criteria the department will use in deciding whether to grant the approval?

dd. The reference to “subch. IV” in s. NR 162.55 (1) should be replaced with a reference to “this subchapter.”

ee. A note should be inserted following s. NR 162.63 (4) (c) indicating where the financial assistance application form may be obtained.

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

a. The rule frequently uses the word “which” when it should use “that.” Examples are found in ss. NR 162.003 (40) and (51), 162.03 (3) (c), 162.08 (3) (g) and (4) (b), 162.30 (6) and (7) (intro.), and 162.61 (3) (a).

b. In the definition of “lateral,” in s. NR 162.003 (40), the word “user” should be inserted following “institutional.”

c. It may be useful to add a note following s. NR 162.003 (52) indicating that the calculation of parallel cost percentage is specified in s. NR 162.04 (1) (c).

d. In s. NR 162.04 (1) (a) 6., either the second occurrence of “are” should be omitted or a third one should be inserted before “owned and maintained.”

e. The rule frequently uses the word “assure” or “insure” when it should use “ensure.” Examples are found in ss. NR 162.07 (1) (h), 162.08 (5), 162.12 (1) (m), 162.32 (4), 162.64 (6), and 162.68 (1) (e).

f. Section NR 162.30 (1) (f) needs more elaboration to be clear. Also, the term “multi-category project” is jargon and should be replaced with a phrase describing the types of projects intended. The same comment applies to sub. (3) (d) of that section.

g. In the second sentence of s. NR 162.30 (4), the words “a water body included on” should be inserted after “means.”

h. In s. NR 162.42 (1) (b), the phrase “, as calculated under s. NR 162.44 (2),” should be inserted after the word “treatment.” Corresponding to this change, s. NR 162.44 (2) (b) should be deleted and s. NR 162.44 (2) (a) should be numbered s. NR 162.44 (2).

i. In s. NR 162.50 (1), “of financial assistance” should be inserted after “Disbursements.”

j. In s. NR 162.53, the word “shall” should be deleted and s. NR 162.55 should read: “Section NR 162.20 applies to hardship financial assistance projects.”

k. What is meant by “replacement fund information” in s. NR 162.63 (4) (f)? This should be explained.