



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE RULE 08-062

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 January 2005.]

2. Form, Style and Placement in Administrative Code

a. The rule analysis should be redrafted to provide a more complete explanation of the rule. In accordance with s. 1.02 (2) (c), Manual, the analysis is to contain sufficient detail to enable the reader to understand the content of the rule. Currently, the first sentence does not mention the program for which the rules are being promulgated. That sentence also lacks a period. The second sentence should indicate that the rule makes existing provisions related to grant termination and enforcement applicable to the urban forest program.

The description of rule provisions should be written in the present tense. For example, in the first sentence, “will identify” should be “identify.” Note that the analysis that is on the page headed “Report to Legislative Council Rules Clearinghouse” is much more complete than the one accompanying the rule text.

b. The rule summary should include all of the headings in s. 1.02 (2), Manual. If there is no information under a particular heading, this should be stated.

c. Section NR 47.955 (2) (intro.) is not properly drafted as introductory material since it does not end in a colon and lead into the subsequent paragraphs. [See s. 1.03 (8), Manual.] Therefore, it should be par. (a) and the remaining paragraphs should be pars. (b) to (e).

d. In s. NR 47.958 (1) (intro.), “do all of the following” should be inserted before the colon.

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

Section NR 47.955 (2) (d) refers to “the state procurement law under chs. 59, 60, 51 and 62, Wis. Stats.” More precise citations should be provided to procurement provisions in those statutory chapters.

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

a. In general, this rule is drafted imprecisely and contains numerous typographical and grammatical errors. The following comments give examples of problems that occur throughout the rule. The entire rule should be reviewed and revised accordingly.

b. The purpose statement in s. NR 47.950 contains so much detail that the program’s purpose is obscured. It is unnecessary to list every element of the rule (sponsor eligibility, procedures, grant selection, etc.) in this general statement. It could be rewritten much more simply, to read: “The purpose of this subchapter is to establish criteria and procedures for awarding grants to local governments and nonprofit organizations for the repair of catastrophic storm damage to urban forests, as provided in s. 23.097 (1r), Stats.” Also, the second-to-the-last sentence contains a grammatical error (“this program is authorization..”) and the last sentence contains substantive language that does not belong in a purpose statement, but rather in a provision on program funding. This provision and others use the term “not-for-profit organization”, whereas the related statute, s. 23.097 (1r), Stats., uses “nonprofit organization”. To avoid confusion over whether they are two different types of organizations, the rule terminology should conform to the statute.

c. The following comments pertain to the definitions in s. NR 47.952:

(1) Throughout these definitions, and elsewhere in the rule, the plural form of a noun is used when the singular is appropriate. As examples, in sub. (1), “tornados” should be changed to “a tornado”, and “Catastrophic storm events do not include” should be “‘Catastrophic storm event’ does not include.” Using the plural may lead the reader to conclude that more than one event must occur.

(2) Specifically with regard to sub. (1), should rain be included as a catastrophic storm event? The second sentence is not in definition form and should be deleted. Instead, the phrase “and for which the governor declares a state of emergency under s. 166.03, Stats.” should be added at the end of the first sentence. The third sentence should begin with the phrase “‘Catastrophic storm event’ does not include...” and should be rewritten to clearly state which events, besides forest fires, are not considered catastrophic storm events. The current language with regard to droughts, insect infestations or disease, and water saturation due to flooding, is confusing. Are those examples of events not considered catastrophic storm events? If so, is the “secondary impacts” language necessary? What about the phrase “such as would result from”?

(3) In subs. (2) and (4), it is unclear from the definitions of “concentrated development” and “eligible project sponsor” exactly where an urban forest must be located in order to qualify for program funds. Does the “concentrated development” (with its requisite population density) have to be entirely within a single unit of government? Since the governing statute refers to catastrophic storm events “in urban areas”, it might be simpler to define what an “urban area” is, rather than introduce an additional term, “concentrated development.” In subsequent provisions, (see s. NR 47.955 (1) (intro.), for example), reference is made to “cities, villages and concentrated development areas”. That implies that concentrated development areas are outside of cities and villages. Is that the intent?

In sub. (4), it is unclear what is meant by the statement that “eligible project sponsor” means (a local government or nonprofit organization) “with urban forests within a concentrated development that has sustained damage...” It sounds as if the concentrated development, rather than the urban forest, has sustained the damage. Also, “eligible project sponsor” is a cumbersome term to have to repeat throughout the rule. “Sponsor” is an odd word choice for a government entity that receives grant funds. Could “eligible project sponsor” be replaced by “applicant”?

Also, in sub. (4), “urban forests” should read “an urban forest” and “following” should be replaced by “during”. Since “catastrophic storm event” is defined as requiring a gubernatorial declaration, the phrase “for which the governor has declared a state of emergency” should be deleted.

(4) In sub. (5), “formally binding” seems unnecessary, because by its nature a legal contract is binding on the parties. “Specific urban forestry projects” should be singular.

(5) In sub. (6), “accomplished” should be replaced by “completed”.

(6) In sub. (7), could the place be referred to as a “collection yard”, rather than “marshalling” yard? In any event, the definition should read: “means a location in which storm-related tree debris is collected, held, or processed for future use.”

(7) In sub. (8), there is a lack of agreement between “organizations” and “meets”. It is suggested the definition be rewritten to read: “...means an organization that is certified by the internal revenue service as meeting the requirements of section 501 (c) (3) of the internal revenue code and registered with the department of financial institutions.”

(8) In sub. (9), the defined term should be singular. Why does the definition limit the location of urban forests to cities and villages (or other concentrated developments), when towns, counties and tribes may also apply for funds? See also comment 5. c. 3. above.

d. The following comments pertain to s. NR 47.953:

(1) Although titled “Eligibility”, this provision does not clearly set forth program eligibility criteria and should be rewritten to list those criteria, for example, the following:

- a catastrophic storm event has occurred for which the governor has declared a state of emergency.
- the community has sustained damage that is the direct result of the storm event (with an indication of how “direct result” will be determined).
- the community is eligible for assistance because it meets the definition of an urban area (or whatever term will be used).
- the person applying for assistance must be an eligible project sponsor, as defined in s. NR 47.953 (4).
- two or more eligible project sponsors may enter into cooperative agreements to jointly apply for program funds, with one sponsor designated as the agent on behalf of all sponsors to administer the grant agreement on behalf of the joint sponsors.

(2) If the section is rewritten along the lines of the suggestions made here, it should be unnecessary to include certain current language, for example in sub. (3) that all parties to the agreement must be eligible project sponsors.

e. The following comments pertain to s. NR 47.954:

(1) In sub. (2), “eligible project sponsors” should be singular, as should “application forms.”

(2) Subsection (3) could be rewritten more simply as follows: “An eligible project sponsor shall submit an application that is postmarked on a date that is within 60 days of the governor’s emergency declaration of emergency for the catastrophic storm event for which funds are sought.” The first sentence of sub. (4) is redundant, because sub. (3) already says the application must come in on time in order to be considered. Should the second sentence of sub. (4) require the agency to request the additional materials in writing, or should it be clarified that it can do it either in writing or by other means?

(3) In sub. (6), the applicant must be notified of the *status* of the application within 60 days of its completion. Does this mean a final decision must be made by that date or could the agency take more than 60 days to decide? Should the successful, as well as the unsuccessful, applicant also receive that information in writing?

(4) Subsection (8) should be rewritten as follows: “If an eligible project sponsor submits an application but all program funds have been expended during a fiscal year, the department shall hold the application for reconsideration when additional funds become available. The department shall notify the applicant in writing (within a

specified number of days?) of the reason for the delay and the opportunity for reconsideration of the application when additional funds become available.”

f. The following comments pertain to s. NR 47.955:

(1) In the first sentence of sub. (1) (intro.), the term “concentrated development areas” is used, whereas the defined term is “concentrated development”. See also comment 5. c. 3. above about use of that term. Also in sub. (1) (intro.), the second sentence is poorly drafted and should read: “To be eligible for reimbursement, eligible costs shall be incurred within a 365-day period beginning on the date on which the governor makes the declaration of emergency.” In the last phrase of sub. (1) (intro.), the “may” should be eliminated. Also, in legal drafting, the word “includes” means “including but not limited to”. What additional items to those delineated are contemplated? Unless it is too unpredictable, it may be preferable to list all of the items for which reimbursement will be made.

(2) In sub. (1) (a), “cost” should be singular.

(3) In sub. (1) (b), “purchase cost” should read “purchase price”. Also, does “per unit” mean per piece of equipment?

(4) In sub. (1) (f), “filling hole left by removed tree” should read: “filling a hole left by tree removal”. Also, “soil amendment” could be changed to “soil modification”.

(5) In sub. (1) (g), what is “cost of utilization” of wood and brush?

(6) In sub. (1) (h), the cost of mileage does not seem to fit in the category of a “necessary supply”. Should it be a separate item or grouped with other costs, such as salaries and fringe benefit costs?

(7) In sub. (4) (b), it does not make sense to say that a person “receives a contract as a result of the award of the contract.”

g. The following comments pertain to s. NR 47.956:

(1) In sub. (1) (intro.), second sentence, “will” should be changed to “shall”. If the list of factors is intended to be exclusive, the “including” should not be used at the end of the (intro.).

(2) In sub. (1) (b), how is “overall land mass” to be measured?

(3) In sub. (1) (c), “by category, tree removal” should be replaced by “in the categories of tree removal...”

(4) In sub. (1) (d), to what does “community” refer?

h. The following comments pertain to s. NR 47.957:

(1) The title to sub. (1) should not contain a date. The date of the first storm event for which reimbursement is available should be stated in the rule analysis and in an

initial applicability provision in the rule. See s. 1.02 (3m), Manual, about use of an initial applicability clause to indicate that a proposed rule applies to events occurring on or after a specified date. (Note that the title to sub. (1) refers to the period *after* June 13, 2007, whereas it should say on or after June 14, 2007, if that is the correct first date.) Also, sub. (1) states that “individual grant awards” may range from not less than \$4,000 to not more than \$50,000. Does “individual grant award” refer to the total amount that an applicant may receive? If so, does the department intend that a community with less than \$4,000 in urban forest damage would *not* receive any reimbursement under this program? If “individual grant award” refers to just one component of what an applicant might receive, that should be clarified, to avoid the impression that costs of less than \$4,000 will not be reimbursed.

(2) Subsection (2) needs a title.

(3) In sub. (3) (a), should the reference be to applications “approved” by the department, rather than “received” and “evaluated”? Also, “of the governor declared state of emergency” is awkward and could be rephrased: “of the governor’s state of emergency declaration”.

(4) In sub. (5), the two “Project sponsors” should be singular. Also, the sponsor is referred to as “the applicant” once in this provision. Consistent terminology should be used throughout. It is suggested in a comment above that “applicant” be used instead of “eligible project sponsor”.

i. The following comments pertain to s. NR 47.958.

(1) In sub (1) (b), “bank statement” should be plural and the colon after “include” eliminated.

(2) For stylistic consistency with the other paragraphs in sub. (1), sub. (1) (c) (intro.) should read as follows: “Specify all of the following if the project sponsor seeks reimbursement of: employee salaries, or fringe benefits or independent contractor fees.” In sub. (1) (c) 2., the “on” should be “for”.

(3) Subsection (1) (e) should begin with “Request reimbursement only for...”.

(4) In sub. (2), the second sentence, “claim” should be plural. In sub. (3), should the sponsor be able to submit additional documentation if the first items submitted are inadequate to prove expenditures?