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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 19-078

#### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated December 2014.]**

#### 1. Statutory Authority

The proposed rule should be carefully reviewed to ensure that, by combining various statutorily authorized grant programs in one rules chapter, the department has not inadvertently modified or removed purposes, conditions, or eligibility criteria established by statute. For example, subch. II of the proposed new rule chapter implements multiple grant programs, which the statutes require the department to develop and administer. By implementing those programs together in one subchapter, the proposed rule arguably conflicts with statutory program requirements in some circumstances. For instance, grants awarded under s. 281.68, Stats., must relate to “natural lake ecosystems” and must be used to: (1) improve water quality assessment and planning; and (2) aid in the selection of activities to prevent pollution in lakes or protect or improve water quality in lakes. Perhaps in part because that subchapter also implements a statutorily authorized grant program relating to rivers, the relevant provisions in the proposed rule appear to authorize grants for a broader array of projects relating to surface water and aquatic ecosystems. Similarly, the list of eligible activities enumerated for river protection grants under s. 281.70, Stats., does not appear, by reference or otherwise, in the rule. Instead, some such activities may qualify under the more general provisions included in subch. II of the proposed new rule chapter. Where the rule conflicts with statutory requirements, either by omitting or modifying eligibility criteria or other requirements established by statute, it should be revised to remove such conflicts, possibly by establishing more unique criteria for each statutory grant program.

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

- a. In the rule caption's listing of affected provisions, the abbreviation "chs." should be inserted after the word "repeal", and the abbreviation "ch." should be inserted after the word "create".
- b. The proposed rule should be reviewed and revised to be more consistent with respect to whether numbers are spelled out or are expressed in numeric format. With certain exceptions, numbers should generally be expressed using Arabic numerals. [s. 1.01 (4), Manual.]
- c. In s. NR 193.12 (2) (title), the word "agreements" should not be capitalized.
- d. In s. NR 193.19, consider dividing the material into subsections. The same comment applies to ss. NR 193.33 and 193.53 (1).
- e. In s. NR 193.51 (6) (a), it appears that the source designation "Stats." should be inserted for the citation.

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

- a. Throughout the proposed rule, references to various grant programs and websites could be more consistent. For example, choose either "web page" or "webpage", and uniformly capitalize the various grant programs.
- b. Wherever it appears as a pronoun for "grantee", "participant", or "person", consider replacing the word "they" with the phrase "the grantee", "the participant", or "the person".
- c. Generally, the proposed rule should be reviewed and revised to ensure that all definitions provided in s. NR 193.03 are necessary. For example, the term "aquatic life" is defined in s. NR 193.03 (5), but some other provisions of the rule appear to use "aquatic ecosystems", or other terms that similarly incorporate the inclusion of habitat considerations, instead, and in other provisions "aquatic life" is used but may not need to be defined.
- d. Periods should be added at the end of various provisions throughout the proposed rule.
- e. The purpose of the information provided in s. NR 193.03 (3) (Note) should be specified.
- f. In s. NR 193.03 (6), the word "assets" should be singular. In addition, consider clarifying whether the definition requires \$5,000 **plus** \$5,000.
- g. In s. NR 193.03 (31), the phrase "recourse may be had to" could be removed, and a more direct phrase, such as "may be used as an alternative point of reference" could be added after "flowage".
- h. In s. NR 193.03 (39), the word "described" could be revised to "authorized".
- i. In s. NR 193.03 (45), it appears that the first instance of the word "and" should be revised to "or".
- j. In the second-to-last sentence in s. NR 193.04 (1) (f), the phrase "copy of the" could be revised to "copy of each", for greater clarity. In addition, the last sentence in that provision provides a consequence. Does that consequence apply only to that paragraph? Consider whether including a consequence in one paragraph could be interpreted to mean that the department may

make payments notwithstanding noncompliance with requirements in other paragraphs of that subsection.

k. In s. NR 193.04 (1) (h), the reference to “this agreement” could be more clearly identified, for example by adding a cross-reference.

l. In s. NR 193.04 (2), to what retention requirement does the phrase “unless longer retention is directed” apply? It appears that the six-year time period in that provision applies to auditing rather than retention.

m. In s. NR 193.06 (1) (a) 1., what is a grantee’s “established rate”?

n. In s. NR 193.06 (1) (b) 17. (intro.), the word “but” should be removed.

o. In the second sentence in s. NR 193.06 (1) (c), consider adding the phrase “for costs under this paragraph” after “approval”.

p. In s. NR 193.07 (2) (a) (intro.), remove the phrase “To be acceptable.”.

q. In s. NR 193.08 (1) (intro.), the phrase “and where” should be revised to the word “if”.

r. In the third sentence in s. NR 193.08 (1) (c), the antecedent for “their” should be clarified in the third sentence, and the authority for establishing a flat rate could be clarified, more generally. The last sentence appears to allow a grantee to establish the grantee’s own flat rate, but the first sentence authorizes the department to establish such rates.

s. In s. NR 193.08 (1) (e), the phrase “if grantee determines” is somewhat awkward. It could be replaced with a phrase such as “The grantee may propose an alternative”.

t. Section NR 193.08 (2) (c) should be rephrased to identify the boundary of the “measure”, as is done in the other paragraphs.

u. In the second-to-last sentence in s. NR 193.09 (1) (a), the word “include” should be revised to the word “including”.

v. In s. NR 193.09 (2) (a) and (b), the two 30-day periods could be clarified, for example by specifying that the 30-day period under par. (a) begins after the department receives a **complete** application.

w. In s. NR 193.09 (5), what does it mean for an applicant to be notified of a “likely” amount of grant funds? Will the department notify the applicant of an actual award amount at a different stage in the process? If so, that should be specified.

x. In the last sentence in s. NR 193.09 (6), the word “applications” should be revised to “applicants”.

y. In s. NR 193.11 (1), consider identifying the criteria that will be used to establish grant funding priorities.

z. In the last two sentences in s. NR 193.12 (2), the phrases “becomes” and “mutually agree” could be modified to clarify the required nature of those actions, for example by adding the word “shall”.

aa. In the third-to-last sentence in s. NR 193.12 (3), delete “the requirement of”.

bb. In s. NR 193.13 (3), both the first and last sentences appear to impose requirements, beyond simply identifying the essential conditions. If so, that broader application should be more clearly identified and addressed.

cc. In s. NR 193.18 (Table 2), could the last box in the second column be modified to more simply refer to all other subprograms?

dd. In s. NR 193.31 (4), the phrase “focus on providing” could be revised to the word “provide”.

ee. In s. NR 193.32 (1) (f), consider clarifying the stage at which public input is required.

ff. In s. NR 193.42 (1) (d), remove the comma in the first sentence.

gg. In s. NR 193.51 (1) (c), clarify which funding cap is referenced, for example by adding a cross-reference.

hh. The locational criteria in s. NR 193.52 (1), in conjunction with the definition of “wetland” in s. NR 193.03 (59), could be interpreted in some cases to disallow a project to restore a former wetland, for example through drain tile removal. Is that the intent?

ii. In s. NR 193.52 (3), consider moving “unless the property is owned by the state” to the beginning of the sentence.

jj. In s. NR 193.53 (2) (intro.), should the word “may” be revised to “shall”?

kk. In s. NR 193.53 (2) (d), there appear to be one or more missing words.

ll. In s. NR 193.54, the comma following “aquatic plants” should be revised to a semicolon.

mm. In s. NR 193.65 (4), the word “do” should be revised to “does”.

nn. Section NR 193.72 (intro.) appears to provide that only counties are eligible for lake monitoring and protection network contracts. If so, that limited eligibility could be clarified. Also, in s. NR 193.72 (intro.), the considerations for designating an agent are separate from the issue of who is an eligible grantee. That material should be separated into a different provision.

oo. In s. NR 193.72 (4), the word “outline” should be changed to “outlined”.

pp. In ss. NR 193.84 (12) (b) and 193.86 (2) (b), both instances of the phrase “is grant eligible” could be revised to “is eligible for grant funding under this subchapter”.

qq. Section NR 193.85 (1) appears to duplicate the general grant condition under s. NR 193.84 (13).

rr. What is the distinction between the “general conditions” under s. NR 193.84, the “additional conditions” under s. NR 193.85, and the “essential conditions” under s. NR 193.88? Could those sections be combined?

ss. In s. NR 193.87 (1), the phrase “Disbursement of grant funds are not possible” should be revised to the phrase “Grant funds shall not be disbursed”.

tt. In s. NR 193.87 (2), it could be clarified that only title to property held by a grantee will vest in the state.