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RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 00-081

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.]

1. Statutory Authority

a. This rule appears to use the fewest words possible to comply with the requirement that rules be promulgated. The result is a rule, but not a program. Clearly, by requiring the department to promulgate rules, the Legislature intended the department to flesh out the programs it was creating and to specify minimum program requirements in a process that is open to the public and subject to legislative review. In strong contrast to this, the rule reveals almost none of the mysteries of how this program will be implemented.

In particular, s. 16.957 (2) (c) 2., Stats., requires the department to promulgate rules establishing requirements and procedures for applications for grants awarded under public benefit programs. Section Adm 44.04 contains the few provisions that relate to this topic, requiring only: (1) that the application process be fair and competitive; (2) that a public notice of it be issued including a statement of the purpose of the grant, the selection criteria and application procedures and deadlines; and (3) that applicants apply to the department or program administrator on department forms. The information that the rule requires to be included in the public notice is the information that s. 16.957 (2) (c) 2., Stats., requires to be in the rule; at a minimum, these requirements and procedures must be spelled out in the rule, not left to the program administrator to specify.

Similarly, s. 16.957 (2) (c) 2m., Stats., requires the department to promulgate rules establishing criteria for the selection of proposals to fund; s. 16.957 (3) (b), Stats., requires that the program administrator use the criteria in those rules to select proposals for funding. In

contrast, s. Adm 44.05 (1) (intro.) directs the program administrator to submit to the department for review the selection criteria that will be used to evaluate grant applications and to select contractors. The criteria must be spelled out in the rule, not left to the program administrators to specify.

b. Section Adm 44.06 (intro.) directs the department to provide program administrators with standard terms and conditions to be used in all grant agreements between a program administrator and a contractor. The statutes define the term “rule” to mean “a regulation, standard, statement of policy or general order of general application which has the effect of law and which is issued by an agency to implement, interpret or make specific legislation enforced or administered by the agency or to govern the organization or procedure of the agency” [s 227.01 (13) (intro.), Stats.] “Standard terms and conditions to be used in all grant agreements” clearly falls within this definition of “rule” and so should be promulgated as part of this rule, rather than being left for articulation by the department at a later date.

2. Form, Style and Placement in Administrative Code

a. The analysis of the rule neither analyzes nor explains the provisions of the rule, but instead merely states the subject of the rules in a paraphrased restatement of the statutes that require the rules.

b. Given the brevity of the new chapter created by this rule and the close relationship between it and the new chapters created in Clearinghouse Rules 00-80 and 00-82, the department may want to consider creating them as three subchapters of a single chapter of the Wisconsin Administrative Code.

c. In s. Adm 44.04 (3), the word “must” should be replaced by the word “shall.”

d. Since s. Adm 44.09 relates to decisions made under s. Adm 44.05, it would make more sense to number those sections in sequence, one after the other. Sections Adm 44.07 and 44.08 are on an entirely different subject, and should be placed at the end of the chapter. Also, in s. Adm 44.09 (2), the phrase “shall have the authority to” should be replaced by the word “may.”

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

a. In s. Adm 44.03 (9), the reference “chapter 181” should be replaced by the phrase “ch. 181, Stats.”.

b. Section Adm 44.04 (3) refers to department forms. The department should ensure that the requirements of s. 227.14 (3), Stats., are met.

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

a. Section Adm 44.04 (3) states that applicants may apply to the department or to the program administrator. Under what circumstances is an applicant to apply to the department and under what circumstances is an applicant to apply to the program administrator or is this choice at the discretion of the applicant? This should be clarified. If the rule gave a complete set of requirements and procedures for the program, these points would be clearer.

b. Section Adm 44.05 (1) (d) refers to compliance with the policies and goals of the public benefits program. What policies and goals are referred to? Where are they articulated? This should be clarified.

c. A period should be inserted at the end of s. Adm 44.08 (2).

d. In s. Adm 44.09 (2) and (3), why is the word “promptly” used? The department should be able to specify a specific number of days within which it will act. Also, in sub. (4), it would be appropriate to state that a contract entered into while a protest or appeal is pending is void or voidable.