WISCONSIN LEGISLATIVE COUNCIL
RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 07-011

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.]

1. Statutory Authority

a. The analysis to the rule should contain a citation to s. 28.05 (3), Stats., both as a source of statutory authority for the provisions of the rule pertaining to cooperating foresters and as a statute interpreted by the rule.

b. The rule does not appear to comply with the requirement set forth in s. 28.05 (3) (a), Stats., that the DNR ". . .shall establish in the rule a method for determining what portion of the proceeds received from each timber sale shall be paid to the private cooperating forester for their services …." The rule does not appear to establish a "method" for determining payment but only states that foresters shall be compensated at the department's choice of a rate per hour, acre, or project established by bids for individual timber sales.

2. Form, Style and Placement in Administrative Code

a. The plain language analysis to the rule incorrectly identifies the content of Section 1 of the rule as appearing in Section 2 of the rule and vice versa.

b. In s. NR 1.26, the introduction does not grammatically lead into the following subunits. Thus, the introduction should be renumbered as sub. (1) and the remaining subsections should be renumbered accordingly.

c. In s. NR 1.26 (1), the word "defined" should be replaced by the word "given."

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d. The rule should be reviewed for the proper use of "may" and "shall." For example, in the last sentence of s. NR 1.26 (2), "will" should be changed to "shall." In the second sentence of s. NR 1.26 (3), the phrase "is responsible for review and approval of" should be replaced by the phrase "shall review and approve."

e. In the third sentence of s. NR 1.26 (4), it appears "may" should be changed to "shall." If the department does not establish lists of cooperators, then to whom will the department issue requests for bids?

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

Section NR 1.26 (1) should refer to only s. NR 1.21 (2) (b) in the definition of "cooperating forester," since that provision sets forth the definition of "cooperating forester." It is unnecessary to cite s. NR 1.21 (2) (e), because the definition of "cooperating forester" incorporates the term "forester," which is separately defined in s. NR 1.21 (2) (e).

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

a. Section NR 1.26 (4) should set forth clear, consistent standards for the department to apply when determining which foresters will be granted the status of "pre-qualified cooperating forester." As currently written, the standards are somewhat vague and the rule allows the department to use standards other than those set forth in the rule ("other objective criteria") at its own discretion. The rule could also set forth a procedure by which foresters are notified of and given the opportunity to apply to be included on the list and an appeal procedure which may be used by applicants who are rejected.

b. The rule should explain what is meant by the terms "check cruise" and "cruising," used in s. NR 1.26 (4), unless they are known terms of art in the industry.