Wisconsin Legislative Council
RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 22-045

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Council Staff and the Legislative Reference Bureau, dated November 2020.]

1. Statutory Authority

Until recently, a municipality was required by statute to submit a notice of intent to apply for clean water fund program financial assistance. [See s. 281.58 (8m), 2019 Stats.] That requirement was repealed by 2021 Wisconsin Act 112, though the agency's statutory authority under s. 281.58 (2), Stats., to "promulgate rules that are necessary for the proper execution of its responsibilities", was not directly affected by the act. The agency's August 26, 2021 testimony on 2021 Senate Bill 489, before the Senate Committee on Utilities, Technology and Telecommunications, included support for the elimination of the intent to apply requirement. Senate Bill 489 passed both houses of the Legislature without amendment, and was enacted as Act 112.

The proposed rule, similar to the current administrative code, requires a municipality to submit a notice of intent to apply for clean water fund program financial assistance. [See, e.g., ss. NR 162.05 (1), 162.24 (1), and 162.40 (1) in the proposed rule.] Given the recent repeal in statute of the requirement, could the agency more clearly articulate the need to retain such a requirement in the proposed rule? Similarly, it may be useful for the agency to describe how its approach to the program has changed since the testimony in favor of Senate Bill 489.

2. Form, Style and Placement in Administrative Code

a. Throughout subch. 1, certain definitions are drafted as references to statutory definitions, and some of those statutory definitions are then provided in Notes while others are not. The agency could consider standardizing the approach to providing statutory definitions in Notes. In addition, the agency should consider the following with regard to definitions in s. NR 162.001:

(1) In sub. (40) (d), "1" should be changed to "one". [s. 1.06 (3), Manual.]

(2) In the Note after sub. (41), "the" should be added after the second instance of "DOA".

(3) Relative to the definitions in subs. (43) and (47), use of the terms "minor civil division" and "municipality" may create confusion in certain instances in the text of the proposed rule. Consider, for example, s. NR 162.10 (2) (d) 1., for its use of the phrase "county or a minor civil division, such as a town" and s. NR 162.10 (2) (d) 2. c., for its use of the phrase "minor civil division, such as a town, within which the municipality is located". Given the breadth of the proposed rule's definition of "municipality", would it be beneficial to revise the definition of "minor civil division" to be a city, village, or town, because those three entities could be characterized as "the primary governmental divisions of a county?" At minimum, it is unnecessary to maintain the qualifying term "such as a town" in reference to "minor civil division" as the phrase is already included via the definition of "minor civil division".

(4) In sub. (68), it appears that the definition of "septage" should cite the statutory definition in s. 281.58 (1) (cv), Stats., instead of the definition in s. NR 113.03 (55), and the Note should be conformed accordingly.

(5) In the Note after sub. (69), it appears that part of the definition copied from s. NR 110.03 (28) is missing.

(6) In subs. (80) and (81), "treatment works" should be changed to "treatment work" to be consistent with the definition created under sub. (77).

(7) In sub. (82), the cross-reference to s. NR 216.06 (2) (c) to (e) appears to be incorrect as that provision does not exist in the current administrative code.

b. The proposed rule should include definitions of the following acronyms: "BOD" (used in s. NR 162.49 (2) (c) 1. (intro.) and a. to e.); "CBOD" (used in s. NR 162.49 (2) (c) 2. (intro.) and a. to e.); and "DO" (used in s. NR 162.49 (2) (c) 4. (intro.), a., and b.).

c. The proposed rule defines the term "substantial completion". It does not define the terms "substantially complete" and "substantially completed". These latter two terms are used in the proposed rule in the following provisions: ss. NR 162.01 (intro.), 162.09 (1), and 162.38 (1) (intro.) and (2) (h). Should these provisions use the defined term instead of one of the undefined terms? If not, will the undefined terms be understood properly by the agency and stakeholders?

d. Section NR 162.03 (1) (a) 1. gives the agency discretion to determine whether certain facilities are considered part of a project. The relevant language is that the agency "may determine" or "may also determine". Should the proposed rule establish criteria for the agency to make those determinations?

e. In s. NR 162.03 (1) (d) 2. (Note), in the first sentence, should "this section" instead be "this subsection"? The note discusses traditional wastewater projects, which are the focus of only sub. (1) of s. NR 162.03 and not the entire section.

f. In s. NR 162.055 (5) (a), the undefined acronym "DOT" should be spelled out as "department of transportation".

g. In s. NR 162.06 (1) (m) 2., the phrase "requesting a loan term greater than 20 years" is unnecessary because par. (m) applies to only an applicant requesting a loan term greater than 20 years.

h. In s. NR 162.14 (1) (a) 4., "department of administration" could be replaced with "DOA". That acronym, which is defined, is used in every other instance in the proposed rule.

i. In s. NR 162.16 (2), the agency gives itself and its agents the authority to inspect and copy records of the recipient and the recipient's contractors. This is exceedingly broad authority. Should the rule confine this authority to records **pertinent** to an award of CWFP assistance rather than applying it to **any** records? Compare, for example, the narrower approach taken in s. NR 162.30 (1) (e) 1. of the proposed rule.

j. In s. NR 162.22 (2) (intro.), it should be clarified that each of the paragraphs following the colon must be satisfied (if that is the intent).

k. In s. NR 162.23 (2) (o), the phrase "the CWFP receives acceptable documentation" is not clear. The CWFP is a program. How does a program receive documentation? Would "the department receives acceptable documentation" or a similar formulation achieve the desired goal?

l. In s. NR 162.38:

(1) In sub. (1) (a) 1. a., the reference to the statutory definition of septage in s. 281.58 (1) (cv), Stats., should be changed to the definition of septage provided in s. NR 162.003 (68) of the proposed rule.

(2) In sub. (1) (b) 1. (intro.), it appears that the reference to "sub. (1)" should be changed to "par. (a)".

(3) In sub. (1) (c) 2. (intro.), the agency should check to make sure the reference to "par. (a)" is correct.

m. The Note to s. NR 162.42 (1) appears to be substantive, so that material should be included in the text of the rule. [s. 1.12 (1) (c), Manual.]

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

a. In several places, the proposed rule refers to either the "U.S. census bureau" or the "U.S. bureau of the census". The latter is the official name of the entity, and references should be conformed.

b. In s. NR 162.05 (4) (j), the phrase "A copy of the existing user charge system information regarding the proposed user charge system," is hard to understand and may contain a typographical error.

c. In s. NR 162.055 (3), "their municipal attorney" should probably be changed to "its municipal attorney".

d. In ss. NR 162.055 (5) (a) and 162.11 (1) (q) (intro.), the agency could consider changing "assure" and "assuring" to "ensure" and "ensuring", respectively.

e. In s. NR 162.08 (4) (a) (intro.):

(1) The designation "s." before "40 CFR part 33" should be removed.

(2) The phrase "in the manner determined by the CWFP" is not clear. The CWFP is a program. How does a program make a determination? Would "in the manner required by the CWFP" or "in the manner determined under this chapter" or a similar formulation achieve the desired goal?

f. In s. NR 162.09 (1):

(1) The phrase "if the reimbursement is in compliance with applicable U.S. treasury reimbursement regulations in 26 CFR 1.150-2 are met" may contain a typographical error. Should "are met" be omitted?

(2) The phrase "for its for its" is a typographical error.

g. In s. NR 162.11 (1) (q) 3.:

(1) Add a period after each number in the reference "subds. 1 and 2".

(2) In the phrase "on which it the project", omit either "it" or "the project".

h. In s. NR 162.16 (1), "recipients' compliance" should probably be changed to "recipient's compliance" because the reference appears to be singular.

i. In s. NR 162.49 (2) (c) 5. (intro.), the phrase "For ammonia limits, the department shall assign the highest of the points for either chronic or acute as follows:" is confusing. Does the agency intend there to be one score for ammonia, either the 5 points for acute ammonia if the chronic ammonia point score is lower than 5, or the highest points for chronic ammonia if that score is above a 5?

j. In s. NR 162.49 (3) (c) 3. b., will applicants know what is meant by "green technology"?