



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 03-029

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 October 2002.]

1. Statutory Authority

Section NR 19.77 relates to facility standards for wildlife rehabilitation activities. Section 169.39 (3), Stats., provides that “No license may be issued under this chapter unless the department determines that the applicant will comply with all of the rules promulgated under subs. (2) and (3).” Subsection (3) states “The rules shall include requirements for the size and location of permanent enclosures and of temporary enclosures at locations other than those where the wild animals are permanently housed. The rules regulating the location of enclosures shall include the distance required between 2 enclosures.” Section NR 19.77 (2) provides enclosure size and construction standards, but does not include requirements for location of enclosures. Are location standards for enclosures included in a different rule?

2. Form, Style and Placement in Administrative Code

a. In the statement of statutory authority, it appears that the reference to “169.24 (3)” should be replaced by a reference to “169.24 (2).”

b. In SECTION 2, “NR 19 Subchapter II (title) is renumbered NR 12 (title) Subchapter II.” The analysis says “Section two creates the second subchapter in ch. NR 12 on the wildlife damage program and moves the rules pertaining to the damage program from ch. NR 19 to this subsection.” However, SECTION 2 only renumbers the title of the rule. The treatment clause for SECTION 2 should be changed to renumber all of the rule sections under subch. II of ch. NR 19.

c. In s. NR 19.71, the introduction should read: “In this subchapter:”. In sub. (1), the word “for” should be replaced by the word “under.” In sub. (5), the word “a” should be deleted and the referenced standards should be incorporated as provided in s. 227.21 (2), Stats. In subs. (11) and (12), the phrase “as used in this subchapter” is redundant and should be deleted. In sub. (13), the word “wildlife” should be inserted before the word “rehabilitation.” Finally, subs. (1) and (3) should be rewritten. An advanced licensee or a basic licensee clearly refers to a person and should not be defined to mean a license.

d. In s. NR 19.72 (2) and (4), the term “rehabilitation” should be changed to the defined term “wildlife rehabilitation.” Also, in sub. (4), the phrase “This license” should be replaced by the phrase “A wildlife rehabilitation license.”

e. Section NR 19.73 (2) (a) (intro.) should be rewritten to read: “An applicant for a basic license shall meet all of the following requirements:”. Titles to rules are not part of rule text. Consequently, it is insufficient to refer to the basic licensee in the title of sub. (2). In sub. (2) (a) 1. the term “sponsorship agreement” should be defined in the definition section of the rule. Also, “the applicant’s” should be inserted before “wildlife rehabilitation activities.” Subsection (2) (b) 2. refers to “Federal migratory birds and federal or state endangered or threatened species.” Can these terms be defined in the rule? In sub. (2) (d), the phrase “are not authorized to” should be replaced by the phrase “may not.” In sub. (3) (a) 1., “the applicant’s” should be inserted before “advanced licensee sponsor” and “the” should be inserted before “applicant.” In sub. (3) (b) (intro.), “of the following” should be inserted after “any.” In sub. (3) (d) (intro.), “all of the following conditions apply” should be inserted before the colon. In sub. (3) (d) 2., the phrase “to a department agent” should be inserted after “provided.” Subsection (3) (d) 4. refers to “human care and housing standards defined in s. NR 19.78,” but that section is entitled “Care and treatment of wildlife.” Will the sponsorship agreements referenced in sub. (2) and the forms cited in sub. (3) be available from the department? If so, a note should be inserted indicating how and where to obtain them.

f. In s. NR 19.74, a Note should be inserted stating where and how the application form, veterinary agreement, and sponsorship agreement can be obtained from the department. [See s. 227.14 (3), Stats.] In sub. (1) (intro.), “all of the following” should replace the first “the” and “all of” should be inserted before the second “the.”

g. In s. 19.75 (1), the phrase “is required to” should be replaced by the word “shall.” Subsection (2) refers to the “wildlife rehabilitation advisory committee,” but the defined term in s. NR 19.71 (2) is “advisory committee.” One term should be used consistently throughout the rule. In sub. (3) “Applicant” should be changed to “An applicant.” Also, sub. (3) should specify when the 30 day time period begins – from the date of the test? The date the exam score is received? Also, a note should be inserted stating where and how the study guide in sub. (4) can be obtained from the department. Finally, the word “permit” should be replaced by the word “license.”

h. In s. NR 19.76 (3) (intro.), the phrase “do any of the following” should be inserted after the word “may.” Subsection (3) (c) should conclude with a period. In sub. (3) (d), the phrase “to the guidelines established in” should be replaced by the word “with.”

i. In s. NR 19.77 (1) (intro.), the phrase “be subject to all of the following conditions” should conclude the introduction.

j. In s. NR 19.78 (1) (intro.), the phrase “either the” should be replaced by the phrase “treated under one of the following options.” In subs. (1) and (8), the rule should be made clear that the determination of rehabilitation is in the hands of the licensee.

k. In s. NR 19.79, a note should be inserted that explains how to contact the department’s wildlife health program.

l. In s. NR 19.80 (2) (intro.), the phrase “Each persons [sic] required to hold a rehabilitation license” should be replaced by the phrase “An advanced licensee and a basic licensee.”

m. In s. NR 19.81 (2), the word “a” should be inserted before the word “decision.”

n. In s. NR 19.82, the title refers to “advanced sponsors.” In s. NR 19.71, “Sponsor” is a defined term; so it appears that “advanced sponsors” should be changed to “sponsors.” Also, in s. NR 19.82 (intro.), “Persons” should be changed to “A person,” and “do all of the following” should be inserted after “shall.”

o. In s. NR 19.83, the title is “Rehabilitation advisory committee” and subs. (1) and (2) refer to “wildlife rehabilitation advisory committee.” However, the defined term in s. NR 19.71 is “Advisory committee.” It is suggested that the definition of “Advisory committee” be changed to “Wildlife rehabilitation advisory committee” and that the new term be used throughout the rule. Also, in sub. (1), the word “designate” should be replaced by the word “appoint.”

p. In s. NR 19.84 (1) and (2), the word “rule” should be replaced by the word “section.” Subsections (2) and (3) should be combined and subs. (4) and (6) should be included in the appropriate portions of the rule dealing with these subjects. In sub. (5), the phrase “will be required to” should be replaced by the word “shall.”

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

In s. NR 19.71 (1), it appears that the notation sub. “(4)” should be changed to “(3).” In sub. (12), “s. 169.01 (30), Stats.,” should be changed to “s. 169.30 (30m), Stats.”

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

a. In s. NR 19.71 (2), “the secretary’s” should be inserted before “designee.” In sub. (8), “devices” should be changed to the singular “device.”

b. In s. NR 19.73 (2) (b) 1., the first occurrence of the word “and” should be replaced by the word “or.” [See also sub. (3) (b) 2.]

c. In s. NR 19.74 (1) (d), “the” should be inserted before “applicant.” In sub. (2), “individuals” should be changed to the singular “an individual.”

d. In s. NR 19.76 (2), “applicants” should be changed to “applicant’s.” Also in sub. (2), “standardized facility inspection form” should be a defined term in s. NR 19.71.

e. In s. NR 19.76 (2) and (3), is it the department’s intent to require an applicant to allow an inspection as a condition of receiving a license? If so, the license requirements under s. NR 19.73 should be changed to require an inspection of an applicant’s facilities. Also, in sub. (3) (b), “or applicant” should be added after “licensee.” In sub. (3) (c), it appears that “or applicant’s” should be removed since presumably an applicant does not have a license for the department to suspend.

f. In s. NR 19.77 (1) (e), it appears that the phrase “in-house” should be deleted. In sub. (1) (h), it appears “individuals” should be changed to “animals.”

g. In s. NR 19.78 (2), “A” should be inserted before “Licensee.” The same problem occurs in s. NR 19.79.

h. In s. NR 19.80 (1), a “license may not be renewed until after the licensee has submitted any required annual report and any additional required records that the department has specifically requested.” Section 169.33 (3) (a), Stats., provides that a person applying to renew a license shall file an application with the department. The rule should specify that an application is among the items required by the department for a license renewal. The rule should also clarify what is required in an “annual report.” In sub. (2) (intro.), “persons” should be changed to the singular “person.”

i. In s. NR 19.81, the title is “License duration and renewal,” but the rule does not address this topic. It appears that either the title should be changed or perhaps s. NR 19.80 (1) could be moved to s. NR 19.81.

j. Section NR 19.84 (2) should specify the types of “Wisconsin permittees” covered in the rule. In sub. (3), it appears that “from the effective date of the provisional license” should be inserted after “After 2 years.” In sub. (4), “persons” should be changed to “a person.” In sub. (4), it appears that “after the effective date of the rule” should be added after “2 years.” Also, “4 or more years” should be changed to “at least 4 years.” In sub. (5), “Individuals” should be changed to “An individual.”