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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 03-031

#### 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**

The rule should specify the distance required between two enclosures in which captive wild animals are held, as appears to be required by s. 169.39 (3), Stats. Also, it appears that all portions of the rule relating to the humane treatment of captive wild animals should be reviewed for compliance with s. 169.39 (2), Stats., which requires the rules to establish standards relating to the “housing, care, treatment, enrichment, feeding and sanitation” of wild animals regulated under ch. 169, Stats. Finally, none of the provisions in the rule relating to the care of captive wild animals require animals to be provided with food, although this requirement exists under current ch. NR 17.

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

a. The rule would be more useful if it set forth requirements relating to license application and eligibility requirements, license fees, license renewals, the period for which a license is valid, department inspections, and grounds and procedures for revocation of licenses. If the department chooses not to include these provisions in the rule, references to the statutory provisions establishing these requirements should be included in the rule.

b. The entire rule should be reviewed for the correct use of introductory material. An introduction grammatically leading into following subunits should clearly indicate to the reader whether all of the following conditions must be met or whether any of the following conditions

must be met. Also, when this is correctly accomplished, as in s. NR 17.11, the following subunits all should conclude with a period.

c. The rule should be reviewed for conformance to proper drafting style of introductory material. Specifically, the introductory material must lead into the subunits. In s. NR 17.01 (2), the introductory material does not lead into the subunits. The introductory material provides that: “The licensee shall be subject to the following conditions:” but par. (d) applies to “any person using captive wild birds for dog training,” and par. (c) sets forth a requirement for license applications. Also, see s. NR 17.03 (2) (c), which, despite the introductory material stating that the subsection sets forth requirements for “licensees,” contains requirements applicable to “any person using captive wild birds or wild animals for dog training” and “club members.” [See s. 1.03 (8) of the Manual.]

d. The information in the Note following s. NR 17.04 (3) is substantive and should be placed in the text of the rule. [See s. 1.09 (1) of the Manual.]

e. In s. NR 17.06 (1), “valid” should be deleted.

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

a. The internal reference in s. NR 17.05 (2) should be changed to “sub. (1).” [See s. 1.07 (2) of the Manual.]

b. Would it be possible to include a description of the requirements of 50 C.F.R. s. 21.13 (b) in an explanatory note following s. NR 17.06 (2) (e)?

c. Section NR 17.07 (1) should contain a cross-reference to the rule section under which captive wild animal farm licenses are issued.

d. In s. NR 17.10 (2), the reference to “s. NR 17.10 (1)” should be replaced by reference to “sub. (1).”

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

a. The analysis to the rule should explain why the requirements relating to the use of firearms in dog training [s. NR 17.02 (4) (b)] and vaccination requirements for dogs [s. NR 17.01 (6) (d)], which appear in current ch. NR 17, are not included in ch. NR 17 as recreated by the rule.

b. Section NR 17.001 (3) refers to a “recognized dog organization.” If the organization is the same as a “dog club” as defined in sub. (4), then the term “dog club” should be used in sub. (3). Also, what does the word “recognized” mean? Who makes this recognition?

c. In s. NR 17.001 (8), should “the animals” be changed to “any captive wild animals”?

d. The Notes to ss. NR 17.01 (1) and 17.06 (1) state that the selling, breeding, or propagation of certain animals is allowed under ss. 169.08 (2) and 169.10 (1) (b) and (2) (a) 2., Stats. The list of affected animals in the Notes does not include bobwhite quail. However, the

term “bobwhite quail” does not appear in ch. 169, Stats. What is the source of this exception in the Notes? Finally, the cited statutes do not appear to use the terms “selling” or “breeding.” Why are these terms used in the Notes?

e. In s. NR 17.01 (1), it is unclear whether “that are bred in captivity” refers to only mallard ducks or to all of the types of birds listed.

f. In s. NR 17.01 (2) (a), it appears that it should be clarified that a licensee must have a license in the licensee’s possession when engaged in dog training.

g. In s. NR 17.02 (3) (a) 3., should a reference to the ability to turn around be included? [See ss. NR 17.03 (2) (d) 3. and 17.07 (3) (a) 3.]

h. In s. NR 17.03 (2) (a), could the rule be more precise as to what constitutes “physical proximity to the clubhouse”?

i. Section NR 17.04 (2) (c) refers to an “individual.” The rule usually refers to a “person.” The term “person” should be used consistently throughout the rule. In sub. (2) (d), what is an “unprotected” wild animal? [See, also, s. NR 12.08 (2) (d).]

j. The text of s. NR 17.04 (3) (a) (intro) should state clearly that the exceptions listed apply only to the northern restricted zone. The title of the paragraph is not sufficient to convey this information, as titles are not part of the substance of the rule itself. [See s. 1.05 (3) (a) of the Manual.]

k. Section NR 17.04 (3) should be rewritten to differentiate between requirements that apply to licensees and those that apply to license applicants.

l. Sections NR 17.05 and 17.10 should contain a detailed explanation of the location of the dog training and trial grounds listed. If these areas are more precisely delineated elsewhere in department rules, or in the statutes, a cross-reference to those sections would be sufficient. Also, how is a reader to know whether use of equine animals in these areas has been “designated” by the department? Finally, what are the standards and procedures for department approval of dog training grounds referred to in ss. NR 17.05 (2) and 17.10 (2)?

m. The first sentence in both ss. NR 17.06 (2) (b) and 17.07 (2) (b) is incomplete.

n. Why does s. NR 17.07 (2) (c) require the license application to contain the address and phone number of the owner of the property on which a hound dog trial is held while s. NR 17.06 (2), relating to bird dog trials licenses, does not require this information?

o. There appears to be a typographical error in the title to s. NR 17.08 (2) (c).

p. In s. NR 17.08 (2) (d), how is the killing of any free roaming wild animal otherwise authorized?

q. Would it be more efficient if the rule set forth universal restrictions to prevent the pursuit of wild bear rather than authorizing the department to place such restrictions on an individual license in s. NR 17.08 (3) (a) 3.?

r. In s. NR 17.08 (3) (c) 1., it should be clarified that the tattoos referred to must identify the owner of the dog.

s. In s. NR 17.08 (4), it should be clarified that a license may be revoked if the dogs found to be running bear are owned by or under the control of the licensee.

t. In s. NR 17.09 (1), the date distinctions relating to applications for dog trial licenses appear to be meaningless because all trials are held prior to December 31. Should the second group referred to be rephrased as “trials starting after July 31 but prior to December 31”?

u. In s. NR 17.11 (1), should “to” be changed to “from”?