



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 06-108

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

The rule proposes a fishing tournament participant fee of \$10 in s. NR 20.40 (5) (d). The statute grants express authority for the department, in s. 29.403 (3) (p), Stats., to promulgate rules specifying fees for fishing tournament permits, and for training or educational programs, including reduced fees in appropriate circumstances. The statute contains no other provision regarding fees. The question regarding statutory authority is whether the department has authority to adopt a participant fee, as in s. NR 20.40 (5) (d).

On one hand, the department has arguably broad authority under s. 29.403 (1), Stats., to “promulgate rules to establish a program to authorize and regulate fishing tournaments,” which could include participant fees.

On the other hand, s. 29.403 (3), Stats., commences with an introductory paragraph that states “(t)he rules promulgated by the department under sub. (1) may include any of the following:”, followed by a list of specific terms. The use of “may” and “include” in the statute suggests that the rule may also include other provisions than those in the list. However, the list is unusually lengthy and specific, and does not include a provision for participant fees. It may be argued that the lengthy list of authorized rule provisions is evidence of legislative intent that the Legislature did not intend to authorize the department to require fees for participants, as well as for the fishing tournaments. The department should review its statutory authority carefully to determine whether the statute authorizes a fishing tournament participant fee.

2. Form, Style and Placement in Administrative Code

a. The two terms defined in s. NR 20.40 (2) (L) (“organizer” and “organize”) would be better drafted as separate definitions. Also, the terms defined in sub. (2) (L) are out of alphabetical order with the other terms defined in sub. (2).

b. In s. NR 20.40 (5), the introductory material does not follow the proper format for an (intro.). [See s. 1.03 (8), Manual.] It should be numbered par. (a) and the subsequent paragraphs should be pars. (b) to (e). A similar change is needed in sub. (6) (intro.).

c. Substantive provisions of the rule should not be included in notes. The note following s. NR 20.40 (5) appears to duplicate the provision in s. NR 20.40 (5) (a). The provision in the note should be eliminated and the provision in s. NR 20.40 (5) (a) should be clarified, if necessary.

d. The acronym “ALIS” in the note after s. NR 20.40 (5) should be spelled out in the rule.

e. “Township” should be changed to “town” in s. NR 20.40 (7) (f).

f. The defined term “permitted fishing tournament” should be used in s. NR 20.40 (8) (a).

g. The numbering and paragraph titles of s. NR 20.40 (9) (f) should be corrected. The titles “rivers” and “other rivers” should be written out as sentences (i.e., “the following provisions apply to rivers:”). Also, either the chart should be converted to text, or the chart should be in a separate paragraph, with the text provisions of subds. 5., 6., and 7., in a separate paragraph.

h. The title in s. NR 20.40 (12) (f) should be rewritten as an introductory sentence to the remainder of that paragraph.

i. The term “live-release” should be hyphenated consistently. The term is not hyphenated in s. NR 20.40 (12) (g) 7.

j. In s. NR 20.40 (12) (h) (intro.), “do all of the following” should be inserted before the colon.

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

a. The cross-reference at the end of s. NR 20.40 (13) (d) should be to “par. (a).”

b. The department should comply with s. 227.14 (3) with respect to the referenced forms in s. NR 20.40 (14).

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

a. The second sentence of s. NR 20.40 (2) (m) refers only to lakes. Should it also refer to rivers?

b. It appears that s. NR 20.40 (3) (intro.) should refer only to organizers and not to participants in fishing tournaments. The provisions related to participants are found in s. NR 20.40 (5) (intro.).

c. The term “open water fishing” is used in s. NR 20.40 (5) (intro.), and elsewhere in the proposed rule. It appears that this refers to fishing other than ice fishing. Can the rule be clarified by defining this term?

d. In s. NR 20.40 (7) (d), a comma should be inserted after “November 1.”

e. The provision in s. NR 20.40 (7) (f) requires the organizer to notify local units of government, and to provide certain specific information. However, this provision does not require the organizer to give notice of the location of the tournament. Is this the department’s intent?

f. There appears to be a typographical error in the cross-reference in s. NR 20.40 (8) (b). The rule does not contain a sub. (4). Also, the phrase “In the event that” could be simplified to “If.”

g. Because of the use of both “and” and “or” in s. NR 20.40 (9) (b), it is not clear whether a tournament must: (1) satisfy subd. 1. and satisfy either subd. 2. or 3.; or (2) satisfy both subds. 1. and 2. or satisfy subd. 3. Also, subd. 3. does not follow grammatically from par. (b) (intro.). It is suggested that the subdivisions be consolidated with par. (b) (intro.) and that the language be clarified. A similar change is needed in sub. (10).

h. It is difficult to know what an applicant is required to do with dead fish. Section NR 20.40 (11) requires the applicant to comply with s. 23.095 (1g), Stats. That statute is fairly vague. Is it possible to provide more specific guidance regarding the disposition of dead fish?

i. Parking is addressed in s. NR 20.40 (12) (d), and the rule requires the organizer to make “alternative parking arrangements for participants.” It is not clear what “alternative” means—alternative to what?

j. In s. NR 20.40 (12) (g) 3. and 4., the singular “person” should be reconciled with the plural “they.”

k. Section NR 20.40 (12) (g) 7. requires the department to include permit conditions regarding fish handling requirements for live-release tournaments, and subd. 8. specifies permit conditions for live-release tournaments. Should these provisions be combined?

l. In s. NR 20.40 (12) (g) 8. c., “re-distribution” should be changed to “redistribution.”

m. The penalty provision in s. NR 20.40 (15) requires the department to deny a permit application for two years after the department determines that a person has failed to comply with a fishing tournament permit or the rules related to tournament fishing. This provision does not contain any information on when and how the department must make this determination in order for the penalty to apply.