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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 07-013

#### 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.]**

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

a. In the relating clause, the department should delete the word “pertaining” and insert the word “relating” in its place.

b. In the explanation of agency authority, the correct citation is s. 23.114 (1) (b), Stats.

c. In s. NR 45.075 (1) (intro.), it is suggested that the department revise the phrase “may declare and shall manage” to may declare, and shall manage,” in order to reproduce the statutory language used in s. 23.114, Stats.

d. In s. NR 45.075, the phrase “but not limited to” should be deleted. Use of the word “including” does not need to be modified by “but not limited to,” in order to convey the intent that the list is illustrative rather than exclusive. However, the department uses the phrases “includes” and “including but not limited to,” suggesting differences in intent. The department should clarify whether its intent is illustrative or exclusive for the sentences that use the terms.

e. In s. NR 45.075 (1) (f) 1., it appears that the word “and” should be replaced by the word “or.” Similarly, in par. (f) 2., it appears that the word “or” should be inserted before the word “ice.”

f. In s. NR 45.075 (2), the phrase “of the declaration” should be inserted after the word “publication.”

g. In s. NR 45.075 (2), the department should delete the note and insert the text of the note in the proposed rule. Notes may not include substantive requirements and are not part of the substantive law created by the rule. [See s. 1.09 (1), Manual.]

h. In s. NR 45.05 (3), the title to the subsection should be removed since the remaining subsections do not have titles. [See s. 1.05 (1), Manual.]

### **3. Conflict With or Duplication of Existing Rules**

In SECTION 5 of the analysis, the department should clarify the intent of references to “this rule” and “the rule.” The department should clarify the relationship between the proposed permanent rule and the emergency rule it is intended to replace. In particular, the use of the word “however” in the second to last sentence suggests a difference between the emergency rule and the proposed permanent rule. Nonetheless, review of the emergency rule reveals that the analysis and the text of the emergency rule and the proposed permanent rule are the same. Does the department intend that the proposed permanent rule differ from the emergency rule that it replaces?

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

a. In the related statute or rule section of the analysis, the department should refer to emergency rule FR-11-07 (E). The analysis states that the proposed rule is intended to replace this emergency rule.

b. In the related statute or rule section of the analysis, it is suggested that the department refer to statutes and rules cited elsewhere in the analysis. Citations in the analysis include s. NR 150.03, listed in section 8 of the analysis.

c. In the related statute or rule section of the analysis, it is suggested that the department refer to statutes and rules cited in the rule. Citations in the rule include ch. 94, Stats., and s. 166.03, Stats., listed in the note following s. NR 45.075 (2).

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

a. In section 3 of the analysis, the department should place a period at the end of the last sentence in the section.

b. In s. NR 45.075 (2) and (3) (b), the department should delete the words “thereafter” and “thereof” and replace them with specific references. [See s. 1.01 (9) (c), Manual.]

c. In s. NR 45.075 (3) (intro.), the phrase “The following definitions apply to terms used in this section:” should be replaced by the phrase “In this section:”.

d. In s. NR 45.075 (3) (b), the word “and” should be inserted after the last semi-colon.