



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 09-077

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated September 2008.]

1. Statutory Authority

a. Based on s. 23.0916 (2) (a), Stats., an acquisition date of “on or after October 27, 2007” should be included in the definition of “non-departmental land.”

b. In s. NR 52.04 (2), the department should clarify its authority to limit public comments to those made by “affected” parties. Additionally, if the authority exists, the department should provide additional guidance regarding the determination of whether a party is sufficiently “affected” to merit consideration of that party’s comments.

c. Section 23.0916 (2) and (3), Stats., generally provide that nature-based outdoor activities must be allowed on certain lands unless the Natural Resources Board determines that it is necessary to prohibit public access for one or more nature-based outdoor activities. However, s. NR 52.04 (2) (a) provides that if no objection is received within a 15-business day comment period following the submission of a proposal to prohibit a nature-based outdoor activity, the department will allow the project to proceed. Thus, in the situation in which no objection is received to a proposal to prohibit a nature-based outdoor activity, the statutory presumption of open use of the property is reversed into a presumption that some activities will be prohibited without a specific determination made by the Natural Resources Board. What statutory authority exists for this rule provision?

2. Form, Style and Placement in Administrative Code

a. In the related statute section of the rule analysis, the department should use the word “establish” instead of “establishes.” A space should be placed between “ch.” and “NR 1.”

b. In s. NR 52.01 (1), the department should move the substantive material in the last sentence to a different section of the rule and provide more explanation regarding the treatment of “restrictions” under ch. NR 52. Also, in sub. (1), the word “Department” should be replaced by the word “department.”

c. Section NR 52.02 (intro.) should read “In this chapter:”.

d. In s. NR 52.02 (1), the department should refer to “s. NR 52.05 (1) (c).” [But see comment 2. k., below.]

e. The rule should include a definition of “department” in s. NR 52.02.

f. Section NR 52.02 (3) should refer to the definition in s. 23.0916 (1) (a), Stats.

g. In s. NR 52.02 (4), should the department use the same definition of hunting used in ss. NR 46.02 (10) and 46.15 (17)?

h. In s. NR 52.02 (5), the word “given” should be inserted after the word “meaning.”

i. In s. NR 52.02 (8), the word “and” should be inserted before “23.0917” and the word “by” should be inserted before the reference “s. NR 51.05.”

j. In s. NR 52.02 (9), the department should refer to “ss. 23.0915 and 23.0917, Stats.”

k. In s. NR 52.03 (1), the notation “(a)” should be deleted. When any section, or part of a section, is divided into smaller subunits, at least two subunits should be created. Similarly, in sub. (2), the notation “(a)” should be deleted, the subdivisions should be renumbered as paragraphs, and the subparagraphs should be renumbered as subdivisions. [See also the creation of one subsection in s. NR 52.05.]

l. In s. NR 52.03 (2) (a) 2., the word “or” should be inserted before “23.0917.” In subd. 3., the word “Grantee” should be replaced by the word “applicant.” In sub. (3) (b), the notation “Wis. Adm. Code” is unnecessary and should be deleted.

m. In s. NR 52.04 (1) (d), the cross-reference should read “s. 23.0916 (2) (b) or (3) (b), Stats.” [See, also, sub. (2) (a).]

n. In s. NR 52.04 (2), the introductory material should be renumbered as par. (a) and the remaining paragraphs should be renumbered accordingly. Also, in what is currently in sub. (2) (e), the word “rule” should be replaced by the phrase “section [legislative reference bureau inserts date].”

o. In s. NR 52.04 (2) (b), the department refers to procedures following resolution of issues during a comment period. The department should elaborate on the procedure if no resolution is reached during that time. Generally, the department should further explain the

review process it intends to use. For example, s. NR 52.04 (2) (e) Note refers to review by the Natural Resources Board. The rule could be clarified with regard to this review, as well the procedure after the board hears the department's report as described in s. NR 52.04 (2) (e). Additionally, the decision-making process of the department in s. NR 52.04 (2) (d) could be clarified.

p. In s. NR 52.04 (2) (d), the department should refer to "pars. (b) and (c)" and "s. 23.0916 (2) (b) and (3) (b), Stats."

q. In s. NR 52.05 (1) (b) (intro.) and 2., the department should avoid repetition of the phrase "the necessity to prohibit."

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

a. Section NR 52.01 (3) provides that certain provisions of the administrative code will govern public access on "all other department and non-department lands." This sentence should be expanded to specifically contrast this land to land covered under other provisions; for example, the sentence could read: "...all department and non-department lands acquired in whole or in part with funding from the stewardship program under ss. 23.0915 and 23.0917, Stats., that are not referred to in sub. (1) or (2)."

b. In s. NR 52.03 (1) (a), the department should rephrase the last sentence to say "This paragraph applies to new plans as well as...."

c. In s. NR 52.04 (1) (d), the department should replace "assessment of the need" with "determination" or provide additional information distinguishing the two terms. Generally, should the department choose different terms of art to differentiate between decisions made by the department and decisions made by the board?