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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 12-010

#### 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 November 2011.]**

#### 1. Statutory Authority

Section 961.335 (5), Stats., provides that a permit may be amended to add a further activity or to add further substances or schedules to the project. Section CSB 3.06 describes the circumstances under which a permit may be amended, but it does not appear to include the option to amend a permit to add further activity, as the statute does. The agency should provide the same options for amending a permit in the proposed rule as what is allowed under s. 961.335 (5), Stats.

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

a. The format of the proposed rule with reference to the creation of a new chapter of the Administrative Code is incorrect. The creation of a chapter should be placed into a single SECTION, as follows:

SECTION 1. Chapter CSB 3 is created to read:

CHAPTER CSB 3

SPECIAL USE AUTHORIZATION

**CSB 3.01 Authority. (insert text)**

**CSB 3.02 Definitions. (insert text)**

**CSB 3.03 Permits generally. (insert text)**

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b. Section CSB 3.05 should be subdivided so that the (intro.) and subs. (1) to (5) become sub. (1) and pars. (a) to (e), and sub. (6) becomes sub. (2).

c. The effective date section should be labeled as SECTION 2. [See comment a.]

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

a. In the rule summary and the proposed rule, the references to statutes should be followed by “, Stats.” [s. 1.07 (2), Manual.]

b. In the rule summary, the agency should review its references to federal law and laws in adjacent states for accuracy. For example, in the summary of federal law, it appears that “21 C.F.R. s. 1301 (13)” should be replaced with “21 C.F.R. s. 1301.13”.

c. In s. CSB 3.01, the text should be replaced with: “The provisions in this chapter are adopted under the authority in s. 961.335 (8), Stats.” [s. 1.07 (2), Manual.]

d. In s. CSB 3.02 (intro.), “As used in ch. CSB 3” should be replaced with “In this chapter”. [ss. 1.01 (7) (a) and 1.07 (2), Manual.]

e. In s. CSB 3.03 (3), “s. 3.08 (2) of this chapter” should be replaced with “s. CSB 3.08 (2)”. [s. 1.07 (2), Manual.]

f. In s. CSB 3.08 (1) (b), the text should be replaced with: “Failure to comply with this chapter or s. 961.335, Stats.” [s. 1.07 (2), Manual.]

g. In the fiscal estimate and economic impact analysis, “961.335 (9), Stats.” should be replaced with “961.335 (8), Stats.”

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

a. Throughout the proposed rule, “will” and “must” should be replaced with “shall”. [s. 1.01 (2), Manual.]

b. In s. CSB 3.02 (2), “has the same meaning as that set forth in” should be replaced with “has the meaning given in”. [s. 1.01 (7) (d), Manual.]

c. In s. CSB 3.02 (3), “which” should be replaced with “that”. In addition, the agency might consider replacing the last sentence with the following: “‘Humane shelter’ includes a shelter that provides foster care to animals.”

d. In s. CSB 3.02 (4), “, but are not limited to,” should be deleted. The term “includes” means “includes, but is not limited to”. [s. 1.01 (7) (d), Manual.] In addition, the agency might consider the following definition: “‘Special use’ includes scientific research, instructional activities, chemical analysis, drug-detecting animal training, and euthanasia in humane shelters.”

The inclusion of “manufacture, obtain, possess, use, administer, or dispense” in the definition appears to be unnecessary.

e. In s. CSB 3.02 (5), “or ‘SUA’” should be inserted after “Special use authorization” and s. CSB 3.02 (6) should be deleted. [s. 1.01 (8), Manual.]

f. In s. CSB 3.03 and elsewhere throughout the proposed rule, “person” and “individual” are used interchangeably. Section CSB 3.03 (2) states that “An SUA permit may be issued to an individual only” and the term “individual” is used predominantly throughout the proposed rule. However, the term “person” (which, although used in s. 961.355, Stats., may be interpreted to include an entity other than an individual) appears in the proposed rule as well. If, in fact, only individual human beings may be issued an SUA permit, “individual” should be used throughout the proposed rule.

g. In s. CSB 3.03 (2), “authorized purposes” should be replaced with “purposes authorized in the permit” in the last sentence.

h. Section CSB 3.03 (3) states that a “permit provides authorization to the holder only for the identified controlled substances in the specified amounts.” The agency should specify what the authorization refers to (e.g., possess, use, etc.). In doing so, the first sentence should be replaced with the following: “An SUA permit authorizes the holder to \_\_\_\_\_ the controlled substances specified in the permit and in the amounts specified in the permit.” The agency should fill in the blank with the appropriate activity.

i. Section CSB 3.03 (3) provides that any deviation from the permit is a violation that may result in revocation or suspension of a permit. However, s. 961.335 (5), Stats., and s. CSB 3.06 (1) (intro.) allow a permit to be used for additional projects that derive directly from the stated project. Section CSB 3.03 (3) should be modified to reflect s. 961.335 (5), Stats., and s. CSB 3.06 (1) (intro.).

j. In s. CSB 3.03 (4), and throughout the proposed rule, the agency should use the singular form instead of the plural form. For example, in that subsection, “SUA permits are valid” should be replaced with “An SUA permit is valid”. [s. 1.01 (9) (e), Manual.]

k. In s. CSB 3.04 (1) (b), the agency should specify a permit fee amount, as is required by s. 961.335 (3), Stats., which provides that the permit fee is an amount determined by the Controlled Substances Board but may not exceed \$25. In addition, the second sentence in that paragraph should read: “No fee for an SUA permit may be charged to an employee of a state agency or institution if the permit is necessary to perform employment functions.”

l. In s. CSB 3.04 (1) (c), “of submission of” should be replaced with “that the applicant has submitted”.

m. In s. CSB 3.04 (1) (e), “requested amounts” should be replaced with “amounts requested in the application”.

n. In s. CSB 3.04 (1) (f), “Individuals applying for an SUA permit shall provide any” should be replaced with “Any”.

o. In s. CSB 3.04 (2) (intro.), (3) (intro.), (4) (intro.), (5) (intro.), and (6) (intro.), “In addition to sub. (1),” should be inserted at the beginning of each introductory provision.

p. In s. CSB 3.04 (2) (b), “Institutional Animal Care and Use Committee approval” should be replaced with “approval by the institutional animal care and use committee”. Similarly, in s. CSB 3.04 (2) (c), “Institutional Review Board approval” should be replaced with “approval by the institutional review board”. In addition, the agency might consider defining “institutional animal care and use committee” and “institutional review board”.

q. In s. CSB 3.04 (4) (a) and (5) (a), which sheriff or chief of police submits the letter? For a narcotic dog trainer, is the sheriff or chief of police who writes the letter the individual who hires the trainer? The agency should provide more detail about which sheriff or chief of police submits the letter under s. CSB 3.04 (4) (a) and (5) (a).

r. In s. CSB 3.04 (4) (b), can the state police dog association be in any state or should it be in Wisconsin? The agency should clarify this provision.

s. The contents of s. CSB 3.04 (4) (c) should be placed in s. CSB 3.04 (8).

t. In s. CSB 3.04 (6) (a), it appears that “for the lab” or a similar phrase should be inserted after “purchase”.

u. In s. CSB 3.04 (6) (b), the text should be replaced with: “Whenever the lab purchases or otherwise adds to its inventory a new controlled substance or an additional amount of a controlled substance that was not previously authorized in a permit, an amended SUA application that includes the total weight in grams for each such new or additional substance.”

v. In s. CSB 3.04 (6) (c), “Provide a” should be replaced with “A”. In addition, “, which shall include” should be replaced with “that includes”.

w. Section CSB 3.04 (7) is unnecessary because of s. CSB 3.04 (1) (f).

x. In s. CSB 3.05 (intro.), the period at the end of the sentence should be replaced with a colon.

y. In s. CSB 3.05, the agency should replace the names of the controlled substances with the technical names of those substances in ch. 961, Stats.

z. In s. CSB 3.05 (3), use of “i.e.” is not appropriate in drafting rules or statutes. The technical name for crack cocaine, as set forth in ch. 961, Stats., should be used and there should be no reference to “crack cocaine”.

aa. In s. CSB 3.05 (6), the text should be replaced with: “A trainer may request, and the board may approve, with appropriate justification by the trainer, other controlled substances or different quantities of controlled substances.” The agency should consider an alternative to the use of the term “justification”.

bb. In s. CSB 3.06 (1) (intro.), the last line should be replaced with: “The board may approve a request to amend a permit for any of the following purposes:”.

cc. In s. CSB 3.07 (1) (intro.), “current” should be replaced with “updated”. [s. 1.01 (9) (b), Manual.]

dd. In s. CSB 3.07 (2), “four” should be replaced with “4”. [s. 1.01 (5), Manual.]

ee. In s. CSB 3.08 (1) (a), “drugs” should be replaced with “controlled substances”.

ff. The Note to s. CSB 3.08 (1) (d) should, if possible, have a reference to where an individual may find the euthanasia standards. In addition, the agency should spell out the acronym “AVMA”.

gg. In s. CSB 3.08 (1) (e), “of the revocation or limitation” should be inserted after “business days”.

hh. In s. CSB 3.08 (1) (e), “three” should be replaced with “3”. [s. 1.01 (5), Manual.]

ii. In s. CSB 3.08 (2), “in the board’s exclusive discretion” should be deleted and “, in the board’s discretion,” should be inserted after “may”.