



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 13-010

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.]

2. Form, Style and Placement in Administrative Code

a. The statutory authority section states that the statutes that authorize the department to promulgate this rule “include ss. 29.604 [and] 227.11,” Stats. “Include” implies that these are not the only statutes that authorize this rule. Are there other statutes the department believes supports this rule-making? If so, it should cite them. Additionally, the department should cite the specific subpart of the statute it relies upon. For example, it appears the department is relying on ss. 29.604 (3) (b) and 227.11 (2) (a), Stats.¹

b. Under the explanation of agency authority section, the department should replace “These sections” with “Sections 29.604 (3) (b) and 227.11 (2) (a), Stats.,”.

c. The plain language analysis section indicates that this rule adds ottoe skipper (*Hesperia ottoe*) to the endangered species list. However, it does not appear that the ottoe skipper is added in the text of the proposed rule.

d. The word “section”, when referring to the sequentially numbered sections of the rule, should be in small caps (SECTION). [s. 1.04, Manual.]

e. The department has treated all of the revisions it proposes in one rule SECTION and characterized all of these changes as amending s. NR 27.03 (2) and (3). However, the proposed rule repeals certain subdivisions, creates new subdivisions, and amends others. For example, the

¹ The comments in this report address the document, submitted by the department, titled “Order of the State of Wisconsin Natural Resources Board Amending and Creating Rules,” which is numbered pages 1 to 14.

addition of the Black Tern entails creating s. NR 27.03 (2) (b) 2., and the removal of the Barn Owl entails repealing s. NR 27.03 (2) (b) 11. Where the department has revised the scientific names of species, it appears to be revising as if it intends to repeal and recreate the subdivisions. These revisions may be accomplished more directly by amending the affected subdivisions, striking only the language that is changing, and replacing that language with the new name underscored. Thus, the department should repeal, create, or amend the individual provisions that are affected by this rule, rather than treating all changes by amending s. NR 27.03 (2) and (3). In doing so, the department should follow the procedure in s. 1.04 (2), Manual, for arranging the rule text and should revise the introductory clause to reflect the treatment changes described in this comment. [ss. 1.02 (1), 1.04, and 1.06, Manual.]

f. In s. NR 27.03 (2) (b) 3l, the subdivision should be numbered as “3L”, not “3l”. In drafting, “l” (the lowercase “L”) is not used in numbering because its use creates confusion between the capital letter “l” and the lowercase “L”.

g. SECTION 2 of the rule contains the following phrase: “The rule contained herein shall take effect...” This phrase should be changed to “This rule shall take effect...” [ss. 1.01 (9) (c) and 1.02 (4), Manual.]

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

a. A comma should be inserted before the word “relating” in the introductory clause. [s. 1.02 (1), Manual.]

b. The plain language analysis section contains numerous incomplete sentences. For example, in the paragraph pertaining to the Black Tern, the department wrote, “Once reported at 79 sites, was found only at 7 breeding colonies in 2010.” That sentence lacks a subject. The plain language analysis section should be written in plain, simple English and should conform to standard grammatical conventions. [s. 1.02 (2) (b), Manual.]

c. In the plain language analysis section, the department explained the reason for each proposed addition or removal to the endangered or threatened species list. The department should also explain the reason for changing the scientific names of other species.