



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 14-034

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. Definitions should be limited to a statement of what the defined term means and should not include substantive requirements. The latter should be placed into the body of a rule. [s. 1.01 (7) (b), Manual.] See, for example, the following:

- (1) The current definition of “disposal” appears to consist entirely of substance (i.e., it tells the reader what form of disposal is permissible). The amendment to this definition only makes this problem more obvious by adding substantive requirements that appear to have nothing to do with the word “disposal.” Rather than amending the definition, the agency should consider repealing the definition and placing these substantive provisions into the body of the rule.
- (2) The language added to s. NR 40.02 (29), (30), (31), and (48) appears to be substantive. A genetically modified arctic char is still an arctic char, but the policy established by this rule is to treat a genetically modified arctic char differently. This distinction should be established in the body of the rule, not in definitions.

b. Notes are explanatory and are not enforceable. [s. 1.09 (1), Manual.] The material added to s. NR 40.02 (24) (Note) relates to the applicability of ch. NR 40, though there does not appear to be a provision in that chapter establishing the applicability described in the note. If this

is correct, a provision to this effect should be added to that chapter, but not in a note or a definition.

c. In s. NR 40.02 (37), the language added to the definition of “pet” should be worded as follows: “‘Pet’ does not include fish or aquatic invertebrates.”

d. In ss. NR 40.02 (48), 40.04 (2) (b) 13. and (3) (e) (intro.), and 40.05 (2) (b) 3., 4., and 20. and (3) (e) (intro.), when material is deleted and new material is inserted in the same location, the new underscored material should immediately follow the stricken material. [s. 1.06 (1), Manual.]

e. In both the treatment clause and text of SECTION 6 of the rule, the notation “(intro.)” should be inserted. The same is true of SECTION 43. The introductory clause should also include the notation “(intro.)” for these provisions.

f. The subdivisions of ss. NR 40.04 (2) and 40.05 (2) should all end in periods. [s. 1.03 (4), Manual.]

g. In ss. NR 40.04 (2) (b) 2. and 40.05 (2) (b) 3., 4., and 14., commas that are new material in the text should be underscored. [s. 1.06 (1), Manual.]

h. In s. NR 40.04 (2) (b) 3., “Iowa,” should be underscored. [s. 1.06 (1), Manual.]

i. The amendment to s. NR 40.04 (2) (b) 16. does not correctly reflect the text of the current rule. It should be drafted, in pertinent part, as follows: “...except in ~~Grant and Buffalo,~~ Crawford, Dane, Grant, Green,...”. Similarly, the amendment to s. NR 40.04 (2) (b) 22. should read, in part: “...Ozaukee, Racine, and Sheboygan ~~and Racine~~ counties.”. See also the treatment of s. NR 40.05 (2) (b) 27. and 28., as well as s. NR 40.04 (3) (g) (Note) (in the reference to the website at the end of the note).

j. When renumbering, show only the new numbering; do not show the old number with a strike-through and the new number with underscoring, as is done in SECTION 25 of this rule.

k. The treatment clause of SECTION 29 should include s. NR 40.04 (2) (b) 41. in the list of subdivisions created by that SECTION.

l. Section NR 40.04 (3) (b) (Note) appears to be substantive; it should be added to s. NR 40.04 (3) (b). In addition, “this paragraph” should be used in place of “this subsection”, and “Wis.” should be omitted. The same applies to s. NR 40.05 (3) (b) (Note).

m. SECTION 38 should renumber s. NR 40.04 (3) (e) to be s. NR 40.04 (3) (e) (intro.), and that provision, as amended, should end with “if any of the following apply?”. [s. 1.03 (3), Manual.] The introductory clause should also be modified to reflect the renumbering of s. NR 40.04 (3) (e). In s. NR 40.04 (3) (e) 1., “, or” should be replaced with a period. [s. 1.03 (4), Manual.] Section NR 40.05 (3) (e) should be treated in the same manner.

n. In SECTION 45, and subsequent SECTIONS, the rule directs the Legislative Reference Bureau (LRB) to insert an effective date but gives the LRB no instructions as to what the effective date should be. If the agency wishes to insert the actual effective date of a rule into the text, this may be done by incorporating, in the location where the date is to appear, the following text: “the effective date of this section ... [LRB inserts date].” [s. 1.01 (9) (b), Manual.] If

those provisions should have an effective date that differs from the effective date in SECTION 79, the agency should specify a different effective date for those changes by creating an exception to the effective date in SECTION 79. [s. 1.02 (4), Manual.]

o. SECTION 64 should state only that it repeals s. NR 40.05 (2) (f); in repealing par. (f), subd. 1. is also repealed.

p. SECTION 76 does not correctly reflect the current text of s. NR 40.07 (8) (d) (Note).

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

a. In ss. NR 40.04 (3) (d) and 40.05 (3) (d), “subsection” should be replaced with “paragraph”. [s. 1.07 (2), Manual.]

b. In s. NR 40.05 (3) (p), “NR 40.05 (2)” should be replaced with “sub. (2)”. [s. 1.07 (2), Manual.]

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

a. In ss. NR 40.04 (3) (h) 3. and 40.05 (3) (o) 3., “Department” should not be capitalized. [s. 1.01 (4), Manual.]

b. In s. NR 40.05 (3) (k), “can” should be replaced with “may”. [s. 1.01 (2), Manual.]