

WISCONSIN LEGISLATIVE COUNCIL STAFF

RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946

Richard Sweet
Assistant Director
(608) 266-2982



David J. Stute, Director
Legislative Council Staff
(608) 266-1304

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

CLEARINGHOUSE RULE 96-041

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 October 1994.]

1. Statutory Authority

Section 29.33 (2) (d), Stats., authorizes the Department of Natural Resources to transfer commercial fishing licenses “between individuals equally qualified to hold the licenses and to members of a licensee’s immediate family....” Presumably, “individuals equally qualified to hold a license” means, at least, individuals who meet all requirements for holding a license. Current rules authorize the transfer of a license to a person who does not meet certain requirements, but require that a license be held in abeyance by the department for up to two years while the transferee is given an opportunity to come into compliance with those requirements. This seems to be a reasonable interpretation of the statutes, since the license is not effectively transferred until the right to exercise it is granted. This rule-making order now proposes to allow a transferee who does not meet certain license requirements to exercise the rights of a license holder while the transferee is coming into compliance with those requirements. This does not appear to be allowed by s. 29.33 (2) (d), Stats., since the transfer of the license is effectively complete and the licensee is not “equally qualified.” If the department wishes to pursue this approach to the transfer of commercial fishing licenses, it may be necessary to obtain an amendment to the statute to explicitly authorize it.

2. Form, Style and Placement in Administrative Code

a. The rule strikes through the entire text of s. NR 25.04 (2) (b) and presents the entire text of a new section of that same number with underscoring. Instead, the rule should repeal and recreate s. NR 25.04 (2) (b) showing the new text only, without underscoring.

b. The rule does not make good use of cross-references to identify other provisions of state law, specifically the eligibility requirements for obtaining a commercial fishing license. In the first sentence of s. NR 25.04 (2) (b) 1., all the proper cross-references are included, and the narrative description of the requirements is unnecessary. That sentence could be rewritten as follows: “If a prospective transferee under this subsection is not eligible to receive a license at the time it is offered because the person does not meet the requirements of sub. (7) (b) or s. NR 25.03 (1) (b) 1. or (2) (b) 1., the department shall offer the license to the person.”

On the other hand, the narrative description “for any reason other than those described in subd. 1.,” found in s. NR 25.04 (2) (b) 2., does not adequately identify the specific provisions of law that are being referenced. This language should be replaced by an explicit list of the provisions referenced.

c. The analysis to the rule should include, in the list of statutes interpreted, s. 29.33 (2) (d), Stats.