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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 05-104

#### 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 January 2005.]**

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

a. In s. NR 17.02 (3) (b) 3., the introduction should conclude with the following language: “The cage shall be constructed so that all of the following requirements are met.”

b. The NOTE following s. NR 17.045 (1) (e) pertains to the requirements in par. (d) of that subsection and therefore should be moved to appear immediately after that paragraph.

c. In s. NR 17.045 (3) (h), the first sentence does not grammatically lead into the following subunits and, therefore, should be renumbered as subd. 1. The remaining subdivisions should be renumbered accordingly. [See also the first sentence of s. NR 17.047.]

d. In s. NR 17.045 (4) (intro.), the phrase “all of” should be inserted before the phrase “the following.”

e. SECTION 22 should read: “NR 17.11 (title) is repealed and recreated to read?”. SECTION 23 then should read: “NR 17.11 (intro.) is repealed.”

f. Section NR 17.11 (1) (intro.) is structurally confusing. Is a portion of the rule missing?

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

a. In s. NR 12.10 (1) (b) 2., the phrase “after release of the animal” should be added after “12 hours.”

b. In s. NR 12.10 (1) (b) 5., it is unclear what is meant by the phrase “that confine or restrict the movements of the animal.” Is it the intent of this language to allow a person to relocate a rabbit without written authorization only to enclosed land from which the rabbit cannot escape? If so, the rule should be rewritten to clearly convey this intent.

c. It appears that in s. NR 16.30 (1), the phrase “are required to be held under the authority of” should be replaced with “may be held only pursuant to.”

d. In the new NOTE following s. NR 16.30 (1), the phrase “and requirements for” should be inserted immediately before “humane handling.”

e. In s. NR 17.001 (1e), “areas” should be changed to “area.”

f. In s. NR 17.001 (1m), where must the members of the club be “identified in writing”? Must written identification be provided to the department? Also, the word “which” should be replaced by the word “who.”

g. In s. NR 17.001 (7m), “that” should be changed to “who” and “with” should be changed to “who has.” Also, the defined term should be “owner” or “operator” and should be used as appropriate throughout ch. NR 17. The slashed alternative should be avoided.

h. In s. NR 17.02 (3) and 17.07 (3) (a), should “used” be replaced with a term that indicates that the captive animals must be kept or housed, as well as used for training purposes, only within the type of enclosure described? In other words, if they are not being actively used for training at a certain time, may the animals be kept in a different type of enclosure such as a cage?

i. Should s. NR 17.02 (3) (b) 7. and 17.07 (3) (b) 7. specify that the animal shall have access to fresh water at all times? If not, should the rule specify when or how often access to fresh water should be provided?

j. In s. NR 17.03 (2) (d), does the word “Those” refer to an owner, an operator, a member, or some or all of these individuals or entities? This should be clarified.

k. The entire rule should be reviewed for conformance to proper drafting of mandatory and permissive actions. For example, in the last sentence of s. NR 17.045 (1) (a), “no person shall” should be changed to “no person may,” and in s. NR 17.045 (2) (a), the language stating that “every person...is required to possess a valid hound dog training license” should be rewritten utilizing the phrase “shall possess.” [See s. 1.01 (2), Manual.]

l. The passive voice should be avoided when possible. For example, the second and third sentences of s. NR 17.045 (1) (a) should be rewritten as follows: “The department shall inspect every hound dog training enclosure for which it has received a permit application. The department shall issue a permit to an applicant if it finds that the facility meets the requirements of this section and s. NR 17.11.”

m. Section NR 17.045 (1) (b) is problematic in several respects. First, it requires any person operating a hound dog training enclosure prior to the effective date of the rule to apply for

“a dog training permit under this section.” However, the section referred to does not contain any information regarding “dog training permits.” Rather, it sets forth requirements for “hound dog training licenses,” “dog club training licenses” and “hound dog trial licenses.” Is the rule intended to require any person operating a hound dog training enclosure prior to the effective date of the rule to apply for a hound dog training enclosure permit or one of the licenses listed above? Second, the rule requires a person to “apply” for a permit no later than December 31, 2006. Should the rule specify a date after which a hound dog training enclosure may not be used without a valid permit?

n. The material in the NOTE following s. NR 17.045 (1) (f) is substantive in nature and should be placed in the text of the rule. [See s. 1.09 (1), Manual.] In addition, it should be rewritten in a form that begins “A hound dog training enclosure permit shall be valid until...”

o. The title to s. NR 17.045 (3) (a) should indicate that “cover” requirements are included in the paragraph.

p. In s. NR 17.045 (3) (c), it appears that “Hounds” should be changed to “Dogs,” since hound is not a defined term, and by limiting the prohibition to “hounds,” it could be argued that dogs that do not belong to an officially recognized breed referred to as “hound” are not covered by the prohibition.

q. The rule should specify whether a separate permit is required for a small enclosure referred to in s. NR 17.045 (3) (e) 2. Also, should the rule define “inexperienced dog”?

r. In the second sentence of s. NR 17.045 (3) (f) 1. a., “bottom” should be inserted before “12-inch section of fence.”

s. The NOTE following s. NR 17.045 (3) (f), should indicate how prior approval of fences may be obtained from the department.

t. In s. NR 17.045 (3) (h) 1., the terms “device” and “escape areas” should not be used unless those terms refer to something that is not included in the definition of “captive animal refuge area.” If those terms refer to something not included in that definition, those terms should be defined.

u. The rule should specify how an owner or operator will be informed of any health management procedures that are required under s. NR 17.045 (4).

v. Should s. NR 17.045 (6) (b) contain special provisions regarding the number of dogs that may be released into a smaller enclosure referred to in s. NR 17.045 (3) (e) 2.?

w. The use of the term “may” in s. NR 17.045 (8) (c) implies that the department has discretion whether to grant a person an opportunity to bring an enclosure into compliance prior to the issuance of a citation. The rule should set forth standards the department must follow in determining whether a person will be given this “opportunity.”

x. In the second sentence of s. NR 17.047 (3), “imported captive animals” should be changed to “an imported captive animal.” In addition, the rule should specify how department

authorization of importation may be obtained and the standards the department will follow when evaluating requests for importation.

- y. In s NR 17.07 (3) (b) 2., “raccoon” should not be capitalized.