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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 11-050

#### 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

In this rule, the department creates the word “troute” to refer to an all-terrain vehicle trail and route combination that, in brief, allows all-terrain vehicles and motor vehicles to utilize the same space. The department should describe its statutory authority to fund the maintenance of “troutes” under s. NR 64.14 (2r) and the rehabilitation of “troutes” under s. NR 64.14 (9) (d). [See also comment 2. d., below, for additional comments relating to use of the created word “troute” and the definition of that term.]

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

a. The introductory clause to the rule is not in proper format and lacks a relating clause stating the subject matter of the rule. Section 1.02 (1), Manual, describes the elements of the introductory clause and provides an example of how it should be drafted.

b. In the plain language analysis, each occurrence of the word “section”, in reference to the sequentially numbered rule SECTIONS, should be in small capital letters. [s. 1.04 (1), Manual.] The same comment pertains to the sequentially numbered SECTIONS in the rule text. Also, in the treatment clause to each SECTION, the word “Section” immediately before “NR” should be deleted. For example, the treatment clause to SECTION 1 should read: “SECTION 1. NR 50.09 (4) (b) 2. is amended to read:”.

c. In s. NR 50.09 (4) (b) 2. (Note), in the first line of the note text, the notation “(Note)” should be deleted. This comment also applies to s. NR 64.14 (6) (d) 5. (Note).

d. In s. NR 64.02 (15), the department creates the word “troute” and defines it as “an all-terrain vehicle trail and route combination that allows all-terrain vehicles and motor vehicles to utilize the same linear surface and the combination is used as a trail connector as defined in sub. (3)”. The following problems are noted with regard to this definition:

(1) Rather than making up a word, it would be preferable to use actual words to describe this combination trail and route. One possibility would be to refer to it as a “multi-use trail”. Another would be to refer to it as a “trail connector”, since the definition says that the combination is used as a trail connector.

(2) The term “trail connector” is *not* defined “in sub. (3)”, as stated in the definition. “Sub. (3)” is a reference to s. NR 64.02 (3), which contains a definition of the term “all-terrain vehicle trail”, not of “trail connector”. The term “trail connector” is not defined anywhere in current s. NR 64.02, nor in this rule.

(3) If a word or phrase *other than* “trail connector” is substituted for “troute” in the above definition and the language about the combination being used as a trail connector is retained, the phrase “and the combination is used as a trail connector” should be replaced by “and that is used as a trail connector...”.

e. In s. NR 64.12 (7) (a) (Note), in the rule text, the notation “(Note)” should be deleted.

f. In SECTION 11 of the rule, the notations NR 64.14 (2r) (b) “(1)” and “(2)” should be changed to s. NR 64.14 (2r) (b) “1.” and “2”. Throughout the rule, note that subdivision numbers should be followed by a period. [s. 1.03 (2) (3), Manual.]

g. In s. NR 64.14 (9) (ar) 1., “all of” should be inserted before “the following”. In sub. (9) (ar) 2., the phrase “all of the following” should be inserted after “include”.

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

In the recitation of statutory authority, the statutory citations should read: “Sections 23.09 (26), 23.33 (8) (a) and (9) (b) 3. to 5., 350.12 (4) (b) and (bm) 2., and 227.11 (2) (a), Stats.”. In the recitation of statutes interpreted, the citations should read: “Sections 23.33 (8) (a) and (9) (b) 3. to 5., 350.12 (4) (b), and 227.11 (2) (a), Stats.”.

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

a. In the first sentence of s. NR 50.09 (4) (b) 2., a comma should be inserted and underscored following “development” on line 3. In the second sentence, if it is the *bridge* that is being developed or rehabilitated (rather than the private land), then the language should be rewritten: “for the placement on private land of a bridge that is either developed or rehabilitated with funds under...”. The same comment pertains to the first two sentences in s. NR 50.09 (4) (bm). Also, what is meant by “developed”? Does it mean “constructed”?

b. This rule creates s. NR 50.09 (4) (b) 2. (Note), which contains information about a future meeting of the Governor's Snowmobile Trail Council at which the council is expected to make recommendations to the department relating to "minimum year lease requirements for bridge projects costing more than \$50,000". Rather than referencing this anticipated future action in a note at this time, it is suggested that the department include any pertinent information in the rule analysis or through other means of communicating with affected or interested parties, or both. Regardless of how this information is conveyed, the following comments are offered regarding the note as drafted [and a similar note following s. NR 64.14 (6) (d) 5.]:

- (1) It is unclear what it means that the council will "consider public comment and criteria". Will it take public testimony at the hearing? What "criteria" will be considered?
- (2) What is meant by "minimum year lease requirements" for the bridge projects costing more than \$50,000?
- (3) The note makes several references to "the new recommendations", which will be an outdated reference to a person reading the note in the future, when the recommendations, if implemented, will no longer be new. Further, the phrase is vague and does not inform the reader what specific recommendations are being referenced.
- (4) A portion of the material in the note is substantive, not merely informational, and, therefore, does not belong in the note. For example, the language about the recommendations for easements and other items only being required of grant applicants in certain situations is substantive. Section 1.09 (1), Manual, states that notes may not include substantive requirements. If it is necessary to include this information in the rule at this time, it should be in the text itself, not in the note.
- (5) Is one of the purposes of explaining this future council action to alert interested parties that there will be further rule-making to implement the council's recommended minimum year lease requirement for bridge projects costing more than \$50,000? If so, that could be stated much more simply in the note or, as suggested, in the rule analysis.

c. Section NR 50.09 (4) (bm) states that the length of any easement, lease, permit, or other agreement "may be" a factor in determining the amount of snowmobile trail funds to be awarded for a project. What will determine whether the length *will or will not* be a factor? It would appear that interested parties would want certainty as to whether the length is, or is not, a factor to be considered. This comment also pertains to s. NR 64.14 (6) (d) 5.

d. In s. NR 50.09 (5) (bn) 2., use of the word "include" at the end of the first line indicates that there may be other items that are ineligible costs besides those listed. If that is not the case, "include" should be changed to "are". The same comment applies to the use of

“include” in s. NR 64.14 (9) (ar) 1. and 2. In sub. (5) (bn) 4., on line 3, the stricken material should precede the underscored material. [s. 1.06 (1), Manual.]

e. In s. NR 64.12 (7) (am) 1., a comma should be inserted after “funding”.

f. In s. NR 64.14 (2r):

(1) The comma after the “(2r)” in the treatment clause should be deleted.

(2) In sub. (2r) (a), on line 5, the phrase “sub. (2) (a) or sub. (2) (b) or both” should be rewritten: “sub. (2) (a) or (b), or both”.

(3) The two subunits of sub. (2r) (b) should be denoted as “1.” and “2.”.

(4) In sub. (2r) (b) 1., a period should be added at the end of the sentence.

(5) In sub. (2r) (b) 1. and 2., should the references to “sub. (2)” be more specific as to whether sub. (2) (a) or (2) (b) is being referenced, or is the intent to include both?

g. In s. NR 64.14 (6) (c) 4., “year around” should be changed to “year round”.

h. In s. NR 64.14 (6) (d) 5., on line 2, the correct way to make “easements” singular is: “~~easements~~, easement.” [s. 1.06 (2), Manual.]

i. Renumbering an existing provision to insert a new provision is generally discouraged. [s. 1.03 (5), Manual.] In SECTION 16, instead of renumbering s. NR 64.14 (9) (d), create a s. NR 64.14 (8m), and place the language that is currently in SECTION 17 in SECTION 16. Also, in SECTION 17, the term “rehabilitation of troutes at 50%” is vague and should be clarified. 50% of what? This language does not follow the format of surrounding provisions, making it more difficult to understand.