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CLEARINGHOUSE RULE 99-068

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 September 1998.]

1. Statutory Authority

Section NR 428.04 (2) states that the department authorizes the administrator to assist the department in implementing the NOx budget trading program by carrying out the functions set forth for the administrator in ch. NR 428. The rule also contains numerous provisions that assign responsibilities to the administrator of the U.S. Environmental Protection Agency. See, for example, the requirement in s. NR 428.25 (1) that the administrator will establish the specified compliance and overdraft accounts.

The authority for the department to make this authorization and assign these responsibilities is not apparent. These provisions seem to reflect a delegation by the department to the administrator that are not explicitly supported by the statutes cited in the analysis accompanying the rule as authorizing the rule or statutes being interpreted by the rule. If the department intends for the rule to set forth how the state regulatory program will mesh with the federal regulatory program for NOx budget trading program, then one alternative would be to place references to portions of the program implemented under federal regulations in notes to the rule.

2. Form, Style and Placement in Administrative Code

a. Since the definition of “acid rain emissions limitation” in s. NR 428.02 (3) references another definition of this term in s. NR 409.02 (2), it is neither necessary nor the preferred

drafting style to also include the text of the definition in addition to the cross-reference in s. NR 428.02 (3). If the department wishes to assist the reader of the rule, it could include the text in a note following the definition.

b. If a chapter of the Wisconsin Administrative Code is divided into subchapters, then the preferred drafting style is to place all provisions in the chapter within subchapters. This style was not followed in the treatment of ch. NR 428 as the rule begins subch. I at s. NR 428.04 rather than s. NR 428.01.

c. In s. NR 428.06 (4), sub. (4) (a) should be sub. (4) (intro.) and subds. 1. and 2. should be pars. (a) and (b).

d. The note accompanying s. NR 428.25 should follow or be included within that section rather than precede it. [See s. 1.09 (1), Manual.]

e. In s. NR 428.40, sub. (1) (intro.) should be par. (a) and pars. (a) and (b) should be pars. (b) and (c). [See the format for sub. (2).]

f. In s. NR 428.46 (6), “will” should be changed to “shall” for consistency with sub. (7).

3. Conflict With or Duplication of Existing Rules

Section NR 428.04 (3) states that requirements of ch. NR 428 supplement, and in some cases modify, the requirements under chs. NR 406 and 407 as these requirements apply to sources subject to the NOx budget program. To assist readers of the rule in understanding how the provisions in ch. NR 428 may modify requirements under chs. NR 406 and 407, the department should consider identifying these modifications as exceptions to the requirements in chs. NR 406 and 407.

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

a. The department should review the following vague references and, as appropriate, clarify them:

- (1) The “United States department of energy standards” in s. PSC 428.02 (35).
- (2) The “department’s title V operation permits regulations” and the applicable provisions in these regulations, including “operation permit shield” and “operation permit issuance,” in s. NR 428.13 (1) (a).
- (3) The “department’s regulations promulgated to administer non-title V permits” and the applicable provisions in these regulations, including “permit duration” and “permit revision,” in s. NR 428.13 (1) (b).

- (4) The “applicable, approved state of Wisconsin implementation plan” in s. NR 428.06 (7).

b. The treatment clause to SECTION 7 refers to “Board Order Am-53-98.” Does this order have a clearinghouse number? If so, it should be cited.

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

- a. In s. NR 428.15 (1), the abbreviation “FID” is not defined.

b. Section NR 428.22 (1) indicates that the NO_x allowance allocations for the control periods in 2003, 2004 and 2005 are listed in tables 1 and 2. Table 1 indicates that the electric utility core source NO_x base allocations will be 95% of the total allocations for electric utility core sources in 2003 and 2004 and 98% in 2005. Large industrial core sources are similarly allocated for those three years in table 2. The department should review these allocations to ensure that they are consistent with the allocations under s. NR 428.23 (2) (intro.) and (3) (intro.) as these latter two provisions indicate that 95% of the NO_x allowances for electric generating units and nonelectric generating units will be allocated to the corresponding existing units in 2005.

- c. The period at the end of s. NR 428.36 (2) (intro.) should be a colon.

d. The period at the end of s. NR 428.39 (4) (b) 2. d. should be “; or” to have consistent punctuation with the list of subparagraphs under subd. 2.