



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 02-146

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 2002.]

2. Form, Style and Placement in Administrative Code

a. The placement of s. NR 439.085 (2) (intro.) and (3) (intro.) does not conform with preferred drafting style, as introductory material should always end in a colon and lead into the subunits that follow the introductory material. See s. 1.03 (8), Manual.

b. Section NR 439.095 (1) (g) uses the term “total reduced sulfur (TRS).” Since “total reduced sulfur” and its abbreviation “TRS” are defined in s. NR 400.02 (159), par. (g) should not respecify the abbreviation for total reduced sulfur and should refer to this term either in words or through the abbreviation, but not both. Similarly, s. NR 447.13 (1) (a) 4. refers to the “occupational safety and health administration (OSHA),” whereas “OSHA” is already defined in s. NR 400.03 (4) (ke).

c. Notes may not include substantive requirements. See s. 1.09 (1), Manual. This form was not followed in the note following s. NR 447.08 (1) (a).

d. The treatment clause to SECTION 50 indicates that s. NR 484.10 (29) and (51) are amended in this SECTION. Subsection (29) should not be included in the treatment clause because s. NR 484.10 (29) currently does not exist and thus could not be amended by the rule. Subsection (51) should not be included because the text of the rule does not amend this subsection.

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

a. In s. NR 420.02 (31), the reference to the incorporation of the specified standard in ch. NR 484 is incomplete. The reference should be to s. 484.10 (6). Similarly, the reference in s. NR 420.02 (41) should be to s. NR 484.10 (2).

b. The rule incorporates standards by reference. See, for example, ss. NR 400.02 (70) and 447.13 (1) (a) 4. Consent for incorporation of the standards must be obtained from the Revisor of Statutes and the Attorney General pursuant to s. 227.21 (2) (a), Stats. The analysis accompanying the rule should, but does not, indicate that this consent has been given either prior to this rule promulgation or concurrently with this rule promulgation.

c. The reference to the code of federal regulations affected by the amendment of s. NR 484.03 (4) is incomplete. Should “29 CFR” precede the stricken citation?

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

a. The purpose of an analysis accompanying a rule is to provide an understandable and objective description of the effect of the rule. The analysis accompanying this rule is skimpy. Can the department assist a reader by providing more detail in the analysis, such as incorporating the itemized changes in the rule identified in the analysis in the report on the rule to the Legislative Council Rules Clearinghouse?

b. To be consistent with the terminology changes in s. NR 423.05 (1) (intro.) and (2), should “petroleum liquid dry cleaning facility” be changed to “~~petroleum~~ liquid VOC solvent dry cleaning facility” in s. NR 423.05 (3) (a)?

c. The treatment of s. NR 423.05 (3) results in text that is confusing. In addition, the text is grammatically incorrect as the singular noun “facility” is used with the plural form of the verb “achieve.” The department should review the treatment of these provisions and revise them, as appropriate, to ensure clear text.

d. The treatment of s. NR 439.095 (5) (a) 2. (intro.) results in the phrase “which meets the performance specifications of sub. (6)” being used twice in this introduction. Is that the department’s intent?

6. Potential Conflicts With, and Comparability to, Related Federal Regulations

The analysis accompanying the rule indicates that the rule interprets s. 285.11 (6), Stats. This statute states that “the rules or control strategies submitted to the federal environmental protection agency under the federal clean air act for the control of atmospheric ozone shall conform with the federal clean air act” unless the Governor makes one of the specified determinations. Since parts of the rule relate to the control of atmospheric ozone (see for example the treatment of chs. NR 423 and 424), the analysis accompanying the rule should specifically indicate whether the rule conforms with the federal Clean Air Act or the Governor has made one of the determinations.