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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 06-005

#### 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. The entire rule needs to be reviewed for the appropriate use of introductory material. First, when an introduction grammatically leads into following subunits, the introduction clearly should indicate whether any or all of the following subunits must be complied with. For example, in s. NR 149.02 (2) (intro.), the phrase “doing any of the following” should be inserted after the word “laboratories.” Second, if introductory material does not grammatically lead into following subunits, then the material should be numbered as a separate subunit and all of the following subunits should be renumbered accordingly. For example, in s. NR 149.02 (7), the first sentence should be renumbered as par. (a) and the remaining paragraphs should be renumbered pars. (b) and (c).

b. The material in s. NR 149.02 (3) should be moved to the definition of the term “laboratory” in s. NR 149.03 (41).

c. In s. NR 149.03 (11), the word “means” should be replaced by the word “includes.”

d. In s. NR 149.07 (1), the word “may” should be replaced by the word “are.” Also, the second sentence states that the department must have procedures for evaluating the eligibility of a laboratory for transferring its certifications and registrations by application. This rule is the place for these procedures. At the very least, the rule should indicate whether the procedures now exist and how they may be obtained. [See also ss. NR 149.08 (4) (b) and 149.23 (1).]

e. In s. NR 149.08 (3) (d), the rule should indicate where the department will publish this list or how a copy of the list can be obtained. The same issue occurs in sub. (4) (c).

f. In s. NR 149.12 (2), a note providing the contact information for the director of the bureau of integrated science services should be included in the rule.

g. In s. NR 149.18 (3), the phrase “shall be responsible for maintaining” should be replaced by the phrase “shall maintain.”

h. The note following s. NR 149.19 (6) provides that the analyses reference in sub. (6) need not be performed by a registered laboratory. Given that sub. (6) makes the same statement with respect to a certified laboratory, and since the note is a substantive statement, the content of the note should be incorporated into the body of the rule. This comment applies to a number of the other notes contained in the rule.

i. In s. NR 149.21 (7) (a) (intro.) and (b) (intro.), it appears that “may not be subject to a minimum fee” should be added before the colon.

j. Section NR 149.22 (2) provides that the department must publish a list of required proficiency testing samples and approved proficiency testing sample providers annually. The rule should describe, in a note, how this list may be obtained.

k. Section NR 149.27 (2) (b) states in part that “the department may develop limits.” Presumably, these limits refer to the term “acceptance limits” as used in par. (a) and as defined in s. NR 149.03 (1). The defined term should be used throughout the rule, including those places where the term “acceptance criteria” is used, unless the term “acceptance criteria” does not have the same meaning as the term “acceptance limits.” [See for example the use of both terms in s. 149.27 (2) (c).]

l. Section NR 149.36 (3) (d) refers to “protocols contained in methods specified by the department.” Is it clear where these protocols may be obtained? If not, a note to the rule should describe the process.

m. In s. NR 149.39 (2) (b), “under s. NR 149.08” should be added after the comma. In sub. (2) (f), the rule should identify the source of the “Manual for the Certification of Laboratories Analyzing Drinking Water.”

n. In s. NR 149.44 (6) (c), the use of the words “and” and “or” following subds. 1. and 2. is confusing and further emphasizes the need to express clearly in the introduction how following subunits are meant to apply.

o. Section NR 149.44 (6) (f) 3. should be incorporated into the material in sub. (6) (f) 2.

p. In s. NR 149.45 (1), the word “should” should be replaced by the word “shall.”

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

a. In s. NR 149.10 (1) (a) 3. and (b) 15., it appears that the word “subsection” should be replaced by the word “paragraph.”

- b. Section NR 149.13 (4) (a) should conclude with the phrase “of this subchapter.”
- c. Sections NR 149.14 (1) (d) and 149.30 (2) refer to forms provided by the department. The department should ensure that the requirements of s. 227.14 (3), Stats., are met.
- d. In s. NR 149.40 (2) (b), “s. NR 149.40” should be replaced with “this section.”
- e. In s. NR 149.48 (4) (3), it appears that the phrase “at this frequency” should be replaced by the phrase “at the frequency described in par. (a).”

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

- a. In s. NR 149.03 (36), the definition should clarify what the tiers are in each type of field of certification. In sub. (37), a comma should be inserted after “matrix-analytical.”
- b. In sub. (59), what does the phrase “with a stated level of confidence” mean? In sub. (81) it appears that the word “that” should be replaced by the word “than.”
- c. In s. NR 149.06 (4), a comma should be inserted after the second occurrence of the word “certificate.” [See also s. NR 149.10 (1) (b) 10. and 11.]
- d. In s. NR 149.10 (1) (b) 7., more detail should be provided about what “failure to follow approved methods” includes. Subsection (1) (c) 2., should specify that the laboratory must submit a petition for a hearing to the department within 30 days of receiving the order.
- e. In s. NR 149.14 (1) (c) (intro.), the phrase “initial, renewed, revised or transfer of” should be replaced with “seeking, renewing, revising or transferring.” In sub. (1) (c) 1., “when” should be replaced with “if.” In sub. (1) (c) 2., “violations” should be changed to “a violation” and the second occurrence of “have” should be replaced by “has.” In sub. (1) (d), instead of “expire,” a better word choice might be “cancel” or “void” or “terminate.” In sub. (2) (e), can the department provide criteria it will use to determine whether a laboratory is eligible to transfer their certifications or registrations? This problem also occurs in sub. (5). In sub. (7) (b) 2., either “during the evaluation” or “in the application” should be inserted before the period. The material in sub. (7) (c) should be clarified; is the intent not to require on-site evaluations?
- f. In s. NR 149.15 (2) (intro.), “to” should be deleted. In sub. (3) (a) and (b), “expire” is an awkward word choice.
- g. In s. NR 149.21 (1) (c) 2. (intro.) and 4., periods should be added at the ends of the sentences. In sub. (11), the rule should specify, through a cross-reference, which types of fees are not refundable.
- h. In s. NR 149.31 (2), the second sentence should conclude with the word “delay.” A third sentence should state: “The notice shall include an expected delivery date for the report.”
- i. In s. NR 149.32 (3) (b) (intro.), the phrase “for a second submittal” should be replaced by “for a second corrective action plan to be submitted.” In sub. (3) (b) 3., “on-site” should be inserted before “evaluation.”

j. In s. NR 149.36 (3) 1. and 2., and sub. (3) (f), the first instance of “that” should be replaced with “who.”

k. In s. NR 149.39 (3) (c) 13., the note contains substantive material which should be placed in the text of the rule. In addition, the statutory or administrative code citation for this exemption should be provided.

l. In s. NR 149.42 (1), it appears that the rule allows a laboratory to use alternative methods if they are approved by EPA without first requesting approval to use these methods from the department; however, both subs. (2) and (3) require a laboratory to request approval first. The department should clarify its intent in these subsections.

m. Section NR 149.44 (3) (b) refers to “department regulations” where can these be found?

n. In s. NR 149.46 (3) (b) (intro.), “This” should be changed to “The sample acceptance policy.” In sub. (3) (c), “can” should be changed to “are.”