



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 13-096

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.]

2. Form, Style and Placement in Administrative Code

- a. The introductory clause should be revised, as follows:
 - (1) The introductory clause currently contains two separate lists of sections treated and two separate relating clauses. Those lists and relating clauses should be combined to form a single list of all provisions treated, followed by a single relating clause. It appears that the relating clause should include the phrase “and affecting small business”.
 - (2) Throughout the list of provisions treated, the relevant code section number should not be repeated for each subsection, paragraph, or subdivision treated in the rule. For example, “146.04 (5), 146.04 (6), 146.04 (7)” should be replaced with “146.04 (5), (6) and (7)”.
 - (3) The list of provisions treated does not appear to accurately reflect the provisions treated in the order. For example, the list does not include s. NR 146.05 (title), (1), and (2), which are amended by the rule. The entire introductory clause should be reviewed and revised to ensure that all provisions treated are included. In addition, the treatment of notes, titles, and introductions should be reflected in the list of provisions treated.

[s. 1.02 (1), Manual.]

b. Throughout the rule, there are instances in which provisions treated in two or more SECTIONS could be combined to be treated in a single SECTION. [s. 1.04 (2) (a) 1. and 4., Manual.] Examples include:

- (1) The provisions treated in SECTIONS 8 to 12 could be treated in a single SECTION. The treatment clause of the new SECTION would read: “NR 146.02 (4d) and (note), (4h) and (note), (4p), (4t), and (7m) are created to read.”.
- (2) The provisions treated in SECTIONS 29 and 30 could be treated in a single SECTION. The treatment clause of the new SECTION would read: “NR 146.07 (3) and (note) and (4) are amended to read.”.
- (3) The provisions treated in SECTIONS 44 to 46 could be treated in a single SECTION. The treatment clause of the new SECTION would read: “NR 812.09 (4) (intro.), (a) 5., and (q) are amended to read.”.
- (4) The provisions treated in SECTIONS 55 to 57 could be treated in a single SECTION. The treatment clause of the new SECTION would read: “NR 812.17 (title), (1), (2) (b) and (c) (intro.), and (3) (a) 4. are amended to read.”. In SECTION 56, “(intro.)” could also be removed from the text of s. NR 812.17 (2) (c).

c. Throughout the rule, there are instances in which the current text of a rule provision is not reflected accurately. In addition, there are instances in which rule provisions are not amended correctly. The agency should accurately reflect the current text of a rule provision and should follow the guidelines for amending rule provisions in s. 1.06, Manual. Examples of these issues include:

- (1) In SECTION 1, the semicolon after “REGISTRATION” is new material and thus should be underscored.
- (2) In SECTION 2, the sentence “This chapter is promulgated under chs. 280 and 281, Stats.” is new material and thus should be underscored.
- (3) In SECTION 3, in the first sentence in the note, “, or” is new material and thus should be underscored.
- (4) In the second SECTION 25, in s. NR 146.07 (1) (b), following the phrase “license or registration”, the stricken comma should be deleted, as it does not appear in the current rule provision, and the strike-through should be removed from the word “and”.
- (5) In SECTION 29, in the note, material that has been deleted from the current rule provision, including the words “training” and “meeting”, should be included with strike-throughs to indicate the deletions. In addition, because the word “conference” is new material, it should be underscored.
- (6) In SECTION 32, in sub. (3), the word “or”, which appears in the current rule provision, should appear following the phrase “heat exchange drilling.”. If the

intent is to strike that word from the provision, then it should be stricken through. In sub. (4), the word “order” should be stricken through, followed by the word “orders”, which should be underscored. In sub. (6), the word “directly” is new material that should be underscored.

- (7) In SECTION 44, the entire word “location” should be stricken. New text, ending with the word “locations”, should be underscored following the stricken word.

d. Throughout the rule, there are instances in which periods should be retained in rule provisions that are amended. The agency should follow the guidelines for the retention of periods in s. 1.06 (4), Manual. For example, in SECTION 6, “~~activity.~~ activities.” should be replaced with “~~activity~~ activities.” and, in SECTION 16, “~~variance.~~ variances and approvals.” should be replaced with “~~variance~~ variances and approvals.”.

e. Throughout the rule, there are instances in which titles of rule provisions do not have the correct format. The agency should follow the guidelines for title formats in s. 1.05 (2), Manual. For example, the titles of s. NR 146.04 (5), (6), and (7), created by SECTIONS 19, 20, and 21, should be written in solid capital letters, and the titles of s. NR 812.20 (1) (f), (g), and (h), created by SECTION 63, should be italicized.

f. Throughout the rule, there are instances in which numbers are expressed incorrectly. Numbers should be expressed using Arabic numerals, except that numbers at the beginning of a sentence and the number “one” should be spelled out. [s. 1.01 (5), Manual.] For example, in SECTION 19, in s. NR 146.04 (5) (a) 2., “five” should be replaced with “5” and “ten” should be replaced with “10”.

g. Throughout the rule, the agency should examine the use of notes to ensure that they provide necessary clarification and do not include substantive requirements. [s. 1.09, Manual.]

h. In SECTION 1, the word “Title” in the treatment clause should read “(title)”.

i. In SECTION 2, the notes should be created in a separate SECTION. The treatment clause of the new section should read: “NR 146.01 (1) (note) and (note) are created to read.”. [s. 1.04 (2) (b), Manual.]

j. The following changes should be made in SECTION 3:

(1) The word “Note” in the treatment clause should read “(note)”.

(2) In the last sentence in the note, the hyphen following the phrase “drillhole construction” should be removed.

k. The SECTION after SECTION 6 should be labeled SECTION 7, not SECTION 47.

l. The word “is” in the treatment clauses of SECTIONS 8 and 9 should be replaced with the phrase “and (note) are”.

m. In SECTION 13, the phrase “**or License**” in the title of the provision is new material and thus should be underscored. [s. 1.06 (1), Manual.] In addition, “**License**” in the title should not be capitalized. [s. 1.05 (2) (b), Manual.]

n. In SECTION 14, “any of the following” should be added after “not required for” in s. NR 146.03 (2) (intro.). [s. 1.03 (3), Manual.]

o. The following changes should be made in SECTION 17:

(1) In s. NR 146.04 (1), “(a)” should be deleted where it appears before the title of the provision.

(2) The notes following s. NR 146.04 (1) (a) should be created in a separate section. The treatment clause of the new section should read: “NR 146.04 (1) (a) (note) and (note) are created to read:”. [s. 1.04 (2) (b), Manual.]

p. In SECTION 22, the note should not appear because it is not being amended.

q. SECTIONS 23, 24, and the first SECTION 25 include improper numbering. They should be revised in one of two ways:

(1) *Either* revise the treatment clause in SECTION 24 to read: “NR 146.06 is renumbered NR 146.06 (1)” and revise the treatment clause in SECTION 25 to read “NR 146.06 (2) is created to read:” (and make the corresponding changes to the numbering in the text of the current and proposed provisions);

(2) *Or* remove SECTIONS 23 and 24 and revise SECTION 25 to create a new section, numbered s. NR 146.065.

r. The rule includes two SECTIONS numbered “SECTION 25”. The second of these should be given a new SECTION number.

s. In SECTION 26, no underscoring should appear in s. NR 146.07 (1) (h) because that paragraph is created in the proposed rule. [s. 1.055, Manual.]

t. In SECTION 27, “(a)” should not be underscored because it was renumbered in the treatment clause.

u. The following changes should be made in SECTION 28:

(1) A period should be added at the end of subd. 1., and a period should be removed from the end of subd. 6.

(2) Because they do not fit with the list of nonrenewal criteria, subds. 6. and 7. should be created as paragraphs rather than subdivisions.

(3) To account for the previous comment, the treatment clause should be revised to read “NR 146.07 (2) (b), (c), and (d) are created to read:”.

v. In SECTION 29, the treatment clause should be amended to read: “NR 146.07 (3) and (note) are amended to read:”.

- w. In SECTION 31, the title of s. NR 146.08 should read: “**Registrant Licensee and registrant responsibilities.**” [ss. 1.05 (2) (b) and 1.06 (3), Manual.]
- x. In SECTION 39, “(1)” should be added following “NR 812.04” in the treatment clause.
- y. In SECTION 42, the treatment clause should be revised to read: “NR 812.08 (title) and (4) (intro.) are amended to read:”.
- z. The following changes should be made in SECTION 43:
 - (1) A period should be added after the phrase “because of property lines” and after each of the paragraphs.
 - (2) At the end of the introduction, the word “a” should be replaced with the phrase “each of the following”. [s. 1.03 (3), Manual.]
- aa. In SECTION 51, a period should be added at the end of the created provision.
- bb. In SECTION 52, the treatment clause should be revised to read: “NR 812.11 (title), (1) (intro.), and (2) (intro.) and (g) are amended to read:”. In addition, “(title),” should be removed where it appears in the title of s. NR 812.11 and “(intro.)” should be removed where it appears in sub. (2).
- cc. In SECTION 58, the treatment clause should be revised to read: “NR 812.18 is renumbered NR 812.18 (1).” The note in s. NR 812.18 should be retained as a note. [ss. 1.067 and 1.09, Manual.]
- dd. In SECTION 67, “(intro.)” should be added following “(a)” in the treatment clause.
- ee. In SECTION 74, “(1) (intro.)” should be added following “812.43” in the treatment clause.

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

- a. Throughout the rule, consider whether there are instances in which general references to “the law” could be replaced with more specific references to state or federal statutes. For example, see the phrase “the law” in s. NR 146.03 (2) (b), which is repealed and recreated in SECTION 14, or the phrase “applicable law” in s. NR 146.03 (3), which is added to an existing provision in SECTION 16.
- b. In SECTION 2, in the first note, “Wis. Adm. Code” should be removed. [s. 1.07 (2), Manual.]
- c. In SECTIONS 8 and 9, in the notes, “s. 280.01” should be replaced with “Section 280.01”.
- d. In SECTION 11, a period should be added after “1” in the statutory reference. [s. 1.07 (2), Manual.]

e. In SECTION 19, references to “subd. ii.” in subds. 3., 4., and 8. should be replaced with references to “subd. 2.”. [s. 1.07 (2), Manual.] In addition, in SECTION 19, consider revising the phrase “in accordance with all laws and rules including reporting” in subd. 3. to clarify the meaning, for example by referring to specific statutory reporting requirements.

f. In SECTION 20, the reference to “subd. i.” in s. NR 146.04 (6) (b) 2. should be replaced with a reference to “subd 1.”. [s. 1.07 (2), Manual.]

g. In the second SECTION 25, it appears that “sub. (2)” should be replaced with “~~sub. (2)~~ sub. (3)” in s. NR 146.07 (1) (a).

h. In SECTION 35, should the citation to s. NR 146.07 (2) in s. NR 146.09 (3) (d) be replaced with a citation to the rule provision relating to examinations?

i. In SECTION 59, what is the reference to “ASTM D 2610, D 2683 and D2657”? Should this be preceded by language such as “as specified in”?

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

a. In SECTIONS 1 and 2, the “_” after “NR” should be removed in the treatment clauses.

b. In SECTION 5, “Supervision” should not be capitalized. [s. 1.01 (4), Manual.]

c. In SECTION 8, in the note, a comma should be added after “surface”. [See s. 280.01 (2b), Stats.]

d. In SECTION 17, “must” should be replaced with “shall” in two instances. [s. 1.01 (2), Manual.]

e. The following comments relate to SECTION 19:

(1) To ensure clarity and reference to a clear antecedent, in s. NR 146.04 (5) (a) 1. to 9., the phrase “the applicant” should be added where applicable in each subdivision. In subd. 4., the word “submit” should be replaced with “The applicant has submitted”. In all other subdivisions, “The applicant” or “the applicant” should appear immediately preceding the word “has” or “was”. [See proposed s. NR 146.04 (6) for an analogous approach.]

(2) In s. NR 146.04 (5) (a) 8. and 9. and (b), “Department” should not be capitalized. [s. 1.01 (4), Manual.]

f. In SECTION 20, consider revising the phrase “in addition to the registered heat exchange drilling business being held responsible” in s. NR 146.04 (6) (d) to provide more straightforward language.

g. In SECTION 26, is the section relating to renewals (s. NR 146.07) the most appropriate placement for the second sentence in s. NR 146.07 (1) (f)?

h. In SECTION 30, it appears that the amended provision would make better sense if the word “or”, which appears following the phrase “heat exchange drilling”, were retained.

i. SECTION 33 should be revised to achieve greater consistency and to clarify antecedents. Consider making following changes:

- (1) To match the approach in the other subsections, remove the phrase “Licensed individual heat exchange drillers or water well drillers shall” at the beginning of sub. (8), and instead begin that subsection with “Provide”. In order to retain the intended meaning, the phrase “they are” in that subsection could then be replaced with the phrase “that a licensee or registrant who is an individual heat exchange driller or water well driller is”.
- (2) In subs. (10) and (11), references to “they” and “they are” could be replaced with references to the “licensee or registrant”. Appropriate changes should then be made to verbs in those provisions.
- (3) In sub. (13), in the second sentence, “Ensure” should be replaced with “The licensee or registrant shall ensure”.

j. The following comments relate to SECTION 34:

- (1) The following changes should be made to improve clarity in s. NR 146.09 (1):
 - (a) The phrase “under this chapter” should be added following the word “registration” in sub. (1) (intro.).
 - (b) The past tense verbs that begin each paragraph in the subsection do not clearly relate to any specific person or group. The phrase “The licensee or registrant” should be added at the beginning of each paragraph.
 - (c) At the end of par. (c), the semicolon should be replaced with a period.
- (2) In s. NR 146.09 (2) (intro.), the phrase “all of the following” or “any of the following”, whichever is appropriate, should be added after “unless”. [s. 1.03 (3), Manual.]
- (3) In s. NR 146.09 (2) (d), the phrase “revoked individual” is odd. Consider replacing it with an alternative phrase, such as “individual whose license or registration is revoked”.
- (4) In s. NR 146.09 (3) (b), is the intent to limit the application of the second sentence to licensees?

k. In SECTION 35, the words “their” and “they” should not be used in s. NR 146.09 (3) (c) because the paragraph refers to the singular “licensee”, “applicant”, or “individual”. Each “their” and “they” should be removed or replaced with “a”, “the licensee”, “the applicant”, or “the individual”, whichever is most appropriate.

l. In SECTION 38, consider removing the phrase “ask them to”.

m. The following comments relate to SECTION 53:

- (1) In s. NR 812.12 (1), consider replacing the word “or” with the word “and”.
 - (2) Section NR 812.12 (1) (b) and (c) should be revised so that the verbs that begin those provisions make sense with the word “it” in the introduction. Specifically, the phrase “Wells should produce” in par. (b) could be replaced with “~~produce~~ Produces”, and the phrase “Wells will provide” in par. (c) could be replaced with “~~provide~~ Provides”. If those changes are made, analogous changes should be made to pars. (d) and (e).
- n. In SECTION 63, consider replacing “as long as” in s. NR 812.20 (1) (e) with “if”. In addition, “%” should be replaced with “percent”.