



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 15-049

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 December 2014.]

2. Form, Style and Placement in Administrative Code

- a. A relating clause stating the subject matter of the proposed rule order should be added in the introductory clause. In addition, if the rule will affect small businesses, then the phrase “and affecting small business” should be added at the end of the relating clause. [s. 1.02 (1) (a) and (c), Manual.]
- b. The word “and” should be added before the final statutory provision of each treatment listed in the enumeration of provisions treated by the proposed rule.
- c. Item number 13 of the rule summary should provide a deadline for submitting comments. [s. 1.02 (2) (a) 13., Manual.]
- d. It is unclear why the title of ch. NR 809 appears before SECTION 1. Is the title to the chapter treated by the proposed rule?
- e. In SECTION 1, commas added in s. NR 809.03 should be underscored. [s. 1.06 (1), Manual.]
- f. In the treatment clause for SECTION 3, parentheses should be added around the subsection numbers 6 and 8.
- g. In SECTION 10, “and (note)” should be added to the treatment clause. [See s. 1.09 (2), Manual.]

h. Throughout the rule, there are numerous instances in which provisions treated in separate sections could be treated together in a single section. [See s. 1.04 (2), Manual.] Examples of sections that could be combined include SECTIONS 12 and 13; SECTIONS 19 and 20; SECTIONS 34 and 35; SECTIONS 37 and 38; SECTIONS 41 through 44; SECTIONS 58 and 59; SECTIONS 77 and 78; SECTIONS 82 and 83; SECTIONS 85 to 88; SECTIONS 90 and 93; SECTIONS 115 and 116; SECTIONS 138 and 139; and SECTIONS 149 and 150.

i. In SECTIONS 14 and 15, what is the purpose for the renumbering of the provision? Renumbering may often cause confusion and should be avoided if possible. [s. 1.03 (5) (a), Manual.]

j. In SECTION 25, it appears that the underscored word “table” already appears in the current rule. In addition, the table in that section appears to be missing the word “Thallium”.

k. In SECTION 26, “and” should replace the comma in the treatment clause. In addition, s. NR 809.115 (2) (intro.) appears to correct a misspelling that is correct in the current rule, and is incorrectly referenced as s. NR 809.115 (1) (d) 2. in the proposed rule.

l. In SECTION 28, in s. NR 809.115 (3) (intro.), a stricken comma should be added following the word “fluoride”. Also, the proposed rule treats s. NR 809.115 (3) (title), which should be included in the treatment clause. Additionally, s. NR 809.115 (3) (intro.) should not end in a period. The rule should be reviewed in its entirety for this latter comment. [s. 1.03 (3), Manual.]

m. In SECTION 30, the phrase “and (2) are” should be added after “(1)” in the treatment clause.

n. The following changes should be added in the table treated in SECTION 31:

(1) In the row for PCBs (as Aroclors), a comma should be added following the new material, and underscored material should refer to “525.3”.

(2) In the box following Butachlor, the comma after “525.2” should be underscored.

(3) In the first box following Dicamba, a comma should be added and underscored.

o. In SECTION 35, the treatment clause should be revised to include “(4) (intro.)”. The introductory material should not end in a period. [s. 1.03 (3), Manual.]

p. In SECTION 36, a period should be added after “3” in the treatment clause. Should subd. 1. refer to exceptions in subds. 2. and 3.?

q. The comma in the treatment clause for SECTION 40 should follow “(1)” rather than “(2)”. In addition, in s. NR 809.243 (2), because the text is unchanged except in the table, the treatment clause and rule text could list the table alone, rather than include the text of the provision.

r. In the treatment clause for SECTION 55, the second instance of “NR 809.31” should be removed.

s. In SECTION 56, the department should avoid unnecessary subdivision of s. NR 809.31 (1) (ar), or use introductory material to precede subds. 1. and 2. The rule should be reviewed in

its entirety to avoid other occurrences of this format. Also, “e.g.” should not be underscored in s. NR 809.31 (1) (ar) 2.

t. In SECTION 57, in the last sentence in s. NR 809.31 (1) (b), it appears that the word “table” is added and so should be underscored.

u. The following suggestions apply to SECTION 60:

(1) In the treatment clause, the word “is” should be added following the word “renumbered”.

(2) In s. NR 809.31 (1) (c) 1., a period should be retained at the end.

(3) In s. NR 809.31 (1) (c) 2., the stricken comma should be retained.

(4) In s. NR 809.31 (1) (c) 3., the stricken period should be retained.

v. In SECTION 61, “e.g.” should not be underscored in s. NR 809.31 (1) (dr) 2. a. This comment also applies to s. NR 809.31 (2) (b) 2.

w. In SECTION 65, a period appears to have been erroneously stricken in s. NR 809.31 (2) (b) (intro.).

x. In SECTION 73, periods should be added before subdivision numbers and the second instance of “809.31” should be removed in the treatment clause. In addition, in s. NR 809.31 (3) (b) 2., “sub” should be replaced with “pars.” rather than “subs.”.

y. In SECTION 74, it is not necessary to include the text of the note following s. NR 809.31 (6).

z. In SECTIONS 76 and 99, it is not necessary to underscore the text of the footnotes following the table because the table is repealed and recreated. [See s. 1.065, Manual.]

aa. Throughout SECTION 81, the phrase “of this section” could be removed following internal references.

bb. In SECTION 83, the department should review the accuracy of amendments to the table, particularly the treatments at the bottom of page 67 and top of page 68.

cc. The treatment clause in SECTION 84 should read “NR 809.323 (2) (title), (a) and (b)”.

dd. In SECTION 85, if par. (c) is not treated, then the reference to it should be removed.

ee. In SECTION 90, the comma should be removed from the treatment clause. If s. NR 809.327 91) (c) 1. and 2. is not treated, then the reference to it should be removed. The treatment clause could instead refer to par. (c) (intro.).

ff. In item number 7 in the table treated in SECTION 103, it appears that the word “with” does not need to be struck or added.

gg. In SECTION 106, a period should replace the comma after “pars.”.

hh. In SECTION 107, periods are missing in the section numbers.

ii. Missing periods should be added following subdivision numbers in treatment clauses in SECTIONS 110 to 113, 119, 120, and 135.

jj. The underscoring should be removed from the footnotes following the table treated in SECTIONS 126 and 127, because the tables are repealed and recreated. For the same reason, it is not necessary to show stricken material in SECTION 127. If the changes to those tables are relatively minor, consider amending those provisions rather than repealing and recreating them.

kk. The phrase “of the U.S. Code” is treated differently in SECTIONS 141 and 142. Is this intended?

ll. In SECTION 156, “.68” appears to be missing from the treatment of that section.

mm. In SECTION 163, “(intro.)” should be added after “809.833 (3) (c) 4.” in the treatment clause and citation.

nn. In SECTION 164, is text missing? The treatment clause refers to provisions that do not appear to be treated. Additionally, the treatment clauses of SECTIONS 164 and 165 are in conflict.

oo. In SECTION 166, for s. NR 809.833 (7) (d), it is not necessary to include text other than the title.

pp. In SECTION 177, “the” should be underscored after “~~their~~”.

qq. In SECTION 180, in footnote 1, underscored material should follow stricken material.

rr. Due to the technical nature of the rule, the agency should consider obtaining a final, careful review of the content of the rule, particularly the tables and charts, by a subject matter expert.

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

a. Several created definitions contain arguably substantive provisions that should be moved to substantive rule provisions, if possible. For example, in SECTION 6, consider moving the limitation in the second sentence into a substantive provision in the rule. Similarly, the last sentences in s. NR 809.04 (46m), (47g) and (47r) contain arguably substantive requirements that should be moved to other provisions in the rule.

b. Is the definition provided in s. NR 809.04 (42m) necessary? If so, could the use of water for maintaining oral hygiene be included in the broader description of “all personal hygiene”?

c. In SECTION 19, does the second section of s. NR 809.10 provide an exception to the general rule provided in the first sentence? That relationship could be clarified.

d. In SECTION 21, should “and” be replaced with “or” in s. NR 809.11 (3) (a) and (d)?

e. In footnote 1 following Table B in SECTION 24, should “done” or a similar term be added after “may be”?

f. Throughout the table treated in SECTION 33, provisions should be checked to be sure that commas are used consistently.

g. In SECTION 34, a noun could be added following “initiates” for greater clarity.

h. In the first footnote following the table treated in SECTION 40, consider replacing the phrase “these documents are” with the phrase “this document is”.

- i. In SECTION 56, in the last sentence of s. NR 809.31 (1) (ar), is it odd to refer to a future date in past tense? Could present tense be used without changing the effect?
- j. In SECTION 61, s. NR 809.31 (1) (dg) (intro.) should be revised to clarify whether all of the criteria set forth in subds. 1. to 4. must be satisfied.
- k. In SECTIONS 55 to 64, paragraph titles should either be used or not used in a consistent manner.
- l. In SECTION 66, the references to water supplier(s) should be made consistent with regard to plural or singular usage.
- m. In SECTION 72, to conform with drafting conventions, the second-to-last sentence in s. NR 809.31 (2m) (a) 5. should be revised to read "...monitoring period and shall collect as soon as possible..., except as provided under par. (c)." In addition, in s. NR 809.31 (2m) (c) 2., the following phrase could be used: "should have in place at least one of the following:".
- n. Formatting should be checked throughout the table treated in SECTION 104.
- o. In SECTION 140, is the first amended reference in the table missing text after the word "or"?
- p. In SECTION 141, should the word "or" be added after "40 CFR part 141" in the current rule text?
- q. In SECTION 162, in s. NR 809.833 (2) (d) (intro.), the phrase "the applicable" should be replaced with the phrase "all of the following:".
- r. In SECTION 168, in s. NR 809.833 (7) (g) 1., "are" should be changed to "is" following the second instance of "[NAME OF WATER SUPPLIER]".
- s. In SECTION 170, does par. (b) properly follow the introductory text?
- t. In SECTION 172, where "(ppb)" is added following existing rule text, the preceding term does not need to be stricken and added.
- u. In the first footnote following the table treated in SECTION 180, the commas before and after "at their option" should be stricken.