



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Scott Grosz
Clearinghouse Director

Terry C. Anderson
Legislative Council Director

Margit Kelley
Clearinghouse Assistant Director

Jessica Karls-Ruplinger
Legislative Council Deputy Director

CLEARINGHOUSE RULE 16-007

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. In s. NR 660.10 (9m), “Cathode ray tube or CRT” should be changed to “Cathode ray tube” or “CRT”. Also, it appears that separate definitions should be created for “used, intact CRT” and “used, broken CRT”. In s. NR 660.10 (70m), the parentheses should be replaced with commas.

b. In s. NR 661.03 (1) (b) 4. a., the underscoring should be removed because this section is being repealed and recreated.

c. In s. NR 661.04 (1) (z) 1., “must” should be changed to “shall”. This problem also occurs in sub. (1) (z) 4., and 5. (intro.), s. NR 661.04 (2) (r) 1., s. NR 662.213 (1) (b), s. NR 665.0195 (3), and s. NR 665.1034 (3) (a) 2.,. The entire rule should be checked for this issue. In sub. (1) (z) 5. (intro.), “all of” should be added between “site” and “the”. This issue also occurs in s. NR 661.04 (2) (r) 5. (intro.).

d. In s. NR 661.04 (2) (o) 4., the symbol before “1317 (b)” should be changed to “s.”. This also occurs in s. NR 661.32 (1) Table.

e. In s. NR 661.32 (2) (a), it appears that quotation marks should be added around the first instance of “dyes or pigments production”. Also, it appears that “under sub. (3)” should be added after “For the purposes of the K181 listing”. This issue also occurs in sub. (2) (d). In sub. (2) (b) 4. (intro.), “all of” should be inserted between “Keep” and “the”. This issue also occurs in sub. (2) (c) 10. (intro.). In sub. (2) (c) 1., it appears that the notation “sub. 3.”, should be changed to

“sub. (3)”. In sub. (2) (c) 2., “described in par. (b)” should be changed to “described in par. (b) 1. to 3.”.

f. In s. NR 661.38 (3) (g) (intro.), the notation “(intro.)” added after the paragraph title should be deleted.

g. In the title of s. NR 661.39, either “cathode ray tubes” or “CRTs” should be used, but not both.

h. In SECTION 32, it appears that the title of the Appendix being amended should be deleted from the treatment clause. The same issue occurs in SECTION 33.

i. In s. NR 662.010 (10) (intro.), the material in the parentheses should be created as a separate sentence.

j. In SECTION 36, it appears that this information should be added to s. NR 662.022 as a note, instead of creating a new section.

k. In s. NR 662.200 (6), the sentence “A regularly scheduled removal of unwanted material as required s. NR 662.208 does not qualify as a laboratory clean-out.”, is substantive and should not be included in the definition of “Laboratory clean-out”. [See s. 1.01 (7) (b), Manual.] A similar issue occurs in sub. (12) by including substantive material in the last sentence of that subsection.

l. In s. NR 662.202, in the subchapter title, “Requirements” should be changed to “requirements”.

m. In s. NR 662.203 (2) (intro.), it appears that “all of” should be inserted between “out” and “the”. The same issue occurs in s. NR 662.204 (2) (intro.).

n. In s. NR 662.206 (1) (b) 2. (intro.), “, but are not limited to” should be deleted. [See s. 1.01 (9) (f), Manual.] The same issue occurs in s. NR 662.207 (3) (intro.). In sub. (2) (intro.), it appears that “assure” should be changed to “ensure”.

o. In the treatment clause for s. NR 662.220, “(intro.)” should be changed to “(title)”.

p. In s. NR 664.0016 (1) (d), “Occupational Safety and Health Administration” should be changed to lowercase.

q. In s. NR 664.0052 (2), it appears that “National Response Team’s” should be changed to lowercase. This issue also occurs in s. NR 665.0052 (2).

r. In the treatment clause of SECTION 157m, “correspondingly” should be deleted. Additionally, SECTIONS in the proposed rule should not be indicated using the insertion style used for actual rule text.

s. In the treatment clause of SECTION 159, “renumbered and” should be added between “are” and “amended”.

t. SECTIONS 166 and 167 should be combined with SECTION 165 because the same treatment applies and there is no intervening subunit that is affected by a different treatment. [s. 1.04 (2), Manual.]

u. SECTIONS 176 and 177 should be combined because the same treatment applies and there is no intervening subunit that is affected by a different treatment. [s. 1.04 (2), Manual.]

v. SECTIONS 190 and 191 should be combined because the same treatment applies and there is no intervening subunit that is affected by a different treatment. [s. 1.04 (2), Manual.] Compliance with this provision of the Manual should be ensured throughout the rule.

w. In s. NR 670.010 (13) (a) 1., consider removing the term “etc.” [s. 1.01 (9) (c), Manual.]

x. Throughout the rule, consider avoiding the use of the words “you” and “your.”

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

a. Section NR 668.01 (6) (c) refers to thermostats as described in s. NR 673.04, but SECTION 227 repeals the word “thermostat” from s. NR 673.04 and replaces it with the term “mercury-containing equipment”.

b. Section NR 670.001 (3) (b) 8. c. refers to thermostats as described in s. NR 673.04, but SECTION 227 repeals the word “thermostat” from s. NR 673.04 and replaces it with the term “mercury-containing equipment.”

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

a. In the plain language analysis prepared by the department, in the introductory sentence it appears that “law” should be added between “state” and “changes”.

b. In Part E of the plain language analysis, consider clarifying whether this part also applies to the changes in SECTIONS 247, 249, 251, and 252 that change the standard for used oil from “greater than or equal to 1,000 ppm total halogens” to “greater than 1,000 ppm total halogens.”

c. In Part I of the plain language analysis, consider clarifying which rule changes are being made pursuant to the Resource Conservation and Recovery Act Burden Reduction Initiative. For example, is the initiative the basis for the change in SECTION 165 that allows a generator to choose not to make the determination of whether the waste must be treated? Is the initiative the basis for the change in SECTION 165 that removes the requirement that an authorized representative certify that contaminated soil does not contain listed hazardous waste? Is the initiative the basis for the change in SECTION 167 that replaces the requirement that an owner or operator of a recycling facility submit a certification for each shipment of waste with a requirement that a certification be submitted only for the initial shipment of waste?

d. Section NR 660.11 should be reviewed in its entirety in order to ensure that periods are added at the end of every sentence.

e. In s. NR 661.03 (1) (b) 4. a., it appears that the hyphen between “derived-from” should be deleted. This problem also occurs in sub. (1) (b) 4. g. Also, it appears that the first instance of “part per millions” should be changed to “part per million”.

f. Although parentheses are used throughout the current chs. NR 661, 662, 663, 664, 665, and 670, please note that the continued use of parentheses in rules should be avoided. [See s. 1.01 (6), Manual.]

g. In s. NR 661.03 (1) (b) 4. d., while the notation “e.g.” is used throughout the current rule provision, please note that instead of “e.g.”, the phrase “for example,” should be used. The entire rule should be checked for this issue.

h. In s. NR 661.03 (1) (b) 4. f., while the notation “i.e.” is used throughout the current rule provision, please note that instead of “i.e.” the department should insert a description or explanation that clarifies the meaning of this provision. The entire rule should be checked for this issue.

i. In s. NR 661.03 (1) (b) 4. f., “Director” should be changed to “director” and the full job title should be included.

j. In s. NR 661.04 (2) (o) 5., “There is one exception:” should be changed to “One exception to these requirements is the following:” In sub. (2) (r) 6. a., “; or” should be deleted and replaced with a period.

k. In s. NR 661.35 (2) (b) 3. a., how will a generator determine what “an appropriate method” is?

l. In s. NR 661.39 (2) (b) 1., the reference to “s. NR 660.10 (19g)” should be changed to “s. NR 660.10 (19j)”.

m. In SECTION 34, under subch. K NR 662.202, “Alternative Requirements” should be changed to “Alternative requirements”. In addition, the section titles listed under subch. K should all end in periods.

n. In s. NR 662.200 (2), “Department of Education” should be changed to “department of education”. In sub. (12), it is unclear what sources “section 261.2” or “section 261.3” are referring to.

o. In s. NR 662.202 (2), it appears that “subpart” should be changed to “subchapter”.

p. In s. NR 662.213 (2) (intro.), “in sub. (1)” should be added after “the same 12-month period”.

q. In s. NR 662.214 (1) (a) 1., “using that term, the eligible academic entity shall” should be inserted between “If not,” and “identify”. In subs. (2) (a) to (g), is it possible to remove the phrase “intended best practices” and replace it with “best practices”?

r. In s. NR 662.216 (1), the term “satellite accumulation area” should be defined in the rule.

s. In s. NR 664.0073 (2) (f), “This information shall be” should be added before “Maintained”. In addition, “ground-water” should be changed to “groundwater”. These issues also occur in s. NR 665.0073 (2) (f).

t. The treatment clause of SECTION 54 states that s. NR 664.0098 (7) (c) is amended, however, there are no strike-throughs or underscores in that subsection in the rule. The same issue occurs in SECTION 55.

u. In s. NR 664.0195 (3) (a), “Above ground” should be changed to “Aboveground”. In sub. (4), “The facility shall” should be added before “Include”.

v. In s. NR 664.0347 (4), it appears that “and maintained” should be changed to “and maintain it”.

w. The treatment clause of SECTION 90 states that the note is being repealed and recreated; however, it appears that the text in the note is identical to the text of the note in the current rule.

x. In s. NR 664, Appendix IX, footnote “4” next to “Chemical abstracts service index name” should be stricken-through. The same change should be made for the text “CAS index names are those used in the 9th Cumulative Index.”, at the end of the Appendix.

y. In s. NR 665.0016 (1) (d), it appears that the term “facility employees” should be changed to “facility personnel”, the term that is used in the current rule, in order to ensure consistency.

z. In s. NR 666.080 (2) (intro.), in order to be consistent with the format in s. NR 666.080 (1) of the current rule, the first sentence should be replaced with “Which requirements apply if spent lead-acid batteries are stored before they are reclaimed, but not through regeneration?”.

aa. In s. NR 666.100 (2) (c) (intro.), it appears that the beginning of this sentence should be reworded to say “If an owner or operator of a boiler or hydrochloric acid production furnace that is an area source under 40 CFR 63.2 elects not to comply...”.

bb. In s. NR 666.905, can the department clarify the meaning of a “legitimate recycling facility”?

cc. In s. NR 666.905 (2) (Note), “that self transport” should be changed to “who self-transport”. The same issue occurs in s. NR 666.905 (3) (c) (Note).

dd. In s. NR 667.0001 (1), is the reference to national standards accurate?

ee. The subdivision of s. NR 667.0147 (7) appears incomplete or inaccurately subdivided.

ff. In s. NR 668.07 (1) (a), consider replacing the words “has to be” with “must.”

gg. In s. NR 668.07 (1) (a), consider revising the sentence that begins “This is done by determining if the hazardous waste...”. This provision should be phrased to more clearly indicate that the action is required by the rule. For example, the following sentence says “This determination shall be made by...”.

hh. In s. NR 668.07 (1) (a), consider revising the new sentences that begin “Alternatively, the generator shall send the waste...”. It is unclear from these sentences under what circumstances the described actions may be taken, and it is unclear which administrative rule provisions apply.

ii. In s. NR 668.07 (1) (a), consider replacing the word “can” with the word “may” in the new sentence that begins “In addition, some hazardous wastes shall be treated by particular treatment methods before they can be land disposed...”.

jj. In s. NR 668.07 (2) (f), replace the word “must” with the word “shall” in the new sentence that begins “The certification and notification must...”.

kk. In SECTION 169, consider revising s. NR 668.20 (2) (e) to clarify which persons are referred to by this provision.

ll. In SECTION 169, consider revising s. NR 668.20 (3) to clarify what is required by the statement “the initial generator must test a sample of the waste extract or the entire waste, depending on whether the treatment standards are expressed as concentrations in the waste extract of the waste, or the generator may use knowledge of the waste.”

mm. In SECTION 194, consider revising s. NR 670.010 (8) to clarify to whom the following sentence applies “The department may not allow you to submit applications or Notices of Intent later than the expiration date of the operating license, except as allowed by s. NR 670.051 (5) (b).