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# Wisconsin Legislative Council

## RULES CLEARINGHOUSE

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## CLEARINGHOUSE RULE 23-017

### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Council Staff and the Legislative Reference Bureau, dated November 2020.]**

#### 2. Form, Style and Placement in Administrative Code

- a. In SECTION 3 of the proposed rule, do not strike-through only the percent symbol attached to the number 15. Strike-through the number along with the symbol and insert “15 percent”.
- b. In SECTION 4 of the proposed rule, make the following changes in s. NR 428.04 (2) (i):
  - (1) In subd. 2. (intro.), insert “any of” before “the following periods?”.
  - (2) In subd. 2. b., insert a comma after “maintenance”.
- c. In SECTION 11 of the proposed rule, consider the following comments regarding s. NR 428.055:
  - (1) Do not create sub. (2) as a subunit following sub. (1). If the items in sub. (2) are requirements under sub. (1) (intro.), change the designation of sub. (2) to par. (a), and conform subunits of par. (a) accordingly. Similarly, if any of subs. (3) to (5) are requirements under sub. (1) (intro.), they should be converted to paragraphs that following the colon at the end of sub. (1) (intro.).
  - (2) Both sub. (1) and sub. (2) (c) address whether an alternative is technologically or economically infeasible. Is there a reason to address this in two locations?
  - (3) In sub. (2) (c) 2., insert a period at the end of the sentence.
  - (4) In sub. (5) (intro.) and (b), change “EPA administrator” and “administrator or designee”, respectively, to “administrator”. The term “administrator” is defined for purposes of ch. NR 428 by s. NR 400.02 (9) as the “administrator of the EPA or designee”.
  - (5) In sub. (5), why is the word “revokes” included? This subsection requires EPA approval before an alternative will become effective. Does the department need

EPA approval before revoking an alternative? If not, remove “revokes” from this subsection.

d. In SECTION 13 of the proposed rule, consider the following comments regarding s. NR 428.08:

(1) In sub. (2):

- (a) Do not create two pars. (g). The second par. (g), on page 14, perhaps should be changed to subd. 5.? If so, it might be helpful if it also began with something like “Notwithstanding subd. 4.,” because it appears to describe conditions under which the performance testing otherwise required by subd. 4. does not apply.
- (b) The first par. (g), on page 13, should have a title because other paragraphs under sub. (2) have titles (save par. (f), which should also have a title). [s. 1.10 (2) (a) 2., Manual.]
- (c) In par. (g) 4. b., clarify the meaning of the following language: “in the load ranges of 25 to 50 percent, 50 to 75 percent, 75 to 100 percent or other load ranges approved” by the department. From context, it appears that the default is that a test must be conducted at each of the first three load ranges mentioned. If that is correct, add the word “and” before “75 to 100” and add a comma after “100 percent” to clarify that. Also, if the department approves other load ranges, must the department approve three load ranges or may the department select some other number of load ranges? If it must be three, replace the word “other” with the word “three” to clarify that. If, however, it could be some other number of load ranges, the department must modify par. (g) (4) c. because it refers to “three” tests.
- (d) In par. (g) 4. c., should “ranges” be inserted after “load”? If not, should “load” be changed to “loads”?

(2) In sub. (3):

- (a) In par. (a) (intro.), the meaning of the phrase “Notwithstanding the exceptions under s. NR 439.075 (4), all of the following exceptions apply to the testing required under sub. (2) (g):” should be clarified. Does this mean that any of those s. NR 439.075 (4) exceptions that otherwise might have applied will no longer be available to sub. (2) (g) testing? If so, it might be clearer if the word “Notwithstanding” was changed to something like “In lieu of”.
- (b) In par. (b), is the reference to a waiver under “par. (a)” correct? Paragraph (a) contains some subunits that involve a waiver, such as subd. 1., and some subunits that do not involve a waiver, such as subds. 3. to 9. Must an owner or operator obtain a waiver to exercise any of the exceptions in those latter subdivisions?

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

In SECTIONS 5, 9 (twice), and 13 of the proposed rule, references to s. NR 484.04 should include a reference to Table 2 of that section.

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

a. In the plain language analysis in the rule summary, in the second paragraph under the heading Revised NOx emission limit, remove the comma after “and”.

b. In SECTION 2 of the proposed rule, the definition of “primary fuel” should be clarified. In particular, the meaning of “predominant” is ambiguous given that a combustion unit may have multiple primary fuel types. For example, if a combustion unit uses three separate fuel types that provide 50, 45, and five percent, respectively, of its heat input, is the first fuel type the only primary fuel because it is used the most? Or would the first two fuel types be primary fuels because none provides more than 50 percent of the unit’s heat input and either of them is predominate as compared to the third fuel type?

c. In SECTION 2 of the proposed rule, in the definition of “primary fuel”, should “MMBtu” be changed to “mmBtu” to match the capitalization used in the abbreviation listed in s. NR 400.03 (2) (nm)?

d. SECTIONS 4, 8 (twice), and 16 of the proposed rule each create an exception for certain uses of a secondary fuel if those uses meet any of a number of criteria. Among the listed criteria is that the fuel is used only for startup or that the fuel constitutes less than one percent of a unit’s consumption. In each instance, these two criteria are listed in a single rule subunit. Unless these two criteria are related to one another, it would be clearer if each was contained in its own rule subunit.

e. In SECTION 9 of the proposed rule, in s. NR 428.05 (4) (b), should “pound per million” be changed to “pounds per million”?

f. In SECTION 15 of the proposed rule, insert “(intro.) in the treatment clause after “(1)” and underscore the closing parenthesis after “3” in s. NR 428.22 (1) (intro.).