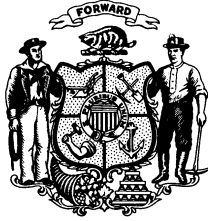


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CLEARINGHOUSE RULE 96-078

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 October 1994.]

2. Form, Style and Placement in Administrative Code

a. The rule creates ch. NR 233 and divides most, but not all, of this chapter into subchapters. If the department organizes ch. NR 233 in subchapters, then the entire chapter, including ss. NR 233.01 to 233.04, should be included in subchapters.

b. The period at the end of each section title should be underscored. This style is not followed for any of the section titles in ch. NR 233.

c. The last paragraph of the analysis states that a purpose section was included in the rule, as required by the Manual. However, s. 1.02 (3), Manual, merely suggests the sequence of material in a chapter. If a purpose statement is included, it should come first. However, there is no requirement to include a purpose statement.

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

The analysis accompanying the rule cites s. 147.04, Stats., as authorizing rule-making, yet this section does not specifically authorize rules. Furthermore, the references to ss. 147.035, 147.06 and 147.07, Stats., as authorizing rule-making, are unduly broad as all of these sections contain considerable other provisions in addition to the authority or duty to adopt rules; specific subsections or paragraphs should be cited.

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

a. The department should review the use of the undefined term “industry” in the applicability provision in s. NR 233.02 to determine whether a definition is necessary to ensure that this provision is clear.

b. In s. NR 233.03 (4) (c), a space is needed between “other” and “living.”

c. The compliance dates for achieving the best practicable technology and the best available technology at existing sources specified in s. NR 233.04 (1), Stats., when read in conjunction with the definitions of “existing source” and “new source” in s. NR 233.03 (2) and (3), Stats., could lead to nonsensical results. For example, these provisions could be interpreted to require an existing source for which construction commenced on January 1, 1991 to have achieved the best available technology by July 1, 1984. The department should clarify the applicability of the compliance dates in s. NR 233.04 (1) by either modifying the text of the rule or, if it is necessary to include these dates to conform with federal law, adding a note on how these compliance dates will be implemented.

6. Potential Conflicts With, and Comparability to, Related Federal Regulations

Under 33 U.S.C. s. 1311 (b) (2) (C), (D) and (F), the deadline for complying with effluent limitations requiring the application of the best available technology is, in general, March 31, 1989. Section NR 233.04 (1) (intro.) and (b) establish that any existing source subject to ch. NR 233 which discharges to waters of the state must achieve the effluent limitations representing best available technology by July 1, 1984.