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CLEARINGHOUSE RULE 99-021

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 September 1998.]

2. Form, Style and Placement in Administrative Code

GENERAL COMMENT: While s. 227.14 (1m), Stats., allows the format of federal regulations to be used in this rule, many of the comments in this section either are not related directly to the federal format or will assist in clarifying the intent of the rule.

a. Based on a word search, it appears that the terms “alternative contemporaneous annual emission limitation” and “approved clean coal technology demonstration project” are not used in the rule. If this is the case, definitions of these terms should be eliminated.

b. Section NR 409.02 (12e) includes a reference to s. NR 409.06 (4) (g) although the latter section does not exist in the current rule or in the rule-making order. Is this an error?

c. In s. NR 409.02 (12t), the definition of “arch-fired boiler” indicates that it is limited to six specific boilers in the state, but it gives no information about where those boilers are. This seems an inadequate definition. Further, the third sentence of that definition appears to be substantive and so belongs in the text of the rule.

d. In s. NR 409.02 (17m), the note following the definition of “cell burner boiler” appears to be more than merely explanatory material. If the department intends this to have the force of law, it should be incorporated into the preceding definition.

e. The citation at the end of s. NR 409.04 (2) (c) should read “under subs. (1) (a) and (4) (c).” The same comment applies to the references in the middle portion of s. NR 409.04 (5) (a) and at the end of that paragraph.

f. The rule contains many errors with regard to introductory language and following lists. [See s. 1.03 (8), Manual.] In general, an introductory clause should end with, or include, a phrase such as “all of the following” or “any of the following,” and each of the following items should end with a period. The first of many provisions that do not follow this rule is s. NR 409.04 (1).

The rule also contains numerous instances in which material that is not introductory in nature is numbered as an introduction. These provisions should be numbered at the same level as those that follow them. For example, s. NR 409.065 (5) (d) 3. (intro.) should be numbered s. NR 409.065 (5) (d) 3. a. and the following provisions should be numbered subd. 3. b. to e. Similarly, s. NR 409.065 (7) (a) (intro.) should be numbered s. NR 409.065 (7) (a) 1. and the following units should be numbered subds. 2. to 8.

In other instances, provisions that should be broken down into an introduction and following list are not. See, for example, s. NR 409.065 (6) (d) 7. and (e) 2.

Two other provisions, s. NR 409.065 (6) (a) and (7) (d), make particularly poor use of the introduction and list format and should be modified as follows:

- (1) Section NR 409.065 (6) (a) (intro.) should end with the phrase “all of the following apply:”. A new subd. 1. should be inserted which reads: “One of the following:” and subds. 1. to 4. should be numbered subds. 1. a. to d. Subdivision 5. should be numbered subd. 2. Subdivision 6. (intro.) should be numbered subd. 3. (intro.) and end with the phrase “all of the following apply:”. Each subunit of this paragraph should end with a period (except those ending with a colon) and should not end with the word “and” or “or.”
- (2) Section NR 409.065 (7) (d) (intro.) should be numbered s. NR 409.065 (7) (d) 1. (intro.) and should begin with the phrase “Except as provided as in subd. 2.,” and end with the phrase “under the plan if all of the following requirements are met:”. Subdivision 1. should be numbered subd. 1. a. and subds. 1. a. and b. should be numbered subds. 1. b. and c. Each subdivision paragraph should end with a period and not with the word “and” or “or.”

g. The second sentence of s. NR 409.04 (3) (a) 4. belongs in the introduction to par. (a). This could be accomplished by simply adding the words “and the administrator” after the words “the department” in that introduction.

h. Section NR 409.04 (5) (b) includes a cross-reference to nonexistence provisions, sub. (3) (a) 1. c. and d.

i. Section NR 409.05, beginning in the first subsection, uses the term “opt-in source.” Is this a term of art? If not, the term should either be defined or replaced by a term or phrase that is understandable on its face.

j. In s. NR 409.05 (3) (b), the word “and” should replace the comma following the notation “40 C.F.R. 72.2 to 72.6.”

k. In s. NR 409.05 (4) (a), the word “and” between the terms “sulphur oxide” and “nitrogen oxides” should be replaced by the word “or.”

l. In s. NR 409.055 (1) (intro.), the notation “sub.” should be replaced by the notation “par.” However, sub. (1) (d) should be redrafted as a definition and placed in a separate subsection of that section. (In particular, it does not follow grammatically from the introductory clause of that subsection.)

m. The format of the series of citations and the end of the first sentence of s. NR 409.055 (2) (intro.) is incorrect. It could be corrected by inserting either the word “and” after the word “section” or the notation “40 C.F.R.” before the notation “72.10 to 72.13.” The same comment applies to the citations at the end of s. NR 409.055 (3) (a) 1.

n. Section NR 409.065 is unnecessarily long, which makes reading it difficult. It could easily be broken down into five or more sections, based on its subsections, which could even be placed in a separate subchapter.

o. In s. NR 409.065 (1) (a), the phrase “the provisions apply to each” should be replaced by the phrase “this section applies to a.”

p. Section NR 409.065 (6) (b) should be rewritten in the active voice and in full sentences. Each subdivision should clearly state whose responsibility the described action is, such as the owner or operator or the department.

q. Section NR 409.065 (6) (e) 11., which is referred to in s. NR 409.065 (6) (d) 3., is missing. Should s. NR 409.065 (6) (d) 3. refer instead to subd. 12.? Similarly, should s. NR 409.065 (6) (e) 6. refer to sub. (9) (e), rather than sub. (9) (b)?

r. Use of the word “will” in s. NR 409.065 (6) (f) 1. c. is inappropriate. That sentence could be rewritten as follows: “During the alternative emission limitation demonstration period, a unit may emit at a rate”

s. In s. NR 409.065 (6) (f) 2. b., the reference to “par. (a)” should be replaced by a reference to “this subd. 2. a.”

t. The text of s. NR 409.065 (7) (a) 6. should be incorporated into the description of the term R_{ij} . The same applies to s. NR 409.065 (7) (d) 2. b.

u. In s. NR 409.065 (7) (b) 1., the notation “pars.” should be replaced by the notation “par.”

v. In s. NR 409.065 (7) (d) 2. (intro.), the reference to “subpar. a.” should be replaced by a reference to “this subd. 2. a.”

w. Section NR 409.065 (7) (d) 2. c. should be renumbered as a separate subdivision.

x. SECTION 19 uses the amendment format to renumber s. NR 409.08 (1) (a). Instead, it should use the renumbering format. The same comment applies to SECTIONS 21 and 23.

y. Since s. NR 409.08 (1) (b) 9. is stated in the past tense and only describes history, should it be placed in a note rather than a substantive provision? Similarly, what is the significance of the date specified in s. NR 409.11 (1) (a) 2., since that date is now past?

z. In s. NR 409.08 (2) (f) 3., the notation “i.e.” should be replaced by the word “including,” and the final two occurrences of the notation “s. NR” should be deleted.

aa. In s. NR 439.098 (4) (a) and (c), the material beginning with “e.g.,” should be placed in a note. [See, also, s. NR 409.065 (6) (d) 2.]

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

The rule contains numerous references to placing information in a prescribed format. The department should ensure that the requirements of s. 227.14 (3), Stats., are met.

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

a. In s. NR 409.02 (12o), it appears that the word “the” should be inserted before the phrase “U.S. environmental protection agency.”

b. In s. NR 409.02 (32p), it appears that the word “of” should be inserted following the word “time.”

c. Section NR 409.02 (35h) defines the term “dry bottom.” The term is used in the rule as an adjective, but its definition is not in that form. The definition should be modified to read “having a furnace bottom temperature below the ash melting point and bottom ash removal as a solid.” The same comment applies to the definition of “wet bottom.”

d. In s. NR 409.02 (39m), the definition of “flue gas” refers to all combustion products which would include ash. Should the definition be limited to gaseous combustion products?

e. In s. NR 409.02 (43h), the definition of “group 1 boiler” should be “a tangentially-fired boiler or a dry bottom wall-fired boiler that is not a cell burner boiler.”

f. In s. NR 409.02 (74p), it appears that a comma should be inserted following the word “and.”

g. Section NR 409.02 (90) states that “wet bottom boiler” includes arch-fired boilers. However, the definition of the latter term states that arch-fired boilers are dry bottom boilers. Which is correct?

h. The titles of s. NR 409.04 (2) and (3) do not describe the content of those provisions well. More descriptive titles might be “Exemptions for Nonallocated Units” and “Exemptions for Allocated Units,” or some other titles.

i. The references to “sub. (1)” in s. NR 409.04 (6) (a) 1. and (c) 2. appear to be incorrect, since sub. (1) does not include any requirements.

j. In s. NR 409.05 (2) (b), it appears that the parenthetical notation following the number “72” should be deleted.

k. The title of s. NR 409.055 refers to “industrial utility-units,” while the applicability provisions in sub. (1) of that section refer to “non-cogeneration, utility units.” These should be reconciled. Also, sub. (1) (intro.) and (a) indicate that that section applies to utility units that are not owned by or affiliated with a utility, an obvious contradiction. These, too, should be reconciled.

l. In s. NR 409.055 (1) (a), it appears that the comma after the word “thereafter” should be deleted and that a comma should be inserted following the word “thereof.”

m. Section NR 409.055 (4) (d) 2. is essentially a definition of the term “successor agreement.” However, the term is not used in that paragraph and its relation to that paragraph, titled “Loss of Exemption,” is not made clear. This definition should be moved to a separate subsection at the beginning of the section.

n. In s. NR 409.065 (2) (e), it appears that a comma should be inserted before the phrase “is exempt.”

o. In s. NR 409.065 (6) (e) 8., the phrase “U.S. EPA” should be replaced by the phrase “U.S. environmental protection agency.”

p. Section NR 409.065 (6) (f) 1. e. should indicate the time frame in which the unit could not demonstrate meeting the requirements, presumably the alternative emission limitation demonstration period.

q. The distinction between s. NR 409.065 (6) (g) 1. b. and f. should be made clearer. Subdivision 1. b. applies during the demonstration period, and subd. 1. f. presumably applies at any time after the demonstration period, although it does state as much. Also, there are subtle differences between the two provisions. For example, subd. 1. b. refers to upgrades while subd. 1. f. does not. Unless it is intended that these provisions to be interpreted differently, they should be worded identically.

r. In s. NR 409.08 (1) (e), the phrase “, in its sole discretion,” is unnecessary and should be deleted.

s. Section NR 439.098 (1) (intro.) should more specifically identify the subject of the sentence, i.e., the owner or operator of an affected unit subject to the requirements of s. NR 409.065. The same comment applies to s. NR 439.098 (2) (intro.).

t. In s. NR 439.098 (2) (f), the second sentence should not be written in the imperative form.

u. Section NR 484.11 (6) (intro.) and (7) (intro.) both should conclude with a colon.