



Wisconsin Legislative Council

RULES CLEARINGHOUSE

Scott Grosz
Clearinghouse Director

Anne Sappenfield
Legislative Council Director

Margit Kelley
Clearinghouse Assistant Director

CLEARINGHOUSE RULE 22-015

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. The introductory clause of the rulemaking order (the text summarizing the sections treated by the order) indicates that “DHS 157.13 (4) (i) (7)” is renumbered. This should instead indicate that “DHS 157.13 (4) (i) 7.” is renumbered.

b. SECTION 5, in part, creates s. DHS 157.03 (239m) (a). Within this paragraph, the cross-reference to “s. DHS 157.65 (6m) (b) (1) to (4)” is invalid. Section DHS 157.65 (6m) (b), as created in the rulemaking order, only contains two subdivisions. It is unclear what provision the definition of “ophthalmic physicist” created in SECTION 5 is intended to cross-reference. Additionally, the format of the cross-reference is incorrect. If the provisions currently cross-referenced were valid, they should be referenced as “s. DHS 157.65 (6m) (b) 1. to 4.” rather than “s. DHS 157.65 (6m) (b) (1) to (4)” (underlining provided for emphasis).

c. It appears that SECTION 9 intends to create s. DHS 157.03 (288m), with pars. (a) to (d) as subunits. The paragraphs should be separated from the introduction (i.e., on separate lines), as the rulemaking order currently merges the paragraphs and the introduction.

d. In SECTION 11, s. DHS 157.03 (336m) (b) 1. should be amended to refer to “a cabinet x-ray system”, rather than referring to “systems” (plural). As a matter of drafting style, the plural form should generally only be used when specifically referring to multiples of the word used. [See s. 1.05 (a) (c), Manual.]

e. In SECTION 31, “mGy” should be underscored to indicate its insertion in s. DHS 157.35. Additionally, there should be a space between the inserted text and “(2.0 mR)”.

f. In SECTION 32, the text inserted in s. DHS 157.44 (6) (a) 3. should be underscored to indicate its insertion.

g. In SECTION 34, the first “the” within s. DHS 157.44 (6) (d) should not be underscored as it is not inserted text. Additionally, the inserted text “personnel dosimeter that require processing” (sic) should be modified to read “the personnel dosimeter that requires processing”

(underlining provided for emphasis). Finally, the inserted text “for personnel dosimeters that do not require processing, evaluation of the dosimeter shall be started within 24 hours” could be modified to use the singular “dosimeter”, rather than the plural. [See s. 1.05 (a) (c), Manual.]

h. The treatment proposed in SECTION 39 may be more appropriately accomplished by amending s. DHS 157.61 (1) (b) and (c), rather than repealing and recreating the paragraphs. Notably, the treatment in SECTION 39 retains much of the existing language in the paragraphs and includes relatively limited insertions.

i. In SECTION 46, the treatment of s. DHS 157.61 (7) (c) 1. would be more appropriately accomplished by amendment to the subdivision, rather than repeal and recreation.

j. In SECTION 50, the word “American” in s. DHS 157.61 (9) (a) 1. should only be stricken-through, not both stricken-through and underscored.

k. In SECTION 53, the insertion of “or associate radiation safety officer” in the title of s. DHS 157.61 (12) (a) should be underscored to indicate its insertion.

l. SECTION 61 proposes to create s. DHS 157.63 (5) (b) 3., relating to the measurement of the concentration of radionuclides strontium-82 and strontium-85. However, the placement of this subdivision is invalid. Notably, s. DHS 157.63 (5) (b) does not currently contain subdivisions (nor does the order propose to create s. DHS 157.63 (5) (b) 1. and 2.). Additionally, par. (b) relates to training requirements for imaging and localization studies, not the measurement of certain nuclides. It is unclear where the language in SECTION 61 is intended to be placed.

m. In SECTION 62, “under subd. 2. g.” should be underscored to indicate its addition to s. DHS 157.63 (5) (c) 2.

n. SECTION 64 proposes to create s. DHS 157.63 (5) (d), relating to reporting of measurements that exceed certain limits. However, it appears that this paragraph is misplaced, given that s. DHS 157.63 (5) relates to training for imaging and localization studies. Further, the “par. (a)” in s. DHS 157.63 (5) (d) would refer to s. DHS 157.63 (5) (a), which does not relate to limits on certain measurements.

o. In SECTION 65, underscoring should be omitted (see the references in the SECTION to “2. g.”), given that SECTION 65 proposes to repeal and recreate, rather than amend, a subsection.

p. In SECTION 67, the “the” that beings the stricken text in s. DHS 157.64 (4) (b) 1. should not be struck. Similarly, the period that concludes the inserted text in s. DHS 157.64 (4) (b) 2. g. should not be underscored (given that the period that follows “...parenteral administration of any other radionuclide for which a written directive is required” in the existing subdivision paragraph is not struck by the proposed treatment).

q. In SECTION 72, the treatment of s. DHS 157.64 (6) (c) (intro.) is provided twice. The second, duplicative treatment should be omitted.

r. In SECTION 76, s. DHS 157.64 (8) (a) 2. appears merged with subd. 1. The formatting should be modified to separate the two subdivisions.

s. In SECTION 77, the final period in s. DHS 157.65 (1) (a) should not be underscored, given that the period at the end of the existing paragraph is not struck by the treatment.

t. The text within SECTION 92 should not be stricken-through, nor underscored. SECTION 92 proposes to create two subdivisions, rather than amend existing subdivisions.

u. In SECTION 93, the comma following “13 months” within s. DHS 157.67 (4) (d) should be underscored to indicate its insertion.

v. In SECTION 95, the word “replacement” should not be underscored as it is present in the existing paragraph.

w. In SECTION 96, the last sentence of s. DHS 157.67 (17) (intro.) should include strikethroughs and underscoring to indicate the insertion of “any” and the striking of “either” from the existing language. Additionally, the word “institution” in s. DHS 157.67 (17) (b) 2. should not be underscored (it is being struck from the subdivision, not inserted).

x. In SECTION 100, the inserted text should be underscored to indicate its insertion.

y. In SECTION 102, an “An” is stricken through in s. DHS 157.71 (5) (c). However, this “An” is not present in the paragraph as currently promulgated and thus should be omitted.

z. SECTION 104 includes the plural term “source(s)”. This style should not be used to indicate that a word may be singular or plural. Section DHS 157.72 (1) (am) 1. should be modified to use the singular “source”. [See s. 1.05 (c), Manual.]

aa. In SECTION 108, the insertions proposed in the treatment of s. DHS 157.73 (14) (a) should be underscored.

bb. The rulemaking order makes uses of slashed alternatives in SECTIONS 118 and 121 (“and/or” and “lock-out/tag-out,” respectively). This format should not be used. Instead, either one of the two words should be chosen. Alternatively, if the thought to be expressed involves a choice between one of two alternatives, or both, the proper phrasing to be used is “_____ or _____, or both”. [See s. 1.08 (1) (d), Manual.]

cc. Within SECTION 121, the following issues should be addressed:

- (1) Section DHS 157.87 (1) (c) 1. ends with an “and” rather than a period. This is improper formatting as all subunits should end with a period to facilitate future insertion or deletion of subunits. [See 1.11 (3), Manual.]
- (2) Section DHS 157.87 (1) (e) (intro.) contains an improperly formatted cross-reference. The cross-reference should read “ss. DHS 157.22 and 157.25”.
- (3) Section DHS 157.87 (1) (e) 8. to 10. appears to be placed incorrectly. Notably, these subunits do not complete the idea presented in s. DHS 157.87 (1) (e) (intro.). The requirements established in s. DHS 157.87 (1) (e) 8. to 10. should be placed elsewhere in subch. IX.
- (4) In s. DHS 157.87 (3) (a) 5., the safety requirements should not be established using the permissive “may”.
- (5) Section DHS 157.87 (4) (a) should be rewritten to use the singular term “device”. [See s. 1.05 (c), Manual.]
- (6) Section DHS 157.87 (7) (intro.) refers to the dose limits “below”. Vague words such as “thereafter”, “above”, and “below” should be avoided. Instead, specific references, such as “in this subsection” should be used. [See s. 1.08 (1) (f), Manual.]

- (7) Throughout SECTION 121, the word “can” should generally be replaced with “may”. Similarly, requirements established using the word “will” should instead use the word “shall”. [See s. 1.08 (1) (b), Manual.]
- (8) Throughout SECTION 121, “such” is used in place of an article on various occasions (e.g., “such individual” and “such locking device”). “The” or “a” should generally be used, rather than “such”. [See s. 1.08 (1) (g), Manual.]

dd. In SECTION 127, subd. 1. is merged into par. (a). The paragraph should be formatted separately from its first subunit.

ee. SECTION 133 should use strike-throughs to indicate the text struck from s. DHS 157.9719 (1) (a).

ff. SECTION 135 should not incorporate underscoring as it does not amend an existing unit.

gg. Modifications to the appendices amended in the rulemaking order should be indicated using underscoring and strike-throughs. It does not appear that SECTIONS 137 and 138 contain any underscoring or strike-throughs.

hh. The rulemaking order proposes to repeal and recreate Appendices A, F, H, L, O, and T. However, these treatments may perhaps be more appropriately accomplished by amending these appendices, given that the changes to the appendices appear to be limited.

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

a. In SECTION 62, the cross-references inserted in s. DHS 157.63 (5) (c) should be reviewed for accuracy. For example, par. (c), as amended, includes duplicative references to both “this subsection” and “s. 157.63 (5)”. Further, “ss.” should precede “DHS 157.61 (10)” in the list of cross-referenced provisions (unless the intent is to allow for an authorized user to satisfy s. DHS 157.63 (5) (c) by meeting some, but not all, of the requirements specified under the inserted cross-references).

b. In SECTION 76, s. DHS 157.64 (8) (d) includes a cross-reference to “sub. (6) (c) 3.”. Should this instead be a cross-reference to sub. (7) (c) 3., given that sub. (7) relates to parenteral administration of unsealed radioactive material requiring a written directive?

c. In SECTION 84, the cross-references to “sub. (1)” (i.e., s. DHS 157.65 (1)) appear incorrect. Section DHS 157.65 (1) generally relates to the purposes for which brachytherapy sources may be used. However, it appears that the cross-references to “sub. (1)” in SECTION 84 relate to requirements of an individual (e.g., certification or training requirements).

d. Within SECTION 121, the following issues should be addressed:

- (1) The cross-reference to “section par. a.” in s. DHS 157.87 (4) (b) is improper. It is unclear which provision is intended to be cross-referenced.
- (2) Section DHS 157.87 (5) (f) may benefit from a cross-reference that specifies the “high radiation area limits”.
- (3) In s. DHS 157.87 (7) (f), the cross-references to “subs. (7)(a) through (e)” should instead be written “pars. (a) to (e)”. A comparable modification should be made to the cross-reference to “subs. (7) (c) through (e)”.

e. In SECTION 122, s. DHS 157.93 (4) (b) 2. should cross-reference “subparts” (plural).

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

a. SECTION 3, in part, defines “associate radiation safety officer” and the acronym “ARSO”. However, the acronym “ARSO” is never used in the rulemaking order nor in ch. DHS 157, as currently promulgated. Thus, the acronym “ARSO” may be omitted from the definition in SECTION 3.

b. It is unclear why SECTION 3 defines the term “bomb detection radiographic equipment”. This term is not used in the rulemaking order nor in ch. DHS 157, as currently promulgated.

c. Throughout the rulemaking order, the term “beam port” is hyphenated in some instances but not others (see, for example, s. DHS 157.03 (40m) in SECTION 3 as opposed to s. DHS 157.87 (3) (b) 2. in SECTION 121). It appears that the term should generally be written without a hyphen.

d. SECTION 17 amends s. DHS 157.10 (3) (table). Within the “Well Logging” section of the table, there appears to be typos wherein the term “sub-surface” is punctuated as “sub*surface”. Assuming that the change is not intended, the punctuation within the table in the order should match the punctuation within the table in ch. DHS 157, as currently promulgated.

e. In SECTION 27, s. DHS 157.13 (5) (b) 1. d. could be rephrased to improve clarity and readability. In particular, it is unclear which individual the term “this individual” is intended to refer to within the subdivision paragraph.

f. In SECTION 41, s. DHS 157.61 (4) (b) 6. a. is created, through the repeal and recreation of s. DHS 156.61 (4) (b), to read “Before implantation, written directive shall include the treatment site, radionuclide, and dose”. This subdivision paragraph could be modified to read “Before implantation, the written directive shall include the treatment site, radionuclide, and dose” (underlining provided for emphasis).

g. In SECTION 41, a comma could be added after “procedure” in s. DHS 157.61 (4) (b) 6. b.

h. In SECTION 43, s. DHS 157.61 (5) (b) 5. refers to a medical event “as defined in s. DHS 157.72 (1)”. It may be more accurate for s. DHS 157.61 (5) (b) 5. to refer to a medical event “under s. DHS 157.72 (1)”, given that, strictly speaking, the term “medical event” is defined under s. DHS 157.03 (208).

i. In SECTION 44, the second insertion in s. DHS 157.61 (7) (intro.) should be modified. As currently drafted, the syntax appears incorrect, as s. DHS 157.61 (7) (intro.) reads, in part, “...a licensee shall ensure that an individual fulfilling the responsibilities of the radiation safety officer... to be an individual who has training in...”. This issue could be remedied by replacing “to be” with “is”.

j. In SECTION 46, both subdivisions appear to be missing words. Subdivision 1. could be modified to read “A medical physicist who has been certified by a specialty board whose certification process has been recognized by the department, the NRC or another agreement state under sub. (8) (a), and has experience in...” (underlining provided for emphasis). Similarly, subd. 2. could be modified to read “An authorized user, authorized medical physicist, or authorized nuclear pharmacist who has been identified on a department, NRC, or an agreement state license, or other equivalent permit or license, and has experience with...” (underlining provided for emphasis).

k. In SECTION 52, s. DHS 157.61 (10) (c) 2. c. appears to contain a typo. It appears that the text reading "... American Osteopathic Board of Radiology in radiation oncology;, by the Canadian..." should be modified to read "...American Osteopathic Board of Radiology in radiation oncology, or the Canadian...".

l. SECTION 65 includes a cross-reference that reads "s. 157.63 (5) (c) 2. g.," (see the proposed language in s. DHS 157.63 (6) (b) 2.). The first comma in this cross-reference should be replaced with a period.

m. In SECTION 76, s. DHS 157.64 (8) (c) contains two typos. Specifically, "theA" may be replaced with "a" and "administering" may be replaced with "administration of".

n. In SECTION 76, s. DHS 157.64 (8) (d) 2. includes a cross-reference to "sub.(4) (b) 2. g" (period omitted). This cross-reference should include a space between "sub." and "(4)", as well as a period after the "g".

o. In SECTION 80, the various accreditation bodies listed within s. DHS 157.65 (8) (a) 1. should be capitalized appropriately.

p. In SECTION 82, s. DHS 157.65 (9) (b) should be modified to replace the comma with the word "and".

q. In SECTION 86, s. 157.66 (c) contains a typo. A space should be inserted into "andprovided" (sic).

r. The hyperlink provided in SECTION 91 could perhaps be updated. The URL currently redirects to a page that does not clearly provide the information indicated in the note.

s. Throughout the rulemaking order, "U.S. Food and Drug Administration" and "FDA" are used interchangeably. Generally, an acronym and its full name should not be used interchangeably. [See s. 1.08 (2) (b), Manual.]

t. The term "investigational device exemption" is capitalized inconsistently in SECTIONS 77, 91, and 92. It appears that the term should generally not be capitalized for consistency with language throughout ch. DHS 157, as promulgated.

u. In SECTION 96, the inserted word "successfully" should be replaced with "successful". Additionally, the last sentence of s. DHS 157.67 (17) (intro.) appears to be missing an "a" between "of" and "sealed".

v. In SECTION 102, it appears that s. DHS 157.71 (4) (b) 3. and (5) (c) should be modified to begin with "An identification number" rather than "Identification number". Additionally, it appears that the word "other" should be omitted from both sections. Finally, the rule could specify what type of identification number should be included in a record of a medical event. For example, it is currently unclear which entity assigns the identification numbers.

w. In SECTION 105, the notes could be rephrased so as to not represent commands. For example, the first note could be modified to read "A report may be submitted to the department via telephone at (608) 267-4797". Additionally, s. DHS 157.72 (4) (b) suggests that the initial report under par. (a) may be submitted by telephone or facsimile. However, par. (a) does not contemplate submission of a facsimile report. The rule should clarify whether the initial report may be submitted via facsimile.

x. In SECTION 108, "DHS 157.73 (14 (a))" is missing a closed parenthesis after "(14)".

y. SECTIONS 109 and 110 provide that certain actions must be performed at least annually, at intervals not to exceed 12 months. Should these SECTIONS instead refer to intervals of 13 months, consistent with other intervals established throughout the rulemaking order?

z. In SECTION 114, s. DHS 157.74 (2) (fm) 3. appears to be missing several words. Should this subdivision indicate that documentation shall be made available to the department for inspection? Is this documentation to be made available to the department upon request?

aa. In SECTION 115, it appears that the word “performed” following “department” in s. DHS 157.74 (5) (a) 3. c. should be omitted.

bb. Within SECTION 121, the following issues should be addressed:

- (1) It is unclear if s. DHS 157.87 (1) (b) 1. requires labeling using the radiation symbol and the suggested text, or if the radiation symbol may be used in lieu of the suggested text. The subdivision should be modified to clarify this.
- (2) Section DHS 157.87 (1) (c) contains a typo. It should read “housing” not “sousing”.
- (3) Section DHS 157.87 (1) (c) 2. indicates that a certain requirement may be met by “complying with sub. (2) (d) radiation limit”. This language should be modified to provide proper syntax.
- (4) Section DHS 157.87 (1) (f) contains a typo. “Each area or room containing a radiation generating device where and individual...” should read “Each area or room containing a radiation generating device where an individual...” (underlining provided for emphasis).
- (5) In s. DHS 157.87 (1) (h) 2. a., it appears that the comma between “safety device” and “interlock” should be replaced by the word “or”.
- (6) Section DHS 157.87 (1) (h) 2. c. appears to be missing the word “such” before the word “as” in the second sentence.
- (7) In s. DHS 157.87 (1) (j) 4., the language referring to “the test” could generally be replaced with language referring to “each test”.
- (8) In s. DHS 157.87 (1) (j) 5., it may be beneficial to add a cross-reference indicating where the requirements relating to a “6 month interval” is established.
- (9) In s. DHS 157.87 (1) (j) 6., the word “specifically” could be omitted.
- (10) Section DHS 157.87 (1) (k) 4. could be rewritten to improve the readability of the sentence formed by the introduction and subd. 4.
- (11) Section DHS 157.87 (1) (L) refers to a registrant’s management throughout. Additional clarity could be provided to indicate which individuals may constitute a registrant’s management.
- (12) Section DHS 157.87 (1) (L) 2. e. should begin with “maintaining” rather than “maintain” for consistency with the introduction and adjacent subparts.
- (13) Section DHS 157.87 (2) (b) contains a typo. The “s” after device should be omitted.

- (14) In s. DHS 157.87 (2) (c), it appears that the first comma should be replaced with the word “and”.
- (15) Section DHS 157.87 (2) (e) 2. appears to be missing various words.
- (16) In s. DHS 157.87 (3) (a) 1., it may be beneficial to specify how a registrant must document their justification for the use of an open-beam system. Similarly, how should a registrant demonstrate that they have “considered” a safety device under subd. 2.? This requirement to “consider” use of a safety device could perhaps be omitted.
- (17) In the first sentence of s. DHS 157.87 (3) (b) 2., commas could be added to improve clarity and readability. Additionally, “indictor” should be replaced with “indicator”.
- (18) In s. DHS 157.87 (3) (d), the space between “in” and “advertent” should be omitted.
- (19) For the purposes of s. DHS 157.87 (3) (e), additional clarity could be provided regarding the meaning of “interchangeable components”.
- (20) In s. DHS 157.87 (3) (f), it is unclear what is meant by the requirement that local components be “located and arranged”. Similarly, the term “local component group” could be defined or rephrased as to indicate what constitutes a “local component group”.
- (21) In s. DHS 157.87 (3) (i) (intro.) and 8., it appears superfluous to refer to both a “radiation area” and “a high radiation area”. It appears that, under the definitions in s. DHS 157.03 (160) and (288), the term “high radiation area” necessarily includes all “radiation areas”.
- (22) In s. DHS 157.87 (3) (i) 6., it is unclear what is meant by the language “the radiation in the work area must be reasonable uniform”. This could be rewritten to provide additional clarity.
- (23) In s. DHS 157.87 (3) (i) 8., it is somewhat unclear what is meant by “initial exposure”. The term could be defined or the subdivision could be written to provide additional clarity.
- (24) In s. DHS 157.87 (3) (j) 4., “procedures and rights of a declared pregnancy” could be rewritten as “procedures and rights relating to a declared pregnancy”.
- (25) In s. DHS 157.87 (4) (b), the cross-reference to “section par. a.” is improperly formatted. It is unclear which provision is intended to be cross-referenced.
- (26) The language in s. DHS 157.87 (5) (a) could be arranged to improve readability.
- (27) In s. DHS 157.87 (5) (e), the requirement that a registrant post instructions on “what to do” is vague and should be clarified.
- (28) The term “closed-beam” is hyphenated inconsistently throughout SECTION 121.
- (29) Throughout SECTION 121, various subunits require that an individual to “demonstrate competency”. This requirement is somewhat vague and it would be beneficial to specify how an individual may satisfy this requirement.

- (30) In s. DHS 157.87 (7) (a), it appears that the language “in preference to the proposed utilizing ionizing radiation” could be omitted.
 - (31) In s. DHS 157.87 (7) (b), it appears superfluous to refer to non-healing arts. It seems that radiation devices used for security screening are inherently not used for healing arts. Additionally, clarity could be provided regarding who may constitute a “qualified expert” for the purposes of evaluating radiation generating devices.
 - (32) For the purposes of s. DHS 157.87 (7) (c) and (d), definitions of “general-use” and “limited-use” may be beneficial. Additionally, the phrase “used with discretion” in par. (d) is vague and may benefit from clarification.
 - (33) In s. DHS 157.87 (7) (e), it may be beneficial to replace the word “venue” with “facility” for consistency.
 - (34) Section DHS 157.87 (7) (f) establishes two radiation dose thresholds: one that shall not be exceeded and one that “should not” be exceeded. The threshold that “should not” be exceeded does not establish a requirement and may perhaps be omitted from the rulemaking order.
- cc. Within SECTION 122, in s. DHS 157.93 (4) (b) 1., “NRC issued” should be hyphenated.
- dd. In SECTION 124, s. DHS 157.94 (6) (f) 1. a. and b. should be reviewed to improve the clarity of the sentence formed when the introduction and subparts are read together. The subdivision paragraphs could perhaps be consolidated into subd. 1.
- ee. In SECTION 127, the first note provides a mailing address for materials for fingerprint checks. Within the note, the “ATTN” should be provided before the recipient (i.e., before “U.S. Nuclear Regulatory Commission, Director, Division of Physical and Cyber Security Policy”).
- ff. In SECTION 131, “DHS 157.9708 (4 (f))” is missing a closed parenthesis after “(4”.