



Wisconsin Legislative Council

RULES CLEARINGHOUSE

Scott Grosz
Clearinghouse Director

Anne Sappenfield
Legislative Council Director

Margit Kelley
Clearinghouse Assistant Director

CLEARINGHOUSE RULE 23-065

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 plain language analysis included in the proposed rulemaking order indicates that the order would modify ch. NR 500 to clarify that glass used as an aggregate replacement is for “clean container glass”. However, it does not appear that any of the proposed treatments to ch. NR 500 make this clarification. The proposed rulemaking order could be reviewed to ensure that it captures the agency’s intent with respect to this potential change.

b. The plain language analysis also indicates that the proposed rule “clarifies that responsible units may provide for the collection of tires by providing information on where and how to recycle them”. From review of the rulemaking order, it is somewhat unclear if any of the proposed treatments accomplish this goal. The proposed rulemaking order could be reviewed to ensure that it captures the agency’s intent with respect to this potential change.

c. Within SECTION 26 of the proposed rulemaking order, in the amendment to s. NR 542.07 (1), “[a]pplications” could be amended to read “an application” to make use of the singular. [See s. 1.05 (1) (c), Manual.]

d. Within SECTION 42 of the order, proposed s. NR 544.04 (1) includes subunits that generally specify the types of information that must be included in a public information and education program. However, proposed par. (f) generally specifies requirements for the distribution of program materials and the regular checking of these materials, rather than specifying information to be addressed by a program. The agency could consider generally shifting the language from proposed par. (f) to sub. (1) (intro.) and modifying sub. (1) (intro.), as appropriate. This approach may help to better reflect the differing objectives of pars. (a) to (e) and par. (f). Proposed s. NR 544.04 (1) (f) could also be revised to use the active voice to more clearly indicate who is responsible for checking the program information (e.g., the responsible unit). [See s. 1.05 (1) (d), Manual.]

e. Within SECTION 51 of the rulemaking order, in the proposed amendment to s. NR 544.06 (2) (b) 3., the comma after “tenants” should be underscored, as it is not in the text of the provision as currently promulgated.

f. Within SECTION 53 of the rulemaking order, in the amendment to s. NR 544.08 (2) (j), the words “the materials” and “under” should be underscored to indicate their addition to the existing text. Additionally, an “in” should be included, with a strike-through, preceding “s. 287.01 (1m) and (2)”.

g. Within SECTION 87 of the rulemaking order, in the proposed amendment to s. NR 544.16 (4) (c), the second “75” should be underlined to indicate its addition to the text. A comma should also be inserted after the word “reuse”. When writing a series of three or more terms with a single conjunction, the “Oxford” comma should be used. [See s. 1.06 (1) (b), Manual.]

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

a. Within SECTION 48 of the rulemaking order, the proposed amendment to s. NR 544.05 (3) (a) provides, in part, that a responsible unit may apply to the agency for approval of an alternate collection system that meets the requirements of “either par. (b) or (c)”. Should a cross-reference to the proposed par. (d) (created in SECTION 47 of the rulemaking order) be included here? As drafted, it appears that the option for individual collection services under par. (d) would require agency approval as an alternate collection system. Section NR 544.05 (3) (a) could be modified to clarify whether individual collection services require agency approval as an “alternate collection system”.

b. SECTION 49 of the rulemaking order proposes, in part, to amend s. NR 544.06 (1) (Note) to indicate that “[a] responsible unit is authorized under s. 287.09 (3) (b), Stats., to adopt an ordinance to enforce the recycling program established under s. 287.09 (2) (a), Stats., to comply with s. 287.07 (1m), (2), (3), (4), (4m), and (5), Stats...”. However, s. 287.09 (2) (a), Stats., only refers to compliance with “s. 298.07 (1m) to (4)” (i.e., the provision does not reference s. 287.07 (4m) and (5), Stats.). The agency should review whether the proposed amendment to s. NR 544.06 (1) (Note) is appropriate. The same consideration should be made with respect to the cross-references in s. NR 544.06 (2) (d), within SECTION 51 of the rulemaking order. Proposed s. NR 544.06 (2) (d) generally directs responsible units to adopt an ordinance prohibiting certain disposal of the materials specified under s. 287.07 (1m), (2), (3), (4), (4m), and (5) (a), Stats. However, s. 287.09 (3) (b), Stats., only addresses a responsible unit’s adoption of an ordinance to enforce a program in compliance with the prohibitions under s. 287.07 (1m) to (4), Stats. The department could consider providing further explanation in the rulemaking order regarding the responsibilities of a responsible unit with respect to the prohibitions under s. 287.07 (4m) and (5) (a), Stats.

c. Within SECTION 75 of the rulemaking order, the cross-references in proposed s. NR 544.16 (1) (e) 2. could be made more specific. As proposed in the rulemaking order, it is unclear what standards the department will apply in evaluating whether a facility has provided sufficient justification for not sending a sufficient amount of glass for recycling or reuse. More specific cross-references could be included to provide clarity. The same consideration could be made with respect to proposed s. NR 544.16 (1) (f) 2.

d. SECTION 76 of the rulemaking order proposes, in part, to amend s. NR 544.16 (2) (a) to cross-reference “subs. (3) to (14)”. However, s. NR 544.16, as amended by the rule, only includes

subsections up to sub. (10). This cross-reference should be evaluated and modified to ensure that it captures the agency's intent.

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

a. The Fiscal Estimate and Economic Impact Analysis provided with the rulemaking order suggest that out-of-state materials recovery facilities (MRFs) would not be subject to the owner financial responsibility (OFR) requirements proposed in the rule. However, neither the text of the proposed rulemaking order, nor the existing ch. NR 544, appear to provide such an exception. Rather, the proposed rulemaking order incorporates the OFR requirements into the requirements imposed on MRFs that serve as a component of a responsible unit's effective recycling program under s. NR 544.16 (which could include out-of-state MRFs). The proposed rule could be amended to clarify that the OFR requirements do not apply to out-of-state MRFs.

b. Within SECTION 6 of the rulemaking order, proposed s. NR 502.06 (4) (er) 1. a. includes a requirement for a recycling service to report tonnages of materials "at the point of collection and from all areas within the responsible unit service area". This language could be amended to improve clarity. Is the intent to require the service provider to report the tonnages of materials collected from particular, defined sub-areas within the responsible unit area? Alternatively, is the intent to only require the service provider to report a single number to satisfy this requirement (i.e., to report the total amount of materials at the point of collection)?

c. Within SECTION 6 of the proposed rulemaking order, in proposed s. NR 502.06 (4) (er) 1., the word "specifically" could be omitted as it appears to be surplusage.

d. Within SECTION 9 of the proposed rulemaking order, in proposed s. NR 502.07 (7) (t), the phrase "...unless contained by at least a 3-sided bunker with wall height and length greater..." could be rewritten "...unless contained by a bunker of at least 3 sides, with wall height and length greater...". This modification would provide for language that better parallels existing language in s. NR 502.07 (7) (b), Wis. Adm. Code. Additionally, the term "recyclables" could be replaced with the term "recyclable materials" (or a similar term) to provide more consistent use of terminology throughout the rule. The same consideration could be made with respect to the description of a bunker included in proposed s. NR 544.16 (3) (a) 23. j., within SECTION 84 of the rulemaking order.

e. SECTION 37 of the rulemaking order proposes to create s. NR 544.02 (3) to specify that ch. NR 544 also applies to "[m]aterials recovery facilities... including a materials recovery facility used as a part of an effective recycling program". Is the agency's intent to apply the chapter to materials recovery facilities broadly, or only to materials recovery facilities that are used as part of an effective recycling program? The existing s. NR 544.16 generally suggests the latter, while the proposed change in SECTION 37 of the rulemaking order suggests the former. The language in proposed s. NR 544.02 (3), or in the existing s. NR 544.16, could be modified to better clarify the applicability of requirements in ch. NR 544.

f. SECTION 41 of the rulemaking order proposes, in part, to amend the definition of "non-residential facilities and properties" under s. NR 544.03 (21). Though the proposed rulemaking order does not substantively modify the existing definition, the existing definition's use of commas is somewhat confusing and impairs readability. To address this, sub. (21) could be further subdivided to more clearly specify the locations that are included within the definition (see the example provided in s. 1.07 (3) (c), Manual).

g. Within SECTION 41 of the rulemaking order, in the amendment of s. NR 544.03 (22), it appears that the phrase "...does not include industrial process waste or newspaper and packaging" could be revised to read "...does not include industrial process waste, newspaper, or packaging".

h. Within SECTION 50 of the rulemaking order, proposed s. NR 544.06 (2) (b) 1. a. to c. refers to "container space for recycling" and "recycling container volume", while also referring to "recyclable container overflow". Language within these provisions could be modified to provide for more consistent use of terminology.

i. Within SECTION 51 of the rulemaking order, in proposed s. NR 544.06 (2) (b) 2., it appears that the comma after "location" should be struck.

j. Within SECTION 60 of the rulemaking order, in the proposed amendment to s. NR 544.10 (2) (a), the reference to the "report year" could be replaced with a reference to the "reporting year" to make more consistent use of terminology throughout the rulemaking order.

k. SECTIONS 74 and 80 of the rulemaking order would, in part, add language to the rule relating to the control of "vectors". A definition of this term could be created to better clarify the requirements imposed on materials recovery facilities.

l. Within SECTION 75 of the rulemaking order, in proposed s. NR 544.16 (1) (e), the word "recyclables" could be replaced with "recyclable materials" to promote the consistent use of terminology throughout the rule.

m. Within SECTION 84 of the rulemaking order, in proposed s. NR 544.16 (a) 23. b. and c., the requirements to "share" information could be replaced with requirements to "provide" information to promote more formal and consistent use of terminology throughout the rule.

n. Within SECTION 84 of the rulemaking order, in proposed s. NR 544.16 (a) 23. d., the agency could consider providing examples of sampling methods or measurements that are acceptable to the agency.

o. Within SECTION 84 of the rulemaking order, in proposed s. NR 544.16 (a) 23. k., the word "shut-down" should be a single word, without a hyphen (i.e., "shutdown").