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CLEARINGHOUSE RULE 95-035

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. Both SECTIONS 4 and 5 in the rule treat s. NR 440.02 (10). The preferred drafting style is to combine these treatments into one section, i.e., “SECTION __. NR 440.02 (10) is repealed and recreated to read:....”

b. The renumbering of the definition of “opacity” from s. NR 440.02 (21) to s. NR 400.02 (60m) conflicts with the existing definition of “opacity” in s. NR 400.02 (60m). If the department intends that the definition of “opacity” in s. NR 440.02 (21) becomes the definition that applies to chs. NR 400 to 499, then the rule should also repeal the current definition of “opacity” in s. NR 400.02 (60m).

c. The definitions in s. NR 440.215 (2) are based upon the definitions in 40 C.F.R. s. 60.51a. Since 40 C.F.R. s. 60.51a does not number the individual definitions within that section, the format of s. NR 440.215 (2) should conform to the style set forth in the Manual. Since s. NR 440.215 (2) contains only one paragraph, the definitions provided in this subsection should not be numbered as subdivisions under that paragraph but instead should each be presented as a separate paragraph. [See s. 1.03 (intro.), Manual.] See, also, the correct numbering in the rule of definitions in ss. NR 440.705 (2) and 440.73 (2). Subsection (2), and the introductions to ss. NR 440.705 (2) and 440.73 (2), should be rewritten to read as follows:

(2) DEFINITIONS. All terms not defined in this section have the meanings given in s. NR 440.02. In this section:

(a) “ASME” means....

d. The department should review the entire rule to ensure that internal references to the Wisconsin Administrative Code follow the preferred format set forth in the Manual. For example, s. NR 440.705 (1) (c) 2. and 4., (5) (e) and (f) 2. contain references to multiple subsections that use more than one “sub.” rather than “subs.” [See s. 1.07 (2), Manual.] Also, periods should follow the subdivision and subparagraph references in s. NR 440.705 (6) (b) (intro.), (d) 1. and (L) (intro.). [See s. 1.03 (5) and (6), Manual.] Finally, in s. NR 440.705 (6), there are numerous cross-references to paragraphs contained in sub. (6) that are incorrectly drafted. For example, in sub. (6) (b) (intro.), the notation “sub. (6) (b) 2 a” should be replaced by a reference to “par. (b) 2. a.” The entire subsection should be reviewed for this problem.

e. In the specification of the terms for the equation of the net heating value of the vent stream in s. NR 440.705 (5) (d) 4., it appears that in the paragraph beginning “C_j is the concentration...”, the second sentence that begins “H_j is the net heat of combustion...” should begin a new paragraph.

f. The reference in s. NR 440.705 (6) (b) 4. d. to “subd. a, b or c” should be to “subpar. a., b. or c.”

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

a. The analysis accompanying the rule indicates that, pursuant to s. 227.14 (1m), Stats., the format for the rule is based upon the format used in 40 C.F.R. Part 60. The analysis should further indicate whether the format of the rule is based upon s. 227.14 (1m) (a) or (b), Stats., as the selection of the specific paragraph will affect the content of the analysis accompanying the rule under s. 227.14 (2) (b), Stats. In particular, if the rule was prepared under s. 227.14 (1m) (b), then the analysis should specify each portion of the rule that differs from the federal regulation upon which it is based under s. 227.14 (2) (b), Stats.

b. The rule incorporates three standards by reference. See the treatment of s. NR 440.17 (2) (h) 1. to 3. Consent for incorporation of these standards must be obtained from the Revisor of Statutes and the Attorney General pursuant to s. 227.21 (2) (a), Stats. The analysis accompanying the rule should, but does not, indicate that this consent has been given.

c. The department should be consistent in its reference to standards incorporated by reference in s. NR 440.17. In general, the department cites these standards as incorporated by reference in “s. NR 440.17.” See, for example, ss. NR 440.20 (2) (n), 440.205 (6) (d) 2. and 440.215 (9) (b) (intro.). Section NR 440.205 (7) (g) refers to a standard incorporated by reference in “s. NR 440.17 (2) (h).”

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

a. Section NR 440.14 (10) (b) (intro.) and 1. refer to a “new unit” and to an “existing unit.” Though these terms are used in 40 C.F.R. s. 60.14 (j) 2. and 2. (i), but not defined in 40 C.F.R. s. 60.2 or 60.14, the department should consider defining them. Does the department intend that they have the meanings specified in 42 U.S.C. s. 7651a (8) and (10)?

b. SECTION 14 repeals s. NR 440.17 (1) (a) (intro.) and SECTION 15 renumbers s. NR 440.17 (1) (b) (intro.) to s. NR 440.17 (1) (intro.). Since these treatments of s. NR 440.17 (1) (a) (intro.) and (b) (intro.) do not affect s. NR 440.17 (1) (a) 1. to 8., it is not clear what treatment the department intends for subds. 1. to 8.

c. The relation of the terms in the equation to calculate the design heating value in s. NR 440.215 (9) (j) 4. a. is not clear. Does the department intend that “10,500” should be added to the term “ $MSW/(MSW+Med+19,800)$ ”?