



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 04-113

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 2002.]

2. Form, Style and Placement in Administrative Code

a. The note following s. NR 544.03 (12) is entirely new material. It should be given a SECTION of its own, stating: “NR 544.03 (12) (note) is created to read:”. Also, in the first line of that note, the word “which” should be deleted.

b. In s. NR 502.07 (2f), the word “rule” should be replaced by the word “subsection.”

c. In s. NR 554.03 (31g), the word “specified” should be inserted after the word “meaning.”

d. There are two options for expressing the delayed effective date established in s. NR 544.04 (9g). First, to remove any ambiguity regarding the day the provision takes effect (i.e., do you include the effective date itself in the count of 365 days?), the drafting convention is to phrase this type of delayed effective date as follows: “Beginning on the 1st day of the 13th month beginning after the effective date of this rule...” It is less precise, in that it specifies a delay of *approximately* one year, but there is no uncertainty as to the effective date. Second, this phrase may be used in the text of the rule, as in this example, or it may be used in an exception to the effective date provision at the end of the rule:

SECTION 55. EFFECTIVE DATE. (1) Except as provided in sub.
(2), this rule shall take effect on....

(2) The creation of s. NR 544.09 (9g) by this order shall take effect on the first day of the 13th month....

The advantage of this last option is that it does not leave an obsolete date in the rules once the effective date has passed.

e. The material inserted in s. NR 544.05 (3) (a) should read: “and either par.” In the note that follows, the word “section” should be “paragraph.”

f. The treatment of s. NR 544.08 (2) (intro.) replaces the final colon with a period; the colon should be kept. Also, in sub. (2) (g), the word “rule” should be replaced by the word “paragraph.”

g. The treatment of the note following s. NR 544.10 (1) replaces reference to a form with “Details regarding application submittal...” If a form is still required for the report, the form should be described in the note. [See s. 1.09 (2), Manual.] Also, if a form is required for self-certification under s. NR 544.16 (3) (intro.), it should be described in the note following that section.

h. In s. NR 544.13 (intro.), “all of” should be inserted after “meets.”

i. In the treatment clauses of SECTIONS 50 and 52, the colons should be replaced by periods.

j. In the treatment clause for SECTION 51, the phrase “as follows” should be deleted.

k. In s. NR 544.16 (3), the introduction should be renumbered as par. (a); a semicolon should be inserted after the phrase “following information;” the final sentence of the introduction should be placed in a separate par. (b) and the word “section” should be replaced by the word “subsection;” and the paragraphs in sub. (3) should be renumbered as subdivisions.

l. In s. NR 544.16 (3) (u), the notation “ss.” should be replaced by the notation “s.”

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

a. In the second paragraph of the plain language analysis, the word “its” should be inserted before the word “entirety” in the first sentence.

b. The rule frequently uses the word “which” when “that” should be used, for example in ss. NR 500.03 (140) (Note), 502.08 (2) (b), (fg) and (fr), 544.03 (2), and others. There are also numerous instances in which sections of current rules contain the same mistake, which could be corrected in this rule-making order, for example in ss. NR 544.05 (1) (b) 2. and 3. and (2) (b) and 544.12.

c. The rule also frequently uses the passive voice, whereas the active voice should be used primarily. [See s. 1.01 (1), Manual.] This is important for establishing unambiguously what requirements are assigned to whom. For example, s. NR 544.16 (1) could be converted to active voice by ending the introduction with the phrase “shall do all of the following:” and beginning each of the following paragraphs with verbs:

(a) Operate and maintain the facility....

(b) Maintain records....

(c) Maintain recyclable materials....

Similarly, the last sentence of s. NR 544.16 (3) (intro.) should read “The owner or operator shall maintain....”

The last sentence of s. NR 544.16 (5) (intro.) should read: “The department may invalidate a material recovery facility’s self-certification if any of the following conditions exist:”. Similarly, the last sentence of s. NR 544.16 (6) should read: “The department may re-certify ... if it determines that....”

d. In s. NR 544.03 (6m), the words “or a” should be inserted before “non-residential.” The comma following “dwelling” should be retained, for clarity.

e. The definition of “processing” in s. NR 544.03 (31r) should be placed before the definition of “processing facility,” observing the conventions of alphabetization.

f. In s. NR 544.03 (39g), the word “source” should be deleted. The term “source separated” is jargon, and “source” is redundant here, since the rest of that phrase is the definition of “source separation.”

g. In the inserted material in s. NR 544.04 (1), the term “up-do-date” should be “up-to-date.” However, a less colloquial word choice would be “current.”

h. The title of s. NR 544.05 (1) (b) includes 18 of the first 19 words of that provision; the same is true of par. (c) (title). These should be replaced by shorter, descriptive terms in the titles, such as “urban municipalities” and “rural municipalities,” respectively.

i. In s. NR 544.05 (3) (c), “that is” should be inserted following “facility.”

j. Section NR 544.06 (1) (Note) would be more accurate if the phrase “in compliance with” were replaced by “under s. 287.09 (2) (a), Stats., to comply with.”

k. In the inserted material in s. NR 544.06 (2) (b) 2. and (c) 2., a period should be placed after “sites” and the next sentence should begin: “For each drop-off site, the notification shall indicate....” Also, should the first of these provisions refer to “drop-off sites,” as the second does?

l. Should all references to “initial” recycling programs be repealed? Occurrences of that word are repealed in s. NR 544.09, except for the title; they are not repealed in s. NR 544.08. Also, s. NR 544.16 (4) (a) refers to “initial self-certification;” is this correct?

m. In s. NR 544.08 (2) (intro.), only “in 1995” is repealed. What, then does “the recycling program and the program that will be in effect” mean?

n. In s. NR 544.08 (2) (c), “approval of” should be inserted after “apply for.”

o. Section NR 544.10 (1) relates to reports, but the note refers to applications. Presumably, the note should be revised to refer to reports.

p. The last sentence of s. NR 544.10 (2) (d) 1. is not a complete sentence. The phrase “the report shall include” should be inserted after “Table 1,”.

q. To make s. NR 544.16 (2) (a) easier to understand, it may be helpful to move “by March 30 of each year” to follow “shall,” and set it off with commas. [See also s. NR 544.16 (5) (e).]

r. The phrase “self-certification requirements,” in s. NR 544.16 (2) (b), is vague, almost jargon. A more specific reference would be “subs. (3) to (8)” (of s. NR 544.16).

s. In s. NR 544.16 (3) (d), the first “the” should be deleted.

t. In s. NR 544.16 (3) (m), “annual” should be deleted, as it is redundant with “during the previous calendar year.”

u. In s. NR 544.16 (3) (u), “a” should be replaced by “the.”

v. Section NR 544.16 (4) (intro.) should begin: “The owner or operator of a...facility shall...” Clearly, the facility does not submit the renewal and report. Also, the phrasing of this introduction requires that the following paragraphs start with nouns, such as:

(a) Certification by...that....

(b) An inventory of....

(c) The total annual quantity....

w. In s. NR 544.16 (5) (a), it appears that the second occurrence of the word “and” should be replaced by the word “or.”