



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 07-036

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 January 2005.]

2. Form, Style and Placement in Administrative Code

a. The term “unit participation power sales agreement,” used in s. NR 400.02 (91m), is not defined. The rule should provide a definition for this term.

b. Section NR 400.02 (91m) (intro.) should end with the phrase “for any of the following:”. In each of the following paragraphs, the word “for” at the beginning of each sentence should be dropped, and each paragraph should end with a period. [See s. 1.03 (8), Manual.]

With the exception of introductory material, which ends with a colon, all units of a rule should end with a period. For example, s. NR 440.20 (3) (e) should end with “any of the following:” and subd. 1. should end with a period rather than “; or”. Similar changes should be made elsewhere in the rule.

c. In s. NR 400.02 (146m), all of the material following the first sentence is explanatory, rather than substantive, and so should be placed in a note. The same applies to the material following the first sentences in ss. NR 440.17 (1) and (2) (intro.) and 440.20 (2) (er) and (Lr), and the last sentence in s. 440.20 (2). There may be other instances of this error in other definitions.

d. In the definition of “coal-fired electric utility steam generating unit,” the terms “coal refuse,” “synthetic gas,” and “petroleum coke” should be omitted, as they are included explicitly in the definition of “coal.”

e. The unit of the rule following s. NR 440.20 (4) (j) 2. c. is numbered as a subsection (“(3)”), and presumably should be numbered as a subdivision (“3.”).

f. The phrase “the owner or operator may not cause to be discharged into the atmosphere any gases that contain nitrogen oxides, expressed as NO₂, in excess of” should be deleted from s. NR 440.20 (5) (e) 1. to 3., since it duplicates language in the preceding introductory material. The same phrase could be deleted from par. (f) 1. to 3., also, if it were added to par. (f) (intro.).

g. The material “or (e) 1.”, in s. NR 440.20 (6) (i) is new, and so should be underscored.

h. In references to subdivision paragraphs of the same subdivision in which the reference is found (i.e., internal references), the word “this” is included before “subd.” [See s. 1.07 (2), Manual.] The rule is inconsistent in following this format. Errors are found, for example, in ss. NR 440.20 (7) (o) 4., (8) (h) 2., and 446.12 (2) (c) 3.

i. Definitions should not include any substantive material. For example, the definition of “automated data acquisition and handling system” in s. NR 446.06 (3) should not include the various references to requirements of the rules; rather, it should simply read: “means a component of an emissions system designed to interpret and convert individual ... record of the measured parameters.” (Note that the reference to s. NR 446.11 in the definition in the rule appears to be incorrect.) The same format is suggested for the definition of “continuous emissions monitoring system” in s. NR 446.06 (12).

Also, the definition of “heat input” in s. NR 446.06 (15) is not so much a definition as a substantive instruction in how to calculate heat input; this should be moved to the text of the rule.

j. The phrase “for industrial, commercial, heating or cooling purposes” should be omitted from the definition of “cogeneration unit” in s. NR 446.06 (10), as those purposes constitute the definition of “useful thermal energy.”

k. The definition of “control period” in s. NR 446.06 (13) could be reduced to “means a calendar year.” Given this, it would appear that the term is not necessary, and could be replaced throughout the rule with “year” or “calendar year.”

l. The references in s. NR 446.08 (5) (c) should be to sub. (4) (b) and sub. (3), since they are internal references. [See s. 1.07 (2), Manual]

m. Section NR 446.12 (2) (c) is subdivided further than allowed under drafting conventions, and further than necessary. It is suggested that s. NR 446.12 (2) (c) 3. (except for subd. par. e.), be numbered s. NR 446.12 (2) (d) and s. NR 446.12 (2) (c) 3. e. be numbered s. s. NR 446.12 (2) (e); pars. (d) and (e) would be numbered pars. (f) and (g).

n. If titles are used for some paragraphs of a subsection, they must be used for all paragraphs of that subsection. [See s. 1.05, Manual.] One instance where this requirement is not observed is in s. NR 446.12 (2). If the department adopts the numbering suggested in the preceding comment, either the titles for pars. (d), (f) and (g) should be omitted or titles should be provided for pars. (a) to (c) and (e). Suggested titles are: par. (a) Initial certification; par. (b) Recertification; par. (c) Certification and recertification procedures; and par. (d) Duties of owners and operators if initial certification or recertification application is disapproved.

3. Conflict With or Duplication of Existing Rules

With regard to SECTIONS 3, 4, 5, and any other SECTIONS that treat the administrative code as affected by other rule-making orders, the department should be sure that the other orders take effect prior to this order.

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

a. Section NR 440.20 (4) (i) (intro.) refers to par. (j) or (k). However, there is no par. (k). What is the correct reference?

b. The “acid rain program” referred to in the definition of “acid rain emissions limitation” in s. NR 446.06 (1) should be identified by a cross-reference to the appropriate provisions of federal law.

c. Similarly, “state implementation plan,” used in s. NR 446.06 (6) and (7), does not appear to be a defined term. Can this be identified by cross-reference to the rules that constitute the plan or federal regulations that call for the plan?

d. The references in s. NR 446.07 (2) and (3) should be to s. NR 446.08 (3) and (4), rather than s. NR 446.08 (2) and (3).

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

a. The rule defines “subbituminous,” an adjective, as a noun. See s. NR 400.02 (154m). The defined term should be “subbituminous coal.” Compare to the definition of “bituminous coal,” in s. NR 440.20 (2) (dm). Similarly, the term defined in s. NR 440.20 (2) (fm) should be “cogeneration facility.”

b. The rule defines “electric utility steam generating unit” as a generator that produces electricity, not steam, except where there is the cogeneration of steam and electricity. See s. NR 440.20 (2) (j). Should the defined term be “electric utility electric generating unit”?

Also, the term “electric utility steam generating unit” would appear to mean only units owned by a public utility. As defined, though, the term is not limited to utility ownership, but includes so-called “merchant” plants. What does the department intend? Again, the term should reflect the intended meaning.

c. Integrated gasification combined cycle (IGCC) technology is the integration of coal gasification facilities with one or more combined-cycle turbine. In contrast, the definition provided in s. NR 440.20 (2) (Lr) refers only to the combined-cycle portion, specifying the type of fuel but not its source. Is this what the department intends? If so, a different term would be more appropriate. The term is further muddled in s. NR 440.20 (5) (f); this paragraph refers to IGCC facilities burning fuels other than synthetic fuels derived from coal, contrary to both the definition and the standard meaning of the term. From this, it appears that the IGCC technology itself is not significant to these rules. Perhaps the term should be dropped from the rule and the rule should be based only on the fuels used in an individual generating unit.

d. In s. NR 440.20 (7) (a), “the” should be inserted before “owner.” In s. NR 440.20 (7) (f), “obtain” is misspelled. In s. NR 440.20 (7) (j) 3., “Method” should be inserted before “3B.”

e. Section NR 446.06 (5), (19), and (20) refer to “reject heat.” This seems like a non-intuitive word choice, since the heat is not *rejected*; “residual heat” would be more accurately descriptive.

f. In s. NR 446.06 (7), “with” should be inserted before the first “40 CFR.”

g. The time period that s. NR 446.08 (1) (b) 2. describes as a 2-calendar-year period is actually only one year. What the department intends, presumably, is the period from the first day of the 7th year before the allocation period until the last day of the 6th year before the allocation period. This could be expressed more succinctly as the 6th and 7th calendar years before the allocation period.

h. There is no such verb as “quality-assure.” In s. NR 446.12 (1) (a) 3. and elsewhere, “quality-assure” should be replaced with a simple phrase, such as “ensure the quality of.”

i. By applying to any “person,” the mercury emission limits in s. NR 446.14 apply to electric generating units as well as the “other sources” referred to in the subchapter title. Presumably, this is not the department’s intent, in which case the applicability of subch. III should be clarified.