



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 19-082

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated December 2014.]

2. Form, Style and Placement in Administrative Code

a. On page 13, in s. NR 660.04, the rule provision is subdivided unnecessarily, as there is no sub. (2) following sub. (1). When any part of a section is divided into smaller subunits, at least two subunits must be created. The proposed rule should be reviewed in its entirety and corrected as appropriate for similar occurrences. [s. 1.03 (1), Manual.] See, for example, ss. NR 660.05, 660.43 (2), and 661.0010, among others.

b. Throughout the proposed rule, the agency should review and revise the grammatical structure that connects introductory material and subunits. Each subunit following an introduction should form a complete sentence when read with the introduction. [s. 1.03 (3), Manual.] See, for example, s. NR 660.10 (138m), among others.

c. Throughout the proposed rule, the agency should consider removing parenthetical material and lists of examples from the rule text. These items could be placed instead in a note or example. [ss. 1.01 (6) and 1.09 (1), Manual.] For instance, on page 609, in s. NR 666.507 (1), the phrase “for example, a unit-dose packet, cup, wrapper, blister pack, or delivery device” could be moved to an example, instead of appearing in the rule text. Alternatively, if the agency believes that a term needs elucidation, it could define the term in the rule. A definition may include a list of reasonably related examples. [s. 1.01 (7) (c), Manual.]

d. In the various definition provisions throughout the rule, it is unnecessary to specify that the definitions are in addition to those given in s. NR 660.10. That section specifies that its definitions apply throughout chs. NR 660 to 679. Also, not all of the subchapters contain a

reference to the general definitions in s. NR 660.10, and it is preferable to be consistent in that phrasing, to avoid any confusion that there could be differences in applicability. Compare, for example, s. NR 661.1031 (intro.) with s. NR 662.081 (intro.).

e. On page 15, in s. NR 660.10 (9t), the cross-reference to the subchapter in another chapter should be formatted as “subch. K of ch. NR 662”. Compare, for example, the phrasing in sub. (53). The proposed rule should be reviewed in its entirety and corrected as appropriate for other subchapter cross-references. [s. 1.07 (2) (Table), Manual.]

f. On page 16, in s. NR 660.10 (28s), should “Manifest” be capitalized in identifying the defined term? In other uses of the phrase, it is not. Compare the identified defined term in s. NR 660.10 (28p).

g. On page 17, in s. NR 660.10 (46), the abbreviation “s.” should be revised to “ss.”. The plural abbreviation should be used whenever citing to multiple sections of the statutes or administrative code that are listed using the conjunctive “and”. However, if multiple sections are listed in the disjunctive “or”, then the singular “s.” abbreviation is used. The same usage applies to the abbreviations “ch.” and “chs.”. The proposed rule should be reviewed in its entirety for similar occurrences.

h. On page 17, in SECTION 15 of the proposed rule, the definition in sub. (51t) appears duplicative with respect to the definition of “generating facility” in sub. (50m).

i. On page 28, in s. NR 660.42 (1) (intro.), the citation should be written as “s. NR 660.30 or 661.0004 (1) (w), (x), (y), or (za)”.

j. On page 30, in s. NR 660.43 (2) (intro.), the reference to “sub. (a)” should be corrected; the designation “(a)” is a paragraph and not a subsection. Consider instead referring to “this subsection”.

k. The organization of ch. NR 661 should be reviewed as it lacks subchs. F, G, K, and L, and lacks subchs. N to Z between subchs. M and AA.

l. On pages 32-33, s. NR 661.0001 (3) (h) should be revised to avoid inclusion of substantive requirements in a definition.

m. On page 34, in s. NR 661.0002 (3) (intro.), errant text relating to internal review should be removed. In the same subsection, the proposed rule should be reviewed for consistent use of title case with respect to table references, and in par. (b) 1. a., the semicolon should be revised to a period.

n. Beginning on page 38, the organization of s. NR 661.0003 (1) (b) should be reviewed as it lacks a subd. 3.

o. On page 45, in s. NR 661.0003 (3) (b) 2. c., are further rule subdivisions necessary, or can the proposed rule be reorganized to avoid such subdivision? Subdivision paragraphs should not be further divided. The proposed rule should be reviewed in its entirety and corrected as appropriate for similar occurrences. See, for example, s. NR 661.1084 (3) (b) 3. b., among others. [s. 1.03 (2) (f), Manual.]

- p. On page 47 of the proposed rule, the organization of s. NR 661.0003 should be reviewed as it lacks a sub. (5).
- q. On page 50 of the proposed rule, references to subds. 1. and 2. should include periods.
- r. On page 56 of the proposed rule, in par. (u), the reference to “paragraph (t)” should be abbreviated “par. (t)”.
- s. On page 58, and throughout the proposed rule, internal cross-references should be made in the style prescribed by s. 1.07 (2) (Table), Manual.
- t. On page 60 of the proposed rule, a period should end subd. 2. d.
- u. On page 70 of the proposed rule, the reference to subd. 2. should include a period.
- v. On page 79 of the proposed rule, the organization of s. NR 661.0004 (2) should be reviewed as pars. (p) and (q) are omitted.
- w. On page 81 of the proposed rule, pars. (b) and (d) should be reviewed for use of “or” instead of “and” in the references to exemptions in par. (a).
- x. On page 86 of the proposed rule, the organization of s. NR 661.0004 should be reviewed as subs. (7) to (9) are omitted.
- y. On pages 92-93 of the proposed rule, use of title case referring to “universal waste”, “toxic waste”, and “acute hazardous waste” should be reviewed. Only proper names should be capitalized.
- z. On page 94 of the proposed rule, what does the agency mean by the phrase “not being formally adopted” in s. NR 661.0020 (3) (Note)?
- aa. On page 119 of the proposed rule, the agency should review whether additional material is necessary to properly introduce the subdivision paragraphs in subds. 4. and 11. Section NR 661.0033 should be reviewed for a similar occurrence. [s. 1.03 (3), Manual.]
- bb. On page 190, in s. NR 661.0035 (2) (intro.), text should be inserted to explain the applicability of the subunits, such as “shall do all of the following”, and the provision should end in a colon.
- cc. On page 191 of the proposed rule, in sub. (2) (d), the word “Shall” should be lowercase. Additionally, the provision is unnecessarily subdivided into only one subdivision.
- dd. On pages 193-197, both s. NR 661.0039 (1) (d) and (4) describe “use constituting disposal”. Is such duplication necessary?
- ee. Beginning on page 201, s. NR 661.0143 should be reviewed for proper use of introductory material and subdivisions.
- ff. On pages 210-211, in s. NR 661.0143 (5) (d) (intro.), each reference to “the effective date of these regulations” should be revised to “the effective date of this section . . . [LRB inserts date]”. The proposed rule should be reviewed in its entirety and corrected as appropriate for similar occurrences. [s. 1.01 (9) (b), Manual.]

gg. On page 220, in s. NR 661.0147 (5), it appears that “will” should be changed to “shall”. This issue also occurs in sub. (6) (d) (intro.).

hh. On page 220, in s. NR 661.0147 (6) (a) (intro.), the phrase “the criteria of subd. 1. or 2.” should be revised to “either of the following”.

ii. On page 223, in s. NR 661.0147 (7) (a), there is only one subunit (subd. 1.), and there is no introductory material to explain its applicability. Review and revise the subdividing of par. (a) as appropriate. Also, the reference to “subs. (6) (a) to (f)” should be revised to the singular “sub. (6) (a) to (f)”.

jj. On page 242, in s. NR 661.0151 (6) (intro.), the final period should be revised to a colon.

kk. On page 280, in s. NR 661.0173 (2), “shall not” should be changed to “may not”. This issue also occurs throughout the rule, including s. NR 661.0177 (1) and (2), 661.0194 (1), 661.0198 (1), 661.0199 (1) and (2), and 662.010 (1) (c), among others.

ll. On pages 284-285 of the proposed rule, the organization of s. NR 661.0193 should be reviewed as it lacks a sub. (5).

mm. On page 287, in s. NR 661.0196 (4) (a), “sub. (b)” should be changed to “par. (b)”. In sub. (5) (a), “inpars.” should be changed to “in pars.”. On page 288, in sub. (6), “shall not” should be changed to “may not”.

nn. On page 311, in s. NR 661.1033 (14) (a) 1., “subchapter” should be changed to “subch.”. The same issue occurs in par. (b) 1.

oo. On page 336, in s. NR 661.1063 (4) (c), it appears that “this provision” should be changed to “this paragraph”.

pp. Beginning on page 346, in s. NR 661.1083, the organization should be reviewed as it lacks a sub. (2).

qq. On page 359, in s. NR 661.1084 (5) (intro.), the introductory material should be revised to end in the phrase “shall meet all of the following:”, ending in a colon. The same issue occurs in sub. (6) (intro.). In both subs. (5) and (6), review the inclusion of par. (d) in each, and revise its designation, as appropriate. In sub. (7) (intro.) and (8) (intro.), the final periods should be revised to colons.

rr. On page 379, in s. NR 661.1086 (4) (d) 1., “subchapter” should be changed to “subch.”.

ss. On page 426, in s. NR 662.010 (1) (intro.), text should be inserted to introduce the subunits, and the introduction should end in a colon.

tt. On page 428, the organization of s. NR 662.010 should be reviewed, as subs. (3), (10), and (11) are omitted.

uu. On pages 473-474, the organization of s. NR 662.024 should be reviewed, as sub. (7) is omitted.

vv. On page 514, in s. NR 662.206 (intro.), text should be inserted to introduce the subunits, and the introduction should end in a colon.

ww. Beginning on page 522, the organization of s. NR 662.214 should be reviewed, as it appears that subs. (3) and (4) are not intended to be subunits of the introduction for the section. Alternatively, consider revising the introduction to either remove the last sentence or to add a final sentence to the effect that “all of the following apply to a laboratory management plan:”.

xx. On page 540, in s. NR 663.10 (4), the designation “NR” should be inserted before “662.083 (4)”.

yy. On page 545, in s. NR 663.21 (1), the phrase “of this section” should be removed. [s. 1.07 (2) (Table), Manual.]

zz. On page 559, in s. NR 664.0174, the inserted material should be placed in a note to the provision, rather than in the text. Alternatively, the word “see” could be removed and a directive (such as “The owner or operator shall comply with...”) could be inserted to apply the cited provisions. The same issue occurs on page 579, in s. NR 665.0174.

aaa. On page 574, in s. NR 665.0071 (6), the text in par. (e) is not a “legal equivalence” as identified in the introductory material. The provisions should be reorganized to separately address the different subjects.

bbb. On page 589, in the treatment clause for SECTION 166 of the proposed rule, the designation “(intro.)” should be inserted after “(3)”. This should also be corrected in the rule caption’s listing of affected provisions.

ccc. On pages 590-591, the following issues in the table under s. NR 666.080 (1) should be reviewed:

- (1) Pars. (a) and (g) appear to partially duplicate and partially conflict with one another. For example, a person who wishes to transport a battery in the U.S. and then export it for reclamation by regeneration in a foreign country would be subject to both pars. (a) and (g), and therefore exempt from, and subject to, separate and conflicting lists of provisions in the final two columns of each paragraph. If par. (a) is intended to apply only to a person who does **not** transport a battery for export, the agency could insert language to that effect in the second column of that paragraph.
- (2) Paragraph (f) contains a cross-reference to “s. NR 660.0007”. That section does not exist.
- (3) In pars. (h), (i), and (j), the word “a” should be inserted before “foreign country” in each instance.
- (4) In par. (i), the third column should be revised. The need for two references to “666.080 (2)” is not apparent. Also, the abbreviation “chs.” should be revised to “s.”, and the format of the second cross-reference should be corrected.
- (5) The use or omission of closing periods should be uniform throughout the table.

ddd. On page 592, in s. NR 666.101 (3) (a), the use of “etc.” should be removed. The same issue occurs twice on page 66 in par. (y) 1. f., on page 111 line K174, and on page 560 in s. NR

664.0197 (1), among others. The rule should be reviewed in its entirety and corrected as appropriate. [s. 1.01 (9) (c), Manual.]

eee. On page 592, in the treatment clause for SECTION 171 of the proposed rule, the designation “(intro.)” should be inserted after “(d)”. This should also be corrected in the rule caption’s listing of affected provisions.

fff. On page 593, in s. NR 666.112 (2) (b) 2., the entirety of “661.0024” should be underscored.

ggg. On page 594, in s. NR 666.255 (1), the entirety of “662.16” should be underscored.

hhh. On page 596, s. NR 666.500 (10) should be divided into two paragraphs: first, to list the elements that are needed to be potentially creditable; and, second, to identify what is excluded from the defined term as currently identified in par. (e). For example: “(10) (a) ‘Potentially creditable...’ ...is all of the following: [subds. 1. to 4.]. (b) The term ‘potentially creditable...’ does not include....”.

iii. On page 598, in s. NR 666.501 (6), the agency should consider placing the examples in a note or example that follows the text.

jjj. On page 612, in s. NR 666.509 (1), the last two sentences appear to interpret federal regulations. Would these sentences be better placed in a note rather than in the rule itself?

kkk. On page 616, par. (j) (intro.) should be revised so that it ends with a colon. One option would be to invert the order of the two sentences. The same comment applies to sub. (2) (d) (intro.) on page 617.

lll. On page 625, SECTION 191 is unnecessary and should be removed. It attempts to correct a transposed cross-reference that has already been corrected.

mmm. On pages 626-627, in s. NR 668.07 (1) (d), the table is shown without any strike-throughs or underscoring. If the table is amended, revisions should be shown; otherwise, the table should be removed. Also, in subd. 4. of the table, the abbreviation “ss.” should be revised to “s.”.

nnn. Beginning on page 632, in s. NR 668.40 (Table), the following issues could be addressed:

- (1) The abbreviation “TC” appears on page 683 and then throughout the table without explanation. Should it be defined?
- (2) The table uses the abbreviation “TCLP” in certain places and “toxicity characteristic leaching procedure (TCLP)” in other places. Is there a reason the table uses both formulations? Consider defining the acronym and then using the acronym consistently.
- (3) For consistency, the agency could consider displaying the explanation “NA means not applicable” on page 632 in the same manner as in the table appearing on page 756.

ooo. On page 753, in s. NR 668.50 (1) (a), the abbreviation “s.” should be revised to “ss.”. Also, in par. (b) 1., the period in the current text should be inserted and shown with a strike-through.

ppp. On page 757, in s. NR 670.001 (3) (b) 1., the abbreviation “chs.” should be revised to “ss.”. In subd. 11, the abbreviation “s.” should be revised to “ss.”.

qqq. On page 757, in the treatment clause for SECTION 213 of the proposed rule, the created provision is identified as subd. 12. However, in the text, the provision is identified as subd. 24. The designation should be corrected to reflect the agency’s intended numbering.

rrr. On page 760, in s. NR 670.320 (2) (b) 2., the abbreviation “s.” should be inserted before “NR 670.410”, and a period should be inserted for subd. “9” in the citation. Also, the period after “(3) (a)” in the stricken material should be removed, as it is preserved at the end of the sentence.

sss. On page 772, in s. NR 673.40 (intro.), it appears as though the agency intended to remove “(in which case the handler is subject to the requirements of subch. H of ch. NR 662) shall do all of the following:”. If so, that phrase should be shown with a strike-through.

ttt. On page 773, in s. NR 673.80 (1), the format for the citation to “par. 4” should be revised to “sub. (4)”.

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

a. Throughout the proposed rule, the agency should review internal cross-references to “this section”. It appears to be used in places where a more targeted cross-reference is intended. For example, in sub. (10) (c) on page 604, in sub. (12) (a) on page 605, and in par. (b) 3. on page 614, it appears that the phrase “this section” should be replaced with “this subsection”, “this subparagraph”, and “this paragraph”, respectively.

b. On page 19, in s. NR 660.10 (100m), the agency’s definition of RCRA is vague. Should the agency include more specific citations? Also, a closing quotation mark should be inserted after “act”, and an opening quotation mark should be inserted before “RCRA”.

c. On page 73, in subd. e., the reference to the list of subchapters is confusing and should be revised to identify the specific chapters that contain the subchapters. For example, it appears the cross-reference to other NR chapters should be shown as follows: “ch. NR 440, subchs. III and IV of ch. NR 446, or chs. NR 447 to 469”. The same issue occurs on page 89, in sub. (3) (a), and page 90, in sub. (4). The rule should be reviewed in its entirety for similar occurrences and corrected as appropriate.

d. On page 193, in s. NR 661.0039 (1) (d), the reference to sub. (3) (h) is inaccurate. Does the agency intend to refer to s. NR 661.0001 (3) (h)?

e. On page 256, in s. NR 661.0151 (9) (intro.), should the citation more specifically identify subs. (1) and (2) of the cited provision?

f. On page 337, in s. NR 661.1064 (2) (a) 6., references to the applicable subsections should be included after each method of compliance is identified. In addition, the quotation marks around each identified method of compliance should be deleted.

g. On page 340, in s. NR 661.1064 (11) (intro.), it is unclear what “other specific subchapters” is referring to. The applicable cross-references should be identified.

h. On page 365, in s. NR 611.1084 (6) (c) 1. d. 3), a more specific citation than “par. (c)” appears to be necessary.

i. On page 388, in s. NR 661.1089 (5) (a) 2., the citation to “s. NR 661.1035 (b) (4)” is incomplete and should be checked for accuracy.

j. On page 588, in s. NR 666.022, the agency should review for accuracy the cross-reference to “subchs. A to L” of a specified list of chapters. In particular, the rule adds ch. 667 to the list. That chapter contains subchs. A to J and then concludes with subch. DD, which does not align with the identified subchs. A to L. The current text also cross-references ch. 670 in its entirety. The rule proposes to cross-reference only subchs. A to L of ch. 670, which would exclude subch. M. Alternatively, is it the agency’s intent to apply “subchs. A to L of ch. NR 664, and chs. NR 665, 667, and 670”? The provision should be reviewed and corrected as appropriate.

k. On page 614, in s. NR 666.510 (1) (c) 1. and 2., references to the applicable subsections should be included after each identified type of hazardous waste. In addition, the quotation marks around each identified type of hazardous waste should be deleted.

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

a. Throughout, the rule uses the terms “off-site” and “on-site” without defining them. Will those terms be understood clearly by a regulated entity or should they be defined?

b. In s. NR 660.10 (21) (a) 3., the provision should end with a period.

c. In SECTION 29 of the proposed rule, periods should be placed at the end of the rule provisions.

d. On page 41 of the proposed rule, the acronym “WPDES” appears three times. The term is not defined in s. NR 660.10 and therefore should either be defined or spelled out.

e. On page 75 of the proposed rule, in par. (f) 1. a., what does “nearly exclusively” mean?

f. On page 91 of the proposed rule, in par. (b), what does “approaches atmospheric” mean?

g. On pages 119 and 192, the acronym “QA/QC” is used. The term is not defined in s. NR 660.10 and should either be defined or spelled out.

h. On page 203 of the proposed rule, “surety” is spelled incorrectly.

i. On page 217, in s. NR 661.0147 (1) (g) 2., “non-sudden” is hyphenated; however, in sub. (2) (intro.), this term is not hyphenated. The spelling of this term should be changed to be consistent throughout the rule.

j. On page 217, in s. NR 661.0147 (2) (intro.), “(67m)” should be inserted after “s. NR 660.10”. In addition, “An owners or operator who combines coverage” should be changed to “An owner or operator who combines coverage”. In sub. (2) (g) 2. and 3., “udden” should be changed to “sudden”.

k. On page 219, in s. NR 661.0147 (3), “coveragebased” should be separated into two words.

l. On page 221, in s. NR 661.0147 (6) (c) (intro.), “this test” should be changed to “the test in par. (a)”. This issue also occurs in sub. (6) (g). In sub. (6) (d) (intro.) and 4., “the effective date of these regulations” should be changed to one of the options included in s. 1.01 (4) of the Manual. In sub. (6) (e), “all 3 items specified in par. (c)” should be changed to “the items in par. (c) 1. to 3.”.

m. On page 223, in s. NR 661.0147 (7) (intro.), it is unclear what a “substantial business relationship” means and why the term is in quotation marks in the rule.

n. On page 260, in s. NR 661.0151 (11) (intro.), the first colon should be changed to a comma.

o. On page 282, in s. NR 661.0191 (2) (intro.), “This assessment” should be changed to “The assessment under sub. (1)”.

p. On page 283, in s. NR 661.0191 (2) (e) 2. (Note), review and revise the phrase “as guidelines in conducting other than a leak test” in order to clarify the intent.

q. On page 291, in s. NR 661.0410 (2) (c), the last semicolon should be changed to a comma.

r. On page 292, in s. NR 661.0411 (2) (intro.), it is unclear how a generator or intermediate or reclamation facility will know which telephone is being referred to in this subsection. In sub. (4) (intro.), it appears that the first instance of “to” should be deleted.

s. On page 294, in s. NR 661.0420 (1) (a), “udden” should be changed to “sudden”. In sub. (2) (b), “already” should be deleted. In addition, “need only” should be revised to “may”. In sub. (5), “spelled out” should be changed to “explained” or “detailed”.

t. On page 299, in s. NR 661.1031 (5), the second instance of “connector” should be enclosed in quotation marks.

u. On page 312, in s. NR 661.1034 (1), the sentence structure of par. (g) should be revised to follow the same structure as pars. (a) to (f). In sub. (3) (d), it is unclear what “the 3 runs” is referring to. In sub. (4) (a) 4., it appears that “grab” should be inserted between “4” and “samples”.

v. On page 321, in s. NR 661.1035 (3) (d) 1., it appears that the word “the” should be added before “period”. The same issue occurs in subs. 2., 3. (intro.), 4. (intro.), 5., 6., 7. (intro.), 8., and 9. In par. (f), it appears that “the” should be added before “date”.

w. On page 324, in s. NR 661.1052 (1) (a), the comma between “(2)” and the period should be deleted. In sub. (4) (e) 1., it appears that “by” should be inserted between “checked” and “the remanufacturer”.

x. On page 326, in s. NR 661.1053 (2) (a), a period should be inserted at the end of the sentence. In sub. (9), a period should be inserted after the abbreviation “subs”.

y. On page 343, in s. NR 661.1081 (13), quotation marks should be added after “Internal floating roof” and before “means”. In sub. (18), it appears that the quotation marks around “Metallic shoe” should also include the word “seal”.

z. On page 349, in s. NR 661.1083 (1) (c) 3. b., the comma between “Section 6.3” and “of Method 301” should be deleted. In sub. (1) (c) 4. b. 2), it appears that the brackets should be removed and replaced with commas.

aa. On page 366, in s. NR 611.1084 (6) (c) 2. b., it is unclear how a remanufacturer or other person will know “the date the tank becomes subject to this section”. A similar issue occurs in sub. (7) (c) 3.

bb. On page 370, in s. NR 611.1084 (10), the material in the note following sub. (10) (a) appears to contain substantive requirements that should be placed in the text of the rule. [s. 1.09 (1), Manual.]

cc. On page 381, in s. NR 611.1086 (6) (b), a semicolon should be inserted between “Packages” and “and 49 CFR part 180”. In sub. (8) (intro.), it appears that “use the following procedure” should be changed to “the following procedure shall be used”.

dd. On page 431, in sub. (6), the agency should consider explaining more precisely the length of any period of extension to the standard records retention requirements. Also, consider dividing the subsection into paragraphs for the multiple components that are addressed in the provision.

ee. On page 438, in par. (e) 8. a., consider the placement of the definition of the word “control”. If it is to apply to the whole section, why is it not listed at the beginning of the section? Is it instead intended to apply only within the subdivision? If so, the applicability statement should be revised.

ff. On pages 449-450, in par. (h) 6., consider explaining what it means to “make arrangements” with local emergency response authorities.

gg. On page 454, in par. (d), the word “of” before “subch. DD” should be removed.

hh. On page 473, s. NR 662.024 (1) (a) should be reviewed for use of “or” instead of “and” when referring to the meaning of a valid and enforceable signature.

ii. On page 475, in s. NR 662.025 (intro.), the word “requirements” should be added after “following”. Also, in sub. (1), what are the “applicable EPA and other federal requirements”?

jj. On page 480, in subch. H (Note), the phrasing should be revised to remove the parenthetical. Compare, for example, the phrasing on page 465, in s. NR 662.021 (Note).

kk. On page 489, in sub. (2) (title), the em dash should be removed.

ll. On page 514, in s. NR 662.206 (1), the word “And” should be revised to “An”.

mm. On page 523, in s. NR 662.214 (2) (b), the agency should move the language identifying the resources (“See the required standards specified in ...”) to a note following the text. The same issue also occurs multiple times in par. (d).

nn. On page 523, in s. NR 662.214 (2) (d) 1., the agency should use complete sentences.

oo. On page 525, in s. NR 662.216 (1) and (2), delete both instances of the phrase “Remains subject to”, as this phrase is redundant when read with the introduction.

pp. On page 537, in s. NR 662.265 (3), the agency should consider clarifying what is meant by the term “concurrently”, in that context.

qq. On page 552, s. NR 664.0071 (3) and the note following the provision should be revised for clarity. The provision should clearly state which provisions apply to whom, in which circumstances. If appropriate, consider moving the portion of the text that appears to be providing guidance to an additional note following the text.

rr. On page 572, in s. NR 665.0071 (1) (b) 5. a., should the applicability on June 30, 2018, be revised to apply on the effective date of the proposed rule? Or is that date from federal law? June 30, 2018 has already passed and the provision cannot apply retroactively. The same issue occurs on page 544, in s. NR 663.20 (5) (b) and (6) (b).

ss. On page 580, s. NR 665.0193 (6) (a) is overly confusing and should be revised. Also, the final period should not be underscored.

tt. On page 588, in s. NR 666.020 (2), it appears that the word “if” should be inserted before “the recycler”. Alternatively, “physical means and if the products” could be replaced with “physical means, the products”.

uu. On page 593, in s. NR 666.202 (4), the word “ammunition” in the final sentence should be revised to “munition”.

vv. Beginning on page 594, the agency should review the following issues with regard to the definitions in s. NR 666.500:

- (1) Redundancy exists in some definitions around the word “pharmaceutical”. For instance, sub. (3) (b) refers to “pharmaceuticals, including over-the-counter pharmaceuticals, dietary supplements, homeopathic drugs”. The definition of “pharmaceutical” in sub. (9) includes dietary supplements and homeopathic drugs, so the inclusion of dietary supplements and homeopathic drugs in sub. (3) (b) is duplicative.
- (2) In sub. (3) (b), it appears that the word “serving” should be revised to “serve”.
- (3) In sub. (9), the definition of “pharmaceutical” refers to both “any...dietary supplement” and “dietary supplements, as defined by the federal food, drug and cosmetic act”. Is there a difference between these two? If not, why use both?

ww. On page 597, in s. NR 666.501, subs. (1), (2), and (4) should be reviewed and revised for clarity. At a minimum, sub. (1) should include notification that an alternative to compliance with s. NR 662.014 exists, such as “Except as provided in sub. (2),”. Also, the internal cross-reference in sub. (2) to “666.501 (4)” should instead be to “sub. (4)”.

xx. On page 598, in s. NR 666.501, sub. (7) (a) and (b) contains sentence fragments and should be revised.

yy. On page 601, the agency could add clarity to sub. (6) (b) by writing in the singular. If the agency chooses not to, the word “it” in par. (b) should be revised to “the pharmaceuticals”.

Also, in subd. 3. on the top of page 602, the agency could clarify how a regulated entity could comply with the “identifying” requirement, especially if it involves actions beyond the “marking or labeling” and “maintaining an inventory system” that are required under subds. 1. and 2.

zz. On page 602, the agency should review sub. (7) for clarity. That subsection provides that certain **pharmaceuticals** are subject to ch. NR 668, and that **facilities** generating those pharmaceuticals must comply with s. NR 668.07 (1), with an exception. The agency should consider whether these two references create either redundancy or conflict.

aaa. On page 602, in sub. (8), the agency should consider the following:

- (1) Is the phrase “with the understanding” in sub. (8) (intro.) a known concept within the regulated community? Is there a more formal arrangement surrounding a shipment of these pharmaceuticals that could be referenced instead?
- (2) This subsection uses both “returned shipment” and “rejected shipment”. If those terms are synonymous, it would be clearer to use just one. This issue also occurs on pages 619-620 in par. (g).
- (3) This subsection mentions both an “original manifest” and a “new manifest”. The agency should review each reference and revise the phrasing as appropriate to refer to the intended manifest.
- (4) The designations for the subunits should be corrected to paragraph numbering. [s. 1.03 (1), Manual.]

bbb. On page 603, the agency should review the following issues with sub. (9) (b):

- (1) Subdivision 1. requires a report by a sending facility if the recipient facility does not send a copy of a manifest to the sending facility. Subdivision 2. requires a report by a sending facility if the recipient facility rejects the shipment, forwards it, and does not send a copy of the manifest to the sending facility. How would a sending facility know which subdivision applied? In either case, the sending facility would have received no notification from the recipient facility. The same issue occurs on pages 620-621.
- (2) Subdivisions 1. a. 1) and 2. a. 1) each require a facility to submit a manifest “indicating” certain information. It is not clear what this requires beyond the handwritten or typed note required by subds. 1. a. 2) and 2. a. 2).
- (3) In subds. 1. a. 2) and 2. a. 2), should each reference to “the manifest” be to “the original manifest” instead?
- (4) Subdivisions 1. a. 2) and 2. a. 2) should each end with “, to the agency”.

ccc. On page 604, in sub. (10) (e), “deperment” should be “department”.

ddd. On page 605, in par. (a), the agency should consider the following:

- (1) In the two places where the term “person” appears, the rule cross-references the applicable definition. This seems unnecessary and potentially confusing given that other defined terms are not similarly cross-referenced. Also, the abbreviation “s,”

should be revised to “s.” in the first reference, and the second reference should be modified to be as specific as the first reference.

- (2) The last sentence needs clarification, beginning with the phrase “except that”. Is the intent that two different facilities owned by two different persons are not under the control of the same person if that person is a mutual contractor? If so, and if there is never a situation in which a contractor qualifies as having control of a facility, could this part of the sentence be changed to “except that a contractor who operates a healthcare facility shall not be deemed to ‘control’ such facility.”?

- (3) These same comments apply to par. (a) on page 606.

eee. On page 605, s. NR 666.503 (1) should be reviewed for clarity on the following two bases:

- (1) The subsection uses the terms “potentially creditable pharmaceutical” and “potentially creditable non-hazardous waste pharmaceutical” but neither term is defined in s. NR 666.500. Should these terms be defined?
- (2) The subsection allows a facility to choose to manage its potentially creditable non-hazardous waste pharmaceuticals as potentially creditable hazardous waste pharmaceuticals under subch. P. Will it be clear to a facility what alternative it has to that choice?

fff. On page 608, in sub. (4), the agency should consider the following:

- (1) In the first sentence, will it be clear to a long-term care facility what it means to be subject to “the other optional provisions of this section”? Consider adding a delineated list of those provisions to improve clarity.
- (2) The meaning of the second sentence is not clear. If it is meant to convey that the presumption laid out in the first sentence may be overcome if the agency is able to demonstrate certain facts, and that there is a consequence if the presumption is overcome, it should be revised to say so.
- (3) The third sentence addresses facilities with more than 20 beds; this seems misplaced in a subsection that focuses on facilities with 20 beds or fewer. Perhaps sub. (4) could be divided into two paragraphs, with par. (a) addressing facilities with 20 beds or fewer and par. (b) addressing facilities with more than 20 beds.

ggg. On page 609, in par. (c) 1., it appears that the reference to “subparts Eb” should be revised to “subpart Eb”. The same issue occurs in subd. 2., in the reference to “subparts AAAA”.

hhh. On page 609, s. NR 666.507 (1) is trying to describe various containers by volume or by number of pills that could be held. It is clear with regard to containers having a volume not to exceed one liter, but it is not as clear with regard to the number of pills. Currently, it refers to a “stock bottle, dispensing bottle, vial, or ampule, not to exceed...10,000 pills”. It might be clearer if “having a capacity” or “with a capacity” was inserted after “ampule,”. Also, consider placing the list of examples in a note following the text.

iii. On page 610, subs. (3) and (4) both provide that an item is treated as a non-creditable hazardous waste pharmaceutical “unless” certain conditions are met. In each subsection, consider stating how the item should be treated if the conditions for the exception are met.

jjj. On page 610, in sub. (4), the final sentence begins with the word “This” but it is not clear to what that word refers. If it is meant to refer to unused, partially administered, or fully administered containers, the first sentence could be modified along the following lines: “Hazardous waste pharmaceuticals remaining in all other types of unused, partially administered, or fully administered containers, including residues in inhalers, aerosol cans, nebulizers, and tubes of ointments, gels, or creams, shall be managed...”.

kkk. On page 610, in s. NR 666.508 (1) (intro.), the rule includes examples after the term “designated facility”. Why? That term is defined on pages 15-16 of the proposed rule. Are the examples on page 610 intended to expand or otherwise change the definition?

lll. On page 612, in s. NR 666.509 (3), the phrase “, that is the reverse distributor,” is accurate but unnecessary. Removing it would help simplify the lengthy sentence.

mmm. On page 614, in s. NR 666.510 (1) (c) (intro.), the second sentence should begin with the word “A”. Also, in subd. 1., a period should be inserted after the abbreviation “sub”.

nnn. On page 615, par. (e) 2. should be revised to clarify that it applies only to a reverse distributor. Also, the internal cross-reference to “s. NR 666.510 (3) (d) 1. to 6.” should instead be to “sub. (3) (d) 1. to 6.”.

ooo. On page 617, sub. (2) (d) 2. should end with a period.

ppp. On page 618, in par. (c), the word “that” should be revised to “who” because it refers to “personnel”.

qqq. On page 619, in par. (d) 6., the agency should consider removing “at the reverse distributor”. All of the subdivisions apply only at a reverse distributor. The inclusion of that phrase in only one subdivision might cause confusion.

rrr. On page 619, par. (g) 2. should end with a period.

sss. On page 620, in par. (i) 2. a., the phrase “, the reverse distributor” after the phrase “initial transporter” should be removed, as it is grammatically incorrect.

ttt. On page 770, in the hazardous waste fee table, should the words “Manifest Fee” also be shown with a strike-through, as the fee itself is removed? Or should other instructions be inserted for how to determine the appropriate manifest fee?