



Wisconsin Legislative Council

RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 21-072

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.]

1. Statutory Authority

The department’s analysis for the proposed rule cites s. 285.11 (11), Stats., as both a statute interpreted and as a source of statutory authority. However, this provision may be better characterized as only a statute interpreted. The other sources of statutory authority cited in the analysis [ss. 285.17 and 299.15, Stats.] appear sufficient for the proposed rule, and provide more specific rulemaking authority relating to reporting requirements.

2. Form, Style and Placement in Administrative Code

a. The caption for the rulemaking order that enumerates the provisions treated by the proposed order should be revised to show the designation “NR” before the first identified provision in each category of treatment, without repetition for the additional provisions within the same category of treatment. For example, the listing of provisions created by the proposed rule should begin as “NR 400.03 (4) (jp), 438.02 (1a)....”. [s. 1.01 (1) (Example), Manual.]

b. In the treatment clause for SECTION 8 of the rulemaking order, the designation “(title) and” should be inserted between “NR 438.03” and “(1) (a)”. The designation should also be added to the listing of affected provisions in the caption for the rulemaking order.

c. In SECTIONS 8 and 9 of the rulemaking order, the references to “in ch. NR 438” are internal references within the chapter and should be revised to “in this chapter”. The grammatical order of the references should then be revised to “in Table 1 in this chapter” and “in Table 2 in this chapter”, respectively. [s. 1.15 (2) (Table), Manual.]

d. SECTION 13 of the rulemaking order moves Table 1 to appear at the end of ch. NR 438. However, this means that Table 1 will appear after Table 2, as created in SECTION 9 of the rulemaking order. To follow sequential numbering conventions, consider renaming Table 2 as Table 1, and revising SECTION 13 to renumber and amend Table 1 as Table 2. As noted above, the reference to “NR 438” in the title for the table is not necessary, as it is an internal reference.

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

a. SECTIONS 5 and 7 of the rulemaking order propose to define “device” and “unit device” for the purposes of ch. NR 438. However, these definitions are equivalent. Additionally, it appears that the rulemaking order only uses the term “device” without referring to a “unit device” in the order’s definition of a “process”. Thus, it may be possible to eliminate the proposed definition of “device” and to modify the definition of “process” to refer to an activity occurring at a “unit device”.

b. The proposed definitions for “filterable PM”, “filterable PM_{2.5}”, and “filterable PM₁₀” each refer to “a particle” (singular). Although the singular form is preferred in Wisconsin drafting conventions, these definitions could be modified to refer to “particles” for style and consistency with the definitions created in 40 C.F.R. Part 51. [s. 1.05 (1) (c), Manual.]

c. The definitions created for “primary PM_{2.5}” and “primary PM₁₀” refer to “condensable PM_{2.5}” and “condensable PM₁₀,” respectively. However, the Code of Federal Regulations notes that all condensable PM, if present from a source, is typically in the PM_{2.5} size fraction and, therefore, all of it is a component of both primary PM_{2.5} and primary PM₁₀. [21 C.F.R. Part 51.] As such, it may be possible to amend the definitions in the rulemaking order to each refer to “condensable PM”, rather than distinguishing between condensable PM_{2.5} and condensable PM₁₀.

d. SECTION 14 of the rulemaking order directs facilities with emission reduction credits to report the credits “separately”. However, it is somewhat unclear the manner through which a facility should separately report these credits. Further clarity could be provided to specify whether these credits are to be reported in the emissions inventory or through some other medium.

e. SECTION 16 of the rulemaking order proposes, in part, to amend s. NR 438.03 (6). The order generally proposes to amend this subsection to refer to “emissions inventory summary reports” throughout. However, it refers only to an “emissions inventory” when directing the department to notify a facility of the department’s decision whether to adjust an emissions inventory. For consistency throughout the subsection, the term “emissions inventory” could be replaced with “emissions inventory summary report” in this instance.

f. SECTION 25 of the rulemaking order establishes a subsection with the title “Emissions-discharging units or stacks”. However, this subsection does not ultimately address emissions-discharging units that are **not** stacks (if such units exist). If the department wishes to establish reporting requirements relating to emissions-discharging units that are not stacks, additional language could be provided.