



Wisconsin Legislative Council

RULES CLEARINGHOUSE

Scott Grosz
Clearinghouse Director

Margit Kelley
Clearinghouse Assistant Director

Anne Sappenfield
Legislative Council Director

CLEARINGHOUSE RULE 21-088

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 summary for the proposed rule cites chs. 280 and 281, Stats., as statutes interpreted. However, it is generally preferable to cite specific provisions, rather than entire chapters, when identifying the statutes interpreted and statutory authority. While the proposed rule cites entire chapters as sources of statutory authority, it also provides citations to specific provisions within these chapters. The statutes interpreted portion of the rule summary could be revised to generally mirror this approach.

2. Form, Style and Placement in Administrative Code

a. In the caption for the proposed rule, the listing of treated provisions should be modified to include the proposed amendment to s. NR 809.203 (1) Table. Additionally, commas should be inserted after “(3)” and “(4)” within the clause’s language stating that the order proposes to “renumber and amend NR 809.205 (3) (4) and (5)...”.

b. The treatment of s. NR 809.20 (1) Table should be numbered “SECTION 2” within the proposed rulemaking order. It is not currently numbered. The following SECTION numbers should be revised to appear in sequential order.

c. In SECTION 7 of the proposed rule, only the provisions that are amended should be shown. For example, the current text of s. NR 809.205 (4) (a) 2. and 3. and (b) 1. to 6. should be removed, as the text of those provisions is not amended. Additionally, in showing the amended text, each provision can be shown with the new designation, without underscoring, and without showing the current designation. To make these changes more clear, the treatment clause for SECTION 7 should also be revised to specify that, “as renumbered,” a list of the specifically identified provisions are amended. [s. 1.04 (6) (b) and (d), Manual.]

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

a. The plain language analysis for the proposed rule notes that the rule establishes MCLs of 0.000002 mg/L (20 parts per trillion) for PFOA and PFOS, individually and combined. For accuracy, the analysis should be modified to refer to 0.00002 mg/L, which is equivalent to 20 parts per trillion, rather than 0.000002 mg/L.

b. The proposed rulemaking order uses the term “perfluorooctane sulfonic acid”, rather than “perfluorooctane sulfonate”. It seems that these chemicals are equivalent for the purpose of establishing regulatory standards (with the latter being the conjugate base of the former). However, WY-23-19 (CHR 21-083, relating to surface water criteria for PFOA and PFOS) uses the term perfluorooctane sulfonate throughout. It would be beneficial for the department to use consistent terminology in its rules relating to PFOS, if possible.

c. Various provisions within the proposed rule use the acronyms “PFOS” and “PFOA” without using the full names of these chemicals, whereas the full names appear in numerous other provisions. For consistency and clarity, consider creating definitions in s. NR 809.04 for perfluorooctane sulfonic acid and perfluorooctanoic acid that incorporate the acronyms. These definitions could mirror the definitions proposed in WY-23-19. [s. 1.08 (2), Manual.]

d. SECTION 1 of the proposed rule defines “perfluoroalkyl and polyfluoroalkyl substances” or “PFAS” as “a large group of human-made chemicals that are part of the synthetic organic contaminants classification”. This definition is somewhat vague and does not specify the types of chemicals that are considered PFAS. The definition could be revised to generally mirror the definition proposed in WY-23-19 to provide that “perfluoroalkyl and polyfluoroalkyl substance” or “PFAS” means a substance that contains a straight or branching chain of carbon atoms in which one or more of the carbon atoms have fluorine atoms attached at all bonding sites not occupied by another carbon atom and the fluorinated part of the molecule can be expressed as C_nF_{2n+1} .

e. In SECTION 2 of the proposed rule, is the intent that all of the listed technologies, together, constitute the best available technology standard for PFOA and PFOS? If only one of those technologies would satisfy the best available technology standard, then the word “and” before “reverse osmosis” should be revised to “or”.

f. SECTION 4 of the proposed rule amends, in part, s. NR 809.203 (2) Table CM. Though the order does not propose to amend the footnotes of this table, footnote 1 could be amended to address a dead link to EPA analytical methods for synthetic organic contaminants.

g. In SECTION 5 of the proposed rule, the word “system” in s. NR 809.205 (1r) (d) should be revised to “systems”. Also, s. NR 809.205 (1r) (e) 2. b. could be revised to use singular noun forms throughout and to make consistent use of either commas or semicolons.

h. In SECTION 6 of the proposed rule, the treatment clause should be revised to identify “NR 809.205 (2) ... (b) (intro.) and 1.”. The designation for (“intro.”) after par. (b) should also be added to the listing of treated provisions in the caption for the proposed rule.

i. SECTION 7 of the proposed rule renumbers and amends various provisions of s. NR 809.205 to limit their applicability to synthetic organic contaminants other than PFOS and PFOA. Among the provisions treated under this section, s. NR 809.205 (4) (a) 1. is renumbered to (2) (d) 1. a. and amended. Should this provision be further amended to refer to synthetic organic

contaminants other than perfluorooctane sulfonic acid and perfluorooctanoic acid, rather retaining language that refers to synthetic organic contaminants more broadly? In addition:

- (1) Should the cross-reference at the end of this renumbered and amended provision (“...except as noted under this subd. 1. b.”) be expanded to cross-reference both subd. 1. b. and c.? While the current rules only include the cross-reference to the former, it appears that subd. 1. c. (subd. 3., under the current rules) also establishes a situation under which the department may waive a testing requirement without requiring analysis of a water source.
- (2) Within this provision, the word “this” that precedes “subd. 1. b.” should be omitted.

j. Also in SECTION 7 of the proposed rule, in s. NR 809.205 (2) (c), as renumbered, to avoid confusion, the new text “other than perfluorooctane sulfonic acid and perfluorooctanoic acid” should follow “listed under s. NR 809.20”. In addition, underscoring should be added for the word “under” at the end of s. NR 809.205 (2) (e), as renumbered.

k. SECTION 9 of the proposed rule amends s. NR 809 Appendix A to Subchapter V to insert information related to PFOS and PFOA. The information inserted into the first column (i.e., “PFOS and PFOA”) should be amended to include a unit (i.e., ppt). Additionally, the information in the final column could be amended to describe the health effects of both PFOS and PFOA, rather than only addressing PFOS.