



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 05-039

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 rule contains definitions that include substantive provisions, contrary to the preferred drafting style in s. 1.02 (7) (b), Manual. See, for example, the definitions in s. NR 460.02 (10) and (24w) (a).

b. Explanatory material, such as the examples in the definitions in s. NR 460.02 (24w) (b), (c) and (d), should be placed in a note following the applicable provision.

c. The use of the slashed alternative “cost/benefits” in s. NR 460.02 (24y) (d) is contrary to preferred drafting style. See s. 1.01 (9) (a), Manual.

d. When a definition in a rule references another definition, the preferred drafting style is to say that the term being defined “has the meaning given” in the cited reference. This style was not followed in s. NR 460.02 (31m) and (40).

e. The department should review and correct the references to subchapters in administrative code chapters in Appendix N to ch. NR 460. For example, the comment in the general provision reference to s. NR 460.01 (1) (a) should start as “Subchapter I of ch. NR 463.” See s. 1.07 (2), Manual.

f. The department should review the entire rule and conform the citations to federal laws to the preferred drafting style of being based upon U.S. code references. If the department wishes to include a reference to a named federal act, that can be done in a note. See s. 1.07 (3),

Manual. Examples where this style was not followed include ss. NR 460.02 (24y) (intro.), (31m) and (34) (a) (intro.), and 460.05 (1) (a) (intro.) and (7) (c) 2.

g. In the first reference to s. NR 460.05 (7) (h) in Appendix N to ch. NR 460, “to” should replace the hyphen.

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

a. The explanation of agency authority in the summary accompanying the rule notes that s. 285.27 (2), Stats., requires the department to promulgate National Emission Standards for Hazardous Air Pollutants by rule. This subsection should be, but is not, included in the list of statutes interpreted and the statutes providing authority for the rule at the beginning of this summary.

b. The rule contains a number of general external references. Can the department assist the reader by being more specific in the references given in s. NR 460.05 (4) (c) 7. d. to definitions in s. NR 460.02; in s. NR 460.07 (6) (c) 2. to the definition of “monitoring” in s. NR 460.02; in s. NR 460.02 (31m) (intro.) to the definition of “source reduction” in 42 U.S.C. s. 13101-13109; and in s. NR 460.08 (2) (d) 1. and (2) (e) (intro.) and 3. to references to provisions in ch. NR 406.

c. Should the reference in s. NR 463.04 (3) (b) 5. to s. NR 463.09 (6) (c) be to s. NR 463.09 (6) (d)? Similarly, should the reference in s. NR 463.09 (6) (a) to s. NR 463.04 (6) b. 4. or 5. be to s. NR 463.04 (3) (b) 4. or 5.?

d. The rule should amend the reference to Table 1 in s. NR 463.05 (2) (a) 2. to be to “Table 1 of this subchapter” as was done in the reference to Table 1 in s. NR 463.05 (2) (a) 3.

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

a. The department should review the following provisions and, as appropriate, revise them to ensure their clarity:

- 1) The last sentence in the definition of “affected source” in s. NR 460.02 (1) limits the applicability of the definition to specified federal standards for which the initial proposed rule was signed by the U.S. EPA administrator after June 30, 2002. The rule does not state what definition applies to rules signed prior to that date.
- 2) The inserted text in s. NR 460.05 (5) does not explain what regulations apply if the condition in the introductory clause in the added sentence is not met. Also, if this condition does apply, and thus the conditional requirement at the end of the inserted sentence is in effect, what emissions standards apply to the emission point during the period of startup, shutdown, or malfunction? Under the existing text at the beginning of s. NR 460.05 (5) that is not affected by the rule, during one of these periods, the emission point appears to be exempt from the specified

emission standards. Is that the department's intent? Similar comments also apply to the treatment of s. NR 460.05 (6) (a).

- 3) What standards will the department use to determine whether a request is frivolous or not under s. NR 460.05 (7) (c) 1. b. or c.?
- 4) The introductory clause in s. NR 460.05 (7) (L) 1. appears incomplete. Does the phrase "Upon making a preliminary determination to terminate,..." better convey the department's intent?
- 5) In s. NR 460.06 (4) (b) 2. and (5) (a), the department should either use the defined terms "intermediate alternative test method" and "major alternative test method," as defined in s. NR 460.02 (22r) and (23n), or explain differences between these defined terms and the terminology used in these provisions, including "use of a major change or alternative to a test method."
- 6) The phrase "the use of an intermediate or major change or alternative to any monitoring requirements or procedures" in s. NR 460.07 (2) (a) 2. is potentially ambiguous given the definitions of "intermediate alternative monitoring" and "major alternative monitoring" in s. NR 460.02 (22g) and (23e).
- 7) The terms in equation 10 in s. NR 463.09 (6) (d) should be defined in either par. (d) or a provision that applies to par. (d).

b. The department should review the following terms and determine whether a definition of the term should be provided to improve the clarity of the rule:

- 1) "Previously nonaffected source" in s. NR 460.02 (32) (intro.).
- 2) "Unexpected event" in s. NR 460.05 (4) (a) 2.
- 3) "Title V permit" in ss. NR 460.05 (4) (c) 9. and 460.09 (2) (c).
- 4) "Major-emitting affected source" in s. NR 460.08 (2) (d) 1.
- 5) "Performance Track member facility" in s. NR 460.11 (1).

c. The abbreviation "CPMS" in s. NR 460.07 (3) (f) is not specified in s. NR 460.03 (3).

d. An article should be added before "site-specific" in s. NR 460.07 (6) (d) 1. (intro.).

e. The text of s. NR 460.11 (2) (intro.) appears incomplete. Should a verb, such as "completed" or "done," be inserted after "has"?

f. In s. NR 463.04 (3) (b) 5., it appears that the phrase "the using" should be replaced by the word "using."