

# WISCONSIN LEGISLATIVE COUNCIL STAFF

## RULES CLEARINGHOUSE

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## CLEARINGHOUSE RULE 00-096

### 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 September 1998.]**

#### **2. Form, Style and Placement in Administrative Code**

a. SECTION 7 of Clearinghouse Rule 00-096 creates subchs. I to III of ch. NR 428. However, because subch. I begins with s. NR 428.04, the three preceding sections [ss. NR 428.01 to 428.03] are not contained in any subchapter of s. NR 428. It is suggested that these sections be organized in subch. I of s. NR 428 and the subsequent subchapters of ch. NR 428, and internal cross-references, be renumbered as appropriate. (The entire rule should be reviewed for the similar problem of unnumbered subunits that do not grammatically lead into following subunits.)

b. Section NR 428.05 (1) (a) uses the phrase “listed in this subsection.” The phrase is unnecessary and should be deleted. Further, all of the introductory material that grammatically leads into following subunits should make appropriate use of the phrases “any of the following” or “all of the following” in order to clearly indicate to the reader whether any or all of the requirements listed must be met.

c. In s. NR 428.07 (2) (b), the introductory material should begin with the phrase “Except as provided in par. (c).” Similarly, par. (d) 1. should begin with the phrase “Except as provided in subd. 2.” Then, the use of the word “However” in pars. (c) and (d) 2. can be avoided.

d. In s. NR 428.09 (4) (intro.), the final clause should read: “The certification shall state all of the following:”. The following paragraphs then should conclude with periods.

e. The examples of “other values” required to determine  $\text{No}_x$  mass which are contained in s. NR 428.07 (3) are explanatory in nature and should be placed in a note following sub. (3). [See s. 1.09, Manual.]

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

a. It is suggested that the phrase “for supporting an exemption claim” be placed after the word “requirements” in s. NR 423.035 (2). As drafted, sub. (2) requires the owner or operator of a facility who claims to be exempt from any requirement of subs. (3) to (7) to comply with the record keeping requirements of s. NR 439.04 (3). However, s. NR 439.04 (3) contains record keeping requirements for sources subject to emissions limitations and operating requirements as well as for sources that are exempt from such requirements. Adding the suggested language will make the subsection more clear.

b. In s. NR 423.035 (4) (d), the subdivisions should not be written in the imperative form. [See also s. NR 439.097 (4).]

c. Section NR 428.01 (1) proposes to incorporate by reference future additions of appendices to the Code of Federal Regulations. [See s. 2.08 (5), Manual, for a discussion of whether such an action is an improper delegation of legislative authority.]

d. In s. NR 428.02 (4), the phrase “of the same phrase defined” should be replaced by the word “given.”

e. It is suggested that the phrase “Beginning on” be substituted for the word “After” in s. NR 428.04 (1) (a).

f. In s. NR 428.04 (6) (a), the introduction should conclude with a colon.

g. Section NR 428.05 (5) (a) requires the owner or operator of certain emissions units to keep certain documents for a period of five years “unless otherwise provided.” If the quoted language is meant to refer to an agreement between the department and the owner or operator of an emissions unit to keep the documents for a period that is less than or greater than five years, the paragraph should clearly state this. If this is not the intent of the paragraph, the paragraph should be redrafted to clarify its meaning. Also, the introduction should conclude with a colon.

h. Section NR 428.06 (2) (a) would be more clear if the word “allowable” or a similar word were placed before the fifth occurrence of the word “emissions.”

i. In s. NR 428.06 (2) (d), the phrase “they have” should be replaced by the phrase “it has.”

j. It appears that the phrase “on or” should be inserted before the word “after” in s. NR 428.09 (1) (b) 1. and (2) (b) 2. to 4., so that units commencing operation on May 1, 2002 are also covered by the rule.

k. Section NR 428.10 authorizes an owner or operator of an emissions source to submit a petition to the department requesting approval to apply an alternative to any requirement of subch. III of ch. NR 428. The rule provision should express a standard or standards upon which an alternative may be granted. Without a basis upon which to grant an alternative, and to the extent an alternative is generally applied, the alternative should be promulgated as an administrative rule. [See also s. NR 439.096 (1).]

l. It is suggested that s. NR 439.096 (4) be redrafted. Read literally, the subsection requires an owner or operator to notify the department that a scheduled compliance combustion optimization has been rescheduled from the date specified in the plan only if the rescheduling is due to “unforeseeable circumstances beyond the owner’s or operator’s control.” It appears the intent of the subsection is to require the owner or operator to conduct the combustion optimization on the day specified in the plan unless the date must be changed due to unforeseeable circumstances beyond the owner’s or operator’s control. Notice would be required regardless of the reason for the rescheduling. It is suggested that the department redraft sub. (4) to clarify its intent.

m. In s. NR 439.097 (5) (c), the word “burner” should be inserted before the phrase “tune-up.”