

# WISCONSIN LEGISLATIVE COUNCIL STAFF

## RULES CLEARINGHOUSE

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## CLEARINGHOUSE RULE 00-160

### 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. It is unclear from the rule where the department intends Appendix JJ of ch. NR 460 to be placed, relative to the other appendices to that chapter. The treatment clause of the SECTION creating the appendix could be written to indicate the department’s intention, such as: “NR 460 Appendix JJ, to follow (or precede) Appendix \_\_, is created to read:”. The department may want to look also at the order in which the existing appendices are printed, since they are neither in alphabetical order nor in numerical sequence relative to the chapters to which they refer.

b. Based on the definition of “affected source,” the first sentence of s. NR 465.01 (1) (a) could be reduced to: “This chapter applies to affected sources.” The second sentence of that paragraph should be broken out as a separate paragraph, since it establishes the treatment of incidental wood furniture manufacturers in the same manner that the following paragraphs establish the treatment of other subcategories of affected sources.

c. Section NR 465.01 (1) (b) should be reorganized to improve clarity and reduce duplication of language.

d. The last sentence of s. NR 465.01 (1) (b) 1. and similar sentences should be written in the active voice, i.e., “The owner or operator shall maintain . . . .” In the alternative, “for 5 years” could be inserted after “maintain” in the previous sentence.

e. Section NR 465.01 (1) (e) and (f) relate to compliance dates, rather than applicability. It would appear that they should be placed with the other provisions relating to compliance dates.

f. In s. NR 465.02 (intro.), “In this chapter:” should be inserted at the end.

g. The rule defines far more terms than appears to be necessary. The purpose of a definition is to inform the reader of the meaning of a word or term used in a rule where that meaning is not readily apparent to the reader. Thus, definitions should be limited to words and terms actually used in the rule whose meaning cannot be determined from context with the aid of a standard dictionary. In addition, to the extent possible, words or terms used once or twice in a rule should not be defined; usually, it is possible to replace these with descriptive language that avoids the need for a definition. With these observations in mind, the following are examples of unnecessary or inappropriate definitions, drawn from only the first half of s. NR 465.02. All the definitions in that section should be reviewed to determine whether they are necessary and appropriate.

- “Baseline conditions” is not used in the rule and so should not be defined. “Baseline level” is used several times, but the context makes its meaning clear and so it does not need defining.

- “Capture device” is used only once; the text of the rule should be modified to clarify the meaning without a definition.

- “Cleaning operations” is used only three times, but its meaning is obvious and it is clear from the context that the rule applies to cleaning with hazardous air pollutant (HAP) solvents, not other kinds of cleaning. Thus, this definition is unnecessary.

- “Coating application station” is not used in the rule and “coating operation” is used only in the definition of “coating application station.” What is more, the definitions of the terms are just common sense meanings of the words. Clearly, these terms do not need to be defined.

- The meaning of “control system” is obvious enough that a definition is not needed.

- “Disposed offsite” and “recycled onsite” are both used only once; in addition, the definitions are entirely obvious. These terms do not need to be defined.

- “Equipment leak” is not used in the rule and so should not be defined. “Leak” is used several times but, again, its meaning is obvious and so it does not need defining.

- The definitions of “finishing material” and “finishing operation” do not add anything to the plain meaning of the terms and so should be omitted.

- “Gluing operation” is not used in the rule and so should not be defined. “Gluing” is used in two other definitions but, again, its meaning is obvious and so it does not need defining.

- “Janitorial maintenance” is not used in the rule and so should not be defined. “Janitorial or facility grounds maintenance” is used twice but, again, its meaning is obvious and so it does not need defining.

h. Definitions should not include substantive requirements; instead, these provisions should be incorporated into the text of the rule. Examples of substantive provisions that should be moved from definitions to the text of the rule include: all of the definition of “certified product data sheet” except for s. 465.02 (11) (intro.); the material following the semicolon in the definition of “coating solids”; the second sentence of the definition of “contact adhesive”; and the second and third sentences of the definition of “continuous coater.”

i. Similarly, explanatory material should not be included in definitions; this material should be placed in a note following the definition. Examples of explanatory material that should be moved from definitions to notes include the second and third sentences of the definition of “conventional air spray” in ss. NR 422.02 (19m) and 465.02 (23) and the second sentence of the definition of “washcoat.” In addition, explanatory material should not be included in substantive provisions. Examples of explanatory material that should be moved from substantive provisions to notes include the examples provided in s. NR 465.01 (1) (g) (“e.g., incinerators, carbon adsorbers, etc.”, “e.g., product recovery” and the last three sentences) and the phrase “for example, all VOC and HAP present in the coating solvent” in s. NR 465.09 (1). [See s. 1.09, Manual.]

j. The rule defines the term “compliant coating,” which is used several times in the rule. However, since the word “compliant” is also used to modify a number of other nouns, it would be more appropriate to define “compliant.” A possible definition would be: “Compliant,” when referring to a finishing material, contact adhesive or strippable spray booth material, means meeting the requirements of s. NR 465.04.” The same applies to “noncompliant.”

k. The term “continuous compliance” appears to be intended to distinguish between initial compliance (on the initial compliance date) and compliance thereafter. “Continuous” seems to be the wrong word to describe this, especially since compliance (at least in some cases) is based on monthly averages and is not necessarily continuous. Better terms would be “continuing compliance,” “on-going compliance” or, simply, “compliance.”

l. “Normally closed container” is an awkward term, where “closed container” would suffice. Of course, a closed container must be opened to add materials to it or remove materials from it, but what matters, for example in s. NR 465.05 (7), is that the container is closed during storage. Furthermore, there would be no need to define “closed container.”

m. The second sentence of the definition of “sealer” should read: ““Sealer” does not include special purpose . . . .” The second sentence of the definition of “stain” should read: ““Stain” includes nongrain raising stains . . . .” Note the omission of the phrase, “but is not limited to”; this is implied by the word “includes.”

n. Many of the symbols defined in s. NR 465.03 are meaningless out of the context of the formulae in which they are used. While it might add some length to the rule, it would seem more helpful to define the terms of formulae according to the convention of listing them

immediately after the formulae in which they are used. Also, the rule is inconsistent in its explanation of the subscripts for some of the symbols used in formulae. For example, the “j” in “C<sub>aj</sub>” and the “i” in “C<sub>bi</sub>” are explained, but not the “a” or “b.” Also, there is no explanation of the subscripts of the terms “M<sub>c</sub>” in Equation 1, “E<sub>bc</sub>” or “E<sub>ac</sub>” in Equations 2 and 4 or “G<sub>bc</sub>” or “G<sub>ac</sub>” in Equation 3. In addition, if the format of s. NR 465.03 is used, the terms being defined should be placed in quotes, as is done for other definitions.

o. The rule is inconsistent in the format it uses to apply requirements to affected sources. The format “Each owner or operator of an affected source . . .” is used, for example, in s. NR 465.04 (1) (intro.), works for affirmative requirements, but not as well for prohibitions--see, for example, s. NR 465.05 (6). Instead, the format used in s. NR 465.06 (1) (a) is suggested: “The owner or operator of an affected source . . .” Also, the format “Owners or operators of an affected source . . .,” used in s. NR 465.07 (1) (intro), should not be used. In s. NR 465.05 (8) (f) (intro.), the rule drops the reference to an owner or operator altogether. In s. NR 465.04 (2) (intro.), the phrase “subject to this chapter” should be omitted.

p. The rule is confusing as to how and where it establishes volatile organic compound emission limits for affected sources. Section NR 465.04 is titled “Emission limits”, but it specifies only some of the specific limits while referring to Table 2 for others. Table 2, on the other hand, appears to be a summary of the various limits, not the authoritative statement of the standards. In some ways, the most complete statement of the limits themselves appears to be in s. NR 465.06, Compliance methods and procedures. One approach to clarifying these provisions would be to: (1) provide a complete statement of the standards in text in s. NR 465.04; (2) leave Table 2 as it is, as a summary, but place it directly following s. NR 465.04; and (3) to the extent possible, replace the repetitions of specific standards in s. NR 465.06 with cross-references to the standards in s. NR 465.04.

q. On several occasions, the rule uses a term and then interjects an explanation of the term. These generally are terms that do not warrant definition, in which case the term should be omitted and the explanation used in its place. For example, the second and third sentences of s. NR 465.05 (2) should read: “Personnel hired on or after the compliance date shall be trained upon hiring. Personnel hired before the compliance date shall be trained within 6 months of the compliance date.” (Also, in the first sentence of that section, the words “new and existing” should be omitted.) In another example, s. NR 465.05 (8) (c) should read: “When the spray gun is aimed and triggered automatically.” Also, in s. NR 465.05 (6), the phrase “unless the spray booth is being refurbished” should be omitted from the first sentence; the second sentence should begin: “If the spray booth coating or other protective material is being replaced, . . .”

r. The last sentence of s. NR 465.05 (8) (f) (intro.) should be rewritten as follows: “The owner or operator shall use one or both of the following criteria to support a claim that no other spray application technology is technically or economically feasible:”.

s. The format of the introductory provisions used in s. NR 465.06 should be revised. For example, sub. (1) (a) (intro.) refers to existing affected sources that are subject to s. NR 465.04 (1) (a), while all such sources are subject to that section. In addition, it requires these sources to comply, but does not say with what they must comply. This should be rewritten as follows: “The owner or operator of an existing affected source shall comply with s. NR 465.04

(1) (a) using any of the following methods:”. The same format should be used for sub. (2) (a) (intro.) and (b) (intro.); sub. (1) (b) and (c) (intro.) should be modified by adding “with s. NR 465.04 (1) (b) 1.” and “with s. NR 465.04 (1) (b) 2.” after “comply” in the respective provisions. The same format should be used for s. NR 465.08 (4).

t. Section NR 465.06 (1) (a) 2. (intro.) should read: “Demonstrate one or more of the following, as appropriate:”. Each of the following subdivision paragraphs should begin with the word “That.” As was suggested earlier, the text of the subdivision paragraphs could be replaced with a reference to the appropriate standard in s. NR 465.04.

u. The format used in s. NR 465.07 should be revised along the lines of the format used in s. NR 465.08 (1) (a) and (b). For example, sub. (1) (b) should read: “If complying by using the methods in s. NR 465.06 (1) (a) 2. or (2) (a) 2., state in the initial compliance report under s. 465.11 (2) that . . . .” Similar modifications should be made, as appropriate, throughout this section.

v. The procedures cross-referenced in s. NR 465.07 (1) (d) 4. e. are only one sentence, which could easily be repeated in this section, rather than making the reader find it in another section. Similarly, the cross-reference in s. NR 465.10 (10) could be eliminated, aiding the reader by reproducing three sentences.

w. There is a large amount of duplicated language in s. NR 465.07 and especially in s. NR 465.08. These sections should be reorganized in a way that eliminates this extensive duplication.

x. In s. NR 465.08 (3), “should” should be replaced with “shall.”

y. It appears that s. NR 465.09 (1) should be broken into three paragraphs, without an introduction. Paragraph (a) should start as follows: “Except as provided in par. (c), the owner or operator of an affected source shall use Method 311 . . . .” Paragraph (b) should start as follows: “Except as provided in par. (c), the owner or operator of an affected source shall use Method 24 . . . .” Paragraph (c) would consist of the last two sentences of the subsection.

z. The cross-reference in s. NR 465.09 (4) should be to sub. (3), since it is an internal cross-reference and it includes all paragraphs of that subsection.

aa. Sections NR 465.11 (2) and (3) should be collapsed into one subsection to avoid duplication of language. Section NR 465.11 (3) (d) appears unnecessary.

ab. By creating s. NR 484.11 (10) and Table 6I, the department is leaving a gap in the numbering within that section. Is this intentional?

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

a. To aid the reader, the second sentence of s. NR 465.05 (1) should end with a reference to the provision establishing the compliance dates.

b. Section NR 465.05 (12) (b) (intro.) should read: “If . . . the VHAP identified under par. (a) 1. exceeds the baseline level established under par. (a) 2., . . . .”

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

a. In s. NR 465.01 (1) (a), the phrase, “The owner or operator of a source that meets the definition for” should be omitted. Also, the cross-reference in that section should read “s. NR 465.02 (33).”

b. In s. NR 465.05 (2) (d), what successful completion is to be documented, presentation of the material by the employer or mastery of the material by the employees?

c. How does s. NR 465.05 (3) (a) and (b) relate to each other? Paragraph (b) requires an inspection schedule but does not say what kind of inspection is required; par. (a) requires visual inspection and specifies the minimal schedule. These need clarification, presumably by expanding par. (b).

d. In s. NR 465.05 (5), the comma following “Table 3” should be omitted and the word “which” should be replaced by the word “that.” In s. NR 465.05 (12) (a) 3., the phrase “by the affected source” should be omitted and the word “which” should be replaced by the word “that.” In s. NR 465.05 (12) (d), the word “which” should be replaced by the word “that” and a period should be placed at the end of the second sentence. Also, Latin terms should be avoided in rules. [See s. 1.01 (1), Manual.] Can “minimal” be substituted for “de minimis” in s. NR 465.05 (12) (d) and elsewhere?

e. In s. 465.05 (5) and elsewhere in the rule, “an” should be used before “MSDS.”

f. Section NR 465.05 (6) excludes the cleaning of certain components from the standards--what standards, if any, apply to the cleaning of these components?

g. Section NR 465.05 (12) (a) 2. requires baselines based on 1994, 1995 and 1996 activities. Is it known that all affected sources will have the data necessary to establish these baselines? How does a facility that was not in operation prior to 1997 establish a baseline?

h. The second sentence of s. NR 465.05 (12) (b) 2. is unclear. Presumably, it means that the source may adjust its *calculation* of usage. However, does this authorization apply only to *de minimis* usage, or should this sentence be moved to the introduction of the paragraph so that it applies to all cases where annual usage exceeds baseline usage, or to another provision of the rule so that it applies even more broadly?

i. In s. NR 465.09 (5), would it be clearer to write a new formula for calculating  $E_{ac}$ , rather than requiring the reader to rewrite Equation 2 for this purpose? The same applies to the following subsections.