

# WISCONSIN LEGISLATIVE COUNCIL STAFF

## RULES CLEARINGHOUSE

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## CLEARINGHOUSE RULE 95-024

### 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 October 1994.]**

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

The text of the rule appears to use the format of the U.S. Environmental Protection Agency’s regulation in 40 C.F.R. Part 51, Subpart W. If this indeed is the department’s intent, the department should indicate in the analysis accompanying the rule that it is being prepared under s. 227.14 (1m) (a) or (b), Stats., and the analysis should comply with s. 227.14 (2) (b), Stats. If this is not the department’s intent, then the department should review the entire rule and revise it, as appropriate, to ensure that the rule adheres substantially to the form and style specified in s. 227.14 (1), Stats. Examples of style in the rule that do not conform with the standard style identified in s. 227.14 (1), Stats., include the following:

- a. Inconsistent use of verbs in the definitions in s. NR 489.02. “Mean” or “means” are the preferred verbs in definitions, not “are” or “is.”
- b. External references to federal law via sections in specific acts rather than relying exclusively upon references to the U.S. Code, such as ss. NR 489.01 (2) and 489.02 (1).
- c. Placement of substantive provisions in definitions, such as the second sentence in the definition of “total of direct and indirect emissions” in s. NR 489.02 (28).
- d. Numbering provisions below the subdivision paragraph level, as in s. NR 489.08 (1) (e) 1. b.
- e. Use of “for purposes of this chapter” in s. NR 489.02 (13). Section NR 489.02 (intro.) already states that the definitions apply to terms used in ch. NR 489.

f. Use of the Latin term “de minimis,” in s. NR 489.03 (3) (b) and elsewhere in the rule, instead of the term “minimal.”

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

a. Section NR 489.02 (intro.) refers to the “environmental protection agency’s (EPA) regulations.” Can the department be more specific as to which regulations are being referred to in this provision?

b. Section NR 489.11 states that the federal conformity regulations under 40 C.F.R. Part 51, Subpart W, as in effect “on the effective date of this chapter .... [revisor inserts date],” in addition to any existing applicable state requirements, establish the conformity criteria and procedures necessary to meet the requirements of the Clean Air Act until such time as the state’s conformity implementation plan revision is approved by EPA. EPA’s rule-making on conformity indicates that the federal regulations that are in effect until applicable state implementation plans are revised with the required conformity provisions are those set forth in 40 C.F.R. Part 51, Subpart W, and Part 93. See 40 C.F.R. s. 51.851 (b), 58 Fed. Reg. 63247 (November 30, 1994).

c. The reference in s. NR 489.11 to “any existing applicable state requirements” is vague. Can the department be more specific?

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

a. The text of the amendment to s. NR 484.05 (8) is incomplete.

b. The definition of “applicable implementation plan” in s. NR 489.02 (2) refers to portions of the state implementation plan which have been approved under 42 U.S.C. s. 7410. How will a federal agency know which portions of Wisconsin’s state implementation plans have been approved for the various criteria pollutants? Can the department provide additional guidance, such as through a note?

c. Section NR 489.03 (3) (b) establishes that the requirements of ch. NR 489 do not apply to the 21 actions listed under par. (b) “which would result in no emissions increase or an increase in emissions that is clearly de minimus.” What happens if one of the listed actions results in an increase in the emissions that exceed the levels specified in s. NR 489.03 (2)? For example, s. NR 489.03 (3) (b) 1. applies to judicial and legislative proceedings that result in no emissions increase or only a de minimis increase. If a federal court or the U.S. Congress takes an action that results in such an emissions increase, will it then be subject to s. NR 489.03?

d. The relationship between s. NR 489.08 (1) (e) 4. a. and b. is not clear. Should a conjunction be included after the semicolon at the end of subparagraph a.?

e. The use of “is” in s. NR 489.09 (2) (b) appears in error. Should “is” be replaced with “in”?

f. In s. NR 489.09 (4) (a), could “latest year” be substituted for “farthest year”?

g. The need for s. NR 489.11 as a substantive rule is not apparent. It appears that the same information could be better conveyed via a note to the rule or in the analysis accompanying the rule.