

# WISCONSIN LEGISLATIVE COUNCIL STAFF

## RULES CLEARINGHOUSE

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## CLEARINGHOUSE RULE 00-174

### 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. The text of the rule should be arranged in the numerical order of the decimal-numbered provisions affected by the rule. [See s. 1.04, Manual.] This drafting style was not followed in SECS. 1 and 2. For example, the creation of s. NR 422.02 (7v) should precede the amendment of s. NR 422.02 (8), and the amendment of s. NR 422.02 (89) should follow the creation of s. NR 422.02 (85m).

b. The department should delete the phrase “under s. NR 422.083” in the first sentence in the definition in s. NR 422.02 (89) (b) to make this definition consistent with other definitions in s. NR 422.02 that apply to single sections in ch. NR 422. Alternatively, the department should move section-specific definitions in s. NR 422.02 to the section that uses the defined term.

c. The preferred drafting style is to avoid the use of slashed alternatives. [See s. 1.01 (9) (a), Manual.] This style was not followed in a number of provisions in the rule, including ss. NR 422.02 (7v), (21m) and 422.083 (1) (c) 2. and in item (a) 3. c. in Table A following s. NR 422.083 (2) (b).

d. In defining different types of coatings in s. NR 422.02, the rule should use consistent terminology, unless there is a substantive reason not to, and express all terms being defined in the singular. For example, s. NR 422.02 (7y) defines “baked coatings,” s. NR 422.02 (22m) defines an “electrostatic prep coat” and s. NR 422.02 (53d) defines a “mask coating.”

e. In s. NR 422.02 (12m) and (53h), “the following:” should be deleted.

f. The second sentence in the definition of “electrostatic prep coat” in s. NR 422.02 (22m) contains nondefinitional material, which should be excluded from the definition. The sentence could be placed in a note. In addition, it is not clear why this definition has a reference to a material safety data sheet and definitions of other types of coatings do not.

g. The preferred drafting style is to not use parentheses in the text of the rule. [See s. 1.01 (6), Manual.] This style was not followed in a number of provisions of the rule, including s. NR 422.02 (21m), (53h) and items (a) 2. a. and b. in Table A following s. NR 422.083 (2) (b).

h. Since the existing tables in ch. NR 422 are labeled with Arabic numbers, Table A, as created by the rule, should also be labeled by a number rather than a letter. See, for example, Table 1 referenced in s. NR 422.095 (4).

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

The reference to Legislative Council Clearinghouse Rule 00-101 in the treatment clause in SEC. 1 is adequate and appropriate provided that the department ensures that it promulgates Clearinghouse Rule 00-101 prior to promulgating the present rule, Clearinghouse Rule 00-174.

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

a. The rule contains a number of provisions in which the phrase “but are not limited to” follows the verb “include” or the phrase “but not limited to” follows the participle “including.” In these instances, the “but are not limited to” and the “but not limited to” phrases are redundant and unnecessary. See, for example, s. NR 422.02 (12m), (53h), (53t) and (89) (b).

b. The department should review the definition of “baked coatings” in s. NR 422.02 (7y). If the department intends that a “baked coating” is a coating that is not an air-dried coating, then the department should revise this definition accordingly. If this is not the department’s intent, then the department should revise the definition of baked coating to clearly convey its intended meaning.

c. The definition of “mask coating,” in s. NR 422.02 (53d) is grammatically incorrect. Should “a” precede “part”?

d. The specific definition of the common word “miscellaneous” in s. NR 422.02 (53h) is counterintuitive, diminishes the clarity of the rule and is a drafting practice that should be avoided. The department should use an expanded term, such as “miscellaneous plastic part.” Alternatively, the department should review whether a definition of “miscellaneous” is even needed if the only use of this term is the heading to item (c) in Table A following s. NR 422.083 (2) (b).

e. The phrase “rich leather-like appearance” in s. NR 422.02 (87s) is subjective and thus vague. Can the department be more specific?

f. Should “operator” be placed before “subject” in s. NR 422.083 (3) (b)?

g. The department should specify the criteria under which it will approve another time period for recordkeeping under s. NR 422.083 (3) (c) to ensure consistent application of this provision.

**6. Potential Conflicts With, and Comparability to, Related Federal Regulations**

The analysis accompanying the rule indicates that the rule is required under the federal Clean Air Act to help attain the one-hour ambient air quality standard for ozone in southeastern Wisconsin. Thus, the requirements in s. 285.11 (6), Stats., apply to this rule. Since the analysis does not indicate that the Governor has made either of the determinations in s. 285.11 (6) (a) or (b), Stats., it appears that the requirement in s. 285.11 (6) (intro.) that the rule “conform” with the federal Clean Air Act applies to the rule. The rule analysis should indicate whether the rule conforms with the federal Clean Air Act and if it does not, how it does not conform, to assist readers in reviewing the application of s. 285.11 (6), Stats., to the rule.