

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

<p>1. Type of Estimate and Analysis <input type="checkbox"/> Original <input checked="" type="checkbox"/> Updated <input type="checkbox"/> Corrected</p>	<p>2. Date 2/21/24</p>
<p>3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) Ch. NR 400 – Air Pollution Control Definitions Ch. NR 419 – Control of Organic Compound Emissions Ch. NR 439 – Reporting, Recordkeeping, Testing, Inspection and Determination Of Compliance Requirements Ch. NR 462 – National Emission Standards For Hazardous Air Pollutants For Industrial, Commercial And Institutional Boilers And Process Heaters Ch. NR 484 – Incorporation By Reference</p>	
<p>4. Subject Simplifying, reducing, updating, and making more efficient the reporting, recordkeeping, testing, inspection and determination of compliance requirements for sources of air contaminants. (AM-05-22)</p>	
<p>5. Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input checked="" type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S</p>	<p>6. Chapter 20, Stats. Appropriations Affected 20.370 (4) (cm), (co)</p>
<p>7. Fiscal Effect of Implementing the Rule <input checked="" type="checkbox"/> No Fiscal Effect      <input type="checkbox"/> Increase Existing Revenues      <input type="checkbox"/> Increase Costs      <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate      <input type="checkbox"/> Decrease Existing Revenues      <input type="checkbox"/> Could Absorb Within Agency's Budget</p>	
<p>8. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy      <input checked="" type="checkbox"/> Specific Businesses/Sectors <input checked="" type="checkbox"/> Local Government Units      <input type="checkbox"/> Public Utility Rate Payers <input checked="" type="checkbox"/> Small Businesses (if checked, complete Attachment A)</p>	
<p>9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$ 0, the proposed rule is expected to reduce costs for businesses and will not impose new reporting or compliance costs.</p>	
<p>10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	
<p>11. Policy Problem Addressed by the Rule Chapter NR 439, Wis. Adm. Code, contains reporting, recordkeeping, testing, inspection, and determination of compliance requirements for all sources of air contaminants in the state. The primary objective of the proposed rule is to simplify, reduce, and make more efficient these requirements for the following sources:</p> <ul style="list-style-type: none"><li>• Sources required to have operation permits under s. 285.60, Stats., but not required to have permits under the federal Clean Air Act (CAA), as required by s. 285.17(4), Stats. These sources are sometimes referred to as "non-part 70 sources."</li><li>• Sources required to have permits under the CAA.</li></ul>	

The proposed changes to ch. NR 439, Wis. Adm. Code, will maintain consistency with the CAA and protect air quality.

The department continuously works to simplify, consolidate, and reduce frequency of reporting, monitoring, and recordkeeping requirements for all sources. The department has done this through rulemaking with Permit Streamlining

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Phase II (which became effective on October 1, 2020), by expanding permit options, improving permit and compliance processes and procedures, and creating online tools. Examples include: creating additional types of registration permits, accepting summary statements for compliance certification and monitoring requirements, offering optional electronic reporting and electronic signature for all compliance reporting, and reducing the frequency of department required emissions testing. This proposed rulemaking to revise ch. NR 439, Wis. Adm. Code, is part of the department's ongoing effort to simplify reporting, monitoring, and recordkeeping requirements and make the process for demonstrating compliance more efficient, consistent with the applicable requirements of the CAA.

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#### 12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments.

Entities that may have an interest in the proposed rule include businesses which emit or cause emissions of air contaminants ("emissions sources") subject to ch. NR 439, Wis. Adm. Code. The department contacted all sources with air permits, as well as the following organizations, via email at the beginning of the solicitation period to notify them of the opportunity to comment:

- Air Management Advisory Group (comprised of representatives from various stakeholder groups, including environmental law attorneys, academia, utilities, and representatives of large and small businesses)
- American Council of Engineering Companies of Wisconsin
- Clean Wisconsin
- League of Wisconsin Municipalities
- NR 439 Stakeholder Advisory Committee (convened pursuant to s. 227.13, Stats.)
- Small Business Environmental Council
- Tribal governments
- Wisconsin Cast Metals Association
- Wisconsin Counties Association
- Wisconsin Manufacturers and Commerce
- Wisconsin Paper Council
- Wisconsin Transportation Builders Association
- Wisconsin Utilities Association

Many of these stakeholders are aware of the department's efforts to revise ch. NR 439, Wis. Adm. Code, because they were notified and/or participated in various stakeholder outreach opportunities hosted by the department, including:

- Three listening sessions prior to scope statement development
  - Preliminary public hearing and comment period on the proposed statement of scope
  - Nine informational meetings and online survey held following adoption of the statement of scope
  - Eight meetings of the NR 439 Stakeholder Advisory Committee following development of preliminary draft rule revisions
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#### 13. Identify the Local Governmental Units that Participated in the Development of this EIA.

The department contacted tribal governments, the Wisconsin Counties Association, and the League of Wisconsin Municipalities via email to notify tribes, counties and other local governmental units of the opportunity to participate in development of the EIA and provide comments on the economic impact of the proposed rule changes during the department's solicitation of comment period.

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### 14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

#### **Specific Businesses and Business Sector (Private Businesses)**

Chapter NR 439, Wis. Adm. Code, applies to all sources of air contaminants in the state. The nature of the proposed changes clarify, reduce, and make more efficient reporting, monitoring, and recordkeeping requirements. The department estimates the cost of the rule to be \$0 because the proposed rule revisions will not impose new compliance costs on businesses.

Some proposed changes to ch. NR 439, Wis. Adm. Code, are being incorporated to improve consistency with existing state and federal rule requirements and clarify current practice. In these cases, new requirements are not being proposed. For example, recordkeeping language for instrumentation replacement and validation is being proposed under s. NR 439.055(5m), Wis. Adm. Code. These requirements currently exist under ch. NR 407, Wis. Adm. Code, and were adopted to meet federal requirements. Also, the emission test plan content requirements in s. NR 439.07(2), Wis. Adm. Code, and the emission test reporting requirements in s. NR 439.07(9), Wis. Adm. Code, are being expanded to reflect what is currently required by the department through forms to clarify expectations for the sources submitting these reports.

Many of the rule changes the department is proposing were requested by industry stakeholders, including:

- Reducing and consolidating reporting of Deviations, Monitoring, Excess Emissions, and Compliance Certifications.
- Reducing reporting frequency for malfunctions, unscheduled events, and deviations that do not pose an immediate risk of or result in excess emissions.
- Excluding facilities that do not require an air pollution permit and smaller emissions units, operations, and activities from the malfunction prevention and abatement plan requirement. For those facilities subject to the requirement, clarifying plan applicability and content.
- Adding flexibility by allowing source or air pollution control equipment parametric monitoring equipment to be calibrated, replaced, or validated as specified by the instrument manufacturer or as required by an applicable standard.
- Updating credible evidence language to be consistent with federal language.
- Providing flexibility to sources by allowing records to be maintained in paper, digital or electronic formats.
- Clarifying that many timelines set under the chapter for a particular number of days refer to *calendar* days.
- Converting many timelines given in *business* days to *calendar* days to simplify deadlines and reduce the potential for confusion.
- Listing the content for each submittal required under the chapter as currently required in practice to clarify the expectations for sources in the rule.
- Updating definitions to reflect contemporary industry practices.

Some businesses may economically benefit from the proposed revisions due to reduced regulatory compliance and administrative burdens. The department anticipates that the benefit from long-term cost savings resulting from increased efficiency will outweigh the cost assessed as value of time spent by businesses to review and update the procedures to comply with the revised rule.

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#### **Impacts on Public Utility Rate Payers**

The department anticipates that utility rate payers will not be economically impacted by the implementation of the proposed rule.

#### **Impacts on Local Governmental Units**

Local governmental units responsible for emissions sources such as wastewater treatment plants, landfills, or energy generating facilities may be interested in this rulemaking. The proposed revisions are anticipated to positively impact local governmental units by clarifying, reducing, and making more efficient reporting, monitoring, and recordkeeping requirements.

#### **Fiscal Impact and Impact on State Economy**

The department does not anticipate fiscal impacts or impacts on the state's economy.

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#### **15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule**

The proposed rule will benefit sources by clarifying, reducing, and streamlining the ch. NR 439, Wis. Adm. Code, requirements. There are no alternatives to implementing the proposed changes other than via an administrative rulemaking.

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#### **16. Long Range Implications of Implementing the Rule**

The proposed changes to ch. NR 439, Wis. Adm. Code, are expected to result in long-term cost savings for businesses and the department as a result of improved clarity and increased efficiency.

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#### **17. Compare With Approaches Being Used by Federal Government**

Chapter NR 439, Wis. Adm. Code, incorporates the federal compliance testing, monitoring, reporting and recordkeeping requirements of 40 CFR part 70. Inclusion of these 40 CFR part 70 requirements in ch. NR 439, Wis. Adm. Code, is necessary to retain EPA approval of the department's operation permit program. Revisions to sections with requirements from 40 CFR part 70 are intended to align language with federal requirements and do not increase or decrease stringency of the requirements and do not impact the ability of the department to retain approval of its operation permit program.

#### **NR 439.03 Reporting**

The monitoring report requirements in s. NR 439.03(1)(b), Wis. Adm. Code, are consistent with the reporting requirements in 40 CFR 70.6(a)(3)(iii)(A). The reporting requirements in s. NR 439.03(1)(b)3.c. and d. and (4), Wis. Adm. Code, are consistent with the reporting requirements in 40 CFR 70.6(a)(3)(iii)(B). The compliance certification requirements under s. NR 439.03(1)(c), Wis. Adm. Code, are consistent with the compliance certification requirements in 40 CFR 70.6(c)(5).

The department has proposed to add a requirement that the compliance certification reports include a certification statement indicating whether the source is in compliance with the applicable requirements of 40 CFR part 68 Chemical Accident Prevention provisions, under s. NR 439.03(1)(c)6, Wis. Adm. Code. This certification is required by 40 CFR 68.215(a)(2)(ii).

#### **NR 439.04 Recordkeeping**

Section NR 439.04(1)(a), Wis. Adm. Code, requires sources to keep records of required monitoring information consistent with what is required by 40 CFR 70.6(a)(3)(ii).

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#### NR 439.05 Access to records; access for inspections, monitoring and sampling; record retention

Proposed rule language under s. NR 439.05(4), Wis. Adm. Code, requires retention of records of all required monitoring information and supporting information for at least 5 years from the date of the monitoring consistent with 40 CFR 70.6(a)(3)(ii). Section NR 439.05(4), Wis. Adm. Code, consolidates several occurrences of similar record retention language that currently exist in ch. NR 439, Wis. Adm. Code.

The proposed language identifies support information to include all calibration and maintenance records, original recordings for continuous monitoring instrumentation, and copies of all reports required by a permit, consistent with what is required by 40 CFR 70.6(a)(3)(ii)(B). This federal requirement does not allow a source to only keep records of a subset of this monitoring data.

#### NR 439.055 Methods and procedures for determining compliance using instrumentation

Proposed s. NR 439.055(1r) and (2m), Wis. Adm. Code, are consistent with 40 CFR 70.6 which specifies that permits for existing sources contain operational, monitoring, and related recordkeeping and reporting requirements that assure and demonstrate compliance with all of a source's applicable requirements.

Proposed ss. NR 439.055(5m) and 439.11(3) and (5), Wis. Adm. Code, also contain recordkeeping requirements consistent with 40 CFR 70.6(a)(3)(ii)(B).

#### NR 439.06, 439.07, 439.075, 439.08, 439.085, 439.09, 439.095 - Methods and procedures for determining compliance with emission limitations; compliance emission testing; fuel sampling and analysis; continuous emission monitoring

Current rule language reflects federal requirements. Revisions to these sections are intended to update, clarify and simplify, but do not increase or decrease stringency or ability of the state to meet federal requirements.

#### NR 439.06 – Credible evidence

The DNR is proposing to modify existing language related to credible evidence under s. NR 439.06, Wis. Adm. Code, to be consistent with federal credible evidence language under 40 CFR 51.212, 52.12, 60.11 and 61.12. Currently, "... the department may use any relevant information or appropriate method to determine a source's compliance with applicable emission limitations", notwithstanding the compliance determination methods authorized under the chapter. To match federal language, the department is proposing to revise the current language to read: "Nothing in this chapter shall preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source would have been in compliance with applicable requirements."

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#### 18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Recordkeeping and Reporting – The States of Illinois, Iowa, Michigan, and Minnesota have incorporated recordkeeping and reporting requirements into their administrative codes. The rules vary from state to state and the key differences relative to ch. NR 439, Wis. Adm. Code, are described below.

Control Equipment Monitoring – Proposed changes to s. NR 439.055, Wis. Adm. Code, remove the specific minimum monitoring requirements for sources and air pollution control equipment in current rule language, effectively increasing flexibility for demonstrating compliance.

Illinois' general control device monitoring requirements are incorporated under s. 201.281, Illinois Administrative Code (IAC) and are similar to the proposed changes to s. NR 439.055, Wis. Adm. Code. The IAC requires that every emission source or air pollution control device be equipped with monitoring instruments as required by its permit.

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Iowa's control equipment monitoring rules are similar to the proposed changes to s. NR 439.055, Wis. Adm. Code. The monitoring requirements are determined on a case-by-case basis and included in the facility's air permit.

Michigan's control equipment monitoring requirements are incorporated under R. 336.1213(3), Michigan Administrative Code and are similar to or slightly more stringent than the proposed changes to s. NR 439.055, Wis. Adm. Code. In addition to general monitoring requirements, Michigan requires certain industries to participate in a monitoring program which meets specified requirements.

Minnesota's control equipment monitoring rules are incorporated under Minnesota Administrative Rules 7011.0080 and are similar to or slightly more stringent than the existing rules under s. NR 439.055, Wis. Adm. Code, and are more stringent than the proposed changes to s. NR 439.055, Wis. Adm. Code. Minnesota rules specify monitoring parameters for more control device technologies than are currently included under s. NR 439.055, Wis. Adm. Code.

Deviation Reporting – Proposed changes to deviation reporting under s. NR 439.03, Wis. Adm. Code, include reporting tiers depending on the severity of the occurrence. The basis for deviation reporting comes from federal rule 40 CFR 70.6(a)(3)(iii)(B) which requires prompt reporting of deviations from permit requirements and specifies that “the permitting authority shall define ‘prompt’ in relation to the degree and type of deviation....”

Illinois' deviation reporting requirements are included under Section 201.530(c), Illinois Administrative Code and are more stringent to the proposed changes to s. NR 439.03, Wis. Adm. Code. Unless specified in the applicable permit-by-rule subpart, a written report of any deviation is required to be submitted within 30 days after the date the deviation occurred.

Iowa's deviation reporting requirements are included under 567 Iowa Administrative Code (IAC) 22.108(5) and 24.1 and are similar to the proposed changes to s. NR 439.03, Wis. Adm. Code. Iowa's reporting timeline of excess emissions is more stringent, but the reporting of non-excess emission deviations is less stringent. The IAC requires a written report regarding excess emissions to be submitted within seven days, instead of Wisconsin's proposed 10 days. Under IAC, excess emissions during periods of startup, shutdown, or cleaning of control equipment are not violations and are not to be reported as long as the startup, shutdown, or cleaning is accomplished expeditiously and in a manner consistent with good practice for minimizing emissions. EPA has proposed to find IAC 24.1(1) as substantially inadequate under section 110(k) of the CAA because it does not comply with EPA's policy on excess emissions during periods of startup, shutdown, and malfunction (88 FR 11842). All other deviations are to be clearly identified in reports submitted at least every six months.

Michigan's deviation reporting requirements are included under Section R. 336.1213(3)(c), Michigan Administrative Code and are similar to the proposed changes to s. NR 439.03, Wis. Adm. Code. Michigan includes provisions that only emissions that exceed the applicable standard for greater than a specified time period need to be reported as deviations within two business days with a written report submitted within 10 days after the deviation occurred. For deviations which are less than the specified time period or which do not exceed the emissions allowed under the permit, a facility is required to submit a report of those deviations at least once every six months.

Minnesota's deviation reporting requirements are included under 7019.1000 Subpart 1 and 7007.0800 Subpart 6, Minn. Adm. Rules and are similar to the proposed changes to s. NR 439.03, Wis. Adm. Code. Minnesota requires deviations which could endanger human health be reported within two business days and all other deviations are to be reported in a semiannual monitoring report. Minnesota is more stringent on reporting breakdowns for more than one hour that cause any increase in emissions. Breakdown notifications are required within 24 hours of when the breakdown was discovered

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or reasonably should have been discovered. Minnesota requires semi-annual reporting of permit deviations which do not result in an emissions limit to be exceeded, which is similar to Wisconsin's proposed rule.

Calibration – Proposed changes to s. NR 439.055(4), Wis. Adm. Code, replace the requirement that monitoring equipment be calibrated at least yearly with a requirement that equipment be calibrated at a frequency based on written manufacturer recommendations or as required by an applicable standard, whichever is more frequent. If no such recommendations or standards exist, the time between a calibration, replacement or validation may not exceed one year.

Illinois' control device monitoring equipment calibration requirements are similar to the proposed changes in s. NR 439.055, Wis. Adm. Code. Monitoring equipment is required to be installed, calibrated, operated and maintained according to vendor specifications.

Iowa's control equipment calibration requirements are similar to the proposed changes in s. NR 439.055, Wis. Adm. Code. Permits generally specify that monitoring equipment be operated in accordance with manufacturer recommendations. Iowa retains the authority to require more frequent calibrations.

Michigan requires air-cleaning devices to be calibrated under the authority of Mich. Admin. Code R. 336.1910. This section requires that these devices be installed, maintained, and operated in a satisfactory manner and in accordance with emissions limits and existing law. This requirement is similar to the proposed changes to s. NR 439.055(4), Wis. Adm. Code. Operation in a satisfactory manner is typically defined as operating according to manufacturer recommendations.

Minnesota's control equipment calibration requirements are included under 7011.0075 Subpart 2.G., Minn. Adm. Rule and are similar to the proposed changes in s. NR 439.055, Wis. Adm. Code. All monitoring equipment for each piece of listed control equipment is required to be calibrated annually, or as required by the manufacturing specification.

Malfunction Prevention and Abatement Plan (MPAP) – Proposed changes to s. NR 439.11, Wis. Adm. Code, include defining thresholds when an MPAP is required, excludes smaller units from needing an MPAP, and clarifies plan content.

Throughout the Illinois Administrative Code, monitoring equipment is required to be installed, calibrated, operated and maintained according to vendor specifications. This requirement is similar to proposed s. NR 439.11(1r)(bm), Wis. Adm. Code, which allows a facility to consider and/or use a manufacturer recommendation to set the interval for routine inspection, maintenance, and calibration, replacement, or validation.

Iowa's MPAP requirements are included in 567 IAC 24.2(445B). Maintenance plans are required for equipment or control equipment where the Iowa director determines that a continued pattern of excess emissions indicative of inadequate operation and maintenance is occurring. Iowa's plan is required when determined by the director, while Wisconsin's MPAP requirements are based on the emissions of the specific process. The content of the MPAP is similar to the proposed changes in s. NR 439.11, Wis. Adm. Code. Wisconsin's proposed rule provides more clarity for what emissions units need an MPAP than Iowa's rules, but Iowa would likely have less equipment subject to the MPAP requirements.

Michigan's MPAP requirements are included under Section R. 336.1911, Michigan Administrative Code. The content of the MPAP is similar to the proposed changes in s. NR 439.11, Wis. Adm. Code. However, Michigan's plan is required whenever requested by the department, while Wisconsin's MPAP requirements are based on the emissions of the specific process. Wisconsin's proposed rule provides more clarity for what emissions units need an MPAP than Michigan's rules, and Michigan has the option to be more or less stringent than Wisconsin on when a plan is required.

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Under 7011.075 Subpart 2, Minn. Adm. Code, Minnesota’s maintenance requirements for control equipment are included. The requirements include training, inspection timelines, and repair records for maintaining each piece of listed control equipment. These maintenance requirements are similar to and slightly more stringent than the proposed changes to s. NR 439.11, Wis. Adm. Code.

19. Contact Name Maria Hill	20. Contact Phone Number (608) 216-3179
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This document can be made available in alternate formats to individuals with disabilities upon request.

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### ATTACHMENT A

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1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

The proposed changes will apply to all businesses, including small businesses, which emit or cause emissions of air contaminants ("emissions sources") subject to ch. NR 439, Wis. Adm. Code. The department estimates the total cost of the rule to be \$0 because the proposed rule revisions will not impose new compliance costs on any business. The proposed changes are intended to clarify, reduce, and make more efficient reporting, monitoring, and recordkeeping requirements.

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2. Summary of the data sources used to measure the Rule's impact on Small Businesses

The total cost of the rule is estimated to be \$0. No business is expected to incur additional costs in order to comply with the revised rule.

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3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

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4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

The proposed rulemaking is intended to clarify, reduce, and simplify ch. NR 439, Wis. Adm. Code, requirements for all sources, including small businesses. The department is proposing the following changes that will make complying with ch. NR 439, Wis. Adm. Code, more efficient:

- Simplify compliance certifications by allowing them to be consolidated with other reports
- Revise reporting requirements for malfunctions, unscheduled events, and deviations by using a tiered approach to allow more time for reporting depending on the extent of the deviation
- Incorporate exclusions for facilities not required to have air pollution permits and smaller emissions units, operations, and activities from the requirement to have a malfunction prevention and abatement plan
- Allow flexibility for calibration or replacement of instruments used for measuring source or air pollution control equipment operational variables as specified by the manufacturer and representative of new technology
- Provide flexibility to sources by allowing records to be in paper or electronic formats
- Clarify timelines for reporting, recordkeeping, and monitoring
- Clearly list the content that shall be included as part of each submittal required under the chapter

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5. Describe the Rule's Enforcement Provisions

Chapter NR 439, Wis. Adm. Code, establishes general reporting, recordkeeping, testing, and inspection requirements the department uses to determine a source's compliance status with applicable state and federal air pollution regulations. The chapter identifies the information air contaminant sources are required to furnish to the department and the records they are required to keep. Section NR 439.05, Wis. Adm. Code, establishes the source's obligation to allow department access

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to records, access to facilities for the purpose of inspection, sampling, and monitoring. Sections NR 439.055(6m) and 439.10, Wis. Adm. Code, include language prohibiting circumvention.

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6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

Yes     No

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