



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 19-040

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated December 2014.]

1. Statutory Authority

The proposed rule meets the standard that is required to submit a petition under s. 227.26 (4), Stats., for expedited repeal of an unauthorized rule. An “unauthorized rule” is a rule for which an agency lacks the authority to promulgate the rule due to the repeal or amendment of the law that previously authorized its promulgation.

In this case, the department’s rulemaking authority was removed by the repeal of s. 287.17, 1995-96 Stats., in 1995 Wisconsin Act 227.

2. Form, Style and Placement in Administrative Code

The rule summary’s listing of statutory authority should be revised to cite the specific statutory provision that granted rulemaking authority for the original rule, s. 287.17, 1995-96 Stats. The citations to ss. 227.26 (4) (b) and 227.29 (1) (a), Stats., should be removed. Those provisions establish the expedited repeal process and require an annual report by each agency of unauthorized rules, respectively. They do not remove or confer rulemaking authority for the subject matter addressed in the proposed rule. [s. 1.02 (2m) (a), Manual.]

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

a. In the rule summary’s listing of statutes interpreted, it may be helpful to insert “1995-96” before “Stats.” to indicate a previous iteration of s. 287.17, Stats. That section now contains an unrelated electronic waste program.

b. In the rule summary's listing of statutes interpreted, the department cites 1995 Wisconsin Act 227. Due to the comprehensive nature of that law, the department may want to cite SECS. 898 and 990 of that law in particular.