



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 19-047

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 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.

The rule repeals ch. NR 543, which establishes a priority system for the development of markets for recyclable materials. The statutory provision authorizing the establishment of that priority system, s. 159.03 (1) (b), Stats., was repealed by 1993 Wisconsin Act 75. In addition, ch. NR 543, Wis. Adm. Code, applies to two statutory activities that are no longer authorized. Specifically, it applies to loans, grants, and rebates that were authorized under s. 287.25, Stats., which was repealed by the 2011-12 Biennial Budget Act, and to promotion activities that were required under s. 560.08 (2), Stats., which was repealed by 1993 Wisconsin Act 75.

2. Form, Style and Placement in Administrative Code

a. The rule summary states that statutory authority for ch. NR 543, Wis. Adm. Code, was repealed by the 2003-04 Biennial Budget Act. That act’s effect on the statutory authority for the rule chapter could be clarified. In addition, the rule summary should reference the repeal of ss. 159.03 (1) (b) and 560.08 (2), Stats., which appear to have provided the primary statutory authority for the rule chapter, by 1993 Wisconsin Act 75. The rule summary could also reference the repeal of authority for s. 287.25, Stats., by the 2011-12 Biennial Budget Act.

b. In the rule summary's listing of statutory authority, 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.]