



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Scott Grosz
Clearinghouse Director

Anne Sappenfield
Legislative Council Director

Margit Kelley
Clearinghouse Assistant Director

Jessica Karls-Ruplinger
Legislative Council Deputy Director

CLEARINGHOUSE RULE 19-050

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, amendments made to s. 281.16 (2) (am), Stats., by 2011 Wisconsin Act 32 prohibit the department from enforcing any provision in a rule that requires a reduction of more than 40 percent in a certain type of water pollution runoff. The provisions of ch. NR 151, proposed to be repealed by this rule, require a reduction of the kind described in s. 281.16 (2) (am), Stats. As such, the department lacks the authority to administer these provisions.

2. Form, Style and Placement in Administrative Code

In the rule summary’s listing of statutory authority, it is not necessary to cite ss. 227.26 (4) (b) and 227.29 (1) (a), Stats. 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

In the rule summary's listing of statutes interpreted, the department cites 2011 Wisconsin Act 32. Due to the comprehensive nature of that law, the department may want to cite SEC. 2895m of that law in particular.