



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 17-038

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

a. In the Fiscal Estimate and Economic Impact Analysis, the Ethics Commission states that, “Amending the rule to reflect the Commission’s current policy is possible, but due to the cumbersome nature of the rulemaking process is not ideal should the Commission decide to modify its policy in the future.”. However, if the Ethics Commission’s new policy governing the conditions under which staff may respond to requests for advice on behalf of the Commission meets the definition of a “rule”, then the Ethics Commission must promulgate the policy as a rule. Subject to certain exemptions, the statutes define a “rule” to include a regulation, standard, statement of policy, or order of general application that governs the procedure of the agency. [s. 227.01 (13), Stats.] Under state law, each agency is required to promulgate as a rule each statement of general policy and each interpretation of a statute that it specifically adopts to govern its administration of that statute. [s. 227.10 (1), Stats.] If a policy meets the definition of a “rule”, the decision whether to promulgate a policy as a rule is not discretionary. A judgment by the Ethics Commission that the rulemaking process is “cumbersome” is not an exception to state law.

In the rule summary’s explanation of agency authority and the plain language analysis, the Commission could consider explaining its apparent distinction between a “rule” and its “new policy” that it states was adopted on March 7, 2017.

b. In the rule summary’s listing of statutory authority, the reference to s. 19.46 (2) (b), Stats., could be removed, as that citation provides the language that is being interpreted. The other citations that are listed provide the specific authority to promulgate the rule. [s. 1.02 (2m), Manual.]