



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 19-032

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. The proposed rule appears to meet 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 In this case, 2013 Wisconsin Act 20 repealed s. 101.144, Stats, under which the Department of Safety and Professional Services (DSPS) and the Department of Natural Resources (DNR) jointly administered the petroleum environmental cleanup fund award program. The proposed rule removes the corollary administrative rule chapter under which DNR and DSPS administered their respective responsibilities under ss. 101.144, 292.11, 292.31, and 292.63, Stats., and ch. 160, Stats., and codified a memorandum of understanding between the departments. The program is currently solely administered by DNR.

b. In the rule analysis statutory authority section, the statutory provision for the expedited rulemaking process, s. 227.26 (4), Stats., should not be cited, as that provision establishes the process and does not remove or confer rulemaking authority for the subject matter addressed in the proposed rule.

c. In the rule analysis statutory authority section, it appears that citing s. 292.31 (2), Stats., is unnecessary because it is not the source of authority to promulgate the rule affected by this petition. It appears that this citation is more appropriately placed in the related statutes or rules section of the summary.