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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 18-044

#### 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 the 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 ss. 50.36 (2) (c) and 50.38, Stats., in 2007 Wisconsin Act 20.

However, the treatment clause for SECTION 1 of the proposed rule specifies that only sub. (1) of the unauthorized rule is repealed. It appears that the rule section should be repealed in its entirety, rather than only one subsection.

#### 2. Form, Style and Placement in Administrative Code

a. An introductory clause should be inserted to specifically enumerate the rule provisions treated and to state the subject matter of the proposed rule. [s. 1.02 (1), Manual.]

b. The rule summary’s listing of statutes interpreted should be revised to cite the specific statutory provision that was interpreted for administration and enforcement in the department’s original rule: ss. 50.36 (2) (c) and 50.38, 2005 Stats. [s. 1.02 (2m) (a) and (b), Manual.]

c. 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. 50.36 (2) (c), 2005

Stats. 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. [s. 1.02 (2m) (a), Manual.]

d. The rule summary's explanation of agency authority should be updated to reflect any revisions made in accordance with the previous comment.

e. The rule summary's listing of related statutes or rules should be revised to identify any statutes or rules that relate to the subject matter addressed in the proposed rule.

f. The department should review its Administrative Code provisions to repeal any cross-references to the provision that is repealed in the proposed rule. For example, s. DHS 124.255 contains a cross-reference to s. DHS 10.72 and the repealed statutory provisions.