



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 18-052

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 generally 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, the agency’s rulemaking authority was amended by the creation of s. 88.74, Stats., in 2017 Wisconsin Act 115.

However, as noted particularly in comments 2. c. and d., below, certain aspects of the proposed rule do not appear to be consistent with the bounds of the unauthorized rule.

b. In the rule summary’s listing of statutory authority, the reference to s. 88.11, Stats., should cite more specifically to sub. (1) (h), (i), and (k) of that section.

2. Form, Style and Placement in Administrative Code

a. In the introductory clause for the proposed rule, the listing of affected rule provisions could be revised to show the source “ATCP” once within each type of treatment. For example: “to repeal ATCP 48.01 (8) and 48.24; and to amend ATCP 48.01 (14), 48.08 (3) (a), 48.12 (2),...”. [s. 1.02 (1) (Example), Manual.]

b. In the rule summary’s listing of statutes interpreted, the general reference to ch. 88, Stats., should be revised to more specifically cite to s. 88.74, Stats.

c. It appears that SECTION 6 of the proposed rule should be removed. That SECTION strikes a reference to when and with whom an inspection report must be filed. However, 2017 Wisconsin Act 115 does not repeal or address the filing of an inspection report, and maintains the December 1 filing of an annual report. The stricken language therefore appears to be outside the scope of the petition for expedited repeal of an unauthorized rule. The removal is also confusing, because it removes only the instructions as to when and with whom an inspection report is filed, but does not remove the general requirement to prepare and file the report; this leaves it unknown as to how to comply with that requirement.

d. A SECTION should be inserted to amend s. ATCP 48.22 (5), in order to strike-through its cross-reference to s. ATCP 48.24, which is repealed in the proposed rule.

e. The effective date provision should be revised to specify that the rule takes effect on the first day of the month following publication in the Wisconsin Administrative Register, as provided in s. 227.22 (2) (intro.).

f. The introductory clause for the proposed rule should be updated to reflect the treatment revisions made in accordance with comments c. and d. of this section.