



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Pam Shannon
Clearinghouse Director

Scott Grosz and Jessica Karls-Ruplinger
Clearinghouse Assistant Directors

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE RULE 12-007

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 November 2011.]

1. Statutory Authority

It appears that the agency should replace the reference to s. 227.10 (1), Stats., in the statutory authority heading of the rule summary with s. 227.11 (2) (a), Stats. Section 227.11 (2) (a), Stats., provides that each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if it exceeds the bounds of correct interpretation. [s. 1.02 (2m) (a), Manual.]

In the explanation of agency authority heading in the rule summary, the agency might consider explaining that s. 101.136, Stats., directed the agency (then, the Department of Commerce) to promulgate the rules that the agency now proposes to repeal and that the repeal of s. 101.136, Stats., implies the authority to repeal the rules.

2. Form, Style and Placement in Administrative Code

a. The introductory clause should be replaced with the following: “The Wisconsin Department of Safety and Professional Services proposes an order to repeal SPS 305.02 Table 305.02 lines 50r. to 50t., 305.06 Table 305.06 lines 45r. to 45t., and 305.74 to 305.743, relating to thermal insulator credentials.” [s. 1.02 (1), Manual.]

b. In the statutes interpreted heading of the rule summary, the agency cites ss. 101.02 (1) and 227.10 (1), Stats. However, the rule does not interpret s. 101.02 (1) or 227.10 (1), Stats.

The agency might, instead, indicate that repeal of the rules harmonizes ch. SPS 305 with the repeal of s. 101.136, Stats., in 2011 Wisconsin Act 32.

c. The summary of proposed rules heading of the rule summary should be titled “Plain Language Analysis”. In that section, “as mandated under 2009 Wisconsin Act 16” implies that Act 16 mandated the repeal of rules. In addition, the agency’s description in that section should contain more detail to enable the reader to understand the changes made in existing rules. [s. 1.02 (2), Manual.] For example, the agency could describe s. 101.136, Stats., and the rules created to implement that section and how the repeal of s. 101.136, Stats., affects the existing rules.

d. Under the analysis and supporting documents heading of the rule summary, the agency should include information that describes the analysis and supporting documents used to determine the effect on small business or in preparation of an economic impact analysis.

e. The rule summary should contain the “effect on small business” heading. If there is no information under the heading, the heading is included and the text should state that there is no information. [s. 1.02 (2) (a) 10., Manual.]

f. In the public hearing comments heading of the rule summary, it appears that “emergency” should be removed.

g. In SECTION 3, “SPS 305.74 to 305.743” should replace “SPS 305.74 and 305.741 to 305.743”.

h. The effective date section should be set forth as a numbered section (i.e., SECTION 4). [s. 1.02 (4), Manual.]

3. Conflict With or Duplication of Existing Rules

Should s. SPS 305.125 (3m) also be repealed? Section SPS 305.125 (3m) specifies forfeitures for violations of the rules that will be repealed. The rules that will be repealed were created by Clearinghouse Rule 10-090. Section SPS 305.125 (3m) was also created by Clearinghouse Rule 10-090.