



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Scott Grosz
Clearinghouse Director

Anne Sappenfield
Legislative Council Director

Margit Kelley
Clearinghouse Assistant Director

Jessica Karls-Ruplinger
Legislative Council Deputy Director

CLEARINGHOUSE RULE 19-061

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 contains two sections, each of which proposes the repeal of a different subsection of s. Trans 276.09.

Although SECTION 1 of the rule meets the standard that is required to submit a petition under s. 227.26 (4), Stats., for expedited repeal of an unauthorized rule, SECTION 2 of the rule does not.

An “unauthorized rule” is a rule for which an agency lacks the authority to promulgate due to the repeal or amendment of the law that previously authorized its promulgation.

SECTION 1 of the proposed rule proposes to repeal s. Trans 276.09 (1). That subsection addresses the sunset of certain regulations upon completion of a highway project authorized by s. 84.013 (3) (rb), 2015-16 Stats. When that highway project was repealed by SECTION 1214 of 2017 Wisconsin Act 59, the department’s authority to sunset regulations relating to that project was removed.

SECTION 2 of the proposed rule proposes to repeal s. Trans 276.09 (4). That subsection addresses the applicability of a regulation contingent on completion of a specified intersection modification project. Absent a showing that the authorization for that intersection project has been repealed, the department’s rulemaking authority regarding that project would remain present. Accordingly, SECTION 2 of the proposed rule should be stricken.

b. The rule summary's listing of statutory authority should be revised to also cite s. 84.013 (3) (rb), 2015-16 Stats.

2. Form, Style and Placement in Administrative Code

In the current administrative code, the Note that follows s. Trans 276.09 (4) and the second Note that follows s. Trans 276.07 (45) each relate to s. Trans 276.09 (1) and should be repealed along with the repeal of s. Trans 276.09 (1). The proposed rule and the treatment clause should be modified accordingly.

4. Adequacy of References to Related Statutes, Rules and Forms

In the rule summary's listing of statutes interpreted, the department should cite SECTION 1214 of 2017 Wisconsin Act 59.