



Wisconsin Legislative Council

RULES CLEARINGHOUSE

Scott Grosz
Clearinghouse Director

Anne Sappenfield
Legislative Council Director

Margit Kelley
Clearinghouse Assistant Director

CLEARINGHOUSE RULE 23-012

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Council Staff and the Legislative Reference Bureau, dated November 2020.]

1. Statutory Authority

The proposed rule meets the standard that is required to submit a petition for expedited repeal of an unauthorized rule under s. 227.26 (4), Stats. For purposes of the expedited repeal process, 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 2011-13 Biennial Budget Act (2011 Wisconsin Act 32). Specifically, the relevant section of the act amended s. 292.75, 2009 Stats., to transfer the authority for administering the Brownfields Site Assessment Grant Program to the Wisconsin Economic Development Corporation.

2. Form, Style and Placement in Administrative Code

a. The rule summary’s listing of statutory authority should be revised to cite s. 292.75 (2) (d), 2009 Stats., because that is the statutory provision that granted rulemaking authority for the original rule. The citations to ss. 227.26 (4) (b) and 227.29 (1) (a), Stats., could be removed, as those provisions establish rulemaking procedures and review requirements and do not directly remove or confer rulemaking authority. [See s. 1.02 (2) (b) 3., Manual.]

b. The following comments apply in the rule summary’s plain language analysis:

- (1) Each reference to “s. 292.75, Stats.” should be revised to “s. 292.75, 1999 Stats.”.
- (2) The phrase “under ss. 227.26 (4) (b) and 227.29 (1) (a), Stats.,” could be inserted after the phrase “the DNR has determined”.