

Committee Name:

**Assembly Committee – Rural Affairs and Forestry
(AC–RAF)**

Appointments

01hr_AC–RAF_Appt_pt00

Committee Hearings

01hr_AC–RAF_CH_pt00

Committee Reports

01hr_AC–RAF_CR_pt00

Clearinghouse Rules

01hr_AC–RAF_CRRule_01–030_pt01

Executive Sessions

01hr_AC–RAF_ES_pt00

Hearing Records

01hr_ab0000

01hr_sb0000

Misc.

01hr_AC–RAF_Misc_pt00

Record of Committee Proceedings

01hr_AC–RAF_RCP_pt00

MEMORANDUM

To: Assembly Committee on Rural Affairs and Forestry Members

From: Chairperson John Ainsworth

Date: July 17, 2001

Re: Clearinghouse Rules 01-030 and 01-036

On Tuesday, July 17, 2001, the following Clearinghouse Rules were referred to the Assembly Committee on Rural Affairs and Forestry:

Clearinghouse Rule 01-030, AN ORDER relating to the cooperating forester program and private forestry priorities for assistance.

Clearinghouse Rule 01-036, AN ORDER relating to administration of the forest crop law and the managed forest law.

The deadline for committee action on both of these rules is **August 16, 2001**. If you would like a copy of either rule, or are interested in requesting a hearing, please contact my office prior to that date.

DATE: July 17, 2001

TO: Kristina Boardman

Committee on Rural Affairs and Forestry

FROM: John Scocos, Assembly Chief Clerk

RE: Clearinghouse Rules Referral

The following Clearinghouse Rule has been referred to your committee.

CLEARINGHOUSE RULE 01-030

AN ORDER to amend NR 1.213 (3) (b) and (d); and to repeal and recreate NR 1.212 (1) and (2), relating to the cooperating forester program and private forestry priorities for assistance.

Submitted by **Department of Natural Resources**.

Report received from Agency on **July 10, 2001**.

To committee on **Rural Affairs and Forestry**.

Referred on **Tuesday, July 17, 2001**.

Last day for action - **Thursday, August 16, 2001**.

Under section 227.19 (4) of the Wisconsin Statutes, your committee has 30 days to take action or get an extension. The day **after** the official referral date is day one of your review period. Therefore, the 30th day should fall four weeks and two days after the referral date. For example, for Clearinghouse Rules referred on a Monday, a Wednesday would be your 30th day. For Clearinghouse Rules referred on a Tuesday, a Thursday would be your 30th day. For Clearinghouse Rules referred on a Wednesday, a Friday would be your 30th day. For Clearinghouse Rules referred on a Thursday or Friday, your 30th day would fall on a weekend. Therefore, your time would expire on the next working day (Monday) as provided for in s. 990.001 of the Wisconsin Statutes. Also, if the 30th day falls on a legal holiday, time would expire on the next working day.

Section 227.19 **requires** you to notify each member of your committee that you have received this Clearinghouse Rule. Although some committee chairs do so, you are not required to send a copy of the text of the rule to each member at this time. Your notice could state that members should contact you if they wish to receive a hard copy of the rule. (Please note that, unlike bills and amendments, the text of Clearinghouse Rules is not currently available online. However, LTSB is currently working on such a project.) Please put a copy of your official notification memo in the rule jacket.

Three copies of the Clearinghouse Rule and its accompanying documents are contained in the jacket. If you wish to have your Legislative Council attorney review the Clearinghouse Rule, send him/her a copy. I only need one copy remaining in the jacket when you report it out of committee at the end of the review period.

The identical process is happening simultaneously in the Senate. Keep track of their action on the rule.

For assistance with the Clearinghouse Rule process, please consult Ken Stigler (6-2406) or your Legislative Council attorney. If you wish to learn more on this subject, read section 227.19 of the Wisconsin Statutes or part 2 of the *Administrative Rules Procedures Manual* written by the Revisor of Statutes Bureau and the Wisconsin Legislative Council staff.

CRule
01-030

STATE OF WISCONSIN

To John

Date 4-30 Time 4:35

WHILE YOU WERE OUT

M Gene Lasch

of N4815 Statehwy 22/Shawano

Phone 71524-3930

Telephoned		Please Call	<input checked="" type="checkbox"/>
Called to See You		Rush	
Returned Your Call		Will Call Again	

Supports DNR
proposal for
cooperating foresters
WI has huge problems
with loggers
file; notify of any rule
hearings

Committee
notice
was posted
on
July 18th

John

Ainsworth

**6th District
Representative**



W6382 Waukechon Road Shawano, WI 54166 (715) 526-3810

Cooperative Foresters Agreement

more uniform enforcement of
DNR standards

list whether insured or not

better list maintenance

END



END

Strategies to Delay a Rule

1. The rule will be referred to **one** committee in the Assembly and **one** in the Senate.
 - A. Send letter to a committee chairman most likely to object, encouraging him to ask Speaker to refer the rule to his committee.
 - B. Encourage Speaker to grant chairman's request.
2. The agency **can not** implement the rule while it is being considered by the committee. The committee has 30 days to review the rule. The committee can extend the period an additional 30 days by:
 - A. Chairman requesting (in writing) the agency meet with the committee to review the proposed rule, **or**
 - B. The chairman publishes or posts a notice that the committee will hold a meeting or hearing to review the proposed rule **and** immediately sends a copy of the notice to the agency.
3. If the committee recommends a modification to a proposed rule (*unlimited in number of attempts to seek*) **and** the agency agrees in writing to those changes, the committee has the longer of either:
 - A. 10 "*working days*" following the receipt of the changes from the agency **OR**
 - B. Expiration of the review period (initial or extended)
4. The committee may object to an entire proposed rule whole or in part if:
 - A. An absence of adequate statutory authority exists **or**
 - B. An emergency relating to *public health, safety or welfare* exists **or**
 - C. The rule fails to comply with *legislative intent* **or**
 - D. The rule is contrary to state law **or**
 - E. A change in circumstances *since the original date of passage of the earliest law upon which the rule is based* **or**
 - F. The rule is *arbitrary* and *capricious* or imposes an *undue hardship*.
5. The Joint Committee for Review of Administrative Rules will review a rule if either of the two house committees considering the rule change objects to the rule (in whole **or** in part?). The JCRAR has 30 days to review the rule (or more if modifications are agreed to). The JCRAR **must exec** on the rule and **may**:
 - A. Non-concur (Rule is OK as written)
 - B. Object (Rule is NOT OK as written)
 1. JCRAR must introduce a bill, within 30 days in each house, to prevent the agency from implementing the rule.
 - A. If both bills are defeated or fail to be enacted in any other manner, the agency can implement the rule.
 - B. If **either bill** is enacted, the agency **may not** implement the rule.
 - C. Seek modifications of the rule
6. JCRAR has statutory authority to suspend a rule that has been implemented and is being enforced if:
 - A. JCRAR has first received testimony on the suspension at **a** public hearing; **and**
 - B. If the suspension is based on one or more of the reasons set forth in item 4.
7. If JCRAR suspends a rule, it must introduce a bill, within 30 days in each house, to suspend the rule.
 - A. If both bills are defeated or fail to be enacted in any other manner, the rule remains in effect.
 - B. If **either bill** is enacted, the rule is repealed and may not be developed again by the agency unless a subsequent law specifically authorizes such action.

From
Finsler

8. If the rule remains in effect, it is time to go to court.
 - A. Challenge the process
 1. Were public hearing rules adhered to?
 2. Did the agency include the following mandatory pieces of information along with the Clearinghouse rule to the Speaker and the subsequent committees?
 - a. Conclusions and recommendations of the agency that demonstrate the need for the rule.
 - b. Explanations of modifications made in the proposed rule as a result of testimony received at public hearings
 - c. A list of persons who appeared or registered for or against the proposed rule at public hearing held by the agency.
 - d. A response to Legislative Council Staff recommendations, contained in the Rules Clearinghouse report, indicating acceptance of the recommendations in whole or in part, rejection of recommendations in whole or in part and specific reasons for rejecting any recommendation.
 - e. A final regulatory flexibility analysis, if the proposed rule will have an effect on small business.
 - f. Other parts of the report that include a plain language analysis of the proposed rule, copies of or references to related forms and a fiscal estimate of the cost of the rule.

END



END

State of Wisconsin
Department of Natural Resources
PO Box 7921
Madison, WI 53707

ANNUAL COOPERATING FORESTER AGREEMENT
Section NR 1.21, Wis. Adm. Code
Form 2400-97 Rev. **DRAFT 1-25-2001**

THIS COOPERATIVE AGREEMENT is entered into by and between the State of Wisconsin Department of Natural Resources (DNR) and (Name of Individual or Firm)

_____ (Cooperator)

of (Name of City) _____, for the purpose of advancing the cause of forestry in the State of Wisconsin and providing forestry assistance to Landowners.

FOR AND IN CONSIDERATION of the following terms and conditions:

1. The period of this Cooperative Agreement shall be from its execution by both parties until December 31, 20___, unless terminated or canceled earlier in accordance with this Cooperative Agreement.
2. The DNR agrees to list the Cooperator in a directory of cooperating foresters (the List) as either a consulting forester or an industrial forester. That directory will be prepared and maintained by the DNR and will include foresters subject to a current and valid cooperative agreement entered into by the Cooperator and the DNR. The List shall be revised annually, based on applications received prior to November 1, and identify those areas of forestry assistance offered to the public as indicated in the application completed by the Cooperator. In addition to use in a printed directory, the List will also be the source of private forestry assistance providers used for display on the Internet and in other printed or electronic media offered by the DNR.
3. The DNR agrees to:
 - a. Upon request, provide the Cooperator with the names, addresses and other pertinent information regarding landowners who have requested assistance or information from the DNR regarding forestry matters, subject to any restrictions imposed by Wisconsin Statutes.
 - b. Make available to the Cooperator the DNR files relative to forestry assistance and DNR recommendations to landowners for review upon request. Copies may be obtained upon request, subject to charges, in accordance with the Public Records Law, subch. II, ch. 19, Wis. Stats., and s. NR 2.195, Wis. Adm. Code.
 - c. Whenever any landowner seeks assistance with a timber harvest that exceeds the limitations in section NR1.212 (3)(a) 2, Wisconsin Administrative Code, provide the landowner a List of Cooperators available to assist them and recommend that the landowner obtain assistance from a Cooperator. DNR foresters are encouraged to provide such information to landowners regardless of the size of proposed harvests. If requested by landowners, the DNR also agrees to communicate their requests for timber sale assistance to Cooperators. DNR foresters shall maintain a record of landowner contacts regarding timber sale set up assistance.
 - d. Not proceed with timber sale set up assistance that exceeds the limitations in section NR1.212 (3)(a) 2, Wisconsin Administrative Code, unless authorized by foresters' immediate supervisors. Supervisors shall confirm that DNR foresters had recommended the landowner obtain assistance from a Cooperator or had placed a referral on behalf of the landowner a minimum of sixty days prior to Department staff commencing timber sale set up assistance for the Landowner. Supervisors shall also affirm that other requirements in section NR1.212 (3)(a), Wisconsin Administrative Code, have been met to the best of their knowledge.
 - e. Encourage landowners contemplating the implementation of any forestry practice that would benefit from professional assistance to consider hiring a Cooperator from the List.
 - f. Maintain objectivity and impartiality in the promotion of services offered by Cooperators in a county.

- g. Upon request, provide Cooperators with Natural Heritage Inventory (NHI) information for tracts where they will be providing service to non-industrial private forest owners, subject to a license agreement provided by the Department.
 - h. Upon request, provide Cooperators with DNR PlanTrac software and electronic forest reconnaissance data, including mandatory practices data, for Forest Cropland and Managed Forest Land entries. Individual mandatory practices included in the data will be considered as referrals (subject to a two-month referral period) when their need has been verified to Cooperators by a Department forester.
 - i. Upon request, provide Cooperators with electronic Digital Orthographic Photos and DNR ArcView basic data sets that may be available for up to five counties, subject to a license agreement provided by the Department. (Cooperators may obtain additional GIS data at standard prices established in the DNR data-sharing policy.)
 - j. Advise Cooperators of DNR provided or approved training opportunities.
 - k. Furnish Cooperators with current stumpage rates and severance or yield taxes schedules and provide, upon request, technical forestry information that the DNR may publish from time to time.
 - l. Provide Cooperators with copies of DNR handbooks and directives relevant to private forestry assistance.
 - m. Upon request, supply Cooperators with DNR publications and forms that may be useful as inserts in private forestry assistance activities.
 - n. Provide Cooperators with a list of the names and addresses of DNR foresters and counties served.
 - o. Require that Department foresters providing private forestry assistance attend at least 10 hours of professional training relevant to services provided. A DNR designated statewide Cooperating Forestry meeting may be attended for a training credit of up to 6 hours.
 - p. Issue Department directives to its employees to comply with the provisions of this agreement.
4. The Cooperator agrees to:
- a. Manage all private lands in a manner which maintains the long-term capacity of the land to provide forest products, uses and values desired by landowners **in accordance with the silvicultural guidelines in department handbooks and directives or a written, science-based forest management commitment submitted to and approved by the department in advance.** (A commitment shall describe the Cooperator's silvicultural principles and techniques used for management planning and outline the procedure used to update and amend management plans.) In the event that a landowner demands assistance that is inconsistent with the terms of this Cooperative Agreement on land that will be continued as a forest use, the Cooperator agrees to decline to provide service.
 - b. When developing forestry recommendations, recognize a landowner's personal land management objectives, use accepted silvicultural methods (as defined in Section 4.a. of this Cooperative Agreement) and apply the constraints found in relevant statutes or administrative rules.
 - c. Utilize the information and guidance provided by the DNR Forest Tax Law Handbook and the Private Forestry Handbook provided to the Cooperator by the DNR, which are made part of this agreement by reference, in providing forestry assistance to landowners.
 - d. Comply with DNR prepared or approved management plans.
 - e. Contact the DNR foresters for the county involved and obtain DNR agreement prior to providing assistance or guidance that deviates from DNR prepared or approved management plans or from the silviculture standards specified in 4.a. of this agreement.
 - f. Disclose to landowners any potential conflicts of interest including those that may arise out of fee structures or relevant associations or affiliations with other service providers, timber producers or mills.

- g. Notify landowner contacts of the Cooperator's status as either an industrial or consulting forester; and, if the Cooperator is an industrial forester, to inform the landowner that on any sale to the Cooperator's employer, the Cooperator will be acting as an agent for the employer rather than for the landowner.
 - h. File completed reports of forestry assistance provided on the forms and at the times required by the DNR. The Cooperator agrees to provide aggregated private forestry assistance information requested by the DNR, but not personal identifiers connecting such information to specific clients except as required in section 8 for the purpose of determining the facts for the resolution of disputes or complaints.
 - i. File annual reports on forms provided by the DNR of non-industrial, private harvest volumes and values of stumpage on timber sales the Cooperator is involved in as a consultant by the deadlines established by the DNR. The Cooperator agrees to provide volume and stumpage value information by sale (whether sold on the basis of scale or lump sum) but not personal identifiers (such as the landowner's name and address or the legal description of the property) connecting such information to specific clients.
 - j. Attend in the year preceding an application or renewal at least 10 hours of professional training relevant to services provided by the Cooperator. A DNR designated statewide Cooperating Forestry meeting may be attended for a training credit of up to 6 hours. Attendance at such meetings will be reported along with the landowner assistance report required in paragraph 4.h.
 - k. Notify a landowner in writing when the Cooperator is unable to give the landowner sufficient or timely technical forestry assistance as may have been agreed with a landowner and encourage the landowner to contact another Cooperator or the DNR forester.
 - l. Not to offer any services the Cooperator is not qualified by training or experience to provide.
 - m. Provide documentation to support claims of education or qualifications if proof is required by the DNR.
 - n. Maintain liability insurance for a minimum coverage of \$1,000,000 and workers compensation insurance where required by law. Proof of liability insurance shall be included with the Cooperator's application to participate in the Cooperating Forester Program.
 - o. Inform the local DNR forester of the Cooperator's knowledge that a referred timber sale request has been contracted or refused by the Cooperator, or if service has been refused by the Landowner.
5. The Cooperator shall receive no consideration from the DNR under this agreement other than the cooperative services provided by DNR as expressly provided herein.
 6. The Cooperator is an independent contractor for all purposes, including worker's compensation, and is not an employee or agent of the DNR.

The DNR agrees that the Cooperator shall have sole control over the methods, hours worked, and time and manner of any performance under the agreement other than as expressly required by this Cooperative Agreement. The DNR takes no responsibility for supervision or direction of the performance of the Cooperator or the Cooperator's employees or agents in the performance of forestry assistance. The DNR further agrees that it will exercise no control over the selection and dismissal of the Cooperators, employees or agents.

7. The DNR reserves the right to cancel this Cooperative Agreement in whole or in part, without penalty, due to non-appropriation of funds or unavailability of DNR staff to provide the cooperative services provided for in this Cooperative Agreement; or for the failure of the Cooperator to comply with the terms, conditions and provisions of this Cooperative Agreement as determined by the State Forester.
8. In the event of a disagreement, complaint or grievance brought by either the DNR or a Cooperator, the following steps shall be followed to resolve the issues:
 - a. Initially, the immediate parties (generally a DNR forester and a Cooperator) to a disagreement shall attempt by professional and civil behavior based on honesty, fairness, goodwill and respect seek to reach agreement.
 - b. If the immediate parties of an issue are unable to reach agreement, the DNR Team Supervisor and the DNR Regional Forester will determine the facts and resolve the issue.

- c. If agreement cannot be reached under (b), the issue will be presented to an Dispute Resolution Panel appointed by the Chief State Forester, who will consult with the parties to the dispute regarding possible conflicts with proposed Panel members. The Panel shall include three members: a DNR Regional Forester not from the Region of the dispute, a Cooperator from the List, and a member of the Society of American Foresters (SAF) nominated by the State SAF Chair. The recommendation of the Dispute Resolution Panel will be conveyed to the Chief State Forester, whose decision will be the final Department decision (subject to review under ch. 227, Wisconsin Statutes).
9. This Cooperative Agreement shall constitute the entire agreement and previous communications or agreements pertaining to the subject of this Cooperative Agreement are superseded. Any change in or amendment to this agreement must be made by a written amendment signed by both parties prior to the ending date of this Cooperative Agreement.
 10. Neither this Cooperative Agreement or any assistance provided pursuant to it in whole or in part may be assigned, delegated or subcontracted without the written consent of the DNR.
 11. In connection with the performance of work under this agreement, the Cooperator agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in section 51.01(5), Wis. Stats., sexual orientation or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, the Cooperator further agrees to take affirmative action to ensure equal employment opportunities. The Cooperator agrees to post in conspicuous places, available for employees and applicants for employment, notices to be provided by the DNR setting forth the provisions of this nondiscrimination clause. Failure to comply with the conditions of this clause may result in the Cooperator being declared an "ineligible" Cooperator, termination of the contract, or withholding of payment.

**STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES**

By:

 Chief State Forester

Date Signed: _____

By signing this agreement, the Cooperator agrees to assure that employees of the Cooperator will comply with it for all landowner assistance regarding land management guidance and harvest of timber provided by the firm and that the Cooperator accepts full responsibility for them. The failure of an employee to comply will constitute the Cooperator's failure to comply with this agreement.

COOPERATOR: (To be signed by the officials of the Cooperating firm with the authority to bind the firm to the terms of this agreement.)

By: _____

By: _____

Date Signed: _____

END



END

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
AMENDING, AND REPEALING AND RECREATING RULES

The Wisconsin Natural Resources Board proposes an order to amend NR 1.213(3)(b) and (d) and to repeal and recreate NR 1.212(1) and (2) relating to the cooperating forester program and private forestry priorities for assistance.

FR-11-01

Analysis Prepared by the Department of Natural Resources

Statutory Authority: ss. 23.09(2)(h), 26.35, 28.07, and 227.11(2), Stats.
Statutes Interpreted: ss. 26.35, and 28.07, Stats.

Private Forestry Priorities for Assistance: Department foresters provide forest management assistance to over 10,000 private landowners annually. Requests for assistance, however, are significantly greater than can be served with available staff. NR 1.212(1) and (2) provide guidance in setting priorities followed by Department foresters when scheduling their work. The rule establishes initial management guidance to landowners, timber harvest advice, referrals to cooperating private foresters for timber harvest marking, forestry incentives program administration, and landowner education among the highest priorities. Less emphasis would be placed on providing complex or detailed services that may be available from private enterprise or on practices that are not mandatory under the forest tax programs. These changes are designed to make more efficient use of DNR staff time and to integrate state forestry services more closely with assistance available from private enterprise and other groups in order to serve as many landowners as practical.

Cooperating Forester Program: Department foresters and foresters in private enterprise offer complementary services, each having particular strengths in motivating landowners and helping them implement forestry practices. The Cooperating Forester Program was established by rule in 1989 to provide a framework for giving out landowners' forestry assistance requests to private consulting foresters and industrial foresters that participate. Lists of Cooperators' names are also provided to landowners wanting to make their own contacts.

The proposed rule requires Cooperating Foresters to apply DNR approved silviculture guidelines in **all** their work. Currently, Cooperators agree to follow DNR forestry standards only on work coming directly from DNR referrals, with a possibility of lower standards elsewhere. That variance can result in a lack of trust on the part of DNR foresters who promote the hiring of Cooperators and a reduction in confidence from landowners considering the services of Cooperators. The rule change will remove potential conflicts of a double standard. The rule will also raise the minimum continuing forestry education requirement for Cooperators from six to ten hours per year in an additional effort to improve quality.

SECTION 1. NR 1.212(1) and (2) are repealed and recreated to read:

NR 1.212 (1) PRIORITY I ACTIVITIES. The following activities shall be the highest priority for department foresters providing private forestry assistance. The order in which the priorities are listed is significant. Department foresters may, however, exercise discretion in applying the priorities within this subsection and sub. (2) based on seasonal needs and scheduling efficiency.

(a) A first time request from a landowner for management guidance may include but is not limited to an initial contact with the landowner, an assessment of the landowner's objectives, a walk-through or cruise of the property, educational and advisory information, written management recommendations or referral to other resource professionals.

(b) Responding to requests for timber sale guidance or information may include an on-the-ground inspection by the department forester to provide sound silviculture advice or a referral to other resource professionals.

Note: Providing timber sale guidance or information is a higher priority for department foresters than marking timber sales; these functions are different.

(c) Administration and oversight of the forest tax laws including: review of petitions for eligibility, preparation of management plans, mandatory practices follow up and enforcement of the provisions of the law.

(d) Establishment of mandatory practices under forest tax laws in subchs. I and VI, ch. 77, Stats., if a cooperating forester has not provided assistance.

(e) Administration of the Wisconsin forest landowner grant program in s. 26.38, Stats.

(f) One-to-one educational opportunities with private landowners and cooperating foresters; landowner or educator conferences, workshops and field demonstrations; and news articles.

(g) Major pest outbreaks or other catastrophic occurrences.

(2) PRIORITY II ACTIVITIES. The following activities shall be important, but a lower priority for department foresters providing private forestry assistance:

(a) Timber sale marking and volume designation on land not under the forest tax programs in subchs. I and VI, ch. 77, Stats., but for which there is a written management plan and within the limitations specified in sub. (3).

(b) Certification of need and performance for federal cost-sharing assistance programs.

(c) Educational presentations to school groups, civic groups, or at parades or fairs.

(d) Development of forest stewardship management plans on lands not enrolled or for which there is no application for enrollment under the forest tax laws in subchs. I and VI, ch. 77, Stats.

(e) Facilitation of any forest improvement, pruning, thinning, site preparation, release or tree planting practices which are non-mandatory under the forest tax programs in subchs. I and VI, ch. 77, Stats.

(f) Insect and disease surveys and recommendations other than those related to catastrophic outbreaks.

SECTION 2. NR 1.213(3)(b) and (d) are amended to read:

NR 1.213 (3)(b) The cooperating forester shall manage all private lands referred to the consulting or industrial forester in a manner which complies with standards established by the department for the management of department land maintains the long-term capacity of the land to provide forest products, uses and values desired by landowners in accordance with the silvicultural guidelines in department handbooks and directives or a written, science-based forest management commitment submitted to and approved by the department in advance.

(d) The cooperating forester shall attend a minimum of 6 10 hours of department-approved training annually.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on _____.

The rules shall take effect the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

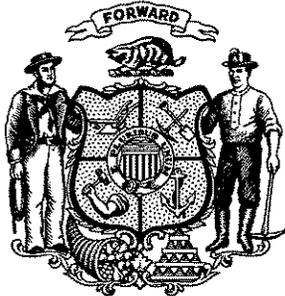
By _____
George E. Meyer, Secretary

(SEAL)

END



END



**LEGISLATIVE REVIEW OF STATE
AGENCY ADMINISTRATIVE RULES**

INFORMATION BULLETIN 99-2*

INTRODUCTION

An “administrative rule” is a regulation, standard, policy statement or order of general application promulgated by a state agency. An administrative rule has the force of law. Rules are issued by an agency: (1) to make specific, implement or interpret provisions of statutes that are enforced or administered by the agency; or (2) to establish procedures for the agency to follow in administering its programs. Rules are published in the Wisconsin Administrative Code.

The purpose of this Information Bulletin is to set forth the procedure by which the Legislature: (1) reviews proposed administrative rules during the process of their promulgation; and (2) reviews the policies contained in existing administrative rules.

The legislative rules review procedure is contained in ch. 227, Stats. This review procedure affords Legislators the opportunity to affect the content of policies, having the force of law, that regulate the lives of Wisconsin citizens. These procedures are summarized in Chart 1 and Chart 2 attached to this Bulletin.

Any questions regarding the rules review process may be directed to Ronald Sklansky, Senior Staff Attorney (266-1946), or Richard Sweet, Senior Staff Attorney (266-2982), Legislative Council Administrative Rules Clearinghouse.

I. A RULE BEGINS WITH AN AGENCY

When an agency decides to promulgate an administrative rule (that is, to either create a new rule or modify an existing rule), it must first draft the proposed rule. The *Administrative Rules Procedures Manual*, prepared by the Legislative Council Staff and the Revisor of Statutes Bureau, sets forth, in detail, the format and style to be used by the agency in preparing rule drafts.

* This Information Bulletin was prepared by Ronald Sklansky, Senior Staff Attorney.

When the draft of a rule is ready, it must be submitted to the Legislative Council Administrative Rules Clearinghouse for review.

2. DUTIES OF THE RULES CLEARINGHOUSE

The Administrative Rules Clearinghouse is operated by the Legislative Council Staff. Upon receipt of a proposed administrative rule, the Legislative Council Staff assigns the rule a Clearinghouse rule number, records the date of the submission of the rule in the Bulletin of Proceedings of the Wisconsin Legislature and prepares two numbered rule jackets, one for the Assembly and one for the Senate.

Following receipt of a proposed rule, the Legislative Council Staff reviews the proposed rule for form, style and technical adequacy. Of particular importance to the legislative branch, the Legislative Council Staff specifically:

- a. Reviews the proposed rule to determine whether there is statutory authority for the agency to adopt the proposed rule; and
- b. Reviews the text of the proposed rule for clarity and the use of plain language.

The Legislative Council Staff review may reveal whether an agency is attempting to regulate matters beyond its legal authority or whether a lack of clarity and precision in a proposed rule will inappropriately affect those persons regulated by the rule.

The period for Rules Clearinghouse review is 20 working days following receipt of the proposed rule. With the consent of the Director of the Legislative Council Staff, the review period may be extended for an additional 20 working days. (Extensions are very rarely necessary.) A written report containing the staff critique of the rule is then forwarded to the agency promulgating the rule.

3. AGENCY RESPONSIBILITIES

After the completion of the Rules Clearinghouse review, an agency is required to hold a public hearing on the proposed rule in most instances. Following the hearing, or if no hearing is required, the agency is required to submit the final version of the proposed rule to the Legislature.

When the agency sends the final draft of a rule to the presiding officers of each house, the agency must include a report that contains, among other things:

- a. Conclusions and recommendations of the agency that demonstrate the need for the proposed rule.
- b. Explanations of modifications made in the proposed rule as a result of testimony received at public hearings.

c. A list of persons who appeared or registered for or against the proposed rule at any public hearing held by the agency.

d. A response to Legislative Council Staff recommendations, contained in the Rules Clearinghouse report, indicating acceptance of the recommendations in whole or in part, rejection of the recommendations in whole or in part and specific reasons for rejecting any recommendation.

e. A final regulatory flexibility analysis, if the proposed rule will have an effect on small businesses.

The other parts of the report include a plain language analysis of the proposed rule, copies of or references to related forms and a fiscal estimate of the cost of the rule.

4. REFERRAL OF RULE BY PRESIDING OFFICER

Within seven working days following receipt of a proposed administrative rule, the presiding officer of each house refers the rule to one committee. The committee to which a rule is referred may be either a standing committee or a joint legislative committee created by law, other than the Joint Committee for Review of Administrative Rules (JCRAR).

5. COMMITTEE REVIEW PERIOD

Generally, the committee review period extends for 30 days after referral of a proposed rule by the presiding officer. However, a committee review period may be extended. Specifically, the review period may be extended for 30 days from the date of either of the following actions, if taken by the chairperson, within the initial 30-day period:

a. The chairperson requests in writing that the agency meet with the committee to review the proposed rule; or

b. The chairperson publishes or posts a notice that the committee will hold a meeting or hearing to review the proposed rule and immediately sends a copy of the notice to the agency.

The agency is prohibited from promulgating the proposed rule until the conclusion of the committee review period, unless both committees waive their jurisdiction over the rule prior to the end of the review period.

6. AUTHORITY OF REVIEWING COMMITTEES

If both committees fail to take any action during the review period, the agency may complete promulgation of the proposed rule.

If a committee, by majority vote of a quorum of the committee, recommends modifications in a proposed rule (and the agency, in writing, agrees to make modifications), the review period for both committees is extended to the later of:

- a. The 10th working day following receipt by the committees of the modified proposed rule; or
- b. The expiration of the initial or extended committee review period.

There is no limit on the number of times that modifications may be sought, prior to the conclusion of the committee review period.

An agency may unilaterally propose rule modifications during, or following, the committee review period.

A committee may object to a proposed rule, or part of a proposed rule, only for one or more of the following reasons:

- a. An absence of adequate statutory authority.
- b. An emergency relating to public health, safety or welfare.
- c. Failure to comply with legislative intent.
- d. Being contrary to state law.
- e. A change in circumstances since the original date of passage of the earliest law upon which the rule is based.
- f. Being arbitrary and capricious or imposing an undue hardship.

7. RESPONSIBILITIES OF JCRAR

If either reviewing committee objects to a proposed rule, the rule must be referred to JCRAR. The JCRAR must take executive action on the rule and may:

- a. Nonconcur in a committee objection;
- b. Object to the rule (that is, concur with the reviewing committee); or
- c. Seek rule modifications.

The review period for JCRAR is 30 days. The review period may be extended for an additional 30 days (or more, if modifications are agreed to) in the same manner as by the initial reviewing committee.

If JCRAR objects to a rule, it must introduce, within 30 days, a bill in each house of the Legislature to prevent the promulgation of the rule. If both bills are defeated, or fail to be enacted in any other manner, the agency may promulgate the proposed rule that received an objection. If either bill is enacted, the agency may not promulgate the proposed rule that was objected to unless a subsequent law specifically authorizes its promulgation.

8. LEGISLATIVE REVIEW AFTER PROMULGATION OF A RULE

The statutes give JCRAR authority to suspend rules that have been promulgated and are being enforced:

- a. If JCRAR has first received testimony on the suspension at a public hearing; and
- b. If the suspension is based on one or more of the reasons set forth in item 6., above, for a committee objecting to a proposed rule.

If JCRAR suspends a rule, it must introduce, within 30 days, a bill in each house of the Legislature to repeal the suspended rule. If both bills are defeated or fail to be enacted in any other manner, the rule remains in effect and JCRAR may not suspend it again. If either bill is enacted, the rule is repealed and may not be promulgated again by the agency unless a subsequent law specifically authorizes such action.

RS:wu:ksm;pkc;wu

Attachments

CHART 1

REVIEW OF PROPOSED ADMINISTRATIVE RULES IN WISCONSIN

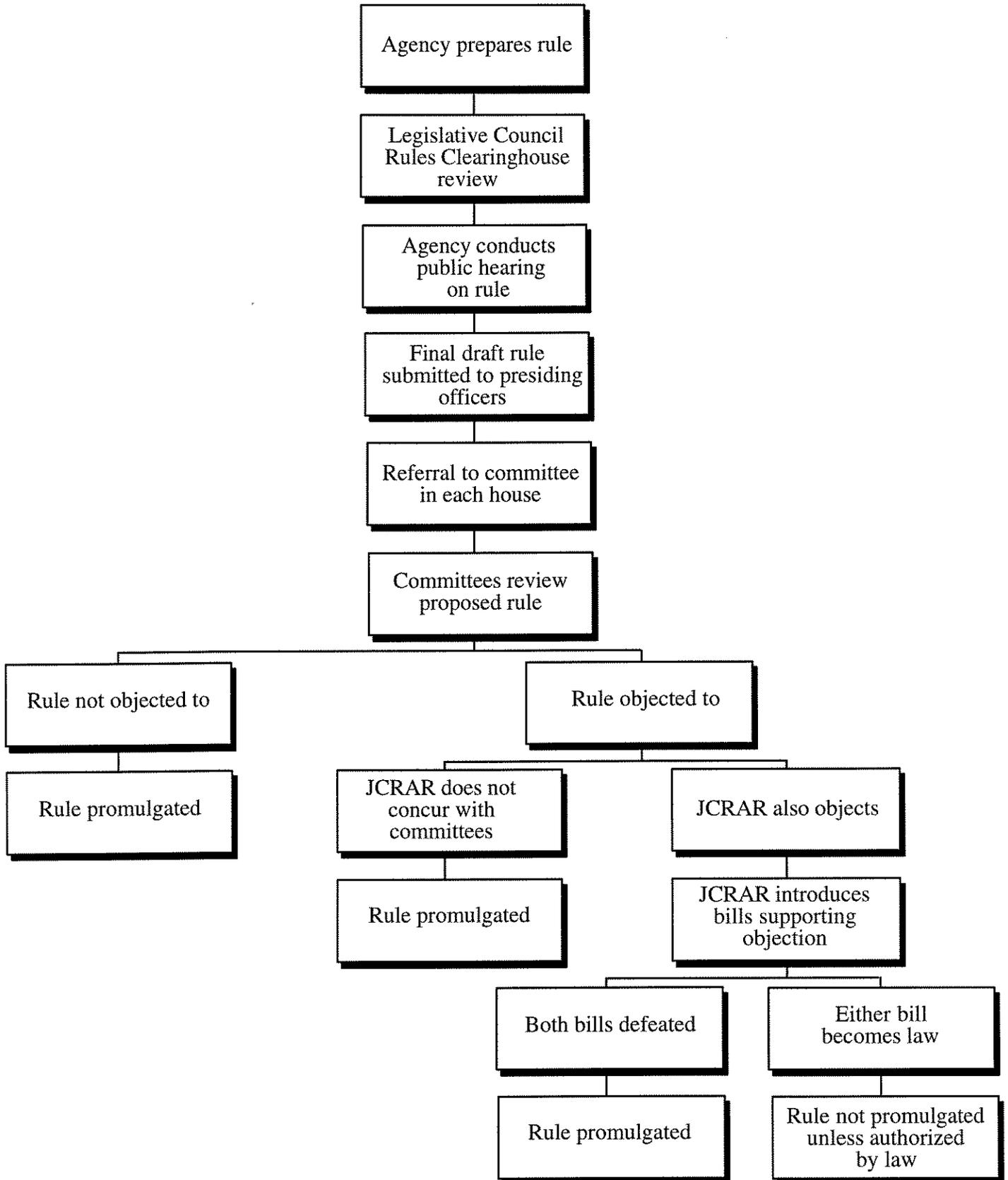


CHART 2

REVIEW OF EXISTING ADMINISTRATIVE RULES IN WISCONSIN

