

***2005 ANNUAL REPORT
LEGISLATIVE COUNCIL
RULES CLEARINGHOUSE***

WISCONSIN LEGISLATIVE COUNCIL

One East Main Street, Suite 401
P.O. Box 2536
Madison, Wisconsin 53701-2536
(608) 266-1304

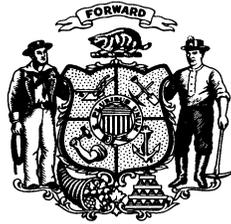
April 2006

State of Wisconsin
JOINT LEGISLATIVE COUNCIL

Co-Chairs

ALAN LASEE
President, State Senate

STEVE WIECKERT
Representative, State Assembly



LEGISLATIVE COUNCIL STAFF
Terry C. Anderson
Director
Laura D. Rose
Deputy Director

April 2006

The Honorable James E. Doyle
Governor
Room 112 East
State Capitol
Madison, WI 53701

Dear Governor Doyle:

This report of the calendar year 2005 activity of the Legislative Council Rules Clearinghouse is submitted to you pursuant to s. 227.15 (5), Stats.

Sincerely,

Terry C. Anderson
Director

TCA:rv

JOINT LEGISLATIVE COUNCIL

s. 13.81, Stats.

Co-Chair

ALAN LASEE
Senate President
2259 Lasee Road
De Pere, WI 54115

Co-Chair

STEVE WIECKERT
Representative
1 Weatherstone Drive
Appleton, WI 54914

SENATORS

RONALD W. BROWN
1112 Violet Avenue
Eau Claire, WI 54701

DAN KAPANKE
1610 Lakeshore Drive
La Crosse, WI 54603

DALE SCHULTZ
Majority Leader
515 N. Central Avenue
Richland Center, WI 53581

RUSSELL DECKER
6803 Lora Lee Lane
Schofield, WI 54476

MARK MILLER
4903 Roigan Terrace
Monona, WI 53716

DAVID ZIEN
President Pro Tempore
1716 63rd Street
Eau Claire, WI 54703

SCOTT FITZGERALD
N4692 Maple Road
Juneau, WI 53039

FRED A. RISSER
5008 Risser Road
Madison, WI 53705

GLENN GROTHMAN
111 South 6th Avenue
West Bend, WI 53095

JUDY ROBSON
Minority Leader
2411 E. Ridge Road
Beloit, WI 53511

REPRESENTATIVES

JOHN AINSWORTH
W6382 Waukechon Road
Shawano, WI 54166

DEAN KAUFERT
1360 Alpine Lane
Neenah, WI 54956

MARK POCAN
309 N. Baldwin Street
Madison, WI 53703

STEPHEN J. FREESE
Speaker Pro Tempore
310 East North Street
Dodgeville, WI 53533

JIM KREUSER
Minority Leader
3505 14th Place
Kenosha, WI 53144

MARLIN D. SCHNEIDER
3820 Southbrook Lane
Wisconsin Rapids, WI 54494

JOHN GARD
Speaker
481 Aubin Street, P.O. Box 119
Peshtigo, WI 54157

ANN NISCHKE
202 W. College Avenue
Waukesha, WI 53186

DAVID TRAVIS
5440 Willow Road
Waunakee, WI 53597

MICHAEL HUEBSCH
Majority Leader
419 West Franklin
West Salem, WI 54669

This 22-member committee consists of the majority and minority party leadership of both houses of the Legislature, the co-chairs and ranking minority members of the Joint Committee on Finance, and 5 Senators and 5 Representatives appointed as are members of standing committees.

Terry C. Anderson, Director, Legislative Council Staff
1 East Main Street, Suite 401, P.O. Box 2536, Madison, Wisconsin 53701-2536

WISCONSIN LEGISLATIVE COUNCIL STAFF
2005 ANNUAL REPORT ON THE
LEGISLATIVE COUNCIL RULES CLEARINGHOUSE*

CONTENTS

	<u>Page</u>
<i>FUNCTION OF THE LEGISLATIVE COUNCIL RULES CLEARINGHOUSE</i>	3
<i>2005 ACTIVITIES OF THE RULES CLEARINGHOUSE</i>	7
<i>APPENDIX 1: SAMPLE CLEARINGHOUSE REPORT</i>	13
<i>APPENDIX 2: PROCESSING INSTRUCTIONS TO AGENCY HEADS</i>	23

* This Report was prepared by Ronald Sklansky, Director, and Richard Sweet, Assistant Director, Rules Clearinghouse, Legislative Council.

FUNCTION OF THE LEGISLATIVE COUNCIL
RULES CLEARINGHOUSE

REVIEW OF RULES

Legislative review of proposed administrative rules begins with the submission of a rule to the Legislative Council Rules Clearinghouse. Section 227.15, Stats., requires that, prior to any public hearing on a proposed rule or prior to notification of the presiding officer of each house of the Legislature if no hearing is held, an agency must submit the proposed rule to the Legislative Council Rules Clearinghouse for staff review. (See the *Administrative Rules Procedures Manual* (January 2005), prepared by the Legislative Council and the Revisor of Statutes Bureau, for more information on drafting, promulgating, and reviewing administrative rules.)

The Legislative Council is provided 20 working days, following receipt of a proposed rule, to prepare a report on its review of the rule. However, with the consent of the Director of the Legislative Council, the review period may be extended for an additional 20 working days.

Upon receipt of a proposed administrative rule, a Clearinghouse rule number is assigned and submission of the rule is recorded in the *Bulletin of Proceedings* of the Wisconsin Legislature. Two numbered rule jackets, one for the Assembly and one for the Senate, are prepared.

The Director of the Rules Clearinghouse assigns the rule to a Legislative Council staff member for review and preparation of the statutorily required report. The staff member generally prepares the report within 10 working days and transmits the report to the Director or Assistant Director for final review. When the report on the proposed rule is completed, the staff returns the rule jackets and the Clearinghouse report containing the results of the review to the agency. [See *Appendix I* for a sample Clearinghouse report.]

In accordance with s. 227.15, Stats., the Clearinghouse report:

1. Reviews the statutory authority under which the agency intends to adopt the rule.
2. Reviews the proposed rule for form, style, and placement in the Wisconsin Administrative Code.
3. Reviews the proposed rule to avoid conflict with, or duplication of, existing rules.
4. Reviews the proposed rule to ensure that it provides adequate references to related statutes, rules, and forms.
5. Reviews the language of the proposed rule for clarity, grammar, and punctuation and to ensure the use of plain language.

6. Reviews the proposed rule to determine potential conflicts and to make comparisons with related federal regulations.

7. Reviews the proposed rule to determine whether the agency has specified the number of business days within which the agency will review and make a determination on an application for a business permit.

As part of this review process, staff of the Legislative Council is directed to ensure that procedures for the promulgation of the rule are followed, as required by ch. 227, Stats., and to streamline and simplify the rule-making process.

OTHER RELATED RESPONSIBILITIES

Other primary rule review responsibilities of the Legislative Council include:

1. Working with and assisting the appropriate legislative committees throughout the rule-making process.

2. Notifying the Joint Committee for Review of Administrative Rules (JCRAR) and appropriate committees of the Legislature whenever the rule-making authority of an agency is eliminated or significantly changed by the repeal, amendment or creation of a statute, by the interpretive decision of a court of competent jurisdiction, or for any other reason.

3. Assisting the public in resolving problems related to administrative rules. This function includes providing information, identifying agency personnel who may be contacted in relation to rule-making functions, describing locations where copies of rules, proposed rules, and forms are available, and encouraging and assisting participation in the rule-making process.

4. Creating and maintaining an Internet site that includes a copy of each proposed rule in a format that allows the site to be searched using keywords.

The final responsibility of the Legislative Council is the submission of an annual report to the chief clerk of each house of the Legislature and to the Governor summarizing any action taken by the staff and making recommendations to streamline the rule-making process and eliminate obsolete, duplicative, and conflicting rules. This report is the *26th Annual Report* submitted by the Legislative Council and covers the staff's activities during calendar year 2005. It has been preceded by an initial report to the 1979 Legislature, which covered the staff's activities from November 2, 1979 to April 1, 1980 (i.e., from the effective date of Ch. 34, Laws of 1979, which initiated the omnibus rule review process, to the end of Floorperiod IV of the 1979 Session) and annual reports for calendar years 1980 to 2004.

RECORDKEEPING SYSTEM

The Legislature's *Bulletin of Proceedings* is used for recording actions relating to the review of administrative rules. The Legislative Council, the Senate and Assembly Chief Clerks and the Legislative Reference Bureau cooperate in a computerized recordkeeping system.

Commencing with the 1979 Session, action on administrative rules has been shown in a separate part of the *Bulletin of Proceedings*.

Under this system, each proposed rule is assigned a number and entered in the computer by the staff of the Legislative Council. A copy of the Clearinghouse report is placed in a Senate and Assembly rule jacket (similar to bill jackets) and the rule is then transmitted to the agency promulgating the rule for its review. After transmittal, all legislative actions taken on the rule are entered on the face of the jacket and are reported to the chief clerk of each house. The chief clerk enters the actions in the computerized system, thereby compiling a history of all legislative actions taken on the rule.

At the beginning of each biennial session, the administrative rule portion of the *Bulletin of Proceedings* is updated by deletion of all records relating to rules which, in the preceding session, have become effective, have been withdrawn, or have been permanently objected to by law. Also removed from the *Bulletin of Proceedings* annually and withdrawn from the rule-making process is any proposed rule that, in accordance with s. 227.14 (6) (c), Stats., has been pending for at least four years, but no more than five years, after the date of its receipt by the Legislative Council under s. 227.15 (1), Stats. The final *Bulletin of Proceedings* printed for the preceding session then serves as the permanent record of the disposition of those rules. The remaining rules, which are still in the promulgation process, are carried over into the new *Bulletin of Proceedings* for the following biennial session.

Access to rules and agency reports over the Internet became available in 2001 for all rules initiated after 2000. These materials may be found at the Legislative Council's website, www.legis.state.wi.us/lc.

2005 ACTIVITIES OF THE RULES CLEARINGHOUSE

During 2005, 122 proposed administrative rules were submitted to the Legislative Council by 21 state agencies.

As of December 31, 2005, Clearinghouse reports had been completed on 114 of the 122 proposed rules and eight rules were in the process of review. In addition to the 114 rule reports completed on 2005 rules, reports were prepared in 2005 on nine rules received in late 2004. Of the 123 reports completed in 2005, no rule required an extension of the review process by the Director of the Legislative Council. Clearinghouse activities in 2005 are summarized below:

Rules Received in 2005		122
Withdrawn	0	
No report required	0	
Pending	8	
		-8
2005 Reports Completed		114
2004 Reports Completed in January 2005		9
Total Reports in 2005		123

The table below shows that, from November 2, 1979 (the beginning of the omnibus rule review process) through December 31, 2005, the Clearinghouse has received 5,390 rule submissions and completed reviews on 5,295 proposed rules. Of the total rule submissions, 87 were exempt from the reporting process for various reasons and 8 were under review at the end of 2005.

<i>Year</i>	<i>Received</i>	<i>Completed</i>	<i>Exempt</i>
1979	70	45	12
1980	252	227	24
1981	252	234	9
1982	251	254	3
1983	222	220	4
1984	255	247	2
1985	213	206	4
1986	251	252	4
1987	182	186	1
1988	219	216	5
1989	212	208	1
1990	264	254	3
1991	199	205	2
1992	225	228	0
1993	241	232	1
1994	225	234	0
1995	236	224	2
1996	194	201	1
1997	158	159	1
1998	208	200	2
1999	170	177	1
2000	189	176	1
2001	157	158	1
2002	155	160	1
2003	126	127	2
2004	142	142	0
2005	122	123	0
Total	5,390	5,295	87

In 2005, rules were received from the following 21 state agencies:

Number of Proposed Rules, by Submitting Agency

Department of Administration	1
Department of Agriculture, Trade and Consumer Protection	5
Department of Commerce	9
Department of Employee Trust Funds	1
Department of Financial Institutions	4
Department of Health and Family Services	5
Department of Natural Resources	39
Department of Public Instruction	1
Department of Regulation and Licensing	18
Department of Revenue	3
Department of Tourism	1
Department of Transportation	11
Department of Veterans Affairs	7
Department of Workforce Development	3
Educational Approval Board	1
Elections Board	3
Higher Educational Aids Board	1
Insurance Commissioner	6
Labor and Industry Review Commission	1
Public Service Commission	1
Technical College System Board	1
Total Number of Rules Submitted	122

Although the statistics presented in this report give some indication of the workload of the Legislative Council staff in reviewing proposed administrative rules, it should be noted that rules vary in length. Similarly, Clearinghouse reports vary from completion of a simple checklist to large reports. In summary, for all rule reports completed in 2005, the Legislative Council staff commented on:

1. The *statutory authority* of a proposed administrative rule on 17 occasions.
2. The *form, style and placement* of proposed administrative rules in the Wisconsin Administrative Code on 89 occasions.

3. A *conflict* with, or *duplication* of, existing rules on 3 occasions.
4. The *adequacy of references* of proposed administrative rules to related statutes, rules and forms on 45 occasions.
5. *Clarity, grammar, punctuation and use of plain language* in proposed administrative rules on 93 occasions.
6. The *potential conflicts* of proposed administrative rules with, and their comparability to, related federal regulations on two occasions. In addition, the Legislative Council staff has adopted a policy of noting when proposed rules are based on federal “*guidelines*,” which do not have the force of law, as opposed to rules based on federal “*regulations*,” which do have the force of law and with which the state may have a legal obligation to comply.
7. The *permit action deadline requirement* on no occasions.

WORKING WITH AND ASSISTING COMMITTEES

A Legislative Council staff attorney or analyst works with each standing committee and statutory committees, except Joint Finance. When a committee has a proposed rule referred to it by the presiding officer of the house, the staff member will participate in the committee’s oversight.

During 2005, legislative committees held hearings or requested meetings on **63 proposed rules**. Modifications to rules were either requested or received in the legislative review of **20 proposed rules**. **Four rules** were objected to by committees.

As a result of committee activities, **five rule objections** were subject to JCRAR jurisdiction in 2005. One of the rules was carried over from 2004. The JCRAR objected to three rules and took no action on the two remaining rules.

The table below reviews legislative committee activity in the review of proposed administrative rules beginning on November 2, 1979 and ending on December 31, 2005.

LEGISLATIVE REVIEW OF PROPOSED ADMINISTRATIVE RULES (November 2, 1979 Through December 31, 2005)*						
Year	Rules Submitted	Rules Subject to Modification	Committee Review Objections	JCRAR Rule Objections	Enacted Laws Following Rule Objections	Enactments by Session Law and Other Description of Bills Introduced Following Rule Objections
11/2/79–80	322	18	5	1	0	No bill introduced, rule withdrawn
1981	252	29	10	4	4	Chapters 20 (SEC. 1561), 26, 31 and 180, Laws of 1981
1982	251	31	4	1	1	1983 Wisconsin Act 94
1983	222	30	5	0	0	—
1984	255	26	2	2	2	1983 Wisconsin Act 310 and 1985 Wisconsin Act 29 (SEC. 826)
1985	213	37	8	3	2	◆ 1985 Wisconsin Act 29 (SECS. 1059r and 2238ng to 2238or) ◆ 1985 Assembly Bill 460, passed and vetoed; override failed
1986	251	30	1	0	0	—

LEGISLATIVE REVIEW OF PROPOSED ADMINISTRATIVE RULES (November 2, 1979 Through December 31, 2005)*						
Year	Rules Submitted	Rules Subject to Modification	Committee Review Objections	JCRAR Rule Objections	Enacted Laws Following Rule Objections	Enactments by Session Law and Other Description of Bills Introduced Following Rule Objections
1987	182	30	5	0	0	—
1988	219	38	4	0	0	—
1989	212	22	6	2	0	◆ 1989 Senate Bill 89 and 1989 Assembly Bill 171 (failed to pass) ◆ 1989 Senate Bill 248 and 1989 Assembly Bill 457 (failed to pass)
1990	264	29	2	1	0	◆ 1991 Senate Bill 24 and 1991 Assembly Bill 71 (failed to pass)
1991	199	19	5	1	0	◆ 1991 Senate Bill 442 and 1991 Assembly Bill 840 (failed to pass after rule objected to withdrawn by agency)
1992	225	33	3	2	1	◆ 1993 Wisconsin Act 9 ◆ 1993 Senate Bill 3 and 1993 Assembly Bill 17 (failed to pass)
1993	241	24	1	0	0	—
1994	225	29	3	0	0	—
1995	236	19	0	0	0	—
1996	194	19	1	1	1	◆ 1997 Assembly Bill 5 and 1997 Senate Bill 20 (failed to pass) ◆ 1997 Wisconsin Act 237 (SECS. 320s, 322d and 322e)
1997	158	19	6	0	0	—
1998	208	15	0	0	0	—
1999	170	18	2	1	0	—
2000	189	20	2	1	1	◆ 1999 Wisconsin Act 178
2001	157	14	5	2	0	◆ 2001 Assembly Bill 18 and Senate Bill 2 (failed to pass); ◆ 2001 Assembly Bill 524 and Senate Bill 267 (failed to pass) ◆ 2001 Assembly Bill 697 and Senate Bill 361 (failed to pass)
2002	155	35	2	1	0	◆ 2003 Assembly Bill 25 and Senate Bill 19 (failed to pass)
2003	126	20	2	2	0	◆ 2003 Assembly Bill 253 and Senate Bill 123 (failed to pass) ◆ 2003 Wisconsin Act 240
2004	142	21	4	2	1	
2005	122	20	4	3	0	◆ 2005 Assembly Bill 8 and Senate Bill 8 ◆ 2005 Assembly Bill 12 and Senate Bill 12 ◆ 2005 Assembly Bill 401 and Senate Bill 200 ◆ 2005 Assembly Bill 404 and Senate Bill 201 ◆ 2005 Assembly Bill 442 and Senate Bill 220
TOTAL	5,390	645	92	30	13 (PLUS ONE BILL PASSED AND VETOED; VETO NOT OVERRIDDEN)	

* The general system of legislative review of proposed administrative rules, primarily embodied in ss. 227.15 and 227.19, Stats., took effect on November 2, 1979, as part of Ch. 34, Laws of 1979.

ELECTRONIC ACCESS

In 2001, the Legislature, through its service agencies, began providing electronic access to all proposed administrative rules submitted to the Clearinghouse. The system mirrors the process already in place for legislative proposals. That is, interested persons are able to use the Internet to search for proposed rules directly or to link to them from the Legislature's Bulletin of Proceedings. The site holds the initial version of the proposed rule, the Clearinghouse report on the proposed rule, all modified versions of the proposed rule submitted to the Legislature, and the related agency report to the Legislature. Electronic access is available for proposed rules submitted to the Clearinghouse after the year 2000.

NOTICE OF CHANGE IN RULE-MAKING AUTHORITY

To date, no court decisions or changes in legislation have been brought to the attention of the Legislative Council staff that would require notification of JCRAR or appropriate standing committees of a change in, or the elimination of, agency rule-making authority.

ASSISTING ADMINISTRATIVE AGENCIES

The Legislative Council staff has responded to numerous questions from agency personnel, relating to both the process and the law governing legislative review of proposed rules.

PUBLIC LIAISON

To date, the Legislative Council staff has received minimal requests from the public. These infrequent questions have either concerned aspects of the rule review procedure or have related to the status of specific rules.

ADDITIONAL ACTIVITIES

On May 4, 2004, the Co-Chairs of the Joint Legislative Council directed the Legislative Council staff to examine current laws relating to the procedures used for the promulgation of administrative rules and to develop proposed legislation that modifies current statutory language, codifies practices used in the process, coordinates statutory changes made in the 2003 Session of the Legislature, and makes minor substantive changes to the law.

In order to fulfill this request, the Legislative Council staff sought comments from rule-promulgating state agencies, the chief clerks of the Legislature, and the Revisor of Statutes. The Joint Legislative Council introduced 2005 Senate Bill 150 in order to respond to many of the comments the Legislative Council staff received as well as to issues noted by the experience of the Legislative Council staff itself.

RS:RNS:jal:tlu:rv

APPENDIX 1
SAMPLE CLEARINGHOUSE REPORT



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Terry C. Anderson
Legislative Council Director

Richard Sweet
Clearinghouse Assistant Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE **05-111**

AN ORDER to repeal Ins 6.58 (5) (c), Appendix 6 of chapter Ins 26, and 28.07 (4); to amend Ins 6.57 (1), (2), (3) and Note, 6.58 (3) (b), (5) (a) and (b), 6.58 Note, 6.59 (4) (a), (am), (as), (av) and Note, 6.61 (3) (f), 26.04 (2) (f) and (3), 26.05 (5), 26.07 (1) (f) and (2), Note to chapter Ins 26, Appendix 5 of chapter Ins 26, 28.04 (1) (a), (d), (f), (g), (h), and (i), 28.04 (2) (c), 28.07 (2), Ins 28.09, and Note to chapter Ins 28; to repeal and recreate Ins 6.63, 28.04 (1) (b), and 28.08; and to create Ins 26.03 (3m), 26.04 (2) (g), (h), and (i), and Ins 28.06 (6) (a) 16, relating to agent licensing procedure changes which will affect small business.

Submitted by **INSURANCE COMMISSIONER**

12-01-2005 RECEIVED BY LEGISLATIVE COUNCIL.

12-23-2005 REPORT SENT TO AGENCY.

RS:JLK

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Terry C. Anderson
Legislative Council Director

Richard Sweet
Clearinghouse Assistant Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE RULE 05-111

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated January 2005.]

1. Statutory Authority

a. Section 628.10, Stats., provides for suspension of an intermediary’s license for 60 days followed by a revocation if the intermediary has not paid fees by the due date or produced evidence of compliance with continuing education requirements by the due date. Section 628.10 (4), Stats., also indicates that, as a penalty, if a license has been suspended or revoked, when the suspension ends or a new license is issued, the intermediary must pay all fees that would have been payable if the license had not been suspended or revoked, unless the Office of the Commissioner of Insurance (OCI) waives the fee payment.

In contrast, ss. Ins 6.58 (5) (b), 6.63 (4), and 28.04 (1) (g) and (h) provide for revocation of the license rather than a suspension period (although none specify when the revocation will be effective). Also, in contrast, s. Ins 6.63 (5) requires a penalty of double the unpaid renewal fee. Thus, there is no statutory authority to promulgate these provisions.

The analysis essentially acknowledges that there is no statutory authority for these provisions. The fourth paragraph of item 5. of the analysis indicates that the changes relating to revocation and reinstatement depend on passage of an OCI technical bill (which has not yet been introduced) and that if it does not pass, the current system of suspending and revoking licenses in s. 628.10, Stats., would continue. The second paragraph of item 5. of the analysis indicates that if an OCI technical bill is not enacted, these proposed changes would have to be modified and that this would be done before the rule is sent to the Legislature.

Section 227.11 (2) (d), Stats., permits an agency to promulgate rules implementing or interpreting a statute that it will enforce or administer *after the publication of the statute* but prior to the statute’s effective date. However, in this case, no statute has been enacted, much less published, that is consistent with the rule’s provisions.

The Legislative Council Rules Clearinghouse is required to review the statutory authority under which an agency intends to promulgate a proposed rule. [s. 227.15 (2) (a), Stats.] It is not possible for the Clearinghouse to conduct that review based on statutes that have not been enacted.

2. Form, Style and Placement in Administrative Code

a. In the treatment clause and text of SECTION 1, s. Ins 6.57 (2) should be changed to refer to “(2) (intro.)” since that is the only part of s. Ins 6.57 (2) that is being amended. Otherwise, all of s. Ins 6.57 (2) must be reproduced.

b. In the last sentence of s. Ins 6.59 (4) (am), the acronym “NIPR” should be written out. The acronym should not be used unless it is defined. [See s. 1.01 (8), Manual.] Also, in the last sentence, the phrase “would be” should be replaced by the word “is.”

c. A title should be inserted for s. Ins 6.63. [See s. 1.05 (1), Manual.]

d. In SECTION 7, it is not necessary to repeat “Ins 6.63” before each entry after the first occurrence. Also, within a subsection, it is only necessary to indicate the paragraph and not repeat the subsection number. A similar comment applies to SECTION 24. Finally, each paragraph introduction should consistently conclude with the phrase “by each licensed individual intermediary-agent is:”.

e. Since s. Ins 6.63 is repealed and recreated, it is unclear why a subsection (2) is omitted.

f. SECTION 14 indicates that the Note to ch. Ins 26 is amended. It should refer to the Note following s. Ins 26.10. A similar comment applies to SECTION 26.

g. In s. Ins 28.04 (1) (a), the reference to “s. 6.50 (2) (a)” should be changed to “s. Ins 6.50 (2) (a).” [See s. 1.07 (2), Manual.]

h. In s. Ins 28.04 (2) (c), the last period should not be shown as overstricken. [See s. 1.06 (4), Manual.]

i. In s. Ins 28.06 (6) (a) 16., the acronym “MEWA” should be written out. The acronym should not be used unless it is defined. [See s. 1.01 (8), Manual.]

j. In s. Ins 28.09, the title should be shown with only an initial capital letter. [See s. 1.05 (2) (b), Manual.]

3. Conflict With or Duplication of Existing Rules

a. Section Ins 26.04 (2) (g), (h), and (i) collectively refer to the following lines of authority: Life; Accident & Health; Property; Casualty; and Personal Lines P&C. However, the certification for Appendix 5 to ch. Ins 26 refers to only the first four lines of authority. If Personal Lines P&C is a separate line of authority, then it should be added to Appendix 5. If it is not, then reference to it should be deleted from s. Ins 26.04 (2) (i).

b. SECTION 28 indicates that the changes take effect on the first day of the month following publication; SECTION 29 indicates that the changes take effect on the first day of the third month after publication for small businesses. To make those provisions consistent with each other, SECTION 28 should include the phrase “Except as provided in SECTION 29.”

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

a. The notice of public hearing indicates that the proposed order affects “Section Ins 6, Wis. Adm. Code.” However, the proposed order also affects chs. Ins 26 and 28.

b. The initial regulatory flexibility analysis indicates that the types of small businesses affected are insurance agents. Is it possible that small businesses affected could also include continuing education program providers who are affected by the proposed order, for example, by requiring in s. Ins 28.07 (2) that they report to OCI on course attendance within seven days of a course instead of within 30 days?

c. In the statutory authority section of the analysis, the reference to s. “601.31 (m)” should be changed to “601.31 (1) (m).”

d. The treatment clause of SECTION 15 refers to “Section Ins 26 Appendix 5.” It should refer to “Chapter Ins 26 Appendix 5.” A similar comment applies to SECTION 16.

e. Section Ins 28.04 (1) (f) refers to a reporting date set forth in paragraphs (a) and (b). Similarly, s. Ins 28.04 (1) (g) refers to the reporting date in paragraphs (a) and (b). While there is a reporting date in paragraph (b), there is no reporting date in paragraph (a). Both of these provisions should refer only to paragraph (b). In addition, s. Ins 28.04 (1) (h) should refer to the due date in “par. (b),” not “par. (1) (b).” [See s. 1.07 (2), Manual.]

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In the first sentence of item 3. of the analysis, “standards by for” should be changed to “standards for.”

b. The first sentence of item 5. of the analysis indicates that: “These changes attempt to move OCI to the NAIC model standards for licensing producers.” Since this is the first time in the document that “NAIC” is used, the full name should be written out, rather than using the acronym (although it may be followed by parenthetical reference to the acronym).

c. In the first sentence under “Fee and CE Reporting Changes” under item 5. of the analysis, “agents month” should be changed to “agent’s month.” The new fees should be set forth in the analysis.

d. In item 9. of the analysis, the second occurrence of the word “in” in the first sentence of the second paragraph should be deleted.

e. In the chart in item 5. of the analysis, it is not clear what “Recipients” means since the text refers to agents, not recipients.

f. In the last sentence of the last paragraph of item 11. of the analysis, the final comma should be changed to a period.

g. Section Ins 6.57 (1) provides that the application must be submitted to OCI and entered in the OCI licensing system within 15 days from the date the agent contract is executed or the first insurance application is submitted. First, this is not clear since two possible dates are mentioned. A clause such as “whichever is earlier” or “whichever is later” should be added to explain the deadline. Second, “from the date” is not clear. Was it intended to mean “after the date”? Third, while the applicant has control over when the application is submitted to OCI, it is unclear how the applicant can control when the application is entered in the OCI licensing system in order to comply with this proposed rule.

h. In the second sentence, s. Ins 6.57 (2) (intro.), “to the ~~listed~~” should be changed to “to be listed.”

i. Section Ins 6.58 (5) (a) indicates that, at certain intervals, a regulation fee of a specified amount will be sent to each entity at the address that OCI has on file. It appears that this should refer to notice of a regulation fee being due that is sent to each entity. Otherwise, the provision literally indicates that the fee is sent to the entity.

j. In the first sentence of s. Ins 6.59 (4) (am), the comma in “or, ~~for~~” should be deleted. Also, the material that begins after the first semicolon (“payment of the fees...”) is not correctly punctuated and leaves two incomplete phrases. If there was an intention to have this be similar to comparable provisions in the proposed rule, it may be that the phrase at the beginning of the current second sentence (A completed application consists of...) should not have been overstricken.

k. In the first sentence of the text of s. Ins 6.59 (4) (as), the inserted comma should be deleted. It does not appear to be preceding the last in a series of three. However, if it is, then a comma should be inserted following “broker,” and the “or” preceding “manager” should be deleted.

l. In s. Ins 6.61 (3) (f), the period following “628” should be changed to a comma. (This should not be shown as an underscored change as the punctuation is correct in the current rule.)

m. In s. Ins 6.63 (1) (a), the phrase “prior to December 31, 2006” should be changed to “on or prior to December 31, 2006” or “prior to January 1, 2007.” If this change is not made, then fees due December 31, 2006 are not accounted for in the rule. Also, the word “a” preceding “OCI” should be replaced by the word “an.”

n. In s. Ins 6.63 (1) (d), the comma following “biennially” should be deleted.

o. In s. Ins 6.63 (4), it appears that the word “biennial” should be deleted as it is not necessary and, moreover, it is not accurate for payments made in 2007 as the fee paid that year is not biennial.

p. In s. Ins 28.04 (1) (b) 1. and 2., it is not clear what the phrase “approved by the commissioner in accordance with this chapter” modifies. It could be interpreted as applying to all of the continuing education courses or only to the ethics courses. If it is the former, then the phrase should be inserted following “continuing education.”

q. Presumably, the credit requirement in sub. (1) (b) 2. covers a three-year period. If so, the rule provision should so state. Finally, the use of the word “must” in both subdivisions should be replaced by the word “shall.”

r. In the last sentence of s. Ins 28.04 (1) (b) 3., “in each even year” should be changed to “in each even numbered year.”

s. The last sentence of s. Ins 28.04 (1) (d) is confusing in that it indicates that courses are counted and banked in the order they are completed. Since the amendment to s. Ins 28.04 (1) (d) repeals the ability to carry forward credits to the following reporting period, it is unclear why a statement is needed about banking the courses.

t. Section Ins 28.08 (2) is confusing in that it explains how many questions are required if a course is for fewer than three credit hours and how many questions are required if a course is for more than three credit hours. However, it does not explain how many questions are required if a course is for exactly three credit hours.

6. Potential Conflicts With, and Comparability to, Related Federal Regulations

Sections Ins 26.05 (5) and 26.07 (2) will require that a continuing education program provider include the applicant’s Social Security number in the information submitted to OCI. It is not clear that this will be consistent with the Federal Privacy Act of 1974 or the Federal Social Security Act which, in general and with exceptions for certain programs, limit the ability of state government to request or require persons to disclose their Social Security numbers as a condition for receipt of any right, benefit, or privilege without certain disclosures. Also, it is noted that s. 628.095 (5), Stats., includes a process for an applicant who does not have a Social Security number.

APPENDIX 2

PROCESSING INSTRUCTIONS TO AGENCY HEADS



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Terry C. Anderson
Legislative Council Director

Richard Sweet
Clearinghouse Assistant Director

Laura D. Rose
Legislative Council Deputy Director

PROCESSING INSTRUCTIONS TO AGENCY HEADS

[ENCLOSED ARE THE SENATE AND ASSEMBLY RULE JACKETS CONTAINING THE LEGISLATIVE COUNCIL CLEARINGHOUSE REPORT. AN ADDITIONAL COPY OF THE CLEARINGHOUSE REPORT IS ENCLOSED FOR YOUR FILES.]

PLEASE NOTE: Your agency must complete the following steps in the legislative process of administrative rule review:

1. On the appropriate line on the face of both clearinghouse rule jackets, enter, in column 1, the appropriate date and, in column 2, "Report Received by Agency."
2. On the appropriate line or lines on the face of both clearinghouse rule jackets, enter, in column 1, the appropriate date or dates and, in column 2, "Public Hearing Held" OR "Public Hearing Not Required."
3. Enclose in both clearinghouse rule jackets, in triplicate, the notice and report required by s. 227.19 (2) and (3), Stats. [The report includes the rule in final draft form.]
4. Notify the presiding officer of the Senate and Assembly that the rule is in final draft form by hand delivering the Senate clearinghouse rule jacket to the Senate Chief Clerk and the Assembly clearinghouse rule jacket to the Assembly Chief Clerk. At the time of this submission, on the appropriate line on the face of the clearinghouse rule jacket, each Chief Clerk will enter, in column 1, the appropriate date and, in column 2, "Report Received from Agency." Each clearinghouse rule jacket will be promptly delivered to each presiding officer for referral of the notice and report to a standing committee in each house.
5. If the agency does not proceed with the rule-making process on this rule, on the appropriate line on the face of both clearinghouse rule jackets, enter, in column 1, the appropriate date and, in column 2, "Rule Draft Withdrawn by Agency" and hand deliver the Senate clearinghouse rule jacket to the Senate Chief Clerk and the Assembly clearinghouse rule jacket to the Assembly Chief Clerk.

FOR YOUR INFORMATION: A record of all actions taken on administrative rules is contained in the Bulletin of Proceedings of the Wisconsin Legislature. The clearinghouse rule jackets will be retained by the Legislature as a permanent record.

[See reverse side for jacket sample.]

