2016 ANNUAL REPORT
LEGISLATIVE COUNCIL
RULES CLEARINGHOUSE

WISCONSIN LEGISLATIVE COUNCIL

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March 2017

State of Wisconsin
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Terry C. Anderson
Director

March 2016

TO: THE HONORABLE SCOTT WALKER, GOVERNOR, AND THE WISCONSIN LEGISLATURE

This report of the calendar year 2015 activity of the Legislative Council Rules Clearinghouse is submitted to you pursuant to s. 227.15 (5), Stats.

Sincerely,

Terry C. Anderson
Director

TCA:jal

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WISCONSIN LEGISLATIVE COUNCIL STAFF

2015 ANNUAL REPORT ON THE LEGISLATIVE COUNCIL RULES CLEARINGHOUSE*

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* This Report was prepared by Scott Grosz, Director, and Margit Kelley, Assistant Director, Legislative Council Rules Clearinghouse.

FUNCTIONS OF THE LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

REVIEW OF RULES

Legislative review of proposed permanent 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 chief clerk 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* (December 2014), prepared jointly by the Legislative Council and the Legislative Reference Bureau, for more information on drafting, promulgating, and reviewing administrative rules. The Manual is available online at: http://lc.legis.wisconsin.gov/administrative-rules/.]

The Legislative Council has 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 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 and Assistant Director of the Rules Clearinghouse assign 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 and 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 1*** 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 proposed rule.

2. Reviews the proposed rule for form, style, and placement in the Wisconsin Administrative Code.

3. Reviews the proposed rule for 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 statutes and 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. 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.

4. Assisting the public in resolving questions 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.

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 to eliminate obsolete, duplicative, and conflicting rules. This report is the 36th *Annual Report* submitted by the Legislative Council and covers the staff's activities during calendar year 2015. 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 2014.

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 Clearinghouse Rule number and entered in the computer system by the staff of the Legislative Council. A copy of the Clearinghouse report is placed in a Senate rule jacket and an Assembly rule jacket (similar to bill jackets) and the two rule jackets are then transmitted to the agency promulgating the rule. After transmittal, all legislative actions taken on the rule are entered on the face of the respective jacket and are reported to the chief clerk of each house. The chief clerk enters the actions in the computer 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 the year 2000. These materials may be found at the Legislative Council's website, www.legis.wisconsin.gov/lc.

2015 ACTIVITIES OF THE RULES CLEARINGHOUSE

REVIEW OF RULES

During 2015, 102 proposed administrative rules were submitted to the Legislative Council by 30 state agencies and boards.

As of December 31, 2015, Clearinghouse reports had been completed on 95 of the 102 proposed rules and 7 rules were in the process of review. In addition to the 95 rule reports completed on 2015 rules, reports were prepared in 2015 on 13 rules received in late 2014. Of the 108 reports completed in 2015, no rule required an extension of the review process by the Director of the Legislative Council. Clearinghouse reports completed in 2015 are summarized below:

Rules Received in 2015	102	
Withdrawn	0	
No report required	0	
Reports pending on December 31, 2015	-7	
Total 2015 Reports Completed in 2015	95	
2015 Reports Completed in 2015		95
2014 Reports Completed in January 2015		13
Total Reports Completed in 2015		108

The table below shows that, from November 2, 1979 (the beginning of the omnibus rule review process) through December 31, 2015, the Clearinghouse has received 6,440 rule submissions and completed reviews on 6,340 proposed rules. Of the total rule submissions, 93 were exempt from the reporting process for various reasons and 7 remained under review at the end of 2015.

Year	***Received***	***Completed***	***Exempt***
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
2006	139	139	3
2007	117	114	0
2008	114	118	0
2009	123	108	3
2010	151	159	0
2011	53	57	0
2012	55	54	0
2013	118	106	0
2014	78	82	0
2015	102	108	0
Total	**6,440**	**6,340**	**93**

In 2015, rules were received from the following 30 state agencies and boards:

Number of Proposed Rules, by Submitting Agency

Agriculture, Trade and Consumer Protection	5
Board of Nursing	2
Children and Families	2
Controlled Substances Board	7
Cosmetology Examining Board	2
Dentistry Examining Board	4
Examining Board of Architects, Landscape Architects, Professional Engineers, Designers, and Professional Land Surveyors	3
Government Accountability Board	1
Health Services	2
Hearing and Speech Examining Board	2
Insurance	2
Justice	1
Marriage and Family Therapy, Professional Counseling, and Social Work Examining Board	1
Medical Examining Board	3
Natural Resources	16
Occupational Therapists Affiliated Credentialing Board	1
Optometry Examining Board	2
Pharmacy Examining Board	2
Physical Therapy Examining Board	1
Podiatry Affiliated Credentialing Board	2
Psychology Examining Board	1
Public Instruction	10
Public Service Commission	1
Real Estate Examining Board	4
Safety and Professional Services	13
Transportation	4
University of Wisconsin System	3
Veterans Affairs	1
Veterinary Examining Board	1
Workforce Development	3
Total number of rules submitted:	**102**

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 2015, the Legislative Council staff commented on:

1. The *statutory authority* of proposed administrative rules in 32 reports.

2. The *form, style and placement* of proposed administrative rules in 79 reports.

3. A *conflict* with, or *duplication* of, existing rules in 2 reports.

4. The *adequacy of references* of proposed administrative rules to related statutes, rules and forms in 38 reports.

5. *Clarity, grammar, punctuation and use of plain language* in proposed administrative rules in 74 reports.

6. The *potential conflicts* of proposed administrative rules with, and their comparability to, related federal statutes and regulations in no reports.[1]

7. The *permit action deadline requirement* in no reports.

ASSISTING COMMITTEES

A Legislative Council staff attorney or analyst works with each standing committee and statutory committee, except the Joint Finance Committee. 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 2015, legislative committees held hearings or requested meetings on five proposed rules and committees waived their jurisdiction over two proposed rules. One rule was recalled by the agency. Germane modifications were received in the legislative review of six proposed rules. Legislative committees did not request modifications to any other proposed rules during the year. Legislative committees did not object to any rules during the year.

Pursuant to 2011 Wisconsin Act 21, all proposed permanent rules must be referred to the Joint Committee for the Review of Administrative Rules (JCRAR).[2] In 2015, JCRAR requested meetings with agencies on four proposed permanent rules, held a hearing on one proposed permanent rule, and waived its jurisdiction over one proposed rule. JCRAR did not object to any rules during the year.

The Legislative Council staff also responded to individual legislator questions concerning the rule-making process and the laws governing legislative and gubernatorial review of proposed 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, 2015.

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[1] 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.

[2] Prior to Act 21, only rules receiving a standing committee objection had to be referred to JCRAR. Act 21 requires that all rules be referred to JCRAR, but only requires that JCRAR take action on rules that received a standing committee objection.

LEGISLATIVE REVIEW OF PROPOSED ADMINISTRATIVE RULES (November 2, 1979 Through December 31, 2015)*						
Year	Rules Submitted to Rules Clearinghouse	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	—
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)

LEGISLATIVE REVIEW OF PROPOSED ADMINISTRATIVE RULES (November 2, 1979 Through December 31, 2015)*						
Year	Rules Submitted to Rules Clearinghouse	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
2004	142	21	4	2	1	♦2003 Wisconsin Act 240
2005	122	20	4	3	0	♦2005 Assembly Bill 8 and Senate Bill 8 (failed to pass) ♦2005 Assembly Bill 12 and Senate Bill 12 (failed to pass) ♦2005 Assembly Bill 401 and Senate Bill 200 (failed to pass) ♦2005 Assembly Bill 404 and Senate Bill 201 (failed to pass) ♦2005 Assembly Bill 442 and Senate Bill 220 (failed to pass)
2006	139	21	8	4	0	♦2005 Assembly Bill 1225 and Senate Bill 732 (failed to pass, late introduction in 2005 Session and reintroduction in 2007 session as Assembly Bill 37 and Senate Bill 9) ♦2005 Assembly Bill 1226 and Senate Bill 733 (failed to pass; late introduction in 2005 Session and reintroduction in 2007 session as Assembly Bill 27 and Senate Bill 10)
2007	117	16	2	0	0	—
2008	114	13	1	0	0	—
2009	123	4	0	0	0	—
2010	151	16	1	0	0	—
2011	53	6**	2	1	0	♦2011 Assembly Bill 196 and Senate Bill 139 (failed to pass)
2012	55	3**	0	0	0	—
2013	118	5	0	0	0	—
2014	78	3	0	0	0	—
2015	102	6	0	0	0	—
TOTAL	6,440	738	106	35	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.

** Includes rules modified by JCRAR.

NOTICE OF CHANGES IN RULE-MAKING AUTHORITY

Section 227.15 (4), Stats., instructs the Legislative Council staff to identify instances when 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.

The Legislative Council staff have identified the following 2015 Wisconsin Acts, enacted in 2015, that were determined to relate to changes in agency rule-making authority, categorized as follows:

- Acts that grant, eliminate, or require the exercise of rule-making authority, as identified in the Act's relating clause:
  - **Act 3**, regarding home medical oxygen providers. Act 3 requires the Pharmacy Examining Board to promulgate rules regarding the occupational licensure that is created in the Act, for home medical oxygen providers.
  - **Act 16**, regarding transportation network companies. Act 16 requires the Department of Safety and Professional Services (DSPS) to promulgate rules regarding the business licensure that is created in the Act, for transportation network companies.
  - **Act 40**, regarding a Corrections System Formulary Board in the Department of Corrections. Act 40 requires the Corrections System Formulary Board, which is created in the Act, to promulgate rules to apply when making an approved therapeutic alternate drug selection for a prisoner in a state correctional institution.
  - **Act 49**, regarding code standards for camping units. Act 49 requires DSPS to promulgate separate rules for dwelling, electrical, and plumbing code standards, for cabin units that are set in a fixed location in a campground that has a permit issued by the Department of Health Services.
  - **Act 53**, regarding student achievement gap reduction contracts. Act 53 grants rule-making authority to the Department of Public Instruction (DPI) to administer the payment of state aid to a school district that has entered into an achievement gap reduction contract with DPI.
  - **Act 89**, regarding various changes to Department of Natural Resources (DNR) approvals. Among the changes in the Act, Act 89 grants rule-making authority to the DNR to designate acceptable forms of proof of various documents issued by the department.
  - **Act 90**, regarding changes to various insurance statutes. Act 90 includes several grants of rule-making authority to the Office of the Commissioner of Insurance.
  - **Act 118**, regarding the reorganization of the Government Accountability Board. Act 118 requires the exercise of rule-making authority in relation to the reorganization.
- Acts that directly modify the Wisconsin Administrative Code:
  - **Act 33**, which repeals an air pollution rule promulgated by the DNR.
  - **Act 38**, which modifies and repeals rules promulgated by the Department of Financial Institutions and the Department of Revenue relating to documents filed with county registers of deeds.

- **Act 76**, which repeals ch. NR 128, promulgated by the DNR, relating to certain obsolete financial assistance programs.
- **Act 107**, which modifies rules promulgated by the Department of Health Services relating to maintenance and use standards for oxygen equipment in nursing homes.

- Acts that remove mandatory directives to promulgate rules:
  - **Act 47**, which removes the requirement that the form and terms of a cooperative agreement for out-of-state real estate brokers, salespersons, and time-share salespersons must be established by the Real Estate Examining board by rule.
- Other Acts that eliminate agency authority to promulgate rules:
  - **Act 6**, regarding raffles. Act 6 removes the Department of Administration's authority to promulgate rules for the regulation of raffle licenses.
  - **Act 117**, regarding campaign finance. Act 117 repeals and replaces all provisions in the statutory chapter regarding campaign finance law, maintaining certain aspects of rule-making authority, but eliminating the Government Accountability Board's (or, effective June 30, 2016, the Ethics Commission's) authority to promulgate rules for the regulation of software that is suitable for electronic filing of campaign finance reports and for the regulation of free time on public access channels for statewide office candidates.

In addition to the Acts listed above, **2015 Wisconsin Act 55**, the 2015-17 Biennial Budget Act, contains numerous provisions relating to the exercise of agency rule-making authority. For a complete description of the Biennial Budget Act, see the Legislative Fiscal Bureau's Comparative Summary of Act 55, available at: http://docs.legis.wisconsin.gov/misc/lfb/budget/2015_17_biennial_budget/100_act_55/200_comparative_summary_of_provisions_act_55.pdf.

Legislative Council staff also conducted a case law review of judicial decisions published in 2015. It was determined that no decisions issued in 2015 eliminated or significantly changed the rule-making authority of an agency.

INTERNET 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, and review a full "rule history" for each proposed rule. 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 final agency report to the Legislature. Each rule history page also includes the economic impact analysis and fiscal estimate prepared by the agency, as well as any report prepared by the Small Business Regulatory Review Board.

Database access is available for proposed rules submitted to the Clearinghouse after the year 2000, with scanned documents available for many prior years. The proposed rules are available at: https://docs.legis.wisconsin.gov/code/chr.

The Clearinghouse also has given advice to the Department of Health Services regarding a searchable rules website operated by the executive branch. That website is now operated by the Department of Administration and is available at https://health.wisconsin.gov/admrules/public/Home.

ASSISTING STATE AGENCIES

In 2015, the Legislative Council staff responded to agency questions concerning the rule-making process and the laws governing legislative and gubernatorial review of proposed rules.

PUBLIC LIAISON

In 2015, the Legislative Council staff received a number of requests from the public for information about aspects of the rule-making process or the status of specific rules.

SG:MSK:jal

APPENDIX 1

SAMPLE CLEARINGHOUSE REPORT

LCRC
FORM 2

WISCONSIN LEGISLATIVE COUNCIL
RULES CLEARINGHOUSE

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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 **15-086**

AN ORDER to create SPS Table 305.02, line 37m, Table 305.06, line 32m, and 305.627, relating to certification to inspect fire detection, prevention, and suppression devices.

Submitted by **DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES**

11-06-2015 RECEIVED BY LEGISLATIVE COUNCIL.

12-17-2015 REPORT SENT TO AGENCY.

MSK:DM

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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 ☑

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CLEARINGHOUSE RULE 15-086

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. Under 2013 Wisconsin Act 270, a person may perform inspections of fire detection, prevention, and suppression devices "only if" he or she has received certification as an inspector from the department. [SEC. 14, 2013 Wis. Act 270.] The Act further provides that a person certified for these purposes must either hold a valid certification from the national fire protection association qualifying him or her as a certified fire inspector I or hold a valid equivalent certification. Under the proposed rule, a person may perform inspections of fire detection, prevention, and suppression devices if the person: (a) holds a certification as described in the Act; ***or*** (b) holds a certification as a commercial building inspector. This suggests that under the proposed rule, a person who holds a certification as a commercial building inspector but has not also been certified as a fire detection, prevention, and suppression inspector would be authorized to perform fire detection, prevention, and suppression device inspections. The department should address whether this is authorized by SEC. 14 of 2013 Wisconsin Act 270.

b. SECTION 4 of the proposed rule provides that the rules shall take effect on the first day of the month following publication in the Wisconsin Administrative Register. The provision of 2013 Wisconsin Act 270 that requires separate certification for inspectors of fire detection, prevention, and suppression devices takes effect on May 1, 2017. The department should consider whether s. SPS 305.627 (1) of the proposed rule might conflict with the statute if it were to take effect prior to May 1, 2017.

2. Form, Style and Placement in Administrative Code

c. In s. SPS 305.627 (4) (a) and (b), the paragraphs should each end with a period, and the word "and" in par. (b) should be removed. [s. 1.03 (4), Manual.]

d. A deadline should be given for submission of comments on the proposed rule. [s. 1.02 (2) (a) 13., Manual.]

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

a. The department lists s. 101.14 (4r) (c) 1., Stats., as the statute the rule interprets. Because all of sub. (4r) pertains to inspection of fire detection, prevention, and suppression devices as addressed in the proposed rule, the department should cite more broadly to s. 101.14 (4r), Stats.

b. Under the rule summary's "Explanation of Agency Authority", the department might consider explaining its authority to promulgate this rule in plain language, perhaps by referring to the directive in 2013 Wisconsin Act 270 for it to promulgate rules on certifying fire detection, prevention, and suppression device inspectors. Additionally, the department should remove the citation to s. 101.12 (4) (a), Stats. That section contains a clause that excludes inspections performed by an inspector who has received certification under s. 101.14 (4r), Stats.

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

a. In the rule summary's "Plain Language Analysis", the phrase "and places of employment" should be inserted at the end of the second paragraph.

b. In s. SPS 305.627 (3), the word "shall" should replace the word "must". Also, the department might consider specifying a consequence if a person does not maintain the certification.

c. The department might consider reordering the language in proposed s. SPS 305.627 (4) (c) as follows: "Make his or her inspection records available to the department upon request".

d. In s. SPS 305.627 (5), the department might consider adding introductory material to precede the subunits, as in subs. (2) and (4). [s. 1.03 (3), Manual.] Also, consider combining pars. (a) and (b), or specifying in par. (b) that "if renewed", the renewal shall be done as provided.

APPENDIX 2

PROCESSING INSTRUCTIONS TO AGENCY HEADS

LCRC
FORM 3

WISCONSIN LEGISLATIVE COUNCIL
RULES CLEARINGHOUSE

Scott Grosz
Clearinghouse Director

Terry C. Anderson
Legislative Council Director

Margit S. Kelley
Clearinghouse Assistant Director

Jessica Karls-Ruplinger
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.]

LCRC
FORM 3

— *SAMPLE* —

CLEARINGHOUSE RULE ASSEMBLY 15-086

AN ORDER to create SPS Table 305.02, line 37m, Table 305.06, line 32m, and 305.627, relating to certification to inspect fire detection, prevention, and suppression devices.

Submitted by Department of Safety and Professional Services

11-06-15	Received by Legislative Council.		
12-17-15	Report sent to Agency.		

NOTE: EACH SUBSEQUENT ACTION TAKEN BY A STANDING COMMITTEE OR THE JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES WILL BE ENTERED ON THE JACKETS BY APPROPRIATE LEGISLATIVE STAFF.