
Wisconsin Legislative Council



Anne Sappenfield
Director

June 25, 2021

Mr. Edward Blazel
Assembly Chief Clerk
Risser Justice Center
17 West Main Street, Suite 401
Madison, WI 53702

Dear Chief Clerk Blazel:

Enclosed is a copy of the *2020 Annual Report Legislative Council Rules Clearinghouse*, submitted to you pursuant to s. 227.15 (5), Stats.

Sincerely,

A handwritten signature in black ink that reads "Anne Sappenfield".

Anne Sappenfield
Director

AS:jal

Enclosure



Wisconsin Legislative Council

RULES CLEARINGHOUSE

Scott Grosz
Clearinghouse Director

Margit Kelley
Clearinghouse Assistant Director

Anne Sappenfield
Legislative Council Director

2020 ANNUAL REPORT LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

WISCONSIN LEGISLATIVE COUNCIL

One East Main Street, Suite 401
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June 2021

Wisconsin Legislative Council

Anne Sappenfield
Director



June 2021

TO: THE HONORABLE TONY EVERS, GOVERNOR, AND THE WISCONSIN LEGISLATURE

This report of the calendar year 2020 activity of the Legislative Council Rules Clearinghouse is submitted to you pursuant to s. 227.15 (5), Stats.

Sincerely,

A handwritten signature in black ink that reads "Anne Sappenfield". The signature is written in a cursive style.

Anne Sappenfield
Director

AS:jal

WISCONSIN LEGISLATIVE COUNCIL STAFF
2020 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** (November 2020), 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: https://legis.wisconsin.gov/lc/media/1597/20adminrules_manual.pdf.]

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 rulemaking 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 rulemaking process.

2. Notifying the Joint Committee for Review of Administrative Rules (JCRAR) and appropriate committees of the Legislature whenever the rulemaking 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 rulemaking functions, describing locations where copies of rules, proposed rules, and forms are available, and encouraging and assisting participation in the rulemaking 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 rulemaking process and to eliminate obsolete, duplicative, and conflicting rules. This report is the 41st annual report submitted by the Legislative Council and covers the staff's activities during calendar year 2020. It is 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 through 2019.

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 (LRB) 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 that, 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 rulemaking 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., or for which the scope statement has expired, whichever occurs first. 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 on the Legislature's page for administrative rules, <https://docs.legis.wisconsin.gov/code/>.

2020 ACTIVITIES OF THE RULES CLEARINGHOUSE

REVIEW OF RULES

During 2020, 89 proposed administrative rules, including no expedited rules¹, were submitted to the Legislative Council by 31 state agencies and boards.

As of December 31, 2020, Clearinghouse reports had been completed on 83 of the 89 proposed rules and 6 rules were in the process of review. In addition to the 83 rule reports completed on 2020 rules, reports were prepared in 2020 on 13 rules received in late 2019. Of the 96 reports completed in 2020, no rule required an extension of the review process by the Director of the Legislative Council. Clearinghouse reports completed in 2020 are summarized below:

Rules Received in 2020	89	
Withdrawn	0	
No report required	0	
Reports pending on December 31, 2020	-6	
<i>Total 2020 Reports Completed in 2020</i>	83	
2020 Reports Completed in 2020		83
2019 Reports Completed in January 2020		13
Total Reports Completed in 2020		96

¹ Pursuant to s. 227.26 (4), Stats., an agency may petition JCRAR for expedited repeal of an unauthorized rule. Such petitions are submitted directly to the Clearinghouse, which reviews the rule and issues a report to JCRAR. Following submission of that report, JCRAR may elect to meet in executive session to approve the petition. If approved, an agency must submit the rule to LRB for publication.

The table below shows that, from November 2, 1979 (the beginning of the omnibus rule review process) through December 31, 2020, the Clearinghouse has received 6,994 rule submissions and completed reviews on 6,895 proposed rules. Of the total rule submissions, 93 were exempt from the reporting process for various reasons and 6 remained under review at the end of 2020.

<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
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
2016	94	90	0
2017	100	101	0
2018	105	99	0
2019	166	169	0
2020	89	96	0
Total	6,994	6,895	93

In 2020, rules were received from the following 31 state agencies and boards:

Number of Proposed Rules, by Submitting Agency

Accounting Examining Board	2
Administration	1
Agriculture, Trade and Consumer Protection	1
Board of Nursing	2
Cemetery Board	1
Children and Families	1
Chiropractic Examining Board	3
Controlled Substances Board	13
Corrections	1
Cosmetology Examining Board	1
Ethics Commission	2
Examining Board of Architects, Landscape Architects, Professional Engineers, Designers, and Professional Land Surveyors	3
Financial Institutions	1
Funeral Directors Examining Board	3
Health Services	8
Hearing and Speech Examining Board	1
Insurance	1
Marriage and Family Therapy, Professional Counseling, and Social Work Examining Board	1
Medical Examining Board	1
Natural Resources	6
Occupational Therapists Affiliated Credentialing Board	1
Physical Therapy Examining Board	3
Podiatry Affiliated Credentialing Board	2
Public Instruction	9
Public Service Commission	1
Revenue	3
Safety and Professional Services	6
Transportation	1
University of Wisconsin System	6
Veterans Affairs	2
Workforce Development	2
Total number of rules submitted:	89

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 2020, the Legislative Council staff commented on:

1. The **statutory authority** of proposed administrative rules in 20 reports.
2. The **form, style, and placement** of proposed administrative rules in 55 reports.
3. A **conflict with, or duplication of**, existing rules in 6 reports.

4. The **adequacy of references** of proposed administrative rules to related statutes, rules and forms in 21 reports.

5. **Clarity, grammar, punctuation and use of plain language** in proposed administrative rules in 46 reports.

6. The **potential conflicts** of proposed administrative rules with, and their comparability to, related federal statutes and regulations in 2 reports.²

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 2020, legislative standing committees requested meetings or held hearings, or both, on 29 proposed rules. Modifications were requested and received by standing committees on one rule, and germane modifications were received in the standing committee review on four other rules. Legislative standing committees did not request modifications to any other proposed rules during the year. Legislative standing committees objected to three rules during the year.

Pursuant to 2011 Wisconsin Act 21, all proposed permanent rules must be referred to JCRAR. In 2020, JCRAR requested meetings or held hearings, or both, on 11 proposed rules. During JCRAR review, eight rules were recalled and resubmitted with germane modifications for subsequent legislative review. JCRAR objected in whole or in part to three rules. The committee did not waive its jurisdiction over any rules during the year. Thirteen proposed rules were withdrawn from legislative review, including petitions for expedited repeal and rules withdrawn due to expiration of the scope statements pursuant to which the rules were proposed.

The Legislative Council staff also responded to individual legislator questions concerning the rulemaking process and the laws governing legislative and gubernatorial review of proposed rules.

² 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.

The table below reviews legislative committee activity in the review of proposed administrative rules beginning on November 2, 1979 and ending on December 31, 2020.

LEGISLATIVE REVIEW OF PROPOSED ADMINISTRATIVE RULES (November 2, 1979 Through December 31, 2020)*						
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)

LEGISLATIVE REVIEW OF PROPOSED ADMINISTRATIVE RULES (November 2, 1979 Through December 31, 2020)*						
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
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)
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	—
2016	94	2	0	3	0	◆ 2015 Assembly Bill 1024 and Senate Bill 797 (failed to pass; late introduction in 2015 Session and reintroduction in 2017 Session as Assembly Bill 30 and Senate Bill 6) ◆ 2015 Assembly Bill 1025 and Senate Bill 798 (failed to pass; late introduction in 2015 Session and reintroduction in 2017 Session as Assembly Bill 31 and Senate Bill 4) ◆ 2017 Assembly Bill 29 and Senate Bill 5

LEGISLATIVE REVIEW OF PROPOSED ADMINISTRATIVE RULES (November 2, 1979 Through December 31, 2020)*						
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
2017	100	7**	0	0	2***	◆ 2017 Wisconsin Act 356 ◆ 2017 Wisconsin Act 357 ◆ 2017 Assembly Bill 31 and Senate Bill 6 (failed to pass; CHR 15-50 withdrawn)
2018	105	7**	0	0	0	—
2019	166	8	0	0	0	—
2020	89	11**	3	3	0	◆ 2019 Assembly Bill 1018 and Senate Bill 904 (failed to pass; late introduction in 2019 Session and reintroduction in 2021 Session as Assembly Bill 11 and Senate Bill 32) ◆ 2021 Assembly Bill 12 and Senate Bill 35 ◆ 2021 Assembly Bill 14 and Senate Bill 31 ◆ CHR 19-154 withdrawn
TOTAL	6,994	773	109	41	15 (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.

*** Includes enactments pertaining to 2016 JCRAR rule objections.

NOTICE OF CHANGES IN RULEMAKING AUTHORITY

Section 227.15 (4), Stats., instructs the Legislative Council staff to identify instances when the rulemaking 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 identified the following 2019 Wisconsin Acts, enacted in 2020, that were determined to relate to changes in agency rulemaking authority, categorized as follows:

- Acts that grant, eliminate, or require the exercise of rulemaking authority, as identified in the act's relating clause:
 - **2019 Wisconsin Act 83**, which relates to grants for peer-to-peer suicide prevention programs in high schools. The act requires the Department of Public Instruction (DPI) to award grants up to \$1,000 through a competitive grant application process for high schools to implement or support existing programs, and allows DPI to renew a grant for up to three additional years. The act grants DPI authority to promulgate rules to implement and administer the grant program.
 - **2019 Wisconsin Act 84**, which permits DPI to determine equivalent training, by administrative rule, for the purposes of the student teaching qualification that

otherwise requires full days for a full semester following the daily schedule and semester calendar of the cooperating school.

- **2019 Wisconsin Act 94**, which creates a retired credential status for professionals holding credentials granted by the Examining Board of Architects, Landscape Architects, Professional Engineers, Designers, and Professional Land Surveyors. The act requires each section of the board to promulgate rules that establish criteria for placing a credential in retired status.
- **2019 Wisconsin Act 100**, which ratifies and enters Wisconsin into the Physical Therapy Licensure Compact, which allows a physical therapist or physical therapist assistant licensed in one member state to obtain a “compact privilege” to practice in a remote state without obtaining a license in that remote state. The act also enters Wisconsin into the Physical Therapy Compact Commission, which has various powers and duties granted in the compact, including promulgating binding rules for the compact.
- **2019 Wisconsin Act 101**, which authorizes the Department of Natural Resources (DNR) to promulgate rules to implement new restrictions regarding the use and discharge firefighting foam that contains intentionally added per- and polyfluoroalkyl substances (PFAS), and to establish appropriate containment, treatment, and disposal or storage measures for the testing of such foam.
- **2019 Wisconsin Act 122**, which relates to the coordination and continuation of care following an overdose and to reimbursement for peer recovery coach services under the Medical Assistance program. The act authorizes the Department of Health Services (DHS) to establish training requirements for peer recovery coaches by rule.
- **2019 Wisconsin Act 125**, which consolidates statutes related to notaries public and notarial acts into one chapter, adopts provisions found in the Uniform Law Commission’s Revised Uniform Law on Notarial Acts from 2018 (RULONA 2018) to authorize the remote notarization of documents, and creates a remote notary council to adopt and implement standards related to remote notarizations. The act authorizes the Department of Financial Institutions (DFI) to have specified rulemaking and enforcement authority over notaries public and notarial acts.
- **2019 Wisconsin Act 130**, which relates to regulation of recreational and educational camps. The act requires the Department of Safety and Professional Services (DSPS) to revise the commercial building code to establish separate standards for the construction and inspection of recreational and educational camps. The act also requires that the standards established under the electrical wiring code and plumbing code take the unique uses of recreational and educational camps into account.
- **2019 Wisconsin Act 137**, which relates to eligibility and continuing education requirements for a funeral director’s license. The act requires the Funeral Directors Examining Board to promulgate rules specifying permitted or required

subjects for the four hours of continuing education that are applicable to the first renewal.

- **2019 Wisconsin Act 138**, which modifies supervision requirements for physical therapy students and physical therapist assistant students. The act authorizes the Physical Therapy Examining Board to promulgate rules related to the supervision of students who perform physical therapy procedures and related tasks.
- **2019 Wisconsin Act 143**, which specifies standards for issuing reciprocal credentials to service members, former service members, and their spouses. The act authorizes DSPS or any applicable credentialing board to promulgate rules to implement the issuance of reciprocal credentials.
- **2019 Wisconsin Act 178**, which provides for the creation of a voluntary individual animal identification program. The act authorizes the Department of Agriculture, Trade and Consumer Protection (DATCP) to promulgate rules to implement the program and provides that DATCP may amend rules promulgated pursuant to the act to adapt to future advances in animal identification technology.
- Acts that directly modify the Wisconsin Administrative Code:
 - **2019 Wisconsin Act 76**, which modifies the state shelter subsidy grant program. Among its provisions, the act corrects the specifications in the Department of Administration's administrative rules for calculating the amount of a grant under the program, to conform to existing state law.
 - **2019 Wisconsin Act 92**, which modifies the Department of Children and Families' administrative rules to expand eligibility for adoption assistance.
 - **2019 Wisconsin Act 174**, which designates Wisconsin's planting and harvesting period as an exception to federal hours of service requirements for commercial motor vehicle operators and repeals the Department of Transportation's (DOT's) administrative rule related to the exception.
- Acts that limit or prohibit rulemaking on a specific subject matter:
 - **2019 Wisconsin Act 89**, which addresses certain requirements imposed by rules of DOT on a driver school office in a private residence. The act prohibits the department from applying those rules if students and the public have no access to the private residence in which the driver school office is located.
 - **2019 Wisconsin Act 91**, which relates to the installation of stairway chair lifts in churches. The act allows the installation of a stairway chair lift in certain churches under certain conditions even if a standard, rule, order, or code adopted, promulgated, enforced, or administered by DSPS would otherwise prohibit it.
 - **2019 Wisconsin Act 131**, which relates to electronic health records at recreational and educational camps. The act provides that, if DATCP requires that such records be maintained, then DATCP must allow them to be made and maintained electronically, if certain conditions are met. Implementation of this change will prohibit DATCP's enforcement of certain related rules.

- **2019 Wisconsin Act 153**, which relates to milk producer affidavits used to substantiate a claim that a dairy product is free from synthetic bovine growth hormone. The act prohibits DATCP from promulgating a rule that limits the duration that a milk producer affidavit may be used to substantiate such a claim.
- **2019 Wisconsin Act 175**, which relates to regulation of nonconforming buildings in a floodplain. Under the act, DNR may not prohibit the repair, reconstruction, or improvement of a building based on cost, if certain conditions are met. Implementation of this change will prohibit DNR's enforcement of certain related rules.
- Other acts that affect agency authority to promulgate rules:
 - **2019 Wisconsin Act 185**, which made numerous changes to state law in response to the declared public health emergency for the COVID-19 outbreak. The act allowed DPI to temporarily waive certain requirements in the statutes and related rules for choice schools and independent charter schools, allowed the Office of the Commissioner of Insurance to implement rules relating to health insurance coverage for diagnosis and treatment of COVID-19, and prohibited DHS from requiring that a nurse aide instructional program exceed specified federal minimum standards.

Legislative Council staff also conducted a case law review of judicial decisions published in 2020. Decisions related to the rulemaking authority of an agency include the following:

- ***Wisconsin Legislature v. Palm***, regarding general orders of general application and rulemaking authority. The Wisconsin Supreme Court held that a public health order relating to the control of communicable disease issued by the Secretary-designee of DHS was a “general order of general application” for purposes of the definition of “rule” in ch. 227, Stats., and thus, except for one provision relating to the closure of schools, invalid because it was not promulgated as a rule. The Court also concluded that portions of the public health order confining persons to their homes, forbidding travel, and closing certain businesses, exceeded the statutory authority of the Secretary-designee under ch. 252, Stats. [2020 WI 42.]
- ***Kathleen Papa and Professional Homecare Providers, Inc. v. Wisconsin DHS***, regarding policy-making authority. The Wisconsin Supreme Court reversed a decision of the Wisconsin Court of Appeals, which was previously described in the 2019 Annual Report of the Legislative Council Rules Clearinghouse. The Wisconsin Supreme Court held that the DHS policy of recouping payments for noncompliance with Medicaid program requirements exceeded its statutory authority because it was a standard, requirement, or threshold that was not “explicitly required or explicitly permitted by a statute or by a [properly promulgated] rule” as required by s. 227.10 (2m), Stats. [2020 WI 66.]
- ***Applegate-Bader Farm, LLC v. Wisconsin Department of Revenue***, regarding improper rule promulgation. The Wisconsin Court of Appeals reversed a decision of the Green County Circuit Court, which was previously described in the 2018 Annual Report of the Legislative Council Rules Clearinghouse. The Court of Appeals held

that the Department of Revenue’s rule defining “agricultural use” for the property tax assessment of agricultural land was properly promulgated and could be enforced. Specifically, the Court of Appeals held that an agency need not create a revised scope statement when a proposed rule is changed in a meaningful or measurable way if the final rule still fits within the ambit of the scope statement. [2020 WI App 7; *reversed and remanded* by the Wisconsin Supreme Court, 2021 WI 26.]

- ***State v. Lasecki***, regarding rulemaking authority. The Wisconsin Court of Appeals examined a DATCP rule governing security deposit practices in light of a statute prohibiting DATCP from promulgating a rule that changes any right or duty arising under the landlord-tenant chapter. The Wisconsin Court of Appeals concluded that the statute did not prohibit DATCP from promulgating the rule in question. Even though the landlord-tenant chapter contained some provisions governing security practice deposits, it was silent on the specific practice outlined in the DATCP rule. Thus, the DATCP rule did not change any right or duty arising under the landlord-tenant chapter. A petition for review was denied. [2020 WI App 36.]

In addition to the judicial decisions listed above, the Wisconsin Supreme Court held oral arguments on Monday, April 12, 2021, on two companion cases, both titled *Clean Wisconsin, Inc. v. DNR*, which were previously described in the 2019 Annual Report of the Legislative Council Rules Clearinghouse. The cases remain pending. [Case No. 2018AP59 and consolidated Case Nos. 2016AP1688 and 2016AP2502.]

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/>.

ASSISTING STATE AGENCIES

In 2020, the Legislative Council staff responded to agency questions concerning the rulemaking process and the laws governing legislative and gubernatorial review of proposed rules.

PUBLIC LIAISON

In 2020, the Legislative Council staff received a number of requests from the public for information about aspects of the rulemaking process or the status of specific rules.

SG:MSK:jal

APPENDIX 1
SAMPLE CLEARINGHOUSE REPORT



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Scott Grosz
Clearinghouse Director

Anne Sappenfield
Legislative Council Director

Margit S. Kelley
Clearinghouse Assistant 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 **20-045**

AN ORDER to repeal FD 1.04 (2); to amend FD 1.02 (3) and (4), 1.04 (title), (intro.), and (1), 1.05 and 1.055; to repeal and recreate FD 4.03 (1); and to create FD 4.03 (1m), relating to licensure and continuing education requirements for funeral directors and funeral director apprentices.

Submitted by **FUNERAL DIRECTORS EXAMINING BOARD**

10-02-2020 RECEIVED BY LEGISLATIVE COUNCIL.

10-22-2020 REPORT SENT TO AGENCY.

SG:EH

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

Scott Grosz
Clearinghouse Director

Anne Sappenfield
Legislative Council Director

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Clearinghouse Assistant Director

CLEARINGHOUSE RULE 20-045

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

Section FD 4.03 (1) (i) appears to allow the agency to authorize new subjects of continuing education without amending the rule provision. The agency should explain its authority to recognize additional subjects of continuing education in the absence of future rulemaking, as s. 445.07 (1) (a), Stats., directs the agency to promulgate these permitted or required subjects of continuing education by rule.

2. Form, Style and Placement in Administrative Code

a. In s. FD 1.04 (1) (title), the agency should avoid the use of a slashed alternative; instead, it could amend the title as “English or Communication Skills”.

b. In the treatment clause of SECTION 4, it is unnecessary to refer to Clearinghouse Rule 19-163, as that Clearinghouse Rule took effect on October 1, 2020.

c. In SECTION 6, the cross-reference should be to “sub. (1) and s. FD 4.05” rather than “ss. FD 4.03 (1) and 4.05”.

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

a. In ss. FD 1.02 (4), 1.05 and 1.055, the agency appears to use the phrases “course in mortuary science”, “curriculum in funeral service education”, and “mortuary school” interchangeably. If so, the agency may wish to consistently use a single term.

b. In FD 1.055, the agency could consider revising the rule to read: “Prior to beginning the 1 year apprenticeship required under s. 445.095, Stats., the applicant ~~must~~ **shall** provide evidence...”. “Shall” and “must” both indicate a mandatory action, but “shall” is the word preferred in the administrative code. [s. 1.01 (2), Manual.]

APPENDIX 2
PROCESSING INSTRUCTIONS TO AGENCY HEADS



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Scott Grosz
Clearinghouse Director

Anne Sappenfield
Legislative Council Director

Margit S. Kelley
Clearinghouse Assistant 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 rulemaking 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.]

— *SAMPLE* —

CLEARINGHOUSE RULE ASSEMBLY 20-045

AN ORDER to repeal FD 1.04 (2); to amend FD 1.02 (3) and (4), 1.04 (title), (intro.), and (1), 1.05 and 1.055; to repeal and recreate FD 4.03 (1); and to create FD 4.03 (1m), relating to licensure and continuing education requirements for funeral directors and funeral director apprentices.

Submitted by Funeral Directors Examining Board

10-02-20	Received by Legislative Council.		
10-22-20	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.