
Wisconsin Legislative Council

Anne Sappenfield
Director



June 17, 2022

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 *2021 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

2021 ANNUAL REPORT LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

WISCONSIN LEGISLATIVE COUNCIL

One East Main Street, Suite 401
Madison, Wisconsin 53703-3382
(608) 266-1304

June 2022

Wisconsin Legislative Council

Anne Sappenfield
Director



June 2022

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

This report of the calendar year 2021 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, flowing style.

Anne Sappenfield
Director

AS:jal

WISCONSIN LEGISLATIVE COUNCIL STAFF
2021 ANNUAL REPORT ON THE
LEGISLATIVE COUNCIL RULES CLEARINGHOUSE*

CONTENTS

	<u>Page</u>
FUNCTIONS OF THE LEGISLATIVE COUNCIL RULES CLEARINGHOUSE	
Review of Rules	1
Other Related Responsibilities.....	2
Recordkeeping System.....	2
2021 ACTIVITIES OF THE RULES CLEARINGHOUSE	
Review of Rules	4
Assisting Committees.....	7
Notice of Changes in Rulemaking Authority.....	10
Internet Access	15
Assisting State Agencies	15
Public Liaison.....	15
APPENDIX 1: SAMPLE CLEARINGHOUSE REPORT	
APPENDIX 2: PROCESSING INSTRUCTIONS TO AGENCY HEADS	

*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 42nd annual report submitted by the Legislative Council and covers the staff's activities during calendar year 2021. 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 2020.

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/>.

2021 ACTIVITIES OF THE RULES CLEARINGHOUSE

REVIEW OF RULES

During 2021, 110 proposed administrative rules, including 5 expedited rules¹, were submitted to the Legislative Council by 36 state agencies and boards.

As of December 31, 2021, Clearinghouse reports had been completed on 104 of the 110 proposed rules and 6 rules were in the process of review. In addition to the 104 rule reports completed on 2021 rules, reports were prepared in 2021 on 6 rules received in late 2020. Of the 110 reports completed in 2021, no rule required an extension of the review process by the Director of the Legislative Council. Clearinghouse reports completed in 2021 are summarized below:

Rules Received in 2021	110	
Reports pending on December 31, 2021	-6	
<i>Total 2021 Reports Completed in 2021</i>	104	
2021 Reports Completed in 2021		104
2020 Reports Completed in January 2021		6
Total Reports Completed in 2021		110

¹Pursuant 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, 2021, the Clearinghouse has received 7,104 rule submissions and completed reviews on 7,005 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 2021.

<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
2021	110	110	0
Total	7,104	7,005	93

In 2021, rules were received from the following 36 state agencies and boards:

Number of Proposed Rules, by Submitting Agency

Accounting Examining Board	1
Administration	1
Agriculture, Trade and Consumer Protection	9
Board of Nursing	2
Children and Families	6
Chiropractic Examining Board	1
Controlled Substances Board	1
Corrections	1
Dentistry Examining Board	2
Examining Board of Architects, Landscape Architects, Professional Engineers, Designers, and Professional Land Surveyors	2
Financial Institutions	1
Health Services	5
Hearing and Speech Examining Board	1
Insurance	3
Labor and Industry Review Commission	1
Marriage and Family Therapy, Professional Counseling, and Social Work Examining Board	2
Massage Therapy and Bodywork Therapy Affiliated Credentialing Board	1
Medical Examining Board	2
Military Affairs	1
Natural Resources	23
Occupational Therapists Affiliated Credentialing Board	2
Optometry Examining Board	2
Pharmacy Examining Board	3
Physical Therapy Examining Board	1
Podiatry Affiliated Credentialing Board	1
Psychology Examining Board	6
Public Instruction	10
Public Service Commission	2
Radiography Examining Board	3
Real Estate Examining Board	3
Revenue	2
Safety and Professional Services	3
Technical College System Board	2
Transportation	2
Veterans Affairs	1
Workforce Development	1
Total number of rules submitted:	110

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 2021, the Legislative Council staff commented on:

1. The **statutory authority** of proposed administrative rules in 23 reports.
2. The **form, style, and placement** of proposed administrative rules in 69 reports.
3. A **conflict with, or duplication of**, existing rules in 11 reports.
4. The **adequacy of references** of proposed administrative rules to related statutes, rules and forms in 34 reports.
5. **Clarity, grammar, punctuation and use of plain language** in proposed administrative rules in 65 reports.
6. The **potential conflicts** of proposed administrative rules with, and their comparability to, related federal statutes and regulations in 4 reports.
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 2021, legislative standing committees requested meetings or held hearings, or both, on 21 proposed rules. Modifications were requested and received by standing committees on one rule, and germane modifications were received in the standing committee review on nine other rules. Legislative standing committees did not request modifications to any other proposed rules during the year. Legislative standing committees waived their jurisdiction on five rules and objected to two rules during the year.

Pursuant to 2011 Wisconsin Act 21, all proposed permanent rules must be referred to JCRAR. In 2021, JCRAR requested meetings or held hearings, or both, on 23 proposed rules. During JCRAR review, seven 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. Three proposed rules were otherwise withdrawn from review.

The Legislative Council staff also responded to many individual legislator questions concerning the rulemaking 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, 2021.

LEGISLATIVE REVIEW OF PROPOSED ADMINISTRATIVE RULES (November 2, 1979 Through December 31, 2021)*						
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, 2021)*						
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, 2021)*						
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
2021	110	16**	2	3†	0	In 2021, JCRAR indefinitely objected, in whole or in part, to CHR 20-063, CHR 20-089, and CHR 21-018. Following indefinite objection, and pursuant to s. 227.19 (5) (em), Stats., any member of the Legislature may introduce a bill to authorize promulgation of the proposed rule. To date, no such bills have been introduced.
TOTAL	7,104	789	111	44	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.

†Includes indefinite objections pursuant to s. 227.19 (5) (dm), Stats.

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 a number of 2021 Wisconsin Acts, enacted in 2021, and court decisions, that were determined to relate to changes in agency rulemaking authority, categorized as follows:

- Sixteen acts that grant, eliminate, or require the exercise of rulemaking authority, as identified in the act's relating clause.
- Three acts that directly modify the Wisconsin Administrative Code.
- Four acts that limit or prohibit rulemaking on a specific subject matter.

- Seven acts that otherwise affect agency authority to promulgate rules, including the Biennial Budget Act.
- Four Wisconsin Supreme Court decisions, one Wisconsin Court of Appeals decision, and one circuit court decision.

The 2021 acts and court decisions identified by the Legislative Council staff that significantly change the rulemaking authority of an agency are briefly described below, by agency.

Department of Children and Families

2021 Wisconsin Act 35, which directly modifies the Department of Children and Families' (DCF) administrative rules governing child support calculations. The act does not change the manner of calculating the amount of child support or the applicable formulas.

2021 Wisconsin Act 42, which creates the concept of a qualified residential treatment program (QRTP), to be certified and regulated by DCF. The act grants DCF the authority to promulgate rules for the establishment, certification, operation, and monitoring of, and the placement of a child in, a QRTP.

Department of Health Services

2021 Wisconsin Act 88, which requires the Medical Assistance program to cover complex rehabilitation technology for a resident in a nursing home, if certain criteria are met. The act prohibits the Department of Health Services (DHS) from imposing any additional criteria.

Tavern League of Wis., Inc. v. Palm, regarding rule promulgation. The Wisconsin Supreme Court held that Emergency Order #3, issued by DHS, constituted a rule for purposes of administrative rulemaking requirements under ch. 227, Stats., like the "safer at home" order invalidated in *Legislature v. Palm*, 2020 WI 42. Accordingly, the Court held that Emergency Order # 3 was invalid because DHS did not follow the rulemaking process. [2021 WI 33.]

Department of Justice

2021 Wisconsin Act 82, which relates in relevant part to the powers of the Law Enforcement Standards Board. Under prior law, the board was authorized to promulgate rules to establish training and qualification requirements for law enforcement personnel and to require the submission of reports and information pertaining to the administration of the requirements by law enforcement and tribal law enforcement agencies. The act extends the authority to promulgate rules relating to standards for jails, juvenile detention facilities, and schools approved by the board and operated by or for this state or any political subdivision of the state for the specific purpose of training law enforcement recruits, law enforcement officers, tribal law enforcement recruits, tribal law enforcement officers, jail officer recruits, jail officers, juvenile detention officer recruits, or juvenile detention officers.

2021 Wisconsin Act 116, which creates statutory procedures and requirements related to transmitting, processing, and storing sexual assault kits. The act requires the Department of Justice (DOJ) to promulgate rules to administer its provisions.

2021 Wisconsin Act 117, which requires DOJ to establish a database, known as the Wisconsin Sexual Assault Kit Tracking System, for the purpose of providing victims of sexual assault access to information about the status of any sexual assault kit the victim has provided. The act requires DOJ to promulgate rules to administer its provisions.

Department of Natural Resources

2021 Wisconsin Act 14, which directly modifies the Department of Natural Resources' (DNR) administrative rules to authorize affixing a processed wood bottom to a hollow log or stump for the purpose of containing bear (or, where allowed, deer) bait or feed.

2021 Wisconsin Act 16, which prohibits DNR from limiting the use, possession, or control of shot shells on the basis of the size of the contained shot for hunting fur-bearing animals during times when hunting is otherwise allowed.

2021 Wisconsin Act 79, which makes various changes to the electronic waste recycling program administered by DNR. Among these changes, the bill shifts a "program year" from a state fiscal year to a calendar year and creates an 18-month "transition year." The act authorizes DNR to promulgate rules to modify the registration fees for manufacturers that sold at least 375 devices during the transition year.

2021 Wisconsin Act 93, which requires DNR to promulgate an emergency rule to implement a new exemption for municipal dredging in the Great Lakes.

Clean Wisconsin, Inc. v. DNR decisions, regarding rulemaking authority. The Wisconsin Supreme Court issued two separate, but related, opinions in the context of permitting decisions made by DNR. The Court held that statutes granting DNR broad authority relating to the permits qualify as "explicit" authority to implement and enforce standards and requirements for a permit. [2021 WI 71 and 2021 WI 72.]

Wis. Manufacturers and Commerce (WMC) v. DNR, regarding rule promulgation. The Waukesha County Circuit Court held that DNR's policy of regulating "emerging contaminants" (including PFAS) as hazardous substances under the Spills Law, as well as DNR's enforcement of any numeric standard, requirement, or threshold for such substances, and an "interim decision policy" adopted by DNR, are unlawfully promulgated rules and may not be enforced. DNR has appealed the decision and the case is pending before the Wisconsin Court of Appeals. [Appeal No. 2022 AP 000718.]

Department of Public Instruction

2021 Wisconsin Act 19, which prohibits the Department of Public Instruction (DPI) from counting an application to attend a virtual charter school toward an applicant's three-application limit.

2021 Wisconsin Act 56, which permits DPI to waive certain requirements in chs. 115 to 121, Stats., and the administrative rules, related to a parental choice program, the Special Needs Scholarship Program, a private school participating in either of those programs, or an independent charter school, from March 12, 2020, to October 31, 2021.

Department of Revenue

Applegate-Bader Farm, LLC v. Wis. Dep't of Revenue (DOR), regarding rule promulgation. The Court of Appeals had held that a rule by DOR defining “agricultural use” for the property tax assessment of agricultural land was properly promulgated and could be enforced. The Supreme Court reversed and remanded on other grounds, reviewing the agency’s actions under the Wisconsin Environmental Policy Act (WEPA), rather than under the s. 227.40, Stats., proceeding to challenge the validity of a rule. The Court held that, under WEPA, an administrative agency must consider indirect, as well as direct, environmental effects of a proposed rule when deciding whether to prepare an environmental impact statement. [2021 WI 26.]

Wis. Property Tax Consultants, Inc. v. DOR, regarding the process for a rulemaking challenge. The Court of Appeals held that relief should first be sought from the Tax Appeals Commission, which addresses disputes with DOR, before bringing a claim to the courts. The court held that the circuit court’s deferral to the agency and dismissal of the action under the primary jurisdiction doctrine was appropriate when a claim had not yet been reviewed by the Tax Appeals Commission. [2021 WI App 47.]

Department of Safety and Professional Services and Credentialing Boards

2021 Wisconsin Act 17, which revises the educational requirements for the initial and renewed credentialing of a home inspector, creates a reciprocity provision for a home inspector credentialed in another state, modifies and adds certain requirements for a home inspection report, and addresses other aspects of the regulation of home inspectors.

2021 Wisconsin Act 22, which revises certain aspects of the regulatory oversight of psychologists. The act redefines the practice of psychology, revises certain categories of licensing status, allows the Psychology Examining Board to establish certain continuing education standards, and revises other aspects of the examining board’s powers.

2021 Wisconsin Act 23, which revises the regulatory oversight of physician assistants. The act moves the credentialing of physician assistants from the Medical Examining Board to a Physician Assistant Affiliated Credentialing Board, and revises certain aspects of licensure application materials and continuing education requirements.

2021 Wisconsin Act 25, which creates an optional license for certain third-party logistics providers. The act directs the Pharmacy Examining Board to promulgate rules to regulate third-party logistics providers and out-of-state third party logistics providers consistent with federal law and that do not mandate licensing under state law.

2021 Wisconsin Act 44, which allows a physician who is licensed in good standing in another state or U.S. territory to practice at a recreational or educational camp for up to 90 days in any year, without a license from the Medical Examining Board, and allows the board to establish related forms by rule.

2021 Wisconsin Act 46, which allows a registered nurse who is credentialed in good standing in another state or U.S. territory to practice at a recreational or educational camp for up

to 90 days in any year, without a license from the Board of Nursing, and allows the board to establish related forms by rule.

2021 Wisconsin Act 100, which requires a pharmacy technician to register with the Pharmacy Examining Board before the technician may practice as a pharmacy technician. The act requires the board to define the activities that constitute the practice of a pharmacy technician and authorizes the board to promulgate rules for the oversight of that practice.

2021 Wisconsin Act 101, which specifies that certain remote dispensing locations allowed to operate without a license under prior law must be licensed by the Pharmacy Examining Board as a pharmacy. The act allows the board to promulgate rules governing pharmacies operated as remote dispensing sites, and to exempt such pharmacies from rules that apply to other pharmacies.

2021 Wisconsin Act 110, which specifies that the Department of Safety and Professional Services (DSPS) may not require a periodic inspection of a chemical recovery boiler more frequently than once every 24 months, if certain criteria are met.

2021 Wisconsin Act 118, which allows a credentialing board to delegate authority to DSPS to determine whether an applicant satisfies the requirements to be granted a credential and authority to grant or deny a credential in accordance with that determination.

Department of Workforce Development

2021 Wisconsin Act 26, which specifies that administrative rules must allow an employer to require a tipped employee who customarily receives gratuities to use an electronic signature to acknowledge the counting of tips in the employer's payroll records.

Office of the Commissioner of Insurance

2021 Wisconsin Act 9, which creates a number of requirements related to pharmacy benefit managers, health insurance policies and plans, and pharmacies. The act authorizes the Office of the Commissioner of Insurance (OCI) to promulgate rules to implement licensure of pharmacy benefit managers.

2021 Wisconsin Act 73, which establishes certain basic requirements for regulated entities' insurance data security programs. The act authorizes OCI to promulgate rules to implement the provisions of the act.

2021 Wisconsin Act 111, which revises certain aspects of the regulatory oversight of travel insurance. The act maintains OCI oversight of travel insurance, but modifies certain roles and requirements to align with the travel insurance model act adopted by the National Association of Insurance Commissioners (NAIC) in 2018.

2021 Wisconsin Act 114, which makes various changes relating to regulation of the insurance industry, including regulations relating to annuity contracts that do not have life contingencies, insurers' reporting of group capital calculations and liquidity stress tests, and publication of small employers' premium rates.

Public Service Commission

2021 Wisconsin Act 24, which makes various changes to laws administered by the Public Service Commission (PSC) and requires investor-owned energy utilities to fund a consumer advocate. The act repeals a requirement that the PSC promulgate rules establishing privacy guidelines applicable to telecommunications services.

2021 Wisconsin Act 86, which exempts certain water meter installation, repair, and replacement projects from PSC review requirements. The act directly modifies the PSC's administrative rules to reflect the new exemption created in the statutes.

Budget

In addition to the acts listed above, 2021 Wisconsin Act 58, the 2021-23 Biennial Budget Act, contains provisions relating to the exercise of agency rulemaking authority. For a complete description of the Biennial Budget Act, see the Legislative Fiscal Bureau's Comparative Summary of Act 58, available [here](#).

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 2021, the Legislative Council staff responded to numerous agency questions concerning the rulemaking process and the laws governing legislative and gubernatorial review of proposed rules.

PUBLIC LIAISON

In 2021, 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 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 **21-038**

AN ORDER to repeal and recreate NR 20.65, relating to guide licenses and reporting requirements and affecting small business.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

04-12-2021 RECEIVED BY LEGISLATIVE COUNCIL.

05-03-2021 REPORT SENT TO AGENCY.

MSK:REL

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

Margit Kelley
Clearinghouse Assistant Director

CLEARINGHOUSE RULE 21-038

Comments

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

1. Statutory Authority

In the statutory authority section of the rule analysis prepared by the department, the department should consider also citing ss. 29.014 (1) and 29.041, Stats.

2. Form, Style and Placement in Administrative Code

a. In the statutes interpreted section of the rule analysis prepared by the department, the narrative explanation should be removed, as that is provided in the explanation of agency authority section of the rule analysis.

b. In s. NR 20.65 (2) (c) 1., “department of natural resources” should be changed to “department”. This also occurs in sub. (3) (d) 2.

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

a. In s. NR 20.65 (1) (c) 1., it appears that the reference to “waters defined in pars. (c), (d), and (e)” should be revised to “waters defined in pars. (d), (e), and (f)”.

b. In s. NR 20.65 (3) (d) 1., a reference to “in sub. (2) (c)” should be inserted between “the required information” and “one-half hour”.

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

a. In s. NR 20.65 (1) (c) 1., the word “accompanying” should be deleted.

b. In s. NR 20.65 (2) (a), it appears that “on-water” should be changed to “open water” to be consistent with sub. (1) (c) 1., unless the department intends for “on-water” to have a different meaning than “open water”. If the term “on-water” is retained, the department may wish to consider clarifying or defining this term.

c. In s. NR 20.65 (3) (d) 2., it is unclear how a guide will know which department “designated phone number” or “designated email address” to use to make the required notification.

APPENDIX 2

PROCESSING INSTRUCTIONS TO AGENCY HEADS



Wisconsin Legislative Council

RULES CLEARINGHOUSE

Scott Grosz
Clearinghouse Director

Anne Sappenfield
Legislative Council Director

Margit 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 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.]

WLCS

AS:jal

05/21

— *SAMPLE* —

CLEARINGHOUSE RULE ASSEMBLY 21-038

AN ORDER to repeal and recreate NR 20.65, relating to guide licenses and reporting requirements and affecting small business.

Submitted by Department of Natural Resources

04-12-21	Received by Legislative Council.		
05-03-21	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.