



Wisconsin Legislative Council

RULES CLEARINGHOUSE

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LEGISLATIVE COUNCIL RULES CLEARINGHOUSE: 2022 ANNUAL REPORT

WISCONSIN LEGISLATIVE COUNCIL

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May 2023

Wisconsin Legislative Council

Anne Sappenfield
Director



May 2023

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

This report of the calendar year 2022 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".

Anne Sappenfield
Director

AS:jal

WISCONSIN LEGISLATIVE COUNCIL STAFF
2022 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 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/>.

2022 ACTIVITIES OF THE RULES CLEARINGHOUSE

REVIEW OF RULES

During 2022, 88 proposed administrative rules, including one expedited rule¹, were submitted to the Legislative Council by 31 state agencies and boards.

As of December 31, 2022, Clearinghouse reports had been completed on all of the 88 proposed rules submitted during the calendar year. In addition to the 88 rule reports completed on 2022 rules, reports were prepared in 2022 on six rules received in late 2021. Of the 94 reports completed in 2022, no rule required an extension of the review process by the Director of the Legislative Council. Clearinghouse reports completed in 2022 are summarized below:

Rules Received in 2022	88	
Reports pending on December 31, 2022	0	
<i>Total 2022 Reports Completed in 2022</i>	88	
2022 Reports Completed in 2022		88
2021 Reports Completed in January 2022		6
Total Reports Completed in 2022		94

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, 2022, the Clearinghouse has received 7,192 rule submissions and completed reviews on 7,099 proposed rules. Of the total rule submissions, 93 were exempt from the reporting process for various reasons.

<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
2022	88	94	0
Total	7,192	7,099	93

In 2022, rules were received from the following 31 state agencies and boards:

Number of Proposed Rules, by Submitting Agency

Administration	2
Agriculture, Trade and Consumer Protection	6
Athletic Trainers Affiliated Credentialing Board	1
Cemetery Board	1
Children and Families	1
Chiropractic Examining Board	1
Controlled Substances Board	13
Cosmetology Examining Board	1
Dentistry Examining Board	3
Dieticians Affiliated Credentialing Board	1
Ethics Commission	1
Financial Institutions	2
Funeral Directors Examining Board	1
Health Services	8
Hearing and Speech Examining Board	3
Insurance	4
Justice	1
Medical Examining Board	2
Military Affairs	2
Natural Resources	8
Occupational Therapists Affiliated Credentialing Board	2
Pharmacy Examining Board	1
Physician Assistant Affiliated Credentialing Board	1
Podiatry Affiliated Credentialing Board	1
Public Instruction	3
Public Service Commission	1
Revenue	3
Safety and Professional Services	4
Transportation	3
Veterans Affairs	2
Workforce Development	5
Total number of rules submitted:	88

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 2022, the Legislative Council staff commented on:

1. The **statutory authority** of proposed administrative rules in 26 reports.
2. The **form, style, and placement** of proposed administrative rules in 65 reports.
3. A **conflict with, or duplication of**, existing rules in 5 reports.

4. The **adequacy of references** of proposed administrative rules to related statutes, rules and forms in 31 reports.

5. **Clarity, grammar, punctuation and use of plain language** in proposed administrative rules in 54 reports.

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

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 2022, legislative standing committees requested meetings or held hearings, or both, on 15 proposed rules. Modifications were requested, but not received by, one standing committee on one rule, and germane modifications were received in the standing committee review on three other rules. Legislative standing committees did not request modifications to any other proposed rules during the year. One legislative standing committee objected to a rule during the year. Legislative standing committees did not waive their jurisdiction on any 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 13 proposed rules. During JCRAR review, four rules were recalled and resubmitted with germane modifications for subsequent legislative review, modifications were requested and received on one rule, and one additional germane amendment was received. JCRAR did not concur in the standing committee objection, described above. The committee did not waive its jurisdiction over any rules during the year. Five 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, 2022.

LEGISLATIVE REVIEW OF PROPOSED ADMINISTRATIVE RULES (November 2, 1979 Through December 31, 2022)*						
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, 2022)*						
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, 2022)*						
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 15-050 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 (failed to pass) ◆2021 Assembly Bill 14 and Senate Bill 31 (failed to pass)
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.
2022	88	8**	1	0	0	—
TOTAL	7,192	797	112	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 2022 Wisconsin Acts, enacted in 2022, and court decisions, that were determined to relate to changes in agency rulemaking authority, categorized as follows:

- Nine acts that grant, eliminate, or require the exercise of rulemaking authority, as identified in the act's relating clause. [2021 Wisconsin Acts 123, 130, 158, 195, 223, 232, 251, 254, and 258.]
- Five acts that directly modify the Wisconsin Administrative Code. [2021 Wisconsin Acts 125, 155, 160, 203, and 253.]

- Four acts that limit or prohibit rulemaking on a specific subject matter. [2021 Wisconsin Acts 121, 126, 143, and 178.]
- No acts that otherwise affect agency authority to promulgate rules.
- Three Wisconsin Supreme Court decisions and one circuit court decision.

The 2021 acts, enacted in 2022, 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 Agriculture, Trade and Consumer Protection

2021 Wisconsin Act 143, which provides that the Department of Agriculture, Trade and Consumer Protection (DATCP) may not promulgate a rule prohibiting dogs from the premises of a retail food establishment that sells only previously packaged food.

2021 Wisconsin Act 223, which requires DATCP to promulgate an emergency rule to implement a grant program for agricultural projects that optimize the application of commercial nitrogen, and an emergency rule to implement crop insurance premium rebates for the planting of cover crops.

Department of Children and Families

2021 Wisconsin Act 160, which directly modifies the Department of Children and Families' administrative rules to exclude certain military allowances in determining gross income for purposes of child support.

Department of Financial Institutions

2021 Wisconsin Act 203, which directly modifies the Department of Financial Institution's (DFI) administrative rules specifying how a pawnbroker may send notice of sale or surplus.

2021 Wisconsin Act 258, which modifies the statutes that govern various types of business organizations to reflect updates in the Revised Uniform Limited Partnership Act and the Revised Uniform Limited Liability Company Act and to harmonize language governing different types of business organizations. The act allows DFI to set certain filing fees and copy charges by rule.

Department of Health Services

2021 Wisconsin Act 125, which directly modifies the Department of Health Services' (DHS) administrative rules to eliminate prior authorization requirements under the Medical Assistance program for enteral products administered through a tube.

2021 Wisconsin Act 155, which directly modifies DHS's administrative rules to specify that, if substance abuse treatment is recommended for a person in a person's driver safety plan, the treatment must include an evaluation of the appropriateness of medication-assisted treatment.

Department of Natural Resources

2021 Wisconsin Act 126, which revises certain requirements for water supply service area plans for public water supply systems. Under the statutes, the Department of Natural Resources (DNR) is required to establish, by rule, and administer a continuing water supply planning process for the preparation of water supply plans by public water utilities. Prior to the act, every water utility serving a population of 10,000 residents or more was required to obtain DNR approval of a water supply plan prepared by the utility. Every plan was required to include a cost-effectiveness analysis, as defined in the statutes. Under the act, only plans involving a new or increased diversion or withdrawal from the Great Lakes basin are required to be approved by the DNR and to include a cost-effectiveness analysis.

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. 2022AP000718.]

Department of Revenue

Wis. Property Tax Consultants, Inc. v. Wisconsin Department of Revenue (DOR), regarding the process for a rulemaking challenge. The circuit court and the Court of Appeals had 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 Wisconsin Supreme Court reversed, and held that the circuit court’s deferral to the agency and dismissal of the action under the primary jurisdiction doctrine was not appropriate when a claim is purely a question of law rather than a factual or technical question within the agency’s expertise. Accordingly, the Court remanded to the circuit court to determine whether a letter from DOR constituted an unpromulgated rule. [2022 WI 51.]

Department of Safety and Professional Services and Credentialing Boards

2021 Wisconsin Act 121, which establishes a definition for “telehealth” for purposes of occupational credentialing and practice standards. The act specifies that the Department of Safety and Professional Services (DSPS) and the credentialing boards must use the statutory definition in any administrative rules related to telehealth.

2021 Wisconsin Act 123, which ratifies and enters Wisconsin into the Occupational Therapy Licensure Compact. The act specifies that the Occupational Therapists Affiliated Credentialing Board may, by rule, require an individual seeking a compact privilege to meet a jurisprudence requirement if a jurisprudence examination is required for applicants under state law.

2021 Wisconsin Act 130, which creates regulatory oversight and licensing requirements for the practice of naturopathic medicine. The act creates the Naturopathic Medicine Examining Board and grants rulemaking authority to the Board related to license holders’ scope of practice,

professional conduct, character and fitness requirements, certain competency requirements, examination standards, continuing education requirements, and malpractice insurance requirements.

2021 Wisconsin Act 158, which relates to the practice of certain skilled health services by military medical personnel. The act authorizes DSPS to promulgate any rules necessary for the administration of the program, and authorizes the Medical Examining Board to promulgate rules to establish minimum standards for military medical personnel who are supervised under the program.

2021 Wisconsin Act 195, which relates to the regulation, registration, and scope of practice of interior designers. The act creates the registered interior designer section of the Examining Board of Architects, Landscape Architects, Professional Engineers, Professional Land Surveyors, and Registered Interior Designers, and transfers rulemaking authority related to registered interior designers from DSPS to the newly created registered interior design section. The act also requires rulemaking on certain aspects of registered interior designer responsibilities and continuing education requirements.

2021 Wisconsin Act 251, which creates regulatory oversight and licensing requirements for genetic counselors, administered by a Genetic Counselors Affiliated Credentialing Board. The act grants rulemaking authority related to the regulation and licensure of genetic counselors.

2021 Wisconsin Act 253, which directly modifies the Chiropractic Examining Board's administrative rules to eliminate and modify certain provisions relating to sponsors of nutritional counseling education programs.

2021 Wisconsin Act 254, which creates regulatory oversight and credentialing requirements for expanded function dental auxiliaries. The Dentistry Examining Board is required to promulgate rules for the certification and practice of the profession.

Department of Transportation

2021 Wisconsin Act 178, which repeals a program authorizing the registration of certain motor vehicles as a fleet. Under the program repealed by the act, the Department of Transportation was required to promulgate rules establishing procedures for the registration of vehicle fleets and specifying the minimum number of vehicles needed for fleet registration.

Department of Workforce Development

2021 Wisconsin Act 232, which grants explicit rulemaking authority to the Department of Workforce Development to carry out the worker's compensation law.

Wisconsin Elections Commission

Teigen v. Wis. Elections Commission (WEC), regarding the validity of guidance on whether anyone other than the voter may deliver an absentee ballot to the clerk. The case challenged WEC guidance on two grounds: (1) that the documents were unpromulgated administrative rules; and (2) that the documents were an incorrect interpretation of the statute. The Wisconsin Supreme Court held that state law requires an absentee voter to mail or

personally deliver the ballot to the clerk and declared the WEC guidance invalid. As the case was determined under the interpreted language of the statute, the Court did not address whether the documents constituted unpromulgated administrative rules. [2022 WI 62.]

State ex rel. Kormanik v. Brash, regarding proper venue in an action related to the validity of a rule or guidance document. The complaint had alleged that two documents provided by WEC to municipal clerks erroneously interpreted certain election statutes. The question for the Court was whether the subject of the complaint triggered a venue-shifting provision. The Wisconsin Supreme Court held that the lawsuit was related to the validity, or invalidity, of a rule or guidance document, and was accordingly subject to the venue provisions governing the review of an administrative rule or guidance document under s. 227.40, Stats. [2022 WI 67.]

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 2022, 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 2022, 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 **22-050**

AN ORDER to amend HAS 4.03 (1) and (Note), and 6.04 (6) (b); and to create HAS 6.07 (1) (c) and (2) (c), relating to audiometric testing and reciprocal licensure.

Submitted by **HEARING AND SPEECH EXAMINING BOARD**

06-06-2022 RECEIVED BY LEGISLATIVE COUNCIL.

06-14-2022 REPORT SENT TO AGENCY.

MSK:BL

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 22-050

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

a. In the rule summary’s listing of statutory authority, it appears that the board should add a citation to s. 440.09 (5), Stats. Similarly, in the listing of statutes interpreted, it appears that the board should add a citation to s. 440.09, Stats.

b. SECTIONS 3 and 4 of the proposed rule, creating s. HAS 6.07 (1) (c) and (2) (c), specify that a reciprocal license for a service member or spouse may be “renewed indefinitely”. However, s. 440.09 (3), Stats., specifies that a reciprocal credential for a service member or spouse expires on the applicable renewal date (unless the renewal date is within 180 days after a reciprocal license is granted), and that renewal is subject to the fees and requirements that apply for renewing the credential. The board should revise the renewal provision to conform with the statutory requirements.

2. Form, Style and Placement in Administrative Code

a. In the board’s summary for the proposed rule, entries should be inserted for the analysis and supporting documents used to determine the effect on small business, and for the fiscal estimate and economic impact analysis.

b. The rule summary’s listing of the deadline to submit comments should specify the date of the public hearing or how a reader could determine that date, rather than referring only generally to a “date to be determined”.

c. In SECTION 1 of the proposed rule, amending s. HAS 4.03 (1), the 1996 ANSI standard that was incorporated by reference is updated to the 2018 ANSI standard. Materials may, in certain circumstances, be incorporated or updated with the consent of the Attorney General. The rule summary should be revised to include a comment on compliance with that requirement. [s. 227.21 (2) (a), Stats.; and s. 1.14, Manual.]

d. In SECTION 1 of the proposed rule, amending s. HAS 4.03 (1) (Note), the text should be revised to accurately reflect the current text of the Note, and all proposed changes should be

shown with striking and underscoring. Additionally, inserted, underscored material should appear in sequence after stricken material. [s. 1.04 (4) (a), Manual.]

e. In the treatment clause for SECTION 2 of the proposed rule, the reference to “HAS 6.04 (b)” should be changed to “HAS 6.04 (6) (b)”.

f. In SECTION 2 of the proposed rule, which states that it is amending s. HAS 6.04 (6) (b), the text is shown without any striking or underscoring. It appears that the board intended to remove the second sentence (“A certificate of clinical competence in audiology granted by ASHA is considered equivalent.”), in order to remove the option of a certificate of clinical competence as an educational equivalent. If so, the sentence should be shown with strike-throughs.

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

In SECTIONS 3 and 4 of the proposed rule, creating s. HAS 6.07 (1) (c) and (2) (c), it appears that a person seeking the reciprocal license would be required to submit an application form. Accordingly, a note referencing the availability of the form on the website, and a link address, should be inserted following both subs. (1) (c) and (2) (c), to assist those who submit an application under these provisions. [s. 1.12 (3), Manual.]

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

a. In SECTIONS 3 and 4 of the proposed rule, creating s. HAS 6.07 (1) (c) and (2) (c), consider revising the phrasing to consistently use the singular form. As proposed, the phrasing uses both singular and plural forms to refer to the same person, within the same sentence. [s. 1.05 (1) (c), Manual.]

b. In SECTIONS 3 and 4 of the proposed rule, creating s. HAS 6.07 (1) (c) and (2) (c), consider revising the phrase “under the appropriate credential granted by the department or credentialing board” to instead specifically identify practice as a speech-language pathologist in sub. (1) (c) and as an audiologist in sub. (2) (c).

c. In SECTIONS 3 and 4 of the proposed rule, creating s. HAS 6.07 (1) (c) and (2) (c), the meaning of the phrase “renewed indefinitely” is not clear. Does this mean that a person may renew the reciprocal license without limit on the number of renewals, based only on the initial reciprocal credential, but is still subject to fees and a renewal schedule? Or that a person will be issued a reciprocal license that is valid indefinitely and is not subject to a renewal application? If the provision regarding indefinite renewal is revised in response to the statutory authority comment, above, in a manner that resolves these questions, the board may disregard this comment.

d. In SECTION 4 of the proposed rule, creating s. HAS 6.07 (2) (c), it appears that the reference to a speech-language pathology license should be revised to refer to a license to practice audiology, to be consistent with the subject matter of sub. (2).

APPENDIX 2

PROCESSING INSTRUCTIONS TO AGENCY HEADS



Wisconsin Legislative Council

RULES CLEARINGHOUSE

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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, the notice, in triplicate, and the 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.]

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— *SAMPLE* —

CLEARINGHOUSE RULE ASSEMBLY 22-050

AN ORDER to amend HAS 4.03 (1) and (Note), and 6.04 (6) (b); and to create HAS 6.07 (1) (c) and (2) (c), relating to audiometric testing and reciprocal licensure.

Submitted by Hearing and Speech Examining Board

06-06-22	Received by Legislative Council.		
06-14-22	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.