



***2017 ANNUAL REPORT
LEGISLATIVE COUNCIL
RULES CLEARINGHOUSE***

WISCONSIN LEGISLATIVE COUNCIL

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May 2018

State of Wisconsin
JOINT LEGISLATIVE COUNCIL

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Terry C. Anderson
Director

Jessica Karls-Ruplinger
Deputy Director

May 2018

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

This report of the calendar year 2017 activity of the Legislative Council Rules
Clearinghouse is submitted to you pursuant to s. 227.15 (5), Stats.

Sincerely,

A handwritten signature in cursive script that reads "Terry C. Anderson".

Terry C. Anderson
Director

TCA:jal

WISCONSIN LEGISLATIVE COUNCIL STAFF
2017 ANNUAL REPORT ON THE
LEGISLATIVE COUNCIL RULES CLEARINGHOUSE*

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

FUNCTIONS OF THE LEGISLATIVE COUNCIL
RULES CLEARINGHOUSE

REVIEW OF RULES

Legislative review of proposed permanent administrative rules begins with the submission of a rule to the Legislative Council Rules Clearinghouse. Section 227.15, Stats., requires that, prior to any public hearing on a proposed rule or prior to notification of the chief clerk of each house of the Legislature if no hearing is held, an agency must submit the proposed rule to the Legislative Council Rules Clearinghouse for staff review. [See the *Administrative Rules Procedures Manual* (December 2014; updated January 2016), prepared jointly by the Legislative Council and the Legislative Reference Bureau, for more information on drafting, promulgating, and reviewing administrative rules. The Manual is available online at: <http://lc.legis.wisconsin.gov/administrative-rules/>.]

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

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

The Director and Assistant Director of the Rules Clearinghouse assign the rule to a Legislative Council staff member for review and preparation of the statutorily required report. The staff member generally prepares the report within 10 working days and transmits the report to the Director and Assistant Director for final review. When the report on the proposed rule is completed, the staff returns the rule jackets and the Clearinghouse report containing the results of the review to the agency. [See *Appendix 1* for a sample Clearinghouse report.]

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

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

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

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

As part of this review process, staff of the Legislative Council is directed to ensure that procedures for the promulgation of the rule are followed, as required by ch. 227, Stats., and to streamline and simplify the 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 38th *Annual Report* submitted by the Legislative Council and covers the staff's activities during calendar year 2017. It has been preceded by an initial report to the 1979 Legislature, which covered the staff's activities from November 2, 1979 to April 1, 1980 (i.e., from the effective date of Ch. 34, Laws of 1979, which initiated the omnibus rule review process, to the end of Floorperiod IV of the 1979 Session) and annual reports for calendar years 1980 to 2016.

RECORDKEEPING SYSTEM

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

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

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

At the beginning of each biennial session, the administrative rule portion of the *Bulletin of Proceedings* is updated by deletion of all records relating to rules which, in the preceding session, have become effective, have been withdrawn, or have been permanently objected to by law. Also removed from the *Bulletin of Proceedings* annually and withdrawn from the 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 at the Legislative Council's website, www.legis.wisconsin.gov/lc.

2017 ACTIVITIES OF THE RULES CLEARINGHOUSE

REVIEW OF RULES

During 2017, 100 proposed administrative rules, including one expedited rule, were submitted to the Legislative Council by 33 state agencies and boards.

As of December 31, 2017, Clearinghouse reports had been completed on 90 of the 100 proposed rules and 10 rules were in the process of review. In addition to the 90 rule reports completed on 2017 rules, reports were prepared in 2017 on 11 rules received in late 2016. Of the 101 reports completed in 2017, no rule required an extension of the review process by the Director of the Legislative Council. Clearinghouse reports completed in 2017 are summarized below:

Rules Received in 2017	100	
Withdrawn	0	
No report required	0	
Reports pending on December 31, 2017	-10	
<i>Total 2017 Reports Completed in 2017</i>	90	
2017 Reports Completed in 2017		90
2016 Reports Completed in January 2017		11
Total Reports Completed in 2017		101

The table below shows that, from November 2, 1979 (the beginning of the omnibus rule review process) through December 31, 2017, the Clearinghouse has received 6,634 rule submissions and completed reviews on 6,531 proposed rules. Of the total rule submissions, 93 were exempt from the reporting process for various reasons and 10 remained under review at the end of 2017.

<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
Total	6,634	6,531	93

In 2017, rules were received from the following 33 state agencies and boards:

Number of Proposed Rules, by Submitting Agency

Accounting Examining Board	1
Agriculture, Trade and Consumer Protection	6
Board of Nursing	2
Cemetery Board	1
Children and Families	3
Chiropractic Examining Board	4
Controlled Substances Board	15
Corrections	1
Dentistry Examining Board	3
Elections Commission	2
Employee Trust Funds	1
Ethics Commission	4
Examining Board of Architects, Landscape Architects, Professional Engineers, Designers, and Professional Land Surveyors	1
Financial Institutions	1
Funeral Directors Examining Board	2
Health Services	4
Insurance	3
Marriage and Family Therapy, Professional Counseling, and Social Work Examining Board	3
Massage Therapy and Bodywork Therapy Affiliated Credentialing Board	1
Natural Resources	13
Pharmacy Examining Board	1
Physical Therapy Examining Board	1
Podiatry Affiliated Credentialing Board	2
Psychology Examining Board	1
Public Instruction	7
Public Service Commission	1
Radiography Examining Board	1
Real Estate Examining Board	1
Revenue	2
Safety and Professional Services	7
Transportation	1
Veterans Affairs	2
Veterinary Examining Board	2
Total number of rules submitted:	100

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 2017, the Legislative Council staff commented on:

1. The *statutory authority* of proposed administrative rules in 29 reports.
2. The *form, style, and placement* of proposed administrative rules in 66 reports.
3. A *conflict with, or duplication of*, existing rules in 4 reports.
4. The *adequacy of references* of proposed administrative rules to related statutes, rules and forms in 23 reports.
5. *Clarity, grammar, punctuation and use of plain language* in proposed administrative rules in 58 reports.
6. The *potential conflicts* of proposed administrative rules with, and their comparability to, related federal statutes and regulations in 1 report.¹
7. The *permit action deadline requirement* in no reports.

ASSISTING COMMITTEES

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

During 2017, legislative standing committees requested meetings or held hearings, or both, on five proposed rules. Germane modifications were received in the standing committee review of four rules. Legislative standing committees did not request modifications to any other proposed rules during the year. Legislative standing committees did not object to any rules during the year.

Pursuant to 2011 Wisconsin Act 21, all proposed permanent rules must be referred to JCRAR. In 2017, JCRAR requested meetings or held hearings, or both, on eight proposed rules. JCRAR requested and received modifications on three proposed rules. The committee waived its jurisdiction over one proposed rule and did not object to any rules during the year. Two proposed rules were withdrawn from legislative review and one proposed rule was withdrawn prior to legislative review.

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.

The table below reviews legislative committee activity in the review of proposed administrative rules beginning on November 2, 1979 and ending on December 31, 2017.

¹ In addition, the Legislative Council staff has adopted a policy of noting when proposed rules are based on federal "*guidelines*," which do not have the force of law, as opposed to rules based on federal "*regulations*," which do have the force of law and with which the state may have a legal obligation to comply.

LEGISLATIVE REVIEW OF PROPOSED ADMINISTRATIVE RULES (November 2, 1979 Through December 31, 2017)*						
Year	Rules Submitted to Rules Clearinghouse	Rules Subject to Modification	Committee Review Objections	JCRAR Rule Objections	Enacted Laws Following Rule Objections	Enactments by Session Law and Other Description of Bills Introduced Following Rule Objections
11/2/79-80	322	18	5	1	0	No bill introduced, rule withdrawn
1981	252	29	10	4	4	Chapters 20 (SEC. 1561), 26, 31 and 180, Laws of 1981
1982	251	31	4	1	1	1983 Wisconsin Act 94
1983	222	30	5	0	0	—
1984	255	26	2	2	2	1983 Wisconsin Act 310 and 1985 Wisconsin Act 29 (SEC. 826)
1985	213	37	8	3	2	◆ 1985 Wisconsin Act 29 (SECS. 1059r and 2238ng to 2238or) ◆ 1985 Assembly Bill 460, passed and vetoed; override failed
1986	251	30	1	0	0	—
1987	182	30	5	0	0	—
1988	219	38	4	0	0	—
1989	212	22	6	2	0	◆ 1989 Senate Bill 89 and 1989 Assembly Bill 171 (failed to pass) ◆ 1989 Senate Bill 248 and 1989 Assembly Bill 457 (failed to pass)
1990	264	29	2	1	0	◆ 1991 Senate Bill 24 and 1991 Assembly Bill 71 (failed to pass)
1991	199	19	5	1	0	◆ 1991 Senate Bill 442 and 1991 Assembly Bill 840 (failed to pass after rule objected to withdrawn by agency)
1992	225	33	3	2	1	◆ 1993 Wisconsin Act 9 ◆ 1993 Senate Bill 3 and 1993 Assembly Bill 17 (failed to pass)
1993	241	24	1	0	0	—
1994	225	29	3	0	0	—
1995	236	19	0	0	0	—
1996	194	19	1	1	1	◆ 1997 Assembly Bill 5 and 1997 Senate Bill 20 (failed to pass) ◆ 1997 Wisconsin Act 237 (SECS. 320s, 322d and 322e)
1997	158	19	6	0	0	—
1998	208	15	0	0	0	—
1999	170	18	2	1	0	—
2000	189	20	2	1	1	◆ 1999 Wisconsin Act 178
2001	157	14	5	2	0	◆ 2001 Assembly Bill 18 and Senate Bill 2 (failed to pass); ◆ 2001 Assembly Bill 524 and Senate Bill 267 (failed to pass) ◆ 2001 Assembly Bill 697 and Senate Bill 361 (failed to pass)
2002	155	35	2	1	0	◆ 2003 Assembly Bill 25 and Senate Bill 19 (failed to pass)
2003	126	20	2	2	0	◆ 2003 Assembly Bill 253 and Senate Bill 123 (failed to pass)
2004	142	21	4	2	1	◆ 2003 Wisconsin Act 240

LEGISLATIVE REVIEW OF PROPOSED ADMINISTRATIVE RULES (November 2, 1979 Through December 31, 2017)*						
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
2005	122	20	4	3	0	<ul style="list-style-type: none"> ◆ 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	<ul style="list-style-type: none"> ◆ 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	<ul style="list-style-type: none"> ◆ 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
2017	100	7**	0	0	2***	<ul style="list-style-type: none"> ◆ 2017 Wisconsin Act 356 ◆ 2017 Wisconsin Act 357 ◆ 2017 Assembly Bill 31 and Senate Bill 6 (failed to pass; CHR 15-50 withdrawn)
TOTAL	6,634	747	106	38	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 have identified the following 2017 Wisconsin Acts, enacted in 2017, 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:
 - **Act 21**, regarding state regulation of aquaculture and fish farms. The Act directs the Department of Natural Resources (DNR) and the Department of Agriculture, Trade and Consumer Protection (DATCP) to review and promulgate rules regarding genetics and viral hemorrhagic septicemia in fish stocking strategies.
 - **Act 36**, regarding the special needs scholarship and parental choice programs. The Act grants rulemaking authority to the Department of Public Instruction (DPI) regarding the submission of evidence of financial viability for a parental choice program and the preparation of financial audits for both programs.
 - **Act 57**, which makes various changes to the rulemaking process. In particular, the Act requires the Department of Administration (DOA) to review a scope statement for explicit authority to promulgate a rule, directs, with certain exceptions, that an agency may not promulgate a rule for which the economic impact analysis has \$10 million or more in implementation and compliance costs over a two-year period, and creates an alternative process that allows JCRAR to indefinitely object to a proposed rule.
 - **Act 82**, regarding the regulation of barbering and cosmetology. The Act eliminates the cosmetology and barbering manager licenses, and requires rulemaking for certain practices by a licensed barber, cosmetologist, aesthetician, electrologist, or manicurist outside of a licensed establishment.
 - **Act 88**, which makes various changes relating to certification of certified public accountants (CPAs). In particular, the Act creates new rulemaking authority relating to equivalency of military training and continuing education for CPAs, and repeals and recreates certain administrative rules relating to CPA examination and continuing education requirements.
 - **Act 100**, which directs DATCP to promulgate rules establishing a state industrial hemp program.
 - **Act 110**, which makes various changes relating to real estate practice. In particular, the Act allows rulemaking regarding advertising by real estate brokers or salespersons that does not conflict with the statutes.

- **Act 113**, which directs the Department of Safety and Professional Services (DSPS) to promulgate rules establishing a license for appraisal management companies.
- **Act 116**, regarding certain dental practices. In particular, the Act allows the Dental Examining Board to promulgate rules regarding the retention of dental patient health care records.
- **Act 134**, which makes a number of changes to laws relating to nonferrous metallic mineral prospecting and mining. In particular, the Act eliminates special Wisconsin Administrative Code provisions applicable to impacts to wetlands caused by a nonferrous mining operation. Under the Act, generally applicable wetlands requirements apply to a mining site. Additionally, the Act provides DNR with rulemaking authority relating to bulk sampling.
- Acts that directly modify the Wisconsin Administrative Code:
 - **Act 18**, regarding various changes to pharmacy practice law. In particular, the Act repeals a requirement regarding display of licenses, removes an address requirement from prescription orders, modifies the definition of “long term care facility” in the Wisconsin Administrative Code, and repeals other provisions of the Wisconsin Administrative Code relating to pharmacy practice.
 - **Act 49**, which repeals a rule of the Department of Transportation (DOT) relating to the purchase of school buses for school transportation.
 - **Act 92**, which repeals the DPI’s alternative education grant program and the administrative rules related to administration of the program.
 - **Act 93**, which modifies DPI rules relating to administration of grant programs for four-year-old kindergarten, alcohol and other drug abuse, peer review and mentoring, and tribal language revitalization.
 - **Act 101**, which modifies rules of the Department of Health Services (DHS) to allow attending physicians to delegate to a certified or licensed dietitian the prescribing of a therapeutic or modified diet.
 - **Act 103**, which repeals two obsolete chapters of the Wisconsin Administrative Code: (1) the Wisconsin Arts Board chapter on the percent for art program; and (2) the Department of Tourism chapter on the heritage tourism pilot program.
- Acts that limit or prohibit rulemaking on a specific subject matter:
 - **Act 41**, which limits the amount of time that a DNR rule may prohibit deer feeding following a positive test for certain diseases.
 - **Act 67**, regarding various changes to zoning and land use. In particular, the Act limits rulemaking authority regarding certain actions relating to substandard lots and prohibits an agency from requiring lots to be merged.
 - **Act 81**, which prohibits DSPS and the Cosmetology Examining Board from imposing continuing education requirements as a condition of license renewal for a licensed barber, cosmetologist, aesthetician, electrologist, or manicurist.

- Other Acts that affect agency authority to promulgate rules:
 - **Act 13**, which creates a statutory framework for the operation of personal delivery devices (PDDs). With respect to rulemaking authority, the Act authorizes the operation of PDDs on sidewalks and crosswalks, unless prohibited by a local government ordinance or by rules promulgated by DOT.
 - **Act 16**, which authorizes domestic insurance corporations to provide surplus lines insurance in Wisconsin, subject to certain requirements. With respect to rulemaking authority, the Act authorizes the Office of the Commissioner of Insurance to promulgate rules relating to the oversight of domestic surplus lines insurers, including extension of existing rulemaking authority regarding trade practices and solicitation to such insurers.
 - **Act 34**, which expands DHS's comprehensive and coordinated programs for treatment of alcoholics, and related rulemaking authority, to also apply to persons who have drug dependence.
 - **Act 39**, which specifies that a scope statement expires 30 months after its publication in the Administrative Register, and that an agency must submit a proposed rule to the Legislature before the scope statement expires.
 - **Act 108**, regarding various changes to the rulemaking process. In particular, the Act creates an expedited process for the repeal of unauthorized rules, authorizes JCRAR to request retrospective economic impact analyses, and requires agencies and the Legislative Reference Bureau to submit reports regarding changes to rulemaking authority as a result of future legislative enactments.
 - **Act 135**, which ratifies Wisconsin's participation in the Enhanced Nurse Licensure Compact. With regard to rulemaking authority, the Act specifies that rules created the Interstate Commission of Nurse Licensure Compact Administrators will be immediately binding on party states, and will not need to be separately promulgated by the state's nurse licensing board.

In addition to the Acts listed above, **2017 Wisconsin Act 59**, the 2017-19 Biennial Budget Act, contains numerous 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 59, available at: https://docs.legis.wisconsin.gov/misc/lfb/budget/2017_19_biennial_budget/033_comparative_summary_of_provisions_2017_act_59_entire_document.pdf.

Legislative Council staff also conducted a case law review of judicial decisions published in 2017. It was determined that no decisions issued in 2017 eliminated or significantly changed the rulemaking authority of an agency.

INTERNET ACCESS

In 2001, the Legislature, through its service agencies, began providing electronic access to all proposed administrative rules submitted to the Clearinghouse. The system mirrors the process already in place for legislative proposals. That is, interested persons are able to use the

Internet to search for proposed rules directly or to link to them from the Legislature’s Bulletin of Proceedings, and review a full “rule history” for each proposed rule. The site holds the initial version of the proposed rule, the Clearinghouse report on the proposed rule, all modified versions of the proposed rule submitted to the Legislature, and the final agency report to the Legislature. Each rule history page also includes the economic impact analysis and fiscal estimate prepared by the agency, as well as any report prepared by the Small Business Regulatory Review Board.

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

ASSISTING STATE AGENCIES

In 2017, 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 2017, 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

Terry C. Anderson
Legislative Council Director

Margit S. Kelley
Clearinghouse Assistant Director

Jessica Karls-Ruplinger
Legislative Council Deputy Director

CLEARINGHOUSE REPORT TO AGENCY

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

CLEARINGHOUSE RULE **17-016**

AN ORDER to repeal chs. SPS 110 to 116; and to repeal and recreate ch. SPS 192, relating to unarmed combat sports.

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

03-16-2017 RECEIVED BY LEGISLATIVE COUNCIL.

04-13-2017 REPORT SENT TO AGENCY.

MSK:AB

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

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

- 1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]
Comment Attached YES NO

- 2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]
Comment Attached YES NO

- 3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]
Comment Attached YES NO

- 4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]
Comment Attached YES NO

- 5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]
Comment Attached YES NO

- 6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]
Comment Attached YES NO

- 7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]
Comment Attached YES NO



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CLEARINGHOUSE RULE 17-016

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

The statutes define an amateur boxing or amateur unarmed combat sports contest to mean a contest or exhibition in which none of the contestants are compensated or paid. [s. 444.01 (1) and (1g), Stats.] The department should explain the authority under which the proposed rule allows an amateur contestant to receive a purse, article, or item that is up to \$50 in value for participating in or winning a bout or exhibit. [ss. SPS 192.02 (2) and 192.14 (1) (f) 4.]

2. Form, Style and Placement in Administrative Code

a. Subchapters IV through VII of ch. SPS 192, which regulate conduct at events, appear to have overlapping requirements that in some cases contain identical language. For example, compare s. SPS 192.59 with s. SPS 192.77, and s. SPS 192.29 (2) with s. SPS 192.59 (6). The department should consider whether the rule could be reorganized to avoid duplication. One option could be to create a subchapter that identifies general requirements common to all unarmed combat sports, followed by separate subchapters that identify more specific additional requirements for each sport. Another option could be to incorporate requirements that appear in earlier sections of the rule by reference, rather than duplicating the language. For example, s. SPS 192.59 (6) could incorporate the requirements in s. SPS 192.29 (2) by reference.

b. The department should review the rule to ensure that the rule’s subunits are formatted correctly. For example, the subsections to ss. SPS 192.12 and 192.13 are identified as (a) and (b) rather than (1) and (2). [s. 1.03 (1), Manual.]

c. The terms “knock-out” and “technical knock-out” are not abbreviated consistently throughout the rule. These terms should be modified for consistency in ss. SPS 192.53, 192.72, and 192.89. The department could also consider whether the acronyms are necessary to improve

readability. [s. 1.01 (8), Manual.] In addition, the department could review the rule generally to ensure consistency in language between the existing code chapters that are being combined.

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

a. The rule defines the terms “mixed martial arts” and “unarmed combat”, which are both essentially already defined in statute. The department should consider using the statutorily defined terminology, if possible. [ss. 1.01 (7) (d) and 1.08 (1), Manual.]

b. In s. SPS 192.02 (18), what are “comparable” rules?

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

a. The department should review s. SPS 192.25 (1) for clarity. What does it mean for a boxer to be “approved” under s. SPS 192.26?

b. The department should consider whether ss. SPS 192.29 (2) and 192.59 (2), which are lengthy, would be clearer if separated into multiple paragraphs. The same could be considered for other parts of the rule that may be equally lengthy.

c. Section SPS 192.12 (b) [sic] should specify the licensing term that applies to each type, or should identify factors that would cause an individual license to be a particular term.

d. The department could consider rewording s. SPS 192.14 (1) to state: “A licensed promoter or club shall obtain a permit from the department prior to conducting an unarmed combat sports event.”. Other rule sections that use this same language could also be reworded in the same way.

e. The department should consider reorganizing s. SPS 192.14 (1). The paragraphs in this section identify a list of information that must be included with an application for a permit to conduct an unarmed combat sports event. However, par. (d) also contains requirements for the minimum number of rounds for each event, and par. (f) 4. limits a proposed purse to \$50. These requirements should not be included within the list of permit application requirements, and should be placed elsewhere in the rule.

f. Section SPS 192.14 (5) should specify what the result is if the commissioner or department representative determines that contestants are not evenly and fairly matched.

g. In s. SPS 192.16 (2), the word “a” should be inserted before “violation”.

h. The note to s. SPS 192.27 (11) could be identified as an “Example” rather than a “Note”, since it provides examples of different weight classes. The department could review the rule to determine whether other “Notes” could be similarly relabeled. [See s. 1.09 (1), Manual.]

i. In ss. SPS 192.59 (7) and 192.77 (7), it appears that the category for “unsportsmanlike conduct” should be elaborated as “any other unsportsmanlike conduct as determined by the referee”. Also, consider revising categories that are described in the plural to the singular, if it is intended that a single described action is a foul. For example, is “an attack to the throat” a foul, or are multiple “attacks to the throat” needed to be considered a foul? [s. 1.01 (9) (e), Manual.]

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, 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.]

