



***2019 ANNUAL REPORT
LEGISLATIVE COUNCIL
RULES CLEARINGHOUSE***

WISCONSIN LEGISLATIVE COUNCIL

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

May 2020

Wisconsin Legislative Council

Anne Sappenfield
Director



May 2020

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

This report of the calendar year 2019 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
2019 ANNUAL REPORT ON THE
LEGISLATIVE COUNCIL RULES CLEARINGHOUSE*

CONTENTS

	<u>Page</u>
<i>FUNCTIONS OF THE LEGISLATIVE COUNCIL RULES CLEARINGHOUSE</i>	3
<i>Review of Rules</i>	3
<i>Other Related Responsibilities</i>	4
<i>Recordkeeping System</i>	5
<i>2019 ACTIVITIES OF THE RULES CLEARINGHOUSE</i>	7
<i>Review of Rules</i>	7
<i>Assisting Committees</i>	10
<i>Notice of Changes in Rulemaking Authority</i>	13
<i>Internet Access</i>	16
<i>Assisting State Agencies</i>	16
<i>Public Liaison</i>	16
<i>APPENDIX 1: SAMPLE CLEARINGHOUSE REPORT</i>	17
<i>APPENDIX 2: PROCESSING INSTRUCTIONS TO AGENCY HEADS</i>	23

* 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 40th annual report submitted by the Legislative Council and covers the staff's activities during calendar year 2019. 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 2018.

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 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 on the Legislature's page for administrative rules, <https://docs.legis.wisconsin.gov/code/>.

2019 ACTIVITIES OF THE RULES CLEARINGHOUSE

REVIEW OF RULES

During 2019, 166 proposed administrative rules, including 32 expedited rules¹, were submitted to the Legislative Council by 37 state agencies and boards.

As of December 31, 2019, Clearinghouse reports had been completed on 153 of the 166 proposed rules and 13 rules were in the process of review. In addition to the 153 rule reports completed on 2019 rules, reports were prepared in 2019 on 16 rules received in late 2018. Of the 169 reports completed in 2019, no rule required an extension of the review process by the Director of the Legislative Council. Clearinghouse reports completed in 2019 are summarized below:

Rules Received in 2019	166	
Withdrawn	0	
No report required	0	
Reports pending on December 31, 2019	-13	
<i>Total 2019 Reports Completed in 2019</i>	153	
2019 Reports Completed in 2019		153
2018 Reports Completed in January 2019		16
Total Reports Completed in 2019		169

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

The table below shows that, from November 2, 1979 (the beginning of the omnibus rule review process) through December 31, 2019, the Clearinghouse has received 6,905 rule submissions and completed reviews on 6,799 proposed rules. Of the total rule submissions, 93 were exempt from the reporting process for various reasons and 13 remained under review at the end of 2019.

<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
Total	6,905	6,799	93

In 2019, rules were received from the following 37 state agencies and boards:

Number of Proposed Rules, by Submitting Agency

Accounting Examining Board	2
Administration	2
Agriculture, Trade and Consumer Protection	6
Athletic Trainers Affiliated Credentialing Board	1
Board of Nursing	1
Cemetery Board	3
Children and Families	3
Chiropractic Examining Board	3
Controlled Substances Board	5
Corrections	1
Dentistry Examining Board	1
Employee Trust Funds	2
Employment Relations Commission	2
Ethics Commission	1
Examining Board of Architects, Landscape Architects, Professional Engineers, Designers, and Professional Land Surveyors	4
Financial Institutions	3
Funeral Directors Examining Board	3
Health Services	14
Insurance	6
Justice	3
Marriage and Family Therapy, Professional Counseling, and Social Work Examining Board	5
Massage Therapy and Bodywork Therapy Affiliated Credentialing Board	2
Natural Resources	41
Occupational Therapists Affiliated Credentialing Board	1
Optometry Examining Board	3
Pharmacy Examining Board	6
Psychology Examining Board	1
Public Instruction	10
Public Service Commission	1
Radiography Examining Board	1
Railroads	1
Real Estate Examining Board	1
Revenue	8
Safety and Professional Services	8
Transportation	8
Veterans Affairs	2
Workforce Development	1
Total number of rules submitted:	166

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 2019, the Legislative Council staff commented on:

1. The *statutory authority* of proposed administrative rules in 62 reports.
2. The *form, style, and placement* of proposed administrative rules in 125 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 49 reports.
5. *Clarity, grammar, punctuation and use of plain language* in proposed administrative rules in 93 reports.
6. The *potential conflicts* of proposed administrative rules with, and their comparability to, related federal statutes and regulations in 2 reports.²
7. The *permit action deadline requirement* in no reports.

ASSISTING COMMITTEES

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

During 2019, legislative standing committees requested meetings or held hearings, or both, on 20 proposed rules. Modifications were requested and received by standing committees on two rules, 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. 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 2019, JCRAR requested meetings or held hearings, or both, on 21 proposed rules. During JCRAR review, four rules were recalled and resubmitted with germane modifications for subsequent legislative review. The committee did not waive its jurisdiction or object to any rules during the year. Three proposed rules, all petitions for expedited repeal, were withdrawn from 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.

² In addition, the Legislative Council staff has adopted a policy of noting when proposed rules are based on federal "*guidelines*," which do not have the force of law, as opposed to rules based on federal "*regulations*," which do have the force of law and with which the state may have a legal obligation to comply.

The table below reviews legislative committee activity in the review of proposed administrative rules beginning on November 2, 1979 and ending on December 31, 2019.

LEGISLATIVE REVIEW OF PROPOSED ADMINISTRATIVE RULES (November 2, 1979 Through December 31, 2018)*						
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, 2018)*						
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, 2018)*						
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	—
TOTAL	6,905	762	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 identified the following 2019 Wisconsin Acts, enacted in 2019, that were determined to relate to changes in agency rulemaking authority, categorized as follows:

- Acts that grant, eliminate, or require the exercise of rulemaking authority, as identified in the act's relating clause:
 - **2019 Wisconsin Act 11**, which relates to the operation of electric scooters, and may require rulemaking updates to reflect the treatment of electric scooters throughout various chapters of the administrative code.
 - **2019 Wisconsin Act 12**, which imposes requirements on insurers, pharmacy benefit managers, and utilization review organizations pertaining to prescription drug step therapy protocols. The act requires the exercise of new rulemaking authority by the Office of the Commissioner of Insurance to implement or enforce these requirements.
 - **2019 Wisconsin Act 17**, which modifies licensure requirements for sign language interpreters and authorizes the Department of Safety and Professional Services to promulgate rules regulating various aspects of the practice of sign language interpreting.
 - **2019 Wisconsin Act 26**, which relates to grants for next generation 911 and requires the Department of Military Affairs to promulgate rules relating to the implementation of a new grant program for 911 public safety answering points.

- **2019 Wisconsin Act 34**, which regulates electric bicycles and their operation. The act authorizes the Department of Natural Resources (DNR) to promulgate rules prohibiting certain operation of electric bicycles on bikeways under the department's jurisdiction.
- **2019 Wisconsin Act 43**, which relates to teaching licenses based on reciprocity. The act provides that a person may receive a teaching license issued by the Department of Public Instruction (DPI) based on reciprocity if the person taught for two semesters, as defined by DPI rule, under certain conditions. The act also requires DPI to issue a lifetime license to certain individuals who complete six semesters of teaching experience, as defined by DPI rule.
- **2019 Wisconsin Act 56**, which requires coverage of services under Medical Assistance (MA) provided through telehealth and other technologies. The act grants new rulemaking authority to the Department of Health Services (DHS) to implement requirements on the MA program relating to services provided through telehealth.
- **2019 Wisconsin Act 59**, which relates to wetland mitigation banking and requires DNR to promulgate rules that address financial assurance requirements for the construction of mitigation projects by mitigation banks. The act exempts those rules from certain rulemaking requirements.
- **2019 Wisconsin Act 68**, which grants rulemaking authority to the Department of Agriculture, Trade and Consumer Protection, and requires the exercise of that authority, with regard to the state's hemp program.
- Acts that directly modify the Wisconsin Administrative Code:
 - **2019 Wisconsin Act 1**, which deletes the phrases "mental retardation," "mentally retarded," and other similar phrases throughout the state's administrative code and replaces these phrases with the term "intellectual disability." Phrases replaced with the term "intellectual disability" are located in administrative code provisions promulgated by DHS, the Department of Children and Families (DCF), the Public Service Commission, DSPS, and the Department of Workforce Development. The act also amends the definition of "intellectual disability" that is used in the administrative code promulgated by DHS for purposes of the Community Options Program and MA home and community-based services waiver.
- Acts that limit or prohibit rulemaking on a specific subject matter:
 - **2019 Wisconsin Act 52**, which applies the same treatment to CS gel as is applied to pepper spray under current law, in that the act prohibits the use, sale, and possession of CS gel in certain circumstances. Wisconsin law prohibits the Department of Justice from promulgating or enforcing any rule that regulates a device or container containing pepper spray, and the act includes devices or containers containing CS gel under that prohibition.

- Other acts that affect agency authority to promulgate rules:
 - **2019 Wisconsin Act 8**, which relates to facilities for holding juveniles in secure custody. The act requires the Department of Corrections (DOC) to include certain items in its administrative rules governing the design and construction of secure residential care centers for children and youth (SRCCCY), and its rules governing services and programming with these facilities. Act 8 requires DOC rules to allow SRCCCYs to use less restrictive physical security barriers than other DOC facilities, requires DOC to grant a variance from the design and construction rules if specific conditions are met, and mandates that DOC rules require implementation of trauma-informed principles and evidence-based practices at a SRCCCY.

In addition to the Acts listed above, **2019 Wisconsin Act 9**, the 2019-21 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 9, available at: http://docs.legis.wisconsin.gov/misc/lfb/budget/2019_21_biennial_budget/202_comparative_summary_of_provisions_2019_act_9_august_2019_entire_document.pdf.

Legislative Council staff also conducted a case law review of judicial decisions published in 2019. Decisions related to the rulemaking authority of an agency include the following:

- ***Koschkee v. Taylor***, regarding gubernatorial approval of certain stages of rulemaking. The Wisconsin Supreme Court overruled one of its prior decisions, *Coyne v. Walker*, in concluding that the requirement that each agency submit for the Governor's approval a statement of scope and a final draft of a proposed rule is constitutional as applied to the Superintendent of Public Instruction and DPI. [2019 WI 76.]
- ***Papa v. Wisconsin Department of Health Services***, regarding policy-making authority. The Wisconsin Court of Appeals reversed a decision from the Waukesha County Circuit Court, which was previously described in the 2016 Annual Report of the Legislative Council Rules Clearinghouse. The Wisconsin Court of Appeals held that the DHS policy of recouping payments for noncompliance with Medicaid program requirements does not have the force of law and therefore does not constitute an administrative rule. [2019 WI App 48.] The Wisconsin Supreme Court granted a petition for review. [Case No. 2016AP2082.]
- ***Lamar Central Outdoor, LLC v. Wisconsin Department of Transportation***, regarding rulemaking to change an agency's interpretation of a statute. The Wisconsin Supreme Court held that DOT was required to promulgate a rule in order to effectuate a change in its interpretation of an ambiguous statute. The department could not implement a new interpretation in the decision of a contested case or in a decision upon or disposition of a particular matter as applied to a specific set of facts. [2019 WI 109.]

In addition to the judicial decisions listed above, the Wisconsin Supreme Court accepted certification in 2019 directly from the Court of Appeals in two companion cases, both titled

Clean Wisconsin, Inc. v. DNR. In those cases, the Supreme Court has agreed to address the application of s. 227.10 (2m), Stats., in relation to the scope of DNR’s regulatory permit approval authority for certain water permits. The cases are pending. [Case No. 2018AP59 and consolidated Case Nos. 2016AP1688 and 2016AP2502.]

INTERNET ACCESS

In 2001, the Legislature, through its service agencies, began providing electronic access to all proposed administrative rules submitted to the Clearinghouse. The system mirrors the process already in place for legislative proposals. That is, interested persons are able to use the Internet to search for proposed rules directly or to link to them from the Legislature’s Bulletin of Proceedings, and review a full “rule history” for each proposed rule. The site holds the initial version of the proposed rule, the Clearinghouse report on the proposed rule, all modified versions of the proposed rule submitted to the Legislature, and the final agency report to the Legislature. Each rule history page also includes the economic impact analysis and fiscal estimate prepared by the agency, as well as any report prepared by the Small Business Regulatory Review Board.

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

ASSISTING STATE AGENCIES

In 2019, 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 2019, the Legislative Council staff received a number of requests from the public for information about aspects of the rulemaking process or the status of specific rules.

SG:MSK:jal

APPENDIX 1
SAMPLE CLEARINGHOUSE REPORT



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Scott Grosz
Clearinghouse Director

Anne Sappenfield
Legislative Council Director

Margit S. Kelley
Clearinghouse Assistant Director

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 **19-070**

AN ORDER to repeal DCF 152.03 (16) (Note), (17) (Note), and (23), 152.06 (5) (d), 152.10 (5), and 152.12 (2) (Note); and to amend DCF 152.03 (5), 152.06 (5) (b) and (c), and 152.12 (1) (a) (intro.) and (2), relating to the administrative enforcement of interest on child support.

Submitted by **DEPARTMENT OF CHILDREN AND FAMILIES**

05-08-2019 RECEIVED BY LEGISLATIVE COUNCIL.

06-05-2019 REPORT SENT TO AGENCY.

MSK:AO

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 S. Kelley
Clearinghouse Assistant Director

Jessica Karls-Ruplinger
Legislative Council Deputy Director

CLEARINGHOUSE RULE 19-070

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated December 2014.]

1. Statutory Authority

a. The department could consider the following changes to the description of statutory authority for the proposed order:

- (1) Cite more generally to s. 49.858 (2), Stats., to encompass the authority for rules relating to payments, as proposed in SECTION 3 of the proposed order.
- (2) Add a reference to s. 49.853 (2), Stats., which provides authority for the changes in SECTION 6 of the proposed order.
- (3) Remove the reference to s. 49.854 (1) (f), Stats., as that paragraph does not authorize promulgation. However, that provision could be referenced in the listing of statutes interpreted.

b. In the listing of statutes interpreted, the department could consider adding references to ss. 49.853 (2), 49.857 (1) (g), and 767.511 (1), Stats.

2. Form, Style and Placement in Administrative Code

a. The department could consider whether, in light of the text stricken from s. DCF 152.06 (5) (c) in SECTION 3, the remaining text is relevant to the child support lien docket. If it is relevant, then the department should consider clarifying its relevance. If it is not, the department could consider repealing the entire paragraph to avoid unnecessary repetition of statutory language, or placing the provision elsewhere in DCF’s administrative code.

b. The department should consider repealing s. DCF 152.06 (5) (d) (Note) in light of the repeal of s. DCF 152.06 (5) (d) in SECTION 4. If repeal occurs, the treatment and introductory clauses should be revised accordingly.

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

a. In the explanation of agency authority, the reference in the second paragraph to “s. 48.857 (1) (g), Stats.” should be revised to “s. 49.857 (1) (g), Stats.”.

b. In the summary of the proposed rule, the department could reference s. 767.511 (1), Stats., which requires that support amounts be expressed as a fixed sum, rather than a percentage, subject to certain exceptions. Also, the reference to “s. 49.852 (2), Stats.” should be revised to “s. 49.853 (2), Stats.”.

c. In the summary of factual data and analytical methodologies, the statutory reference in the third paragraph should read “s. 49.854 (1) (f) 5., Stats.”.

d. When summarizing the related federal requirements, the department could consider more precise citations to the specific federal requirements that are referenced by citing 42 U.S.C. s. 666 (a) (4) and 45 C.F.R. s. 302.70 (a) (4).

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

a. In the summary of the proposed rule, the department should expand on how the proposed rule clarifies lien payment procedures to enable the reader to understand the content of the rule and the changes made in SECTIONS 3 and 4. [s. 1.02 (2) (b), Manual.]

b. In s. DCF 152.06 (5) (b) under SECTION 3, the department should clarify the appropriate sum of the payment amount. For example, the department could state “... and be in an amount equal to the total lien amount on the child support lien docket plus the monthly amount due” or other, similar language that matches the department’s intent.

c. In SECTION 6 of the proposed rule, the department could consider replacing “a designee” with “its designee” to clarify that the department possesses the authority to name the designee.

APPENDIX 2
PROCESSING INSTRUCTIONS TO AGENCY HEADS



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Scott Grosz
Clearinghouse Director

Anne Sappenfield
Legislative Council Director

Margit S. Kelley
Clearinghouse Assistant Director

PROCESSING INSTRUCTIONS TO AGENCY HEADS

[ENCLOSED ARE THE SENATE AND ASSEMBLY RULE JACKETS CONTAINING THE LEGISLATIVE COUNCIL CLEARINGHOUSE REPORT. AN ADDITIONAL COPY OF THE CLEARINGHOUSE REPORT IS ENCLOSED FOR YOUR FILES.]

PLEASE NOTE: Your agency must complete the following steps in the legislative process of administrative rule review:

1. On the appropriate line on the face of both clearinghouse rule jackets, enter, in column 1, the appropriate date and, in column 2, "Report Received by Agency."
2. On the appropriate line or lines on the face of both clearinghouse rule jackets, enter, in column 1, the appropriate date or dates and, in column 2, "Public Hearing Held" OR "Public Hearing Not Required."
3. Enclose in both clearinghouse rule jackets, in triplicate, the notice and report required by s. 227.19 (2) and (3), Stats. [The report includes the rule in final draft form.]
4. Notify the presiding officer of the Senate and Assembly that the rule is in final draft form by hand delivering the Senate clearinghouse rule jacket to the Senate Chief Clerk and the Assembly clearinghouse rule jacket to the Assembly Chief Clerk. At the time of this submission, on the appropriate line on the face of the clearinghouse rule jacket, each Chief Clerk will enter, in column 1, the appropriate date and, in column 2, "Report Received from Agency." Each clearinghouse rule jacket will be promptly delivered to each presiding officer for referral of the notice and report to a standing committee in each house.
5. If the agency does not proceed with the rulemaking process on this rule, on the appropriate line on the face of both clearinghouse rule jackets, enter, in column 1, the appropriate date and, in column 2, "Rule Draft Withdrawn by Agency" and hand deliver the Senate clearinghouse rule jacket to the Senate Chief Clerk and the Assembly clearinghouse rule jacket to the Assembly Chief Clerk.

FOR YOUR INFORMATION: A record of all actions taken on administrative rules is contained in the Bulletin of Proceedings of the Wisconsin Legislature. The clearinghouse rule jackets will be retained by the Legislature as a permanent record.

[See reverse side for jacket sample.]

— **SAMPLE** —

CLEARINGHOUSE RULE ASSEMBLY 19-070

AN ORDER to repeal DCF 152.03 (16) (Note), (17) (Note), and (23), 152.06 (5) (d), 152.10 (5), and 152.12 (2) (Note); and to amend DCF 152.03 (5), 152.06 (5) (b) and (c), and 152.12 (1) (a) (intro.) and (2), relating to the administrative enforcement of interest on child support.

Submitted by Department of Children and Families

05-08-19	Received by Legislative Council.		
06-05-19	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.