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# Wisconsin Legislative Council

## RULES CLEARINGHOUSE

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# LEGISLATIVE COUNCIL RULES CLEARINGHOUSE: 2023 ANNUAL REPORT

## WISCONSIN LEGISLATIVE COUNCIL

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**May 2024**

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# Wisconsin Legislative Council

Anne Sappenfield  
Director



May 2024

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

This report of the calendar year 2023 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**  
**2023 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](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/>.

## 2023 ACTIVITIES OF THE RULES CLEARINGHOUSE

### REVIEW OF RULES

During 2023, 75 proposed administrative rules, including two expedited rules<sup>1</sup>, were submitted to the Legislative Council by 30 state agencies and boards.

As of December 31, 2023, Clearinghouse reports had been completed on 69 of the 75 proposed rules and 6 were in the process of review. Of the 69 reports completed in 2023, no rule required an extension of the review process by the Director of the Legislative Council. Clearinghouse reports completed in 2023 are summarized below:

Rules Received in 2023	75	
Reports pending on December 31, 2023	-6	
<i>Total 2023 Reports Completed in 2023</i>	69	
2023 Reports Completed in 2023		69
2022 Reports Completed in January 2023		0
<b>Total Reports Completed in 2023</b>		<b>69</b>

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<sup>1</sup>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, 2023, the Clearinghouse has received 7,267 rule submissions and completed reviews on 7,168 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
2023	75	69	0
<b>Total</b>	<b>7,267</b>	<b>7,168</b>	<b>93</b>



In 2023, rules were received from the following 30 state agencies and boards:

***Number of Proposed Rules, by Submitting Agency***

Agriculture, Trade and Consumer Protection	3
Athletic Trainers Affiliated Credentialing Board	1
Board of Nursing	1
Children and Families	3
Controlled Substances Board	6
Corrections	1
Dentistry Examining Board	3
Employee Trust Funds	1
Financial Institutions	3
Genetic Counselors Affiliated Credentialing Board	1
Health Services	5
Insurance	1
Justice	1
Marriage and Family Therapy, Professional Counseling, and Social Work Examining Board	1
Medical Examining Board	1
Military Affairs	2
Natural Resources	17
Naturopathic Medicine Examining Board	1
Nursing Home Administrator Examining Board	1
Optometry Examining Board	1
Pharmacy Examining Board	4
Psychology Examining Board	1
Public Instruction	1
Public Service Commission	1
Real Estate Examining Board	1
Revenue	2
Safety and Professional Services	4
Transportation	4
Veterans Affairs	1
Workforce Development	2
<b>Total number of rules submitted:</b>	<b>75</b>

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 2023, the Legislative Council staff commented on:

1. The **statutory authority** of proposed administrative rules in 31 reports.
2. The **form, style, and placement** of proposed administrative rules in 55 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 31 reports.

5. **Clarity, grammar, punctuation and use of plain language** in proposed administrative rules in 50 reports.

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

7. The **permit action deadline requirement** in no reports.

### **ASSISTING COMMITTEES**

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

During 2023, legislative standing committees requested meetings or held hearings, or both, on 36 proposed rules. Modifications were requested and received by standing committees on two rules, and germane modifications were received in the standing committee review on six 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 waived their jurisdiction on 11 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 11 proposed rules. JCRAR concurred in the standing committee objection, described above, resulting in indefinite objection to Clearinghouse Rule 23-007. The committee did not waive its jurisdiction over any rules during the year. During legislative review, five rules were recalled and resubmitted with germane modifications for subsequent review. Additionally, 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, 2023.

LEGISLATIVE REVIEW OF PROPOSED ADMINISTRATIVE RULES (November 2, 1979 Through December 31, 2023)*						
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, 2023)*						
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, 2023)*						
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 <sup>†</sup>	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	—
2023	75	13**	1	1 <sup>†</sup>	0	In 2023, JCRAR indefinitely objected to CHR 23-007. Following indefinite objection, and pursuant to s. 227.19 (5) (em), Stats., any member of the Legislature may introduce a bill to authorize promulgation of the proposed rule. To date, no such bills have been introduced.
TOTAL	7,267	810	113	45	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.

<sup>†</sup>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 2023 Wisconsin acts, enacted in 2023, and court decisions, that were determined to relate to changes in agency rulemaking authority, categorized as follows:

- Six acts that grant, eliminate, or require the exercise of rulemaking authority, as identified in the act’s relating clause. [2023 Wisconsin Acts 12, 20, 56, 73, 82, and 86.]
- Six acts that directly modify the Wisconsin Administrative Code. [2023 Wisconsin Acts 6, 19, 28, 46, 71, and 73.]
- Three acts that limit or prohibit rulemaking on a specific subject matter. [2023 Wisconsin Acts 59, 76, and 80.]
- The Biennial Budget Act, which otherwise affects agency authority to promulgate rules. [2023 Wisconsin Act 19.]
- Three Court of Appeals decisions issued in 2023, plus one Court of Appeals decision issued in March 2024 on a previously cited circuit court decision.

The 2023 acts, enacted in 2023, and court decisions identified by the Legislative Council staff that significantly change the rulemaking authority of an agency are briefly described below, by agency.

### **Board of Regents of the University of Wisconsin System**

2023 Wisconsin Act 59, which specifies that individuals with certain disability plates or special identification cards are exempt from any administrative rule promulgated by the University of Wisconsin System that imposes parking time limits of 30 minutes or more on campus.

### **Department of Health Services**

2023 Wisconsin Act 12, which indirectly and partially repeals a Department of Health Services (DHS) administrative rule that had required emergency medical service personnel of all practice levels to be registered with the National Registry of Emergency Medical Technicians (NREMT), and to either be certified by NREMT or have completed an assessment exam through NREMT, by prohibiting DHS from requiring a NREMT registration and assessment exam for applicants for an emergency medical responder credential.

2023 Wisconsin Act 71, which directly modifies DHS administrative rules to allow SeniorCare participants to purchase 100-day supplies of prescription drugs.

*Moss v. DHS*, regarding rule promulgation. The Court of Appeals held that the BadgerCare Plus Eligibility Handbook only explained the application of a statutory provision, and did not have its own independent “force of law.” The plaintiff had argued that the handbook constitutes a “rule” and should have been promulgated in accordance with administrative rulemaking procedures. The court agreed that the handbook was not a controlling authority, but found that the handbook only explained the application of the existing statutes on the issue. [Appeal No. 2021AP1433.]

## **Department of Natural Resources**

2023 Wisconsin Act 6, which directly repeals a chapter of Department of Natural Resources (DNR) rules (ch. NR 167), which had implemented the land recycling loan program that had not been utilized since 2008. The act retains DNR's rule promulgation authority with respect to the program by authorizing rules necessary to implement existing loans authorized under the 2021 statutes.

*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 appealed the decision and the case was pending before the Wisconsin Court of Appeals throughout 2023. On March 6, 2024, the Court of Appeals issued an opinion affirming the circuit court decision. [2024 WI App 18.]

## **Department of Public Instruction**

2023 Wisconsin Act 12, which directs the Department of Public Instruction (DPI) to promulgate rules to administer a reporting requirement created by the act, under which high schools must report statistics regarding certain incidents involving law enforcement.

2023 Wisconsin Act 20, which authorizes DPI to promulgate rules for selecting and approving a fundamental skills screening assessment and a universal screening assessment, and a list of approved diagnostic assessments, and for establishing a process for requesting that a specific diagnostic assessment be approved by the agency.

## **Department of Revenue**

2023 Wisconsin Act 12, which directs the Department of Revenue (DOR) to promulgate rules to implement an innovation grant program created by the act.

2023 Wisconsin Act 73, which grants DOR rulemaking authority and directly repeals a DOR administrative rule in conjunction with the act's changes to Wisconsin's alcohol beverage laws.

## **Department of Safety and Professional Services and Credentialing Boards**

2023 Wisconsin Act 56, which ratifies and enters Wisconsin into the Audiology and Speech-Language Pathology Compact. The compact provides state regulatory oversight for a person providing audiology or speech-language pathology services in Wisconsin.

2023 Wisconsin Act 76, which prohibits the department from prohibiting or otherwise limiting the use of certain refrigerants designated by the U.S. Environmental Protection Agency as an acceptable alternative to ozone-depleting refrigerants.

2023 Wisconsin Act 82, which grants rulemaking authority to the Hearing and Speech Examining Board to promulgate administrative rules relating to the act's creation of a cerumen management certificate for hearing instrument specialists to engage in cerumen management.

### **Department of Transportation**

2023 Wisconsin Act 28, which directly modifies provisions of the Department of Transportation's (DOT) administrative rules specifying the maximum number of days in a year in which a farm service license endorsement may be issued.

2023 Wisconsin Act 46, which directly amends DOT administrative rules addressing liability for costs related to utility relocation delays.

2023 Wisconsin Act 86, which authorizes DOT to promulgate administrative rules to establish and administer a grant program for a provider of a course in driver education.

Two Court of Appeals decisions, regarding rule promulgation. In two separate cases, plaintiffs argued, in part, that DOT took action in a manner that should have proceeded only under a properly promulgated rule. In both cases, the Court of Appeals held that DOT was applying provisions explicitly required by statute, and that rulemaking was not required for the agency to apply the unambiguous statutes. [*Adams Outdoor Adver. Ltd. P'ship v. Thompson*, 2023 WI App 39; and *Destiny Motors Corp. v. Wis. Dep't of Admin.*, 2023 WI App 44.]

### **Higher Educational Aids Board**

2023 Wisconsin Act 80, which modifies the Wisconsin Grant and Talent Incentive Grant programs. The act revises certain eligibility standards applied by the Higher Educational Aids Board in administering the programs.

### **Budget**

In addition to the acts listed above, 2023 Wisconsin Act 19, the 2023-25 Biennial Budget Act, contains provisions that directly modify the Administrative Code and otherwise relate to the exercise of agency rulemaking authority. For a complete description of the Biennial Budget Act, see the Legislative Fiscal Bureau's [Summary of Provisions: 2023 Wisconsin Act 19](#).

### **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 2023, the Legislative Council staff responded to numerous agency questions concerning the rulemaking process and the laws governing legislative and gubernatorial review of proposed rules.

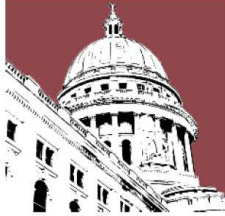
### **PUBLIC LIAISON**

In 2023, 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 **23-048**

AN ORDER to repeal NR 12.10 (3) (b); to amend NR 10.12 (3) (c) and 10.125 (1), (5) (a), and (6); to repeal and recreate NR 10.01 (1); and to create NR 10.001 (20), relating to establishing the 2023-2024 migratory bird season framework and regulations.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

08-08-2023 RECEIVED BY LEGISLATIVE COUNCIL.

09-05-2023 REPORT SENT TO AGENCY.

MSK:AH

**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 Groz  
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### CLEARINGHOUSE RULE 23-048

#### 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

As noted in the department’s analysis for the proposed rule, the department has broad statutory authority to establish hunting seasons and bag limits by rule under s. 29.014 (1), Stats. The department’s authority to establish alternate bag limits by order, as the rule proposes, is more questionable. As a generally applicable standard with the force and effect of law, the alternate bag limits authorized to be selected by the department secretary under s. NR 10.01 (1) (L) 2. arguably fall within the definition of a “rule” under s. 227.01 (13), Stats. If so, they must be promulgated as a rule. In addition, although s. 29.014 (1), Stats., does not expressly require the department to promulgate bag limits by rule, that provision is within a section of the statutes entitled “Rule-making for this chapter” and has historically been interpreted to provide a broad grant of rulemaking authority. It is not clear that the provision authorizes the department to establish bag limits by order. In lieu of orders, would it be feasible to establish, by rule, alternate bag limits that apply when certain conditions of federal law are satisfied?

#### 2. Form, Style and Placement in Administrative Code

a. In s. NR 10.01 (1), each reference to a paragraph within sub. (1) that uses the abbreviation “sub.,” “subs.,” or “subd.” should be revised to the abbreviation “par.” or “pars.,” as appropriate. For example, in sub. (1) (intro.), the reference to “sub. (a)” should be revised to “par. (a)”. [ss. 1.10 (1) (a) (Example) and 1.15 (2) (c) (Examples), Manual.]

b. In s. NR 10.01 (1) (intro.), the department should use the introductory statement to explain the interrelationship of each of the paragraphs, not just pars. (a), (b), and (L). For example, something like, “each of the following requirements apply”. [s. 1.11 (1) and (2), Manual.]

c. The treatment clause for SECTION 3 of the proposed rule should be revised to more precisely identify the affected provision as “NR 10.01 (2) (g) 1.,” rather than “NR 10.01 (2) (g)”. Subdivision 2. of par. (g) is not affected by the proposed rule. The rule caption’s introductory clause that lists the affected provisions should also be updated to identify this amended provision.

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

In s. NR 10.01 (1) (n), it appears that a reference to s. 29.197 (1), Stats., should instead refer to s. 29.197 (2), Stats.

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

a. In s. NR 10.01 (1) (m) (table), commas should be added after “wood ducks” and “common snipe” in the first column.

b. The rule creates a definition of “Open Water Zone” but also retains the phrase “Open Water zone as established in s. NR 10.32” in several provisions in s. NR 10.01 (1) (b) (table) (1). Does the zone depicted in s. NR 10.32 match the definition created by the rule? If so, is the new definition needed given the references to s. NR 10.32? See also comment 6, below. Lastly, if the definition is retained, is it necessary for the term “Open Water Zone” to be capitalized? The term is not a proper name, and similar terms in the current code are not capitalized (see, for a comparison, the terms “pheasant management zone” and “wild turkey hunting zone”). [s. 1.06 (2), Manual.]

c. In s. NR 10.01 (1) (L), some provisions are missing periods at the end of the text.

d. In s. NR 10.01 (1) (n), is it the department’s intent to require persons who participate in the special youth hunt to both obtain a hunter education certificate and to satisfy the requirements for participating in a mentored hunt? If not, the phrase “shall be in compliance with ss. 20.592 and 29.593, Stats.” could be revised to avoid confusion. For example, if the intent is to allow a person who meets the requirements under s. 29.592, Stats., to participate without obtaining a hunter education certificate, that could be clarified.

#### **6. Potential Conflicts With, and Comparability to, Related Federal Regulations**

The definition of “open water zone” in SECTION 1 of the proposed rule, creating s. NR 10.001 (20), appears to be worded differently than the description of “open water zone” included in Wisconsin-specific area, unit, and zone descriptions for ducks and coots in a proposed U.S. Fish and Wildlife Service rule published on January 30, 2023. Should the definition mirror the description in the proposed federal rule?

**APPENDIX 2**

**PROCESSING INSTRUCTIONS TO AGENCY HEADS**



# Wisconsin Legislative Council

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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 23-048

AN ORDER to repeal NR 12.10 (3) (b); to amend NR 10.12 (3) (c) and 10.125 (1), (5) (a), and (6); to repeal and recreate NR 10.01 (1); and to create NR 10.001 (20).

Submitted by Department of Natural Resources

08-08-23	Received by Legislative Council.		
09-05-23	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.