



# Appendix D

## Wisconsin Legislative Council



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### Wisconsin Legislative Reference Bureau

# ADMINISTRATIVE RULES PROCEDURES MANUAL

- *Drafting Style and Format*
- *Promulgation Procedure*
- *Rules Review Procedure*

#### LEGISLATIVE COUNCIL

##### Administrative Rules Clearinghouse

**Scott Grosz, Director**

Telephone: (608) 504-5715

Email: [scott.grosz@legis.wisconsin.gov](mailto:scott.grosz@legis.wisconsin.gov)

**Margit Kelley, Assistant Director**

Telephone: (608) 504-5717

Email: [margit.kelley@legis.wisconsin.gov](mailto:margit.kelley@legis.wisconsin.gov)

One East Main Street, Suite 401  
Madison, Wisconsin 53703-3382

#### LEGISLATIVE REFERENCE BUREAU

Wisconsin Administrative Code  
Wisconsin Administrative Register

**Michael Duchek, Administrative Rules Counsel**

Telephone: (608) 504-5830

Email: [michael.duchek@legis.wisconsin.gov](mailto:michael.duchek@legis.wisconsin.gov)

**Jill Kauffman, Code and Register Editor**

Telephone: (608) 504-5824

Email: [jill.kauffman@legis.wisconsin.gov](mailto:jill.kauffman@legis.wisconsin.gov)

One East Main Street, Suite 200  
Madison, Wisconsin 53703-3382

Copies of this Manual are available at <http://www.legis.wisconsin.gov/lc> and <https://docs.legis.wisconsin.gov/code>

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## INTRODUCTION

The *Administrative Rules Procedures Manual* is prepared jointly by the Legislative Reference Bureau (LRB) and the Legislative Council Rules Clearinghouse (Rules Clearinghouse), pursuant to ss. 227.15 (7) and 227.25 (1), Stats. Its purpose is to provide agency personnel with information on the three basic aspects of administrative rulemaking: drafting, promulgation, and legislative review.

**PART 1** of the Manual discusses the form and style of agency rule drafting, which generally follows LRB's bill drafting style and format. PART 1 also contains the standards applied by the Rules Clearinghouse when reviewing proposed rules.

**PART 2** describes an agency's internal activities when it drafts and promulgates administrative rules. The rulemaking procedures described in PART 2 follow the general procedures found in ch. 227, Stats. However, if an agency is subject to special statutory procedures, those procedures must be followed. PART 2 also contains information relating to filing deadlines for material published in the Wisconsin Administrative Register (Register).

**PART 3** sets forth the process of legislative review of administrative rules, including procedures for review of proposed rules by the Rules Clearinghouse, legislative standing committees, and the Joint Committee for Review of Administrative Rules (JCRAR). PART 3 also summarizes the statutes relating to review by JCRAR of existing rules.

**APPENDIX A** contains a checklist for document submissions in the rule promulgation process.

**APPENDIX B** contains a flow chart of the rule promulgation process.

Agency personnel having questions or needing assistance are encouraged to contact:

### Legislative Council Rules Clearinghouse

**Scott Grosz**

Director

Telephone: (608) 504-5715

Email: [scott.grosz@legis.wisconsin.gov](mailto:scott.grosz@legis.wisconsin.gov)

**Margit Kelley**

Assistant Director

Telephone: (608) 504-5717

Email: [margit.kelley@legis.wisconsin.gov](mailto:margit.kelley@legis.wisconsin.gov)

### Legislative Reference Bureau

**Michael Duchek**

Administrative Rules Counsel

Telephone: (608) 504-5830

Email: [michael.duchek@legis.wisconsin.gov](mailto:michael.duchek@legis.wisconsin.gov)

**Jill Kauffman**

Code and Register Editor

Telephone: (608) 504-5824

Email: [jill.kauffman@legis.wisconsin.gov](mailto:jill.kauffman@legis.wisconsin.gov)



## PART 1

### DRAFTING STYLE AND FORMAT

**1.01 Arrangement of rulemaking orders. (1) INTRODUCTORY CLAUSE.** (a) New administrative rules are created and existing rules are revised or repealed by rulemaking orders adopted by agencies with rulemaking authority. A rulemaking order begins with an introductory clause that is comprised of an enumeration of the rule provisions treated by the proposed order and the nature of the treatment, followed by a relating clause concisely stating the subject matter of the proposed order.

(b) In the enumeration of provisions treated, group the provisions in the following order: to repeal; to renumber; to renumber and amend; to consolidate, renumber, and amend; to amend; to repeal and recreate; and to create. List the affected provisions under each type of treatment in numerical order.

(c) If a rule will have an impact on small business, include the phrase “and affecting small business” at the end of the relating clause. [s. 227.15 (1m), Stats.]

**EXAMPLE:**

The Wisconsin Department of Agriculture, Trade and Consumer Protection proposes an order to repeal ATCP 7.02 (1); to renumber ATCP 7.02 (2); to renumber and amend ATCP 7.03; to amend ch. ATCP 7 (title) and ATCP 7.04 (title) and (2) and 7.05 (3) (a) (Note) and (b); to repeal and recreate ATCP 7.02 (3) and 7.05 (1); and to create ATCP 7.025, relating to dairy plant trustees and affecting small business.

**(2) RULE ANALYSIS.** (a) Immediately following the introductory clause is a rule analysis. [s. 227.14 (2), Stats.] The analysis should contain all of the following headings; if there is no information under a particular heading, the heading is included and the text should state that there is no information:

1. Statutes interpreted.
2. Statutory authority.
3. Explanation of agency authority.
4. Related statutes or rules.
5. Brief summary of the proposed rule.
6. Summary of, and comparison with, existing or proposed federal statutes and regulations.
7. If held, summary of comments received during preliminary comment period and at public hearing on the statement of scope.

8. Comparison with rules in adjacent states.
9. Summary of factual data and analytical methodologies.
10. Analysis and supporting documents used to determine effect on small business or in preparation of an economic impact analysis.
11. Effect on small business.
12. For rules proposed by the Department of Veterans Affairs, a copy of any comments and opinion prepared by the Board of Veterans Affairs under s. 45.03 (2m), Stats.
13. Agency contact person (including email and telephone number).
14. Place where comments are to be submitted and deadline for submission.

*NOTE:* Failure by an agency to provide a comment deadline will result in comments being accepted at the Legislature's Administrative Rules website until final publication or withdrawal of the rule.

(b) The purpose of the brief summary is to provide an understandable and objective description of the effect of the rule. The summary is not intended to be an exhaustive discussion of the rule, but should contain sufficient detail to enable the reader to understand the content of the rulemaking order, its relationship to current law, and the changes made, if any, in existing rules. It should be written in plain, simple English.

(c) 1. Since all authority for administrative rules is conferred by statute, it is important for agencies to identify the specific statutes that authorize promulgation. An agency should cite the statute that explicitly grants authority to the agency to promulgate the rule. Sources of agency rulemaking authority may include broad grants of authority to the agency or specific grants of authority associated with a particular program or function of the agency. In the absence of one of these grants of authority, an agency may cite s. 227.11 (2) (a) (intro.), Stats., which expressly confers on an agency the authority to promulgate rules interpreting the provisions of a statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute. Also, an agency should carefully review a proposed rule for consistency with all relevant statutes.

2. An agency may promulgate rules interpreting the provisions of a statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if it exceeds the bounds of correct interpretation. All of the following apply to the promulgation of a rule that interprets the provisions of a statute enforced or administered by the agency:

- a. A statutory or nonstatutory provision containing a statement or declaration of legislative intent, purpose, findings, or policy does not confer rulemaking authority on the agency or augment the agency's rulemaking authority beyond

the rulemaking authority that is explicitly conferred on the agency by the Legislature.

b. A statutory provision describing the agency's general powers or duties does not confer rulemaking authority on the agency or augment the agency's rulemaking authority beyond the rulemaking authority that is explicitly conferred on the agency by the Legislature.

c. A statute containing a specific standard, requirement, or threshold does not confer on the agency the authority to promulgate, enforce, or administer a rule that contains a standard, requirement, or threshold that is more restrictive than the standard, requirement, or threshold contained in the statute.

[s. 227.11 (2) (a), Stats.]

3. An agency may not implement or enforce any standard, requirement, or threshold, including as a term or condition of any license issued by the agency, unless that standard, requirement, or threshold is explicitly required or explicitly permitted by statute or by rule. [s. 227.10 (2m), Stats.]

4. A plan that is submitted to the federal government for the purpose of complying with a requirement of federal law does not confer rulemaking authority and cannot be used by an agency as authority to promulgate rules. An agency cannot agree to promulgate a rule as a component of such a compliance plan unless the agency has explicit statutory authority to promulgate the rule at the time the compliance plan is submitted. [s. 227.11 (3) (a), Stats.]

5. A settlement agreement, consent decree, or court order does not confer rulemaking authority and cannot be used by an agency as authority to promulgate rules. An agency cannot agree to promulgate a rule as a term in any settlement agreement, consent decree, or stipulated order of a court unless the agency has explicit statutory authority to promulgate the rule at the time the settlement agreement, consent decree, or stipulated order of a court is executed. [s. 227.11 (3) (b), Stats.]

6. A board, affiliated credentialing board, examining board, or commission that has not taken any action with respect to rule promulgation in 10 years or more may not promulgate a rule unless specifically authorized to do so by new legislation. [s. 227.111, Stats.]

(d) The agency should revise the rule analysis prior to the submission to the Legislature, or when making other changes during the process, so that the analysis accurately reflects any changes to the content of the rule since submission to the Clearinghouse.

**(3) RULE TEXT.** The text of the rule is divided into sequentially numbered SECTIONS for the treatment of affected provisions, and an effective date clause. [See s. 1.03.]

**1.02 Petition for expedited repeal of a rule. (1) GENERAL.** An agency may petition for expedited repeal of an unauthorized rule. [s. 227.26 (4), Stats.] An “unauthorized rule” means a rule that an agency lacks the authority to promulgate due to the repeal or amendment of the law that previously authorized its promulgation.

**(2) ARRANGEMENT.** A petition for expedited repeal of an unauthorized rule should be in the same form and style as a proposed rulemaking order. The petition should include the following elements:

(a) An introductory clause. The introductory clause is comprised of an enumeration of the rule provisions repealed by the proposed order and a relating clause concisely stating the subject matter of the proposed order.

(b) A rule summary. The rule summary should contain entries for all of the following headings:

1. Agency statement of petition for expedited repeal of an unauthorized rule.
2. Statutes interpreted.
3. Statutory authority for the original rule.
4. Statement of statutory authority.
5. Related statutes or rules.
6. Plain language analysis.
7. Agency contact person (including email and telephone number).

(c) The text of the rule, including an effective date clause. The repealed provisions are cited in the treatment clause and no rule text is shown. Corrections in cross-references to the repealed provisions should also be included, to the extent that those changes are necessary to accomplish the repeal of the unauthorized rule.

**(3) OTHER DOCUMENTS.** There is no requirement to submit other documents, such as the regulatory flexibility analysis, fiscal estimate, or economic impact analysis.

**1.03 Arrangement of SECTIONS in rule orders. (1) GENERAL.** The text of a rulemaking order is divided into sequentially numbered SECTIONS (denoted as SECTION 1, SECTION 2, etc.), which are arranged according to the numerical order of the decimal-numbered rule provision being treated, as it appears in the Administrative Code at the time of drafting or, in the case of a newly created provision, in the order in which it will appear in the Code. This rule applies regardless of whether different SECTIONS may have different effective dates. The effective date SECTION, and an initial applicability SECTION, if included, are placed at the end of a rule order after the SECTIONS that treat the administrative code.

**(2) ORDER AND ARRANGEMENT OF TREATMENT SECTIONS.** (a) 1. Each SECTION treating an administrative code provision begins with a treatment clause that cites the rule provision being treated and the type of treatment being made to the affected provision.

For example, “Adm 1.01 is created to read:” is a treatment clause. As described in s. 1.04, rule provisions may be repealed; renumbered; renumbered and amended; consolidated, renumbered, and amended; amended; repealed and recreated; and created.

2. Except in the case of a repeal or a simple renumbering, the treatment clause is followed by the text of the treated rule provision, set forth in a separate paragraph. The text of the rule provision should only include provisions that are treated in the SECTION and should not include untreated provisions. For example, if s. DHS 163.10 (1) (a) 1. is amended, only the text of subd. 1. should appear in the SECTION. The text of sub. (1) (intro.) and par. (a) (intro.) should not appear in the SECTION. [See also s. 1.10 (2) (c), for more information on when titles should be shown.]

3. A separate SECTION may be created for each rule section or subunit that is being treated in a rule order. In certain circumstances described below, it is acceptable to combine the treatments of multiple sections or section subunits in a single treatment. When in doubt, treat a single unit, and avoid making a treatment clause too complicated or cumbersome.

(b) 1. When a series of consecutively numbered rule sections are affected in their entirety by the same treatment, the affected rule sections may be included in a single SECTION.

**EXAMPLE:**

SECTION 1. Adm 1.03, 1.04, and 1.05 are amended to read:

Adm 1.03 (text)

Adm 1.04 (text)

Adm 1.05 (text)

2. A repeal, a repeal and recreation, or a renumbering and amendment of consecutively numbered rule sections may be included in the same SECTION of the rulemaking order.

**EXAMPLE:**

SECTION 1. Adm 2.01 and 2.02 are repealed. (No text shown.)

- OR -

SECTION 1. Adm 2.01 and 2.02 are repealed and recreated to read:

Adm 2.01 (text)

Adm 2.02 (text)

- OR-

SECTION 1. Adm 2.01 and 2.02 are renumbered Adm 2.16 and 2.17 and amended to read:

Adm 2.16 (text)

Adm 2.17 (text)

- OR -

SECTION 1. Adm 2.01 and 2.02 are renumbered Adm 2.16 and 2.17 and Adm 2.17 (2), as renumbered, is amended to read:

Adm 2.17 (2) (text)

(c) 1. When a number of rule sections are affected in their entirety by the same treatment but are not consecutively numbered, those sections may not be included in a single SECTION of the rulemaking order.

**EXAMPLE:**

SECTION 1. Adm 3.01 and 3.02 are amended to read:

Adm 3.01 (text)

Adm 3.02 (text)

SECTION 2. Adm 3.04 is amended to read:

Adm 3.04 (text)

2. When two or more subsections, paragraphs, subdivisions, or subdivision paragraphs of the same rule section are affected by the same treatment, and any intervening subunits are unaffected, they may be included in the same SECTION of the rulemaking order. Nonconsecutive subunits may not be placed in the same SECTION if an intervening subunit is affected by a different treatment.

**EXAMPLE:**

SECTION 1. Adm 20.02 (1), (2) (a) and (5) (c) 3. are amended to read:

Adm 20.02 (1) (text)

(2) (a) (text)

(5) (c) 3. (text)

(d) When two or more subsections, paragraphs, subdivisions, or subdivision paragraphs of the same rule section are affected by different treatments, each is treated separately, in numerical order, in separate SECTIONS of the rulemaking order. Do not place different types of treatments in a single SECTION.

(e) If it is necessary to make different treatments to a single rule unit that go into effect at different times, this can be accomplished by including two separate treatments of the same provision, each in different SECTIONS. This is sometimes referred to as double



drafting. In double drafting, the text for the later treatment has the earlier treatment already incorporated, indicated by the phrase “as affected by this rule.” In this case, the second treatment must have a different, later effective date than the first treatment. See sub. (4) (b), below, regarding different effective dates for different SECTIONS of a rule order.

**EXAMPLE:**

SECTION 1. Adm 20.02 (1) is amended to read:

Adm 20.02 (1) (text)

SECTION 2. Adm 20.02 (1) (a), as affected by this rule, is amended to read:

Adm 20.02 (1) (a) (text, which incorporates the changes from SECTION 1)

**(3) INITIAL APPLICABILITY.** If there is an existing procedure that is modified by a rule, an agency may wish to include an initial applicability clause after the text of the rule and before the effective date clause described in sub. (4). An initial applicability clause may be used to apply the revised rule to events occurring, or situations that arise, on or after the effective date or, and to apply the existing rule to events occurring, or situations that arose, before the effective date. An initial applicability clause may also be used to provide that a new rule applies to events occurring on or after a specified date.

**EXAMPLE:**

SECTION \_\_. INITIAL APPLICABILITY. This rule first applies to a license renewal application that is submitted on the effective date of this rule.

**(4) EFFECTIVE DATES.** (a) Each rule must have an effective date SECTION to indicate the date on which the rule changes take effect.

(b) 1. The default effective date for a permanent rule is the first day of the month following publication in the Register. If an agency intends that a rule take effect on that default date, the effective date SECTION should cite s. 227.22 (2) (intro.), Stats. [See also s. 2.08 (5).]

**EXAMPLE:**

SECTION \_\_. EFFECTIVE DATE. This rule takes effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.

2. The default effective date for an emergency rule is the date of publication in the official state newspaper. [s. 227.24 (1) (c), Stats.] For more on emergency rule effective dates, see s. 2.10 (5).

3. If the agency intends a rule to take effect, in whole or in part, on a specified date in the future, the effective date clause should specify that date, but the agency should confirm the proposed date with LRB to be certain that the desired date is feasible.

**EXAMPLES:**

SECTION. EFFECTIVE DATE. This rule takes effect on the first day of the (\_\_) month following publication in the Wisconsin Administrative Register.

SECTION \_\_. EFFECTIVE DATE. This rule takes effect on (month, day, year).

(c) A rule may have different effective dates for different parts of the rule. If a rule treats a provision more than one time as described in sub. (2) (e), the agency should include a later effective date for the later treatment.

**EXAMPLE:**

SECTION \_\_. EFFECTIVE DATE. This rule takes effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats, except that SECTION 2 takes effect on [(month, day, year) or the first day of the (\_\_\_\_) month following publication in the Wisconsin Administrative Register].

**1.04 Types of treatment of the administrative code. (1) TABLE OF CONTENTS.** It is never necessary to create or modify a chapter's table of contents in a rule order. A new table of contents is generated by LRB each time a chapter is created or updated.

**(2) CREATING NEW PROVISIONS.** (a) If new material is to be created that is not part of an existing unit, it should be done by creating the appropriate unit as it will appear after promulgation. Underscoring is not used when creating an entire rule unit.

(b) Material may be created at any level, from a chapter to a subdivision paragraph. A new chapter, or subchapter, may be created with a single action phrase showing the creation of the chapter, with the chapter's title and individual sections following. When creating rule provisions within an existing chapter, place the new material in the most appropriate location in the affected chapter, section, or subunit using the numbering system described in ss. 1.09 and 1.10.

**(3) REPEALING PROVISIONS.** (a) A repeal is used to eliminate the entirety of a rule section or subunit, chapter, or subchapter. When repealing an existing rule provision, the repealed provision is cited in the treatment clause and no rule text is shown in the SECTION.

**EXAMPLE:** SECTION \_\_. ATCP 10.01 is repealed.

(b) Strike-throughs are not used when repealing an entire rule unit. If parts of a provision are being amended, and parts are being repealed, these treatments are performed in separate SECTIONS.

**EXAMPLE:**

SECTION \_\_. ATCP 10.01 (1) (intro.) and (a) are amended to read: (text).

SECTION \_\_. ATCP 10.01 (1) (b) and (c) are repealed.

SECTION \_\_. ATCP 10.01 (1) (d) is amended to read: (text).

(c) Do not renumber existing material to fill in a “gap” in numbering resulting from a repeal. [See s. 1.10 (3).]

(d) Repealing a provision does not repeal or address cross-references to the repealed provision. [See s. 1.15.]

**(4) AMENDING EXISTING PROVISIONS.** (a) *Striking and underscoring.* 1. When amending a current rule provision, show the complete, existing text of the affected provision. Language to be removed is stricken-through (~~stricken-through~~) and new material to be inserted is underscored (underscored).

**NOTE:** When drafting proposed changes to an existing rule, the current version of a rule should be used. To obtain a copy of the current version in Microsoft Word format, contact Jill Kauffman or Mike Duchek at LRB.

2. When material is deleted and other material is inserted in the same location, show all of the stricken material, then the new underscored material. Even if the stricken material consists of more than one sentence, the new underscored material that replaces the stricken material is inserted at the end of all stricken material.

(b) *Amending a word.* When a single word is amended, the existing word is stricken in its entirety and the new word is underscored immediately after the strike-through.

**EXAMPLES OF INCORRECT AND CORRECT STYLES:**

Incorrect:

~~section~~.

~~sections~~.

~~subchapter~~.

~~miles~~

Correct:

~~Section~~ s.

~~sections~~ ss.

~~subchapter~~ subch.

~~mile~~ miles

(c) *Changing the beginning of a sentence.* When language at the beginning of a sentence is stricken, strike through all words at the beginning of the sentence including the first word of the recreated sentence. Immediately after the strike-through, recreate the same word beginning with a capital letter and underscore the word.

**EXAMPLE:**

ER 29.03 (2) (b) ~~In any reinstatement when~~ When an employee ~~who has obtained permanent status in class~~ is required to serve . . . .

(d) *Periods.* Periods are usually preserved in material being amended, but periods may be stricken or underscored if a new sentence is created, an old sentence is eliminated, or two or more existing sentences are combined.

(5) REPEALING AND RECREATING PROVISIONS. (a) If major changes are being made to an existing rule provision, the existing provision may be repealed and recreated rather than amended. This eliminates the previously existing language and replaces it with entirely new language shown in the rulemaking order. Use “repeal and recreate” only when intending to repeal an existing provision and create all new language in its place. Note that a drawback of repealing and recreating rule provisions is that only the newly created text is shown, and not the changes to existing text.

(b) The text of a repealed and recreated provision should be shown as it will appear after promulgation, without strike-throughs and underscores.

(6) RENUMBERING; RENUMBERING AND AMENDING PROVISIONS. (a) Rule sections or subunits may be renumbered to reorganize existing material. Whole sections may be renumbered for more logical placement within a rule chapter or can be moved to a different chapter. Subunits of sections may be moved within their current section or to a different section. [See also s. 1.10 (3) (d) for more on appropriate use of renumbering.]

(b) Renumbered provisions may be amended in the same SECTION of a rulemaking order in which they are renumbered. If a provision is renumbered without amendment, the renumbering is described in the treatment clause and no text is shown. If a provision is renumbered and amended, the renumbering and amendment are listed in the treatment clause and the amended text is shown with the new number. The former number is not stricken through or shown.

**EXAMPLE:** SECTION \_\_. ATCP 1.01 (1) is renumbered ATCP 1.37 (3) (no text shown).

**EXAMPLE:** SECTION \_\_. ATCP 1.01 (1) is renumbered ATCP 1.37 (3) and amended to read:

ATCP 1.37 (3) (insert amended text using strike-throughs and underscores).

(c) When a rule section or subunit is renumbered, the current rule section number, as opposed to the proposed new section number, is shown as the provision being treated in the SECTION. The current number determines the sequence of treatment in the rulemaking order.

(d) When parts of a rule section are renumbered and not all of the renumbered parts are amended, this may be done in one SECTION by showing each of the subunits as they are currently numbered and then showing how they will be renumbered. The

amended portions are then shown under their new number and only the subunits being amended are shown in the text.

**EXAMPLE:**

SECTION \_\_. NR 144.09 (title), (1) (a), (b), and (c) and (2) are renumbered NR 144.065 (title), (1) (b), (c), and (d) and (2), and NR 144.065 (1) (b) and (d), as renumbered, are amended to read:

NR 144.065 (1) (b) (text)

(1) (d) (text)

(e) When parts of a rule section are renumbered to a different rule section and some of the subunits within the section are internally renumbered, this may be done in one SECTION by showing each of the subunits as they are currently numbered and then showing how they will be renumbered. The new numbering need not correspond to the old numbering.

**EXAMPLE:**

SECTION 1. DHS 144.09 (title), (1) (a), (b), and (c) and (2) are renumbered DHS 144.065 (title), (1) (b), (c), and (d) and (2).

(f) Renumbering a provision also renumbers all subunits contained within it, unless the treatment clause specifies that only particular subunits are being renumbered. For example, if s. NR 1.01 (1) includes s. NR 1.01 (1) (intro.) and (1) (a) and (b), renumbering s. NR 1.01 (1) to s. NR 100.01 (3) will renumber NR 1.01 (1) (intro.), (a) and (b) to NR 100.01 (3) (intro.), (a) and (b). However, if only s. NR 1.01 (1) (intro.) is renumbered, this will not renumber (1) (a) and (b).

(g) Renumbering may be used to take a section or subunit and turn it into an introduction with subunits for clearer organization. This is the only circumstance in which new numbering may be inserted by underscoring. The action is taken in the following steps: (1) in one SECTION, renumber the provision as an introduction and insert underscored numbering for one or more parts of the remaining text as subunits; and (2) create any new subunits in another SECTION.

**EXAMPLE:**

SECTION 12. NR 128.01 (2) is renumbered NR 128.01 (2) (intro.) and amended to read:

NR 128.01 (2) (intro.) A person applying for a license under this section shall include ~~the~~ all of the following:

(a) The required fee.

SECTION 13. NR 128.01 (2) (b) is created to read:

NR 128.01 (2) (b) Evidence demonstrating that the person satisfies the requirement under sub. (4).

**(7) CONSOLIDATING, RENUMBERING, AND AMENDING PROVISIONS.** Rule sections or subunits may be consolidated, renumbered, and amended to reorganize and amend existing material. The most common use for this action is to repeal one or more subunits that are no longer needed and combine the introduction and remaining subunit. The action is taken in two steps: (a) consolidate, renumber, and amend the introduction and the retained subunit in one SECTION; and (b) repeal the subunit that is no longer needed in another SECTION.

**EXAMPLE:**

SECTION \_\_. Ins 3.46 (13) (a) (intro.) and 2. are consolidated, renumbered Ins 3.46 (13) (a) and amended to read:

Ins 3.46 (13) (a) An insurer may provide compensation to an intermediary ~~or other representative~~, and an intermediary ~~or representative~~ may accept compensation for the sale of a long-term care policy or certificate only if: ~~2. The~~ the compensation provided in the 2nd year or period and subsequent years is the same as ~~provided in the 2nd year or period~~ and is provided for at least 5 renewal years.

SECTION \_\_. Ins 3.46 (13) (a) 1. is repealed.

**NOTE:** In the example, the numbering for subd. 2. is shown and stricken to indicate where the former par. (a) (intro.) ended and where par. (a) 2. began.

**1.05 General drafting style. (1) GENERAL STYLE; CLARITY.** (a) To the extent possible, rules are to adhere to the format and drafting style of bills prepared for the Legislature and this Manual, and should be drafted using concise simple sentences, using plain language that can be easily understood. [s. 227.14 (1), Stats.]

(b) Use the present tense, unless talking about a past event. Avoid the future tense. [s. 990.001 (3), Stats.]

(c) Generally, use the singular form of a word and use the plural only when specifically referring to multiples of the word used. Under s. 990.001 (1), Stats., the singular includes the plural, and the plural includes the singular. Do not use “(s)” to indicate that the word may be singular or plural. Do not alternate between using the plural and singular. When regulating classes of people, the obligation to comply with the regulation is on each individual member of the group, not the group as a whole.

(d) Express ideas and concepts positively using the active voice. When writing a command or direction, specify the actor or actors in association with the required action.

For example, begin a provision by identifying who must do what, and then identifying when and under what conditions.

(e) Be consistent with phrasing so as to maintain parallel structure. For example, the description of each item on a list should consistently begin with either a noun or a verb; if beginning with a verb, use the same verb tense for each item.

(f) Use Times New Roman font for rule drafting, as specified in s. 2.005. When drafting rule text, the use of italics or bold text for emphasis is disfavored and generally will be removed by LRB. However, italics, bold, or small caps font style is appropriate when used for titles, as described in s. 1.10 (2) (b).

(g) Use the current edition of Webster's New International Dictionary as the standard for spelling conventions. [s. 35.17 (3), Stats.]

(h) If a question of style, grammar, or usage is not answered in this Manual, consult *The Chicago Manual of Style*.

**(2) SEX-NEUTRAL LANGUAGE; DISCRIMINATION PROHIBITED.** When drafting new rules and revising existing rules, eliminate all terminology that is not sex neutral. Avoid the repetitious use of the phrases “he or she” and “his or her.” Do not use slashed alternatives, such as “he/she,” “his/her” or “s/he.” In most cases, a pronoun can be replaced with the noun to which it refers; for example, “~~he~~ the secretary shall set fees for state parks.” See also s. 227.10 (3), Stats., which prohibits discrimination in the terms or application of a rule for or against any person, by reason of sex, race, creed, color, sexual orientation, national origin, or ancestry.

**(3) REPETITION OF LANGUAGE.** Avoid unnecessary repetition of statutory language. Statutory language may be used if necessary to convey the intent of a particular rule.

*NOTE:* See s. 1.15 regarding the use of cross-references, and s. 1.14 regarding the incorporation of materials by reference.

**1.06 Punctuation; capitalization; numerals. (1) PUNCTUATION.** (a) Generally, rules should be written in sentences that end in a period, except an introduction to a series of subunits should end with a colon. See s. 1.11 for more on introductions and subunits.

(b) In writing a series of three or more terms with a single conjunction, use a comma after each term except the last. (In other words, use the “serial” or “Oxford” comma.) When helpful to distinguish a series within a series, semicolons may be used in addition to commas.

*EXAMPLES:* Red, white, and blue. Dogs; black, brown, or white rabbits; horses; or cats.

(c) Avoid using parentheses or dashes. If certain material is important to the thought or concept expressed in the rule, the material should be set apart with commas,

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not parentheses or dashes. Otherwise, place the material, if necessary, in an explanatory note immediately following the rule itself.

(2) **CAPITALIZATION.** Avoid using capital letters except for proper names. For proper names, capitalize according to standard rules of English usage with one major exception: do not capitalize state or federal departments or agencies other than the University of Wisconsin System.

*EXAMPLES:* city of Madison, Dane County, Dane and Racine counties, Mississippi River, World War II, public service commission, Mendota Mental Health Institute, national park service, U.S. fish and wildlife service, Madison Gas and Electric Company, and Internal Revenue Code.

(3) **NUMBERS.** Numbers are expressed using Arabic numerals, with certain exceptions. Numbers at the beginning of a sentence are spelled out. The number “one” is spelled out, unless it is in reference to a date, percentage, or money, or in a series of numbers.

*EXAMPLES:* For a 2nd or subsequent offense...; Whoever, on 3 or more occasions...; Seven percent of...

*EXAMPLES:* January 1; 1 percent; 1, 5, or 7; or \$1.

**1.07 Definitions. (1) USE AND FUNCTION.** (a) The use of definitions is an important technique to achieve consistency and clarity of terminology within a chapter or section of rules. Create a definition when the intended meaning of a word or phrase is either not apparent from the context or if a more specific or narrow meaning is intended than what may otherwise be the generally recognized or applicable meaning. [ss. 227.27 (1) and 990.01 (1), Stats.] A definition may also be used as a way to refer to something in a shorthand manner so as to avoid needing to have a long phrase repeated.

(b) When a word or term is defined in a definition section, use that term consistently throughout the rule unit in which the term applies. Use the precise term that has been defined, and not similar or variant phrases (other than the plural form). If a term is already defined to be “included” within a defined term, do not use both in the substantive rule provisions where those terms are used, as it creates redundancy. If it is important to use both terms in the substantive provision, do not “include” one in the definition of the other.

(c) Variants of the same term or alternative terms can be included in a definition, but avoid doing so unless there is a distinct reason to have a rule use different variants in different places; the preferred method is to choose one term and use it throughout the rule. It is not necessary to separately define the single and plural forms of a term.

(d) Substantive provisions should never be incorporated as part of a definition. A reader should look to a definition section to understand the meanings of particular terms, and not to understand the procedures, requirements, or prohibitions that apply to the agency or persons or entities affected by the rule.



**EXAMPLE OF INCORRECT STYLE:**

DHS 83.04 (18) "Department" means the Wisconsin department of health services, which shall administer this chapter.

(e) With the exception of terms defined in s. 990.01, Stats., words used in rules are not self-defining. Definitions from corresponding statutory provisions do not automatically carry over to a rule and should be identified in a rule if intended to apply.

(2) **FORMAT, LOCATION, AND STRUCTURE.** (a) If definitions of words or terms apply to an entire chapter, the definition provisions should appear at or near the beginning of the chapter, except where definitions are provided for a series of related chapters. If definitions apply only to a particular rule section or subsection, the definition provisions should appear only at or near the beginning that section or subsection, and not somewhere else in the chapter or in a different chapter.

(b) 1. The extent of the applicability of the definitions should be clearly stated; for example, definitions are preceded by the phrase "In this chapter;" "In chs. 1 to 6," or "As used in this subsection:".

2. In the case of a single definition, the applicability phrase, followed by a comma, precedes the defined term, which is placed in quotation marks.

**EXAMPLE:**

**Accy 1.003 Definition.** As used in chs. Accy 1 to 6, "board" means the accounting examining board.

3. In the case of multiple definitions, the applicability phrase appears in introductory material that ends with a colon, with the terms following as subunits in alphabetical order and each placed in quotation marks. Alphabetize definitions without regard to spaces or hyphens. For example, "farmland" precedes "farm residence." Do not create subdefinitions, or nested definitions, within a definition.

(c) A definition is written as a complete sentence.

**EXAMPLE OF INCORRECT STYLE:**

DHS 83.04 (18) DEPARTMENT. The Wisconsin department of health services.

**EXAMPLE OF CORRECT STYLE:**

DHS 83.04 (18) DEPARTMENT. "Department" means the Wisconsin department of health services.

(d) Definitions may also apply to other defined terms within the same definition section, and it is acceptable to define a term that is only used to define language used in another definition, but not elsewhere in the substantive provisions.

(e) Do not use the term being defined in its own definition, unless the definition merely particularizes a more general term (e.g., "'contract' means a contract approved by the board under s. 555.55.>").

(f) Avoid circular definitions. When the definition of "A" depends on the meaning of "B" and the definition of "B" depends on the meaning of "A," it is not possible to determine the meaning of either term.

**(3) STYLE; "MEANS," "INCLUDES," AND "INCLUDING."** (a) A definition is generally drafted using the term "means." The use of the term "means" limits the scope of the definition to the meaning provided and limits examples to those stated.

(b) 1. If, instead of providing a specific definition of a term, one or more examples of a term are provided, a definition can be created using the term "includes." Use of the term "includes" is typically employed to expand the scope of the definition to encompass other reasonably related examples not specifically enumerated.

2. In definitions and in substantive provisions of a rule, "including, but not limited to," should be avoided because it has the same meaning as "including."

(c) Do not use "means and includes," but a definition may be subdivided to separate the "means" provision from "includes" provisions. If examples are a series, the "includes" provision may be further subdivided. There may be more than one "includes" or "does not include" provision, if the context requires.

**EXAMPLE:**

NR 422.02 (14m) (a) "Cleaning solution" means a liquid solvent or solution used to clean the operating surfaces of a printing press and its parts.

(b) "Cleaning solution" includes any of the following:

1. A blanket wash.
2. A roller wash.
3. Any other cleaner used for cleaning a press or press parts or to remove dried ink or coating from areas around the press.

(c) "Cleaning solution" does not include any cleaner used on electronic components of a press; a pre-press cleaning operation, such as platemaking; a post-press cleaning operation, such as a binding, finishing, or mailroom activity; or cleaning performed in a parts washer or cold cleaner.

(d) "Cleaning solution" does not include janitorial supplies used to clean the area around a press, except janitorial supplies used to clean dried ink.

**(4) USING CROSS-REFERENCES FOR DEFINITIONS.** (a) If a rule uses a definition that is identical to one found in the statutes or another rule provision, the definition may be drafted as a simple reference to the other definition (e.g., "'Obligation' has the meaning given in s. 150.01 (16), Stats.>").

(b) A citation to another definition would generally be construed as incorporating any definitions of defined words contained in the cited definition.

(c) A cross-reference to a definition will incorporate future changes in the cross-referenced definition. [s. 990.001 (5) (b), Stats.] To avoid incorporating future changes, define the new term with the same words used in the other definition rather than using a cross-reference.

**1.08 Words and phrases; acronyms. (1) WORDS AND PHRASES.** (a) Under s. 227.27 (1), Stats., the conventions and definitions in ss. 990.001 and 990.01, Stats., apply in the same manner in which they apply to statutes, unless their application would produce a result that is inconsistent with the manifest intent of the agency.

(b) Use the word “shall” to denote a mandatory or absolute duty or directive. Use the word “may” to denote an optional or permissive privilege, right, or grant of discretionary authority. Avoid use of a negative subject with an affirmative “shall.” The term “No person shall” is incorrect. The correct way to express a prohibition is either “No person may . . .” or “A person may not . . . .”

(c) The word “that” initiates a restrictive clause that restricts or limits or describes and defines the word modified, and is necessary to identify the word modified. The clause is not parenthetical, but vital, so commas should not be used to enclose the clause. Generally, the word “which” is used to initiate a nonrestrictive clause that gives additional, supplemental, or descriptive information about the word modified. The meaning of the sentence is complete without the “which” clause. Therefore, if “which” is used, commas should be used to enclose the clause.

**EXAMPLES:**

A fence that conforms to s. 90.02, Stats., is a legal fence.

The municipality shall provide a separate write-in ballot, which may be in the form of a paper ballot.

(d) Do not use slashed alternatives, such as “and/or.” Instead, determine whether the sentence means “and” or “or” and use the appropriate word. If the thought to be expressed involves a choice between one of two alternatives, or both, the proper phrasing to be used is “\_\_\_\_\_ or \_\_\_\_\_, or both.”

(e) Avoid the use of the words “currently,” “now,” and “formerly” to refer to the date a rule takes effect. Instead, make reference to the particular date if known; for example, “loans entered into on or after January 1, 1991.” If an agency wishes to insert the actual effective date of a rule into the text, this may be done by incorporating, in the location where the date is to appear, the following text—“the effective date of this section/subsection/paragraph/subdivision . . . . [LRB inserts date].” This directs LRB, when LRB publishes the rule in the code, to substitute the actual date the rule takes effect.

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(f) Avoid the use of vague words and phrases, such as “thereto,” “herein,” “thereafter,” “above,” “below,” “hereafter,” “heretofore mentioned,” and “hereunder.” Instead use specific references, such as “in this chapter,” “in subd. 1.,” or “under this section.” Avoid the use of the vague term “etc.”

(g) Do not use the words “said” or “such” in place of an article; for example, “said form” should be “the form.” To avoid ambiguity, use specific references; for example, “the form specified in subd. 1.”

(h) When referring to a series of provisions or numbers, use “to” rather than “through;” for example, use “pars. (a) to (e)” or “items 11. to 20.”

(i) Use “person” to refer to human beings and to nonhuman entities, such as corporations or governmental bodies. “Person” is defined in s. 990.01 (26), Stats. Use “individual” to limit the application of a law to human beings .

(j) “Where” denotes place only. If you are expressing a condition that may never occur, use “if” to introduce the condition, not “when” or “where.” If the condition may occur more than once, you may use “whenever” or “if.” If the condition is certain to occur, use “when,” not “if,” “where,” or “whenever.”

(k) Avoid using purely subjective terms such as “appropriate” or “sufficient” as adjectives when setting a standard or condition.

(L) Avoid Latin and other foreign terms.

(m) In describing a mathematical calculation, “sum” means the result of numbers added together, “product” means the result of numbers multiplied together, “difference” means the result of a number subtracted from another, and “quotient” means the result of a number that is divided by another. A “ratio” is the relationship between two quantities where one number is contained within the other.

**(2) ACRONYMS.** (a) Acronyms or other abbreviations should be used only to improve readability. If acronyms are used for units of measurement, names of agencies or programs, or phrases in a rule, they must be defined and used consistently. Do not define an acronym by inserting the acronym in parentheses following the first occurrence of the full term in a substantive provision.

(b) Do not use an acronym and the full term interchangeably. Instead, choose one or the other and use it consistently throughout the affected rule. However, it may be appropriate to use an acronym in a table if space is limited.

(c) Do not use an acronym in parentheses to identify the common name for a term that is otherwise not used in the rule. If necessary, add a note to explain that the term is commonly referred to by the acronym.

**1.09 Numbering and organization of administrative code. (1) STRUCTURE OF CODE; AGENCY CODES; AND DECIMAL SYSTEM.** (a) The Administrative Code is divided by agency, with each agency being assigned a code letter designation. The Department of Children

and Families' rules, for example, are designated DCF. Just like the statutes, the code is divided at its highest level into chapters. Each chapter consists of one or more sections. Chapters may be, but are not required to be, subdivided into subchapters, containing related material. Chapters may be grouped with related chapters to reflect divisions or programs within an agency, for purposes of subdividing the table of contents for the agency's rules on the Legislature's rules website.

(b) Rule sections are numbered according to the decimal system. Each code section is given a mixed decimal section number that consists of the agency code letter designation plus a decimal number. The chapter number is the number to the left of the decimal point and the section's location within the chapter is to the right of the decimal point. In the decimal system, 48.10 (which is the same as 48.100 or 48.1000) follows 48.09. Material inserted after 48.99 would have to be numbered 48.995, etc., and not 48.100. All sections have at least two digits to the right of the decimal point, and may have more as needed to insert material between existing sections. For example, 48.1 would be incorrect and would instead be 48.10.

**(2) ORGANIZATION OF SUBJECT MATERIAL.** (a) In drafting a rulemaking order, proper organization of the text of the rule is important to aid the reader in understanding the pattern of regulation or required conduct set forth in the rule. Single-section chapters should be avoided when possible. Combine similar material into a chapter with several sections, rather than arranging each section as a separate chapter. If it enhances clarity and convenience in locating provisions, a long or complex rule may be divided into appropriate subchapters or, if appropriate, separate chapters.

(b) Within this framework, each section should address a particular subject matter, and each subunit of that section should generally have a particular subset of subject matter within the section's larger subject matter. For example, if a section is addressing a type of license being issued, each subsection should deal with a particular aspect of those licensing provisions, with similar requirements or exceptions grouped together into a subunit. Avoid having a section in which each subunit is indiscriminately dealing with a different subject matter, in no particular sequence. Insert new material near related material, and not just at the end of a provision.

(c) The recommended general sequence of material in a rule chapter or rule section is as follows:

1. A statement on the purpose of and authority for the chapter or section. A purpose statement is not necessary, but if it is included, it should be the first item.
2. Definitions of words or terms used in the chapter or section.
3. Substantive provisions in their order of importance, time sequence, or other logical arrangement.

4. Exceptions, exemptions, or exclusions, if any, to the chapter or section.
5. Benefits, sanctions, or results of compliance or noncompliance with the chapter or section.

**1.10 Format of subunits, titles, and numbering insertions. (1) FORMAT FOR RULE SUBUNITS.** (a) Chapters of the code are further divided into subunits. To preserve clarity and to simplify drafting, rule sections should be subdivided into subsections and smaller subunits whenever feasible. When any unit is divided into smaller subunits, at least two subunits must be created.

*EXAMPLE:* As an example, the parts of s. DHS 163.10 (1) (a) 2. b. and the abbreviations for each subunit are as follows:

DHS 163.	10	(1)	(a)	2.	b.
Chapter (ch.) [Subch. I]	Section (s.)	Subsection (sub.)	Paragraph (par.)	Subdivision (subd.)	Subdivision paragraph (subdpar.)

(b) The general format for rule subunits is as follows:

1. *Subchapters.* A chapter may be divided into subchapters for organizational purposes, but it is not necessary to use subchapters. See ch. DHS 163 as an example of a rule chapter that contains several subchapters. When referring to a subchapter, the abbreviation is “subch.” Subchapters are numbered with capitalized Roman numerals. Note that while subchapters may be cited, subchapter numbers are not cited as part of a citation to a specific section.

2. *Sections.* Each section is numbered to include the agency’s code letter designation followed by the rule’s chapter and section number. For example, “s. DHS 163.10” indicates a section of a rule of the Department of Health Services that appears in ch. DHS 163.

3. *Subsections.* A section may be divided into “subsections,” which are designated by numerals enclosed in parentheses: “(1)”.

4. *Paragraphs.* A subsection may be divided into “paragraphs,” which are designated by lowercase letters enclosed in parentheses: “(a)”. However, the capital letter “L” is used to distinguish the letter from the numeral one. If the entire alphabet is used, continue the designations using “(za)”, “(zb)”, “(zc)”, and so on.

5. *Subdivisions.* A paragraph may be further divided into “subdivisions,” which are designated by a number followed by a period: “1.”.

6. *Further divisions.* Further division beyond the subdivision level should be avoided whenever possible. In most situations, material can be rearranged so that it is not necessary to use any further division. However, if it is necessary, “subdivision paragraphs” may be created with lowercase letters followed by a period: “a.”. Subdivision paragraphs may not be further divided.

(c) Material in an agency’s code should not include paragraphs or other material that is not numbered in accordance with par. (b), except an appendix or a form or table that follows a particular unit. Unnumbered paragraphs, or “outros,” may not be used. [See s. 1.13 for more on forms and tables.]

**(2) TITLES.** (a) *Use of titles.* 1. Titles to any unit of a rule are not part of the substance of the rule itself, but if an ambiguity exists in the statutory text, a court may use the title to interpret the text. [ss. 227.27 (1) and 990.001 (6), Stats.] Titles should therefore not be used to impart any legally essential information and should not express any information not expressed in the substantive provision that follows.

2. All rule chapters, subchapters, and sections must have titles. Titles may, but are not required to be, used for subunits within sections, but if titles are used for any subsection, paragraph or subdivision, titles should be utilized in a consistent manner. For example, if any subsection of a particular rule section is titled, then all of the subsections in that section should be titled as well. No units may be given titles unless the immediately higher units also have titles. For example, in order to have paragraph titles, titles should also be created for all subsections in the affected section.

3. A title should fairly reflect and encompass all of the content of the text that follows, but be as concise as possible. If the content of the text is modified such that the title no longer reflects the context, the title should be amended as needed. A title may be written similarly to the length and format of a newspaper headline, and need not form a complete sentence.

4. Titles should be specific enough to differentiate one rule unit from another. For example, there should not be two sections in a chapter with the same title, and a lower subunit should not share the same title with a higher subunit.

(b) *Title format.* For drafting purposes:

1. Chapter and subchapter titles are centered and written in solid capital letters.

**EXAMPLE:**

CHAPTER DHS 61  
COMMUNITY MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES  
SUBCHAPTER IV  
COMMUNITY MENTAL HEALTH PROGRAMS

2. Section titles are written with an initial capital letter and in bold print; for example, **DHS 61.71 Inpatient program standards.**

3. Subsection titles are written in small capital letters; for example, DHS 61.71 (2) PROGRAM CONTENT.

4. Paragraph titles are written with an initial capital letter and italicized; for example, DHS 61.71 (2) (a) *Therapeutic milieu.*

5. Subdivision titles are written with an initial capital letter and are enclosed in single quotation marks; for example, DHS 61.71 (2) (a) 2. 'Staff functions.'

6. Titles may not be used for subdivision paragraphs.

(c) *Treating provisions with titles.* 1. If a title is being amended or created for a rule provision that is not otherwise revised, the citation to the rule provision and the designation "(title)" should be included in the enumeration of provisions treated. For example: "...to amend ATCP 1.01 (title)...", "... to repeal ATCP 1.01 (title)", or "... to create ATCP 1.02 (title)..." In addition, in a rule SECTION, the citation to the rule provision and the designation "(title)" should be included in the treatment clause and rule text.

**EXAMPLES:**

SECTION \_\_. ATCP 1.01 (title) is amended to read:

ATCP 1.01 (title) **Grass for ~~eows~~ pigs.**

SECTION \_\_. ATCP 1.02 (title) is created to read:

ATCP 1.02 (title) **Grass for horses.**

SECTION \_\_. ATCP 1.03 (title) and (1) are amended to read:

ATCP 1.03 (title) **Grass for ~~eows~~ goats.**

**(1)** (text)

SECTION \_\_. ATCP 1.03 (title) is repealed.

2. As with other provisions, titles to units of a rule are amended by use of strike-throughs and underscores. Titles to units of a rule are created without strike-throughs and underscores, but a title may be scored in or stricken if the text is otherwise being amended. If a title is repealed, the text is not shown.



3. When only a title is affected in a SECTION, the text that follows the title is not shown. If a rule provision containing a title is amended, the title is shown even if it is not itself being amended, and the “(title)” notation is not used. If a rule provision that does not contain a title is amended, the title of any larger unit of which the provision is a part is not shown; however, if the unit being amended is an introduction, the title for that unit is shown.

4. If a subunit is being repealed, repealing that subunit also automatically repeals that subunit’s title.

5. If a subunit with a title is renumbered to a level that does not contain titles and the title is not to follow, provide separately for the repeal of the title. Otherwise, the title will move along with the subunit.

**(3) INSERTING NEW PROVISIONS.** (a) When inserting new rule sections (or smaller subunits) into existing rule provisions, the existing provisions are not automatically renumbered and it is generally best to avoid renumbering the existing rule sections or subunits, except as described in par. (d). Renumbering impairs the ability to trace a provision’s history and may result in ambiguity or error. It is also best to avoid renumbering any unit to eliminate a gap in numbering or to otherwise reuse a previously existing number that is eliminated by repeal. The reuse of numbers can cause confusion as to whether the current or previous provision is being referred to and may lead to erroneous cross-references.

(b) The use of the decimal system allows for the convenient insertion of new rule sections or subunits in their proper numerical location without the necessity of renumbering existing rule sections or subunits. For example, if it becomes necessary to insert a new rule section between s. ATCP 10.03 and s. ATCP 10.04, the new section should be numbered s. ATCP 10.035.

(c) New subsections or paragraphs may be created and inserted between two existing subsections or paragraphs by adding a letter after the numeral or letter previously used. For example, “(2m)” should be used for a single subsection inserted between subs. (2) and (3), and “(am)” should be used for a single paragraph inserted between pars. (a) and (b). Letters are lowercase, except that the letter “L” is capitalized.

**NOTE:** To leave the most space for future insertions under alphabetic numbering use the following letters:

One insertion:	m
Two insertions:	g r
Three insertions:	e m s
Four insertions:	d h p t
Five insertions:	c g n r w
Six insertions:	c g L p t x
Seven insertions:	b f k p s w y
Eight insertions:	b e h L p r u y

**EXAMPLE:** If two new subsections are inserted between subs. (3) and (4), they may be numbered subs. (3g) and (3r) to leave the most space for future units.

(d) Renumbering is appropriate to do any of the following:

1. Provide space for a large quantity of new material.
2. Locate old material near new material on the same subject.
3. Relocate inappropriately placed material that may be easily overlooked or whose applicability may be in question in its current location.
4. Insert an initial item into a series to maintain a time sequence or alphabetical order.
5. Maintain correct outline format when all but one subunit of a unit is being renumbered or repealed.

(e) If renumbering is done, cross-references to the renumbered provision must be addressed accordingly. See s. 1.15 (1) (e) for more on finding cross-references.

**1.11 Introductory material. (1)** When dividing a unit of a rule into subunits that consist of a series of items, it may be necessary to precede the subunits with introductory material, which is designated as “(intro.)”. Using an introduction and subunits can often clarify ambiguities that result from writing a series in a sentence, including whether a particular qualifying word or phrase applies to all items in the series or only to the last one.

**(2)** Each subunit following an introduction should complete the idea and result in a complete sentence when read with the introduction. Except in the case of an introduction of definitions as described in s. 1.07 (2) (b), each introduction should generally contain words like “all of the following,” to indicate that each of the items in the list are applicable, or “any of the following” to indicate that any one of the items is applicable.

**(3)** An introduction should end with a colon and all subunits should end with a period, rather than a comma or semicolon or the word “and” or “or.” This facilitates

future insertion or deletion of subunits without having to move the word “and” or “or” in the next-to-the-last subunit.

**EXAMPLE:**

RL 8.01 An applicant shall be granted a license if the applicant satisfies all of the following conditions:

- (1) Two years of post-secondary education at any of the following:
  - (a) A college or university.
  - (b) A technical college.
- (2) One year of apprenticeship.

*NOTE:* In this example, the material after “RL 8.01” and before the first colon is referred to as “s. RL 8.01 (intro.)”. If a rule amends only that portion of s. RL 8.01, the treatment clause should read “RL 8.01 (intro.) is amended to read:”. If a rule amends only the material after the (intro.), the (intro.) should not be shown.

Subsection (1) in the example is divided into three parts. The material after “(1)” and before the second colon is referred to as “s. RL 8.01 (1) (intro.)”. The three parts of sub. (1) are sub. (1) (intro.), par. (a), and par. (b).

(4) An introduction should generally not be followed by a single subunit. If repeal of subunits in a series results in one remaining subunit, that subunit should be consolidated with the introduction into a single rule unit, often by way of consolidating, renumbering and amending the provisions. [See also s. 1.04 (7) for information on how to consolidate, renumber, and amend a provision.]

(5) A section or subunit may be divided into subunits without introductory material.

**1.12 Notes. (1) EXPLANATORY MATERIAL.** (a) If it is necessary to clarify a rule by using examples, illustrations, or other explanatory material or if an agency wishes to disclose where or how particular information, including forms, may be obtained, the agency may include such explanatory material in a note that follows the applicable rule provision and is labeled “Note:” or “Example:”.

(b) Do not include explanatory material in the substantive provisions of a rule.

(c) Notes may not include substantive requirements, are not part of the substantive rule, and do not have the effect of law. As such, notes should not contain a command indicating some requirement.

(2) CREATING, REPEALING, AND AMENDING NOTES. (a) Notes may be created repealed, or amended in a rule order in the same manner as other rule provisions. If a note is created, repealed, or amended in a rule order, that action should be included in the enumeration of provisions treated and in the proper sequentially numbered rule SECTION using the number of the rule unit that precedes the note, i.e., “SECTION \_. NR 1.05 (1) (a) (Note) is amended to read:”. If more than one note follows a provision and they are not numbered in any way, refer to the note by the order of its appearance. For example, “SECTION \_. NR 1.05 (1) (a) (Note 2) is amended to read:” refers to the second note following NR 1.05 (1) (a).

(b) As a note is not a part of the substantive rule, it may also be created, amended, or deleted at any time by LRB without rulemaking. To request a change to a note, contact LRB.

(3) REFERENCES TO FORMS. If a rule requires a new or revised form, include a reference to the form in a note to the rule. The note should indicate the address that a person may write to, or the telephone number that a person may call, in order to obtain the form. If the form is available on the Internet, the note should indicate the website from which the form may be obtained. [See ss. 227.01 (13) (q) and 227.14 (3), Stats., for the treatment of forms in ch. 227, Stats.]

*EXAMPLE: Note:* The (form title) is available from (the agency name), (address), (phone number), or online at (website).

(4) HYPERLINKS. A hyperlink in a note should be preceded by “[http://](#)” or “[https://](#)” to be electronically recognized on the Legislature’s website as a link.

**1.13 Forms, tables, images, and appendices. (1) FORMS, TABLES, AND IMAGES.** An agency may include the text of forms, tables, and images following rule units, which may not adhere to the numbering structure described above. LRB will generally do its best to integrate such materials into the code, but if the agency has any questions about doing so, the agency is encouraged to contact LRB, especially for larger or multi-part tables. See the existing code for examples of the use of text for forms, tables, and images in rule provisions.

(2) APPENDICES. An agency may create appendices that include additional material that is relevant to a rule but that is not organized in the structure otherwise described in this chapter. Each appendix is generally numbered by reference to one or more particular code chapters (e.g., NR 24 Appendix A) and should generally be referenced within the corresponding rule provisions. A chapter may have more than one appendix (i.e., “Appendix A, Appendix B...”). Consult the existing code for examples of appendices and their use.

**1.14 Incorporation of material by reference. (1) GENERAL.** (a) With the consent of the Attorney General, an agency may in a rule incorporate by reference standards established by technical societies and organizations of recognized national standing.

Standards incorporated by reference need not be published in full in the Administrative Code.

(b) The Attorney General may consent to the incorporation only if the rule is of limited public interest and the incorporated standards are readily available in printed form or an electronic format. [s. 227.21 (2), Stats.]

*NOTE:* The Attorney General, in 59 Op. Att’y Gen 31 (1970), defined a “standard” for what is now s. 227.21 (2), Stats., as:

. . . something that is set up and established by authority as a rule for the measure of quantity, weight, value or quality. It is synonymous to criterion, which is any objective measure by which one judges a thing by comparison as authentic, good or adequate.

(2) WRITTEN REQUEST FOR APPROVAL OF INCORPORATION. If an agency desires to incorporate standards in a rule by reference, the agency must submit a written request to the Attorney General with a copy of the proposed rule and the standards. The request must contain information regarding all of the following:

- (a) Whether the rule is of limited public interest.
- (b) The extent of unnecessary expense if permission to incorporate the standards by reference is not granted.
- (c) Whether the standards are established by a technical society or organization of recognized national standing.
- (d) Whether the standards are readily available in published form or are available in an electronic format.

*NOTE:* A request for the Attorney General’s consent may be emailed to [dojlegalreferrals@doj.state.wi.us](mailto:dojlegalreferrals@doj.state.wi.us), or mailed to the Attorney General’s office, Attn.: Administrator, Department of Justice - Division of Legal Services, P.O. Box 7857, Madison, WI 53707-7857.

The request should be initiated early in the rulemaking process so that permission is granted prior to submitting the final draft proposed rules to the Governor under s. 227.185, Stats. The rule analysis should include a statement that consent has been given.

(3) FORMAT OF INCORPORATION IN RULE. (a) The proposed rule must contain a provision that states that the standard is incorporated by reference, specifying the exact title and publication date of the standards. If less than all standards within a publication

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are being incorporated, specific citations to the standards incorporated or not incorporated must be included.

(b) The proposed rule must state how the incorporated material may be obtained and that the standard is on file at the office of the agency and LRB. This requirement is met by inserting this information in a note following the rule provision that includes the incorporation of the standard. The standard must be filed with LRB by the time the certified copy of the final rule is filed for publication in the Administrative Code under s. 227.20, Stats. LRB will not publish a rule incorporating a standard in the Administrative Code until the required copies have been filed.

*NOTE:* LRB has a spreadsheet with a record of the standards that are on file. Contact LRB to request a copy of the spreadsheet, if needed.

(4) SUBMITTAL OF FINAL PROPOSED RULE TO GOVERNOR AND LEGISLATURE. A standard incorporated by reference *is a part of the rule* in which it is incorporated but is exempted from the general requirement under s. 227.21 (1), Stats., that all permanent rules be published in the Administrative Code. As such, when the rule is “in final draft form” and submitted to the Governor for approval under s. 227.185, Stats., and to the Legislature for review under s. 227.19, Stats., the submission should include the incorporated standards or, at minimum, indicate that the agency can provide those standards for review on request.

(5) AMENDMENTS AND REVISION OF INCORPORATED STANDARDS. If standards that have been adopted by reference are changed by the independent entity that is the author of the standards, an agency may adopt the changed version only by promulgating a new rulemaking order that amends the affected Administrative Code provision as necessary to identify the version of the standard adopted. Consent of the Attorney General to the adoption of the updated standard must be obtained. The changes cannot be adopted prospectively or automatically.

*NOTE:* Prospective incorporation of standards by reference may raise legal questions regarding improper delegation of authority by the agency to the independent entity that authored an adopted standard.

(6) SECONDARY STANDARDS. If a standard to be incorporated by reference contains secondary standards, the agency must expressly adopt the secondary standard (or expressly provide that the secondary standard is not adopted) by rule and make a distinct request for incorporation of a secondary standard by reference.

(7) INCORPORATING FEDERAL RULES. (a) In general, all material included in a rule must be published in full in the Administrative Code. Section 227.21 (2), Stats., provides a specific exception to the general publication requirement only for *standards* established by technical societies or organizations of recognized national standing; it does not specifically address the incorporation of federal materials by reference.

(b) In 59 Op. Att’y Gen. 31 (1970), the Attorney General stated that “it is my opinion that it would be improper to incorporate by reference the U.S. Code or federal regulations” (CFR) under what is now s. 227.21 (2), Stats. However, that opinion continues, “While this exception [to the publication requirement] does not include legislative processes of various governmental units empowered to make substantive laws, it may apply to physical or objective standards adopted by governmental agencies which are not policy matters.” The Attorney General went on to say that standards produced by the federal government have general acceptance, which brings them within the purview of standards that may be incorporated by reference under s. 227.21 (2), Stats.

(c) While the above-quoted opinion suggests an outright ban on incorporating CFR provisions, its subsequent discussion of federal materials that are standards that may be incorporated by reference suggests that if a CFR provision incorporates federally determined “standards,” as that term is defined, rather than policy determinations, those standards can be incorporated by reference under s. 227.21 (2), Stats., subject to the approval of the Attorney General. When referring to CFR material it appears that the following factors should be considered:

1. Is the text of the CFR material being referred to actually being made a part of the rule being promulgated? If it is only referred to for explanation or context, it seemingly is not a part of the rule and need not be incorporated in the rule, either by fully restating it in the rule or by incorporation by reference and a cross-reference would be sufficient.

2. If the text of the CFR material being referred to is to be an actual part of the rule and falls within the definition of a standard, the material seemingly may be incorporated by reference with the approval of the Attorney General.

3. If the text of the CFR material being referred to is to be an actual part of the rule and does not meet the definition of a standard, but is a matter of federal policy, the Attorney General’s opinions and case law suggest that the material must be reproduced in full, as part of the text of the rule.

**1.15 Citations to other provisions. (1) GENERALLY.** (a) Cross-references are commonly used to refer to specific material contained in a statute or different rule provision. For example, “the requirement under par. (a)” should be used instead of “that requirement” or “the aforementioned requirement.”

(b) Cross-references may also be used to incorporate material by reference. For example, if s. NR 1.02 contains a procedure for processing complaints, this procedure could be incorporated in other provisions using language such as, “The department shall process complaints using the procedure provided under s. NR 1.02.”

(c) Do not use general terms, such as “et. seq.,” “this provision,” “this rule,” “of the code,” or “of this chapter” when making references to another rule or part of a rule. Make the references as specific as possible by using the specific statute, code, or regulation citation.

(d) Do not include the title of a referenced provision in the text of a rule; use only the numerical reference.

(e) When existing provisions are renumbered, repealed, or repealed and recreated, carefully review other rules that contain references to the revised rules and make any needed cross-reference changes. Refer to the Administrative Code cross-references list at: <http://docs.legis.wisconsin.gov/code/xrefs/xrefs>. Search for the whole section number of the cite being affected, including the code letter designation (e.g., ATCP 10.01). Revise all references located in the agency’s code as necessary, including in chapters not otherwise affected by the rule. Inform LRB of any cross-references to an affected provision from rule provisions promulgated by other agencies.

**(2) REFERENCES TO STATE STATUTES AND RULES.** (a) 1. Rule provisions may cross-reference to other rule provisions, which may be internal or external cross-references as described below. References may be made to another agency’s code, but caution should be used when doing so because that agency may subsequently modify or repeal the provision being cross-referenced.

2. Do not include the source designation “Wis. Adm. Code” for cross-references to other rule provisions.

(b) 1. Rule provisions may cross-reference provisions in the state statutes. Cross-references to state statutes are always external cross-references, as described below, and are followed by the source designation “, Stats.”

2. A cross-reference may be made to specific (i.e., prior) editions of the statutes (e.g., “2015 Stats.”).

(c) Differing format is used for internal and external references to state statutes and rule provisions. An “internal” reference is a reference to another portion of the Administrative Code that is within the same unit as the portion where the reference occurs, thus making a full citation unnecessary. An “external” reference is a reference to portions of the code outside of the portion containing the reference, thus necessitating a full, precise citation in order to achieve accuracy.

**EXAMPLES:**

<i>Citation</i>	<i>Internal</i>	<i>External</i>
Statutes	-----	s. 15.01, Stats.
Rules chapters	this chapter	ch. ATCP 14
Rules subchapters	this subchapter	subch. IV [same chapter], subch. IV of ch. ATCP 14 [different chapter]
Rules sections	this section	s. ATCP 14.24



<i>Citation</i>	<i>Internal</i>	<i>External</i>
Rules subsections	this subsection	s. ATCP 14.24 (2) [different section], sub. (2) [same section]
Rules paragraphs	this paragraph	s. ATCP 14.24 (2) (a) [different section], sub. (2) (a) [different subsection], and par. (a) [same subsection]
Rules subdivisions	this subdivision	s. ATCP 14.24 (2) (b) 3. [different section], sub. (2) (b) 3. [different subsection], par. (b) 3. [different paragraph], and subd. 3. [same paragraph]
Rules subdivision paragraph	this subd. 3. a.	s. ATCP 14.24 (2) (b) 3. a. [different section], sub. (2) (b) 3. a. [different subsection], par. (b) 3. a. [different paragraph], and subd. 3. a. [different subdivision or same subdivision]
Alternative	this subsection or sub. (2) [reference is in sub. (1)]	sub. (1) or (2) [same section], s. ATCP 14.18 (1) or (2) [different section]
Plural	this subsection and sub. (2) [reference is in sub. (1)]	subs. (1) and (2) [same section], s. ATCP 14.18 (1) and (2) [different section]
Consecutive series	subs. (1) to (5)	s. ATCP 14.18 (1) to (5)

(d) Use the abbreviation “s.” when referring to a single section of the statutes or rules, and use “ss.” when referring to multiple sections of the statutes or code. Do not use “ss.” if a citation refers to multiple subparts of a single section or if a citation refers to multiple sections listed disjunctively (“or”).

**EXAMPLES:**

- s. ATCP 14.01
- ss. ATCP 14.01 and 14.03
- s. ATCP 14.01 or 14.03
- s. ATCP 14.02 (1) and (2)
- s. ATCP 14.01 (4) or 14.02 (4)
- ss. ATCP 14.01 to 14.05

**(3) REFERENCES TO FEDERAL STATUTES AND REGULATIONS.** (a) When citing a federal law, use the U.S. Code reference whenever possible; for example, 42 USC 1396a (a) (13).

(b) When citing a federal regulation that is currently in force, use the Code of Federal Regulations citation; for example, 22 CFR 13.2, as of (insert date).

**NOTE:** See s. 1.14 for more information on how to incorporate material by reference.

**1.16 Permits; small business; local land use planning. (1)** Each rule that includes a requirement for a business to obtain a permit must include the number of business days, calculated beginning on the day a permit application is received, within which the agency will review and make a determination on the permit application. [s. 227.116 (1r), Stats.]

*NOTE:* Under s. 227.116 (1g), Stats., “permit” means any approval of an agency required as a condition of operating a business in this state.

**(2)** When an agency proposes or revises a rule that may have an effect on small businesses, the agency must consider the methods specified in s. 227.114 (2) (a), Stats., for reducing the impact of the rule on small businesses and incorporate into the proposed rule any method the agency finds to be feasible, unless doing so would be contrary to the statutory objectives which are the basis for the proposed rule. [s. 227.114 (3), Stats.]

**(3)** Each agency, where applicable and consistent with the laws that it administers, is encouraged to design the rules promulgated by the agency to reflect a balance between the mission of the agency and the goals specified in s. 1.13 (2), Stats., regarding local, comprehensive planning goals. [s. 227.113, Stats.]

**PART 2**  
**PROMULGATION PROCEDURE**

**2.001 Submission of materials to LRB. (1)** Email all documents to be published in the Administrative Code or Register to LRB at [Admin-Code-Register@legis.wi.gov](mailto:Admin-Code-Register@legis.wi.gov). LRB will email an acknowledgement of receipt of each submitted item. If you do not receive the acknowledgement, you may contact Jill Kauffman or Mike Duchek at LRB. Except for certified copies of emergency and final permanent rules required to be submitted to LRB under s. 227.20, Stats., and except for when returning proof copies of Administrative Code chapters, no paper copies of any documents should be submitted to LRB.

**(2)** The Register is generally published by 8 A.M. each Monday, except when Monday is a holiday, in which case the Register is published on Tuesday. The general deadline for submitting documents to LRB for Register publication is the end of the day on Thursday prior to the Monday of publication. If time permits, LRB will grant exceptions to the deadline upon email or phone request. However, no notice relating to a permanent rule will be published if the Rules Clearinghouse has not assigned a Clearinghouse rule number to the rule prior to the finalization of the Register by LRB on the Friday before publication.

*NOTE:* See s. 2.08 (3) for the deadline for filing final rulemaking orders for publication in the Administrative Code.

*NOTE:* Current and prior editions of the Register may be accessed at: <http://docs.legis.wisconsin.gov/code/register>.

*NOTE:* For information on executive branch submission requirements and procedures, consult the latest edition of the Department of Administration (DOA) Administrative Rules Process - E-Mail Guide.

**2.005 Formatting documents. (1)** As a general rule, all documents submitted to LRB for publication should be Microsoft Word documents; the only exceptions are fiscal estimates, economic impact analyses, and executive orders, which may be submitted as PDFs. Follow the following guidelines in preparing any Word document for publication:

- (a) Use Times New Roman, 11 point font.
- (b) Use “normal” text formatting (vs. headings, subtitles, etc.).
- (c) Do not use “track changes” to strike or score items in rule text; use strike-through and underlining.
- (d) Do not use auto-numbering.

(2) LRB must individually reformat each document containing the items listed above for Register publication. Otherwise, the text-reading software that publishes documents to the register website may not include all of the words in your document, or it will format the document in unwanted ways. LRB does not reformat actual rule text, which is why the document text may appear skewed online and may include the note “see formatting in PDF.”

**2.007 Informational hearings; advisory bodies. (1)** Before preparing a statement of scope for a proposed rule as described in s. 2.01, an agency may hold hearings to solicit public comment on a general subject area that may result in future rulemaking. Hearings of this nature do not relieve the agency from its obligation to comply with a directive to conduct a preliminary hearing on a statement of scope under s. 227.136 (1), Stats. [s. 227.136 (7), Stats.] Notices for informal or informational hearings may be published in the Register.

(2) In addition, an agency may use informal conferences and consultations to obtain the viewpoint and advice of interested persons with respect to contemplated rulemaking. An agency also may appoint a committee of experts, interested persons or representatives of the public to advise it with respect to any contemplated rulemaking. Such a committee has advisory powers only. Whenever an agency appoints such a committee, the agency must submit a list of the members of the committee to JCRAR. [s. 227.13, Stats.]

**2.01 Statement of scope of proposed rule. (1) GENERAL REQUIREMENT.** (a) For each emergency or permanent rule that an agency plans to promulgate, the agency must prepare a statement of the scope of the proposed rulemaking. A statement of scope is a notice that an agency intends to engage in rulemaking on a topic specified in the notice. It must address 6 specific topics that combine to identify the reason for and coverage of the intended rulemaking. It is not a detailed statement of the content of the rules that will be proposed. The statement of scope must be presented to DOA, approved by the Governor, published in the Register, and then approved by the person or body with policy-making powers for the agency. The individual or body with policy-making powers for the agency may not approve the statement until at least 10 days after publication of the statement in the Register and, if a preliminary public hearing and comment period is held, not until the individual or body has received and reviewed any public comments and feedback received by the agency at the public hearing or otherwise received during the comment period. [ss. 227.135 and 227.24 (1) (e) 1d., Stats.]

(b) No state employee may perform any activity in connection with the drafting of a rule, except for the preparation of the statement of scope, and preparation of a notice of a preliminary public hearing and comment period when held under s. 227.136, Stats., until the statement of scope is approved by the Governor and the individual or body with policy-making powers for the agency. [s. 227.135 (2), Stats.] Therefore, do not include proposed rule text in a statement of scope.

**NOTE:** See sub. (5) for the information on preliminary public hearings and comment periods for statements of scope.

(c) A statement of scope expires 30 months after it is published in the Register. After a statement of scope expires, an agency may not submit a proposed rule based upon that statement of scope to the Legislature for review under s. 227.19 (2), Stats., and any proposed rule based on the statement that has not been submitted to the Legislature for review before that date is considered withdrawn on that date. [s. 227.135 (5), Stats.]

(d) A single statement of scope may be used when an agency intends to promulgate both an emergency rule and a permanent rule in carrying out the intended rulemaking included in the statement of scope.

**(2) ELEMENTS.** The statement of scope must include all of the following statutory elements, which should serve as the headings in the statement of scope in the order stated below:

(a) A description of the objective of the proposed rule.

(b) A description of the existing policies and new policies included in the proposed rule and an analysis of policy alternatives.

(c) The statutory authority for the proposed rule. [See s. 1.01 (2) (c).]

(d) An estimate of the amount of time agency employees will spend developing the proposed rule and of other resources needed to develop the rule.

(e) A description of all of the entities that may be affected by the proposed rule.

(f) A summary and preliminary comparison of any existing or proposed federal regulation that addresses or is intended to address the activities to be regulated by the proposed rule.

[s. 227.135 (2), Stats.]

**NOTE:** DOA has created a template for preparing statements of scope. The template is available at: <https://doa.wi.gov/Pages/StateFinances/State-Controllers-Office-Information-for-state-agencies.aspx>.

**NOTE:** For examples of actual statements of scopes filed by agencies with LRB, see:

[http://docs.legis.wisconsin.gov/code/scope\\_statements](http://docs.legis.wisconsin.gov/code/scope_statements).

**(3) SUBMISSION TO DOA AND GOVERNOR.** Upon completion of the statement text by the agency, the agency must present the statement of scope to DOA for a determination of whether the agency has “explicit authority” to promulgate the rule as proposed in the

statement of scope. DOA then reports the statement of scope and its authority determination to the Governor, who may approve or reject the statement of scope. The Governor must approve the statement of scope in writing prior to submittal of the statement to LRB for publication in the Register. [s. 227.135 (2), Stats.]

**NOTE:** Email statements of scope to DOA's Office of Legal Services at: [SBOAdminRules@spmail.wi.gov](mailto:SBOAdminRules@spmail.wi.gov) and [DOARulesReview@wi.gov](mailto:DOARulesReview@wi.gov).

**(4) PUBLICATION.** (a) Upon approval by the Governor, the agency must send a copy of the statement of scope to LRB for publication in the Register and, on the same day, send a copy to the Secretary of DOA and to the chief clerks of each house of the Legislature for distribution of the statement to the JCRAR co-chairs. The agency must include the date of the Governor's approval in the submission of the statement of scope to LRB.

(b) Upon receipt of a statement of scope for publication in the Register, LRB assigns a discrete identifying number to the statement, determines the expiration date for the statement, and publishes the statement of scope in the next Register whose filing deadline has not been reached, displaying the identifying number, date of Governor's approval, and expiration date. [s. 227.135 (3) and (5), Stats.]

**(5) HEARING AND COMMENT PERIOD.** (a) Within 10 days after publication of the statement of scope in the Register, either JCRAR co-chair may submit a written directive to the agency requiring that a preliminary public hearing be held on the statement of scope and that a period be established for the receipt of public comments on the statement of scope. The agency may also opt to hold a preliminary public hearing and comment period on its own initiative. If a hearing and comment period are held, the agency must submit a notice of preliminary public hearing and comment period to LRB for publication in the Register. There is no statutory minimum time period within which the hearing must be held or within which notice must be given, nor is there a statutory minimum duration for the comment period established by the agency. However, the hearing may not be held sooner than the 3rd day after publication of the notice in the Register. [s. 227.136 (1) to (3), Stats.] An agency may submit a notice of preliminary public hearing and comment period to the LRB when it submits the statement of scope to the LRB under sub. (4), to have both the statement and the notice published in the Register on the same day.

(b) The notice of preliminary public hearing and comment period must be approved by the individual or body with policy-making powers over the subject matter of the proposed rule and must include all of the following: [s. 227.136 (2), Stats.]

1. A statement of the date (not sooner than the 3rd day after publication of the notice in the Register), time, and place of the preliminary public hearing.

2. The place where comments on the statement of scope should be submitted and the deadline for submitting those comments.

**NOTE:** LRB will publish the notice in the Register with a link to the statement of scope that is the subject of the notice.

**NOTE:** All statements of scope for which a notice of a preliminary public hearing and comment period is published in the Register are open for comment at the Legislature's Administrative Rule website, <http://docs.legis.wisconsin.gov/code>. Comments submitted through this website are automatically forwarded to the email address provided to LRB by the agency for receipt of comments. After the comment deadline, comments are no longer accepted through the website. Agencies may elect to provide an additional site or method by which comments may be submitted.

(c) The hearing is to be held in the same manner as hearings on proposed rules, as provided under s. 227.18, Stats. The agency must report all public comments and feedback on the statement of scope received at the public hearing, or otherwise submitted to the agency prior to the conclusion of the comment period, to the individual or body with policy-making powers over the subject matter of the proposed rule. [s. 227.136 (4) and (5), Stats. See also s. 2.06, regarding the conduct of rulemaking hearings.]

**NOTE:** LRB and LC have created a template for a notice of preliminary public hearing and comment period. The template is available at: <https://legis.wisconsin.gov/lrb/pubs/administrative-register-templates>.

**(6) APPROVAL BY AGENCY.** A statement of scope must be formally approved by the individual or body with policy-making powers over the subject matter of the proposed rule. This approval may not occur until at least 10 days after publication of the statement in the Register or, if a preliminary public hearing and comment period are held by the agency as described in sub. (5), above, until the individual or body has received and reviewed any public comments and feedback received from the agency. When the agency submits a notice of submittal of a proposed rule to the Rules Clearinghouse, as described in s. 2.03 (2), the notice must include the date of approval of the statement of scope by the individual or body with policy-making powers over the subject matter of the proposed rule.

**(7) REVISED STATEMENT OF SCOPE.** (a) If an agency changes the scope of any proposed rulemaking in any meaningful or measurable way at any time after a statement of scope has been approved by the Governor, as described in sub. (3), above, the agency must prepare and obtain approval of a revised statement of scope in the same manner as the original statement was prepared and approved. Circumstances necessitating a revised statement of scope include the agency's changing of the scope of the rule to

include any activity, business, material, or product that was not specifically included in the original scope of the rule. [s. 227.135 (4), Stats.]

(b) A revised statement of scope must contain all of the elements required for an original statement of scope as set forth in sub. (2), above. The statement should be labeled a “Revised Statement of Scope” and contain a preface identifying the original statement that is being modified, as follows (as applicable):

This revised statement of scope modifies, SS \_\_\_\_\_, which was approved by the Governor on \_\_\_\_\_ (date), published in Register \_\_\_\_\_ (Register Number), on \_\_\_\_\_ (Register publication date), and approved by \_\_\_\_\_ (name of policy making body or individual for the agency as required by s. 227.135 (2), Stats.) on \_\_\_\_\_ (date), relating to \_\_\_\_\_ (state the subject as it appears in the original statement.)

(c) As with the original statement of scope, the revised statement must be submitted to DOA and approved by the Governor, as provided in sub. (3), above, submitted to LRB for publication as provided in sub. (4), above, and submitted for approval by the individual or body with policy-making powers for the agency as provided in sub. (6), above. As with the original statement, no state employee may perform any activity in connection with the drafting of the rule, except for the preparation of the revised statement of scope, until the statement of scope is approved by the individual or body with policy-making powers for the agency, as described in sub. (6), above. [s. 227.135 (4), Stats.]

(d) A revised statement of scope receives a new identifying number as described in sub. (4) (b) and a new, 30-month expiration date. [s. 227.135 (5), Stats.]

**(8) WITHDRAWAL OF STATEMENT OF SCOPE.** There is no statutory process for withdrawing a statement of scope. An agency may send a notice to LRB for publication in the Register indicating that it no longer intends to promulgate a rule under a statement of scope.

**2.02 Drafting rulemaking orders. (1) GENERALLY.** Upon final approval of the statement of scope by the individual or body with policy-making powers for the agency, an agency may begin the drafting of a rulemaking order to promulgate the intended rulemaking described in the statement of scope. [See also s. 2.01 (1) (b).] Part 1, above, provides a general discussion of the structure and style of rulemaking orders, which applies to the drafting of both emergency rules and permanent rules. When a statement of scope provides for both an emergency rule and a permanent rule, the same rulemaking order may be published as the emergency rule as is submitted to the Rules Clearinghouse for review, except that the permanent rule and the emergency rule each requires its own effective date provision as provided in ss. 1.03 (4) and 2.10 (5), and each emergency rule must include a finding of emergency as provided in sub. (2) (b), below.



(2) FORM OF RULEMAKING ORDER. (a) *Content*. Each rule must contain each of the following three elements:

1. An introductory clause, as described in s. 1.01 (1).

2. A rule analysis, as described in s. 1.01 (2).

3. The text of the rule, as described in ss. 1.01 (3) and 1.03, including code treatments and an effective date SECTION.

(b) *Finding of emergency*. With certain exceptions, each emergency rule must include a finding of emergency with a statement of the facts constituting an emergency. [For a full treatment of emergency rules, see s. 2.10.]

(3) PRESUBMISSION EDITING OF PROPOSED RULES BY LRB. (a) *Service provided*. LRB offers the services of its staff editors to provide editing of all proposed rules prior to their submission to the Rules Clearinghouse, prior to legislative review, or, in the case of emergency rules, prior to publication. The use of this service is strictly voluntary on the part of each agency. Editing will be for form, structure, and style of the rule text. Legality, authority, or the substance of the rule will generally not be addressed, and the rule analysis will not be reviewed.

(b) *Timing*. LRB recognizes that rules are often drafted within a restricted time frame. If time is limited, editing may also need to be less than would normally be done, in which case the editing services that can be provided will be discussed by LRB with agency representatives. If a rule has been edited prior to submission, but major post-hearing revisions are being made, those revisions can also be reviewed.

(c) *Submission to LRB*. Rules to be edited should be submitted to LRB as a Microsoft Word document, and the agency should indicate any date by which the agency needs LRB to perform the editing. Editors will then make suggested corrections and offer other suggested changes or feedback using the Track Changes function, and the marked-up copy will be returned to the agency by email. Explanatory comments will be included as necessary.

**2.025 Requirements prior to submission to Rules Clearinghouse. (1) GENERALLY.** Prior to submitting a proposed permanent rule to the Rules Clearinghouse as described in s. 2.03, the agency must comply with the steps required to prepare the materials described in subs. (2) to (5), below. [s. 227.15 (1), Stats.]

(2) REGULATORY FLEXIBILITY ANALYSIS; SMALL BUSINESS REVIEW. (a) If the rule will have an effect on small business, an initial regulatory flexibility analysis must be prepared and, if the rule may have an economic impact on small business, the rule must be submitted to the Small Business Regulatory Review Board (SBRRB). The initial regulatory flexibility analysis must be included in the notice of hearing. [ss. 227.14 (2g) and 227.17 (3) (f), Stats.; and s. 2.05 (1) (d).]

(b) The SBRRB must determine whether the rule will have a significant economic impact on a substantial number of small businesses. The agency will also need to prepare a final regulatory flexibility analysis for submission to the Legislature along with the proposed rule unless the SBRRB determines that the rule will not have a significant economic impact on a substantial number of small businesses. [s. 227.19 (3) (e) and (3m), Stats.; and s. 3.02 (2) (h) 6.]

*NOTE:* The term “small business” is defined in s. 227.114 (1), Stats.

**(3) FISCAL ESTIMATES.** (a) A fiscal estimate is required for all proposed rules under s. 227.14 (4), Stats. The fiscal estimate must include all of the following:

1. Any anticipated fiscal effect of the rule on the fiscal liability and revenues of a county, city, village, town, school district, technical college district, and sewerage district.

2. A projection of the rule’s anticipated state fiscal effect in the current biennium and a projection of the net annualized fiscal impact on state funds.

3. For rules that the agency determines may have a significant fiscal effect on the private sector, the anticipated costs that will be incurred by the private sector in complying with the rule.

4. A list of the major assumptions used in preparing the estimate.

(b) If the rule has no fiscal effect, independent of the fiscal effect of the statute upon which it is based, the agency should base its fiscal estimate on the fiscal effect of the statute.

(c) If, during the rulemaking process, the rule is substantially revised so that the fiscal effect is significantly changed, the agency must prepare a revised fiscal estimate prior to promulgating the rule. The revised fiscal estimate is published in the Register.

(d) 1. The fiscal estimate must accompany any rule that is submitted to the Rules Clearinghouse for review under s. 227.15, Stats.

2. The fiscal estimate or a summary of the fiscal estimate and a statement of the availability of the full fiscal estimate must be provided to LRB when a notice of hearing on the rule is filed for publication in the Register. If the agency initiates the rulemaking process with a 30-day notice pursuant to s. 227.16 (2) (e), Stats., the full fiscal estimate must be provided to LRB for publication with the notice.

*NOTE:* DOA has developed a template for preparing a fiscal estimate and the economic impact analysis described in subs. (2) and (3). The template is available at: <https://doa.wi.gov/Pages/StateFinances/State-Controllers-Office-Information-for-state-agencies.aspx>.

**(4) ECONOMIC IMPACT ANALYSES.** (a) An economic impact analysis must be prepared for every proposed rule before the rule is submitted to the Rules Clearinghouse

for review. [s. 227.137, Stats.] This requirement does not apply to emergency rules. The analysis must include information on the economic effect of the proposed rule on specific businesses, business sectors, public utility ratepayers, local governmental units, and the state's economy as a whole. In preparing the analysis, the agency must solicit information and advice from businesses, associations representing businesses, local governmental units, and individuals that may be affected by the proposed rule and must prepare the analysis in coordination with local governmental units that may be affected by the proposed rule. The analysis must include all of the following:

1. An analysis and quantification of the policy problem that the proposed rule is intended to address, including comparisons with the approaches used by the federal government and by Illinois, Iowa, Michigan, and Minnesota to address that policy problem and, if the approach chosen by the agency to address that policy problem is different from those approaches, a statement as to why the agency chose a different approach.

2. An analysis and detailed quantification of the economic impact of the proposed rule, including the implementation and compliance costs that are reasonably expected to be incurred by or passed along to the businesses, local governmental units, and individuals that may be affected by the proposed rule, specifically including:

- a. An estimate of the total implementation and compliance costs that are reasonably expected to be incurred by or passed along to businesses, local governmental units, and individuals as a result of the proposed rule, expressed as a single dollar figure.

- b. A determination as to whether \$10,000,000 or more in implementation and compliance costs are reasonably expected to be incurred by or passed along to businesses, local governmental units, and individuals over any 2-year period as a result of the proposed rule.

3. An analysis of the actual and quantifiable benefits of the proposed rule, including an assessment of how effective the proposed rule will be in addressing the policy problem that the rule is intended to address.

4. An analysis of alternatives to the proposed rule, including the alternative of not promulgating the proposed rule.

5. A determination made in consultation with the businesses, local governmental units, and individuals that may be affected by the proposed rule as to whether the proposed rule would adversely affect in a material way the economy, a sector of the economy, productivity, jobs, or the overall economic competitiveness of the state.

6. An analysis of the ways in which and the extent to which the proposed rule would place any limitations on the free use of private property, including a discussion of alternatives to the proposed rule that would minimize any such limitations.

(b) If an economic impact analysis relates to a proposed rule of the Department of Safety and Professional Services under s. 101.63 (1), Stats., establishing standards for dwelling construction, the analysis must address whether the rule would increase the cost of constructing or remodeling a dwelling by more than \$1,000. [s. 227.137 (3) (f), Stats.]

(c) On the same day that the agency submits the economic impact analysis to the Rules Clearinghouse under s. 227.15 (1), Stats., the agency must also submit the analysis to DOA, to the Governor, and to the Chief Clerks of each house of the Legislature for further distribution within the Legislature. [s. 227.137 (4), Stats.]

(d) If a proposed rule is modified after the economic impact analysis is submitted so that the economic impact of the proposed rule is significantly changed, the agency must prepare a revised economic impact analysis for the proposed rule as modified and submit the revised analysis in the same manner as the original. [s. 227.137 (4), Stats.]

(e) If an economic impact analysis, revised economic impact analysis, or independent economic impact analysis, regarding a proposed rule indicates that a total of \$10,000,000 or more in implementation and compliance costs are reasonably expected to be incurred by or passed along to businesses, local governmental units, and individuals over any two-year period as a result of the proposed rule, the agency may not promulgate the rule absent authorizing legislation or a germane modification to the proposed rule that reduces costs below the \$10,000,000 threshold. [s. 227.139, Stats.]

(5) HOUSING IMPACT ANALYSIS. If a rule directly or indirectly may increase or decrease the cost of the development, construction, financing, purchasing, sale, ownership, or availability of housing in Wisconsin, the agency must prepare an analysis for the rule before it is submitted to the Rules Clearinghouse. The analysis must contain information about the effect of the rule on housing, including the specific information required under s. 227.115 (3) (a), Stats. The analysis is included in the agency's report to the Legislature under s. 227.19 (3), Stats. If a proposed rule is modified after the housing impact analysis is submitted so that the housing impact of the proposed rule is significantly changed, the agency must prepare a revised housing impact analysis for the proposed rule as modified and submit the revised analysis in the same manner as the original. [s. 227.115 (2) (b), Stats.]

**2.03 Submittal of proposed permanent rule to Rules Clearinghouse. (1) SUBMISSION.** An agency must submit a copy of each proposed permanent rule to the Rules Clearinghouse as provided in s. 227.15, Stats. A proposed rule to repeal an existing unauthorized rule under s. 227.26 (4), Stats., must also be submitted to the Rules Clearinghouse for review with a petition to JCRAR seeking authorization to repeal the unauthorized rule. [See s. 3.01, for the requirements for submitting proposed rules to the

Rules Clearinghouse for review. See also s. 2.04, for the procedure for repealing unauthorized rules provided under s. 227.26 (4), Stats.]

**NOTE:** On the same day that an agency submits to the Rules Clearinghouse a proposed rule that may have an economic impact on small businesses, the agency must submit the proposed rule and other materials to the SBRRB, as provided in s. 227.14 (2g), Stats.

**(2) NOTICE.** The agency must submit to LRB for publication in the Register, and to the Secretary of DOA, a notice, approved by the person or body with policy-making authority over the subject matter of the proposed rule, that the agency has submitted a proposed rule to the Rules Clearinghouse. [See s. 227.14 (4m), Stats.] The notice must include all of the following:

- (a) The date the proposed rule was submitted to the Rules Clearinghouse.
- (b) The subject matter of the proposed rule.
- (c) Whether a public hearing is required. Include the date of the hearing if it is known. If a hearing is not required, note the applicable exemption under s. 227.16 (2), Stats., in the notice and proceed as provided in s. 2.05 (2).
- (d) The organizational unit within the agency that is responsible for preparing the rule.
- (e) The name and contact information for a contact person, if desired by the agency.
- (f) The identifying number of the statement of scope for the proposed rule [s. 2.01 (4) (b)], the publication date and issue number of the Register in which the statement was published [s. 2.01 (4) (b)], and the date of approval of the statement of scope by the individual or body with policy-making powers over the subject matter of the proposed rule [s. 2.01 (6)].

**NOTE:** If the notice of hearing, or other rulemaking notice, is not submitted to LRB at the same time as the notice of the submittal of the rule to the Rules Clearinghouse, submit copies of the proposed rulemaking order and the EIA for the rule to LRB in the email transmitting the notice of submittal.

**NOTE:** LRB and LC have created a template for a notice of submittal to the Rules Clearinghouse. The template is available at:  
<https://legis.wisconsin.gov/lrb/pubs/administrative-register-templates>.

**2.04 Repeal of unauthorized rules. (1)** Section 227.26 (4), Stats., provides an expedited procedure for repealing an unauthorized rule. Section 227.26 (4) (a), Stats., defines an “unauthorized rule” as a rule that an agency no longer has the authority to promulgate due to the repeal or amendment of the law that previously authorized its promulgation. When using the expedited procedure, none of the following are required:

- (a) Statement of scope under s. 227.135, Stats.
- (b) Economic impact analysis under s. 227.137, Stats.
- (c) Housing impact analysis under s. 227.115, Stats.
- (d) Submittal of proposed rule to Rules Clearinghouse, and notice thereof, under ss. 227.14 (4m) and 227.15, Stats.
- (e) Notice of hearing under s. 227.17, Stats., or other notice of rulemaking under s. 227.16, Stats., and hearing under s. 227.18, Stats.
- (f) Approval of rule by Governor under s. 227.185, Stats.
- (g) Notice to the chief clerks of the houses of the Legislature and review by committees of the Legislature under s. 227.19, Stats.
- (h) Finding of an emergency under s. 227.24, Stats.

**(2)** Instead of following the steps for promulgating a permanent rule enumerated in sub. (1), above, an agency may promulgate a rule that repeals an unauthorized rule using the following procedure:

(a) 1. The agency submits to the Rules Clearinghouse a petition to JCRAR seeking authorization to use the expedited procedure to repeal that rule, together with a proposed rulemaking order, in the form described in s. 1.02.

*NOTE:* For an example of a petition for expedited repeal see:  
[http://docs.legis.wisconsin.gov/code/register/2018/748A4/register#repeal\\_petitions](http://docs.legis.wisconsin.gov/code/register/2018/748A4/register#repeal_petitions).

2. In addition to repealing the unauthorized rule provision, a proposed rulemaking order may include the modification or removal of language outside of the text being repealed in order to remove cross-references and any other language directly referring or related to the language to be repealed.

(b) The Rules Clearinghouse assigns the petition a Clearinghouse rule number, reviews the petition and proposed rulemaking order, and submits them to JCRAR with a written report that includes a statement of the Clearinghouse’s determination of whether the proposed rule will repeal an unauthorized rule.

(c) JCRAR reviews the petition and proposed rule and may approve, deny, or request changes to the petition.

(3) If JCRAR approves the petition, the agency completes the promulgation of the proposed rule by filing a certified copy of the rule with LRB, in the same manner as all other final rules, along with a copy of JCRAR's decision. LRB publishes the rulemaking order and decision in the next Register, incorporates the changes into the Administrative Code, and publishes the updated Administrative Code in the Register, effective as provided under s. 227.22 (2), Stats.

(4) If JCRAR denies a petition, the agency should withdraw the petition and may pursue a repeal or amendment of the rule using the general, rather than expedited process.

(5) If JCRAR requests changes to a proposed rule, the agency must resubmit a revised petition and proposed rule to the Clearinghouse.

**2.05 Notice and public hearing. (1) HEARING REQUIREMENT.** (a) *Requirement; exceptions.* Section 227.16, Stats., requires that all rulemaking by an agency be preceded by notice of public hearing under s. 227.17, Stats., and that a public hearing be conducted as required under s. 227.18, Stats. However, a public hearing is not required if any of the following applies:

1. The proposed rule brings an existing rule into conformity with a statute that has been changed or enacted or with a controlling judicial decision. [s. 227.16 (2) (b), Stats. See sub. (2) (b), regarding this procedure.]

2. The proposed rule is adopted as an emergency rule. [s. 227.16 (2) (c), Stats.,] Section 227.24 (4), Stats., requires a public hearing on an emergency rule after the emergency rule is in effect. [See also s. 2.10 for a complete treatment of emergency rules, including hearing requirements.]

3. The proposed rule is being promulgated as directed by JCRAR under s. 227.26 (2) (b), Stats. [s. 227.16 (2) (d), Stats.]

4. The proposed rule is published under the 30-day notice procedure in s. 227.16 (2) (e), Stats. [See sub. (2) (a), regarding this procedure.]

5. The proposed rule is a rule to repeal an unauthorized rule using the procedure under s. 227.26 (4) (d), Stats. [See s. 2.04, regarding this procedure.]

(b) *Hearing notice; to whom sent.* If a hearing is required, the agency must do all of the following:

1. Send written notice of the hearing to LRB for publication in the Register and, if required, to a local newspaper. [s. 227.17 (1) (a), Stats.]

2. Send written notice of the hearing to every member of the Legislature who has filed a request for a notice in writing with LRB. [s. 227.17 (1) (b), Stats.]

**NOTE:** Do not contact LRB to ask if a request has been filed. Such requests are extremely rare. If LRB receives a request from a legislator, it will promptly notify the agency.

3. Send written notice of the hearing to the Secretary of DOA on the same day that the notice is sent to LRB. [s. 227.17 (1) (bm), Stats.]

4. Take whatever other steps it considers necessary to convey notice to interested persons. [s. 227.17 (1) (c), Stats.]

**NOTE:** Possible steps could include publishing the notice on the agency's Internet site, sending press releases to local newspapers, mailing notice to interested parties, and making radio spots available in the area where a hearing will be held.

(c) *Hearing; date.* An agency may not hold a public hearing on a proposed rule until after it has received the Rules Clearinghouse's written report on the Clearinghouse's review of the proposed rule or until 20 working days (counting weekdays only, and excluding holidays) have passed following receipt by the Rules Clearinghouse of the proposed rule. The agency may publish notice of the hearing before receiving the Clearinghouse report or the end of the 20-working day period. [s. 227.15 (1), Stats.] The notice of the hearing must be published in the Register at least 10 calendar days prior to the date set for the hearing. [s. 227.17 (2), Stats.]

(d) *Hearing notice; required information.* The notice of hearing must include all of the following:

1. The time, date, and place of the hearing.

2. A copy of the proposed rule as submitted to the Rules Clearinghouse under s. 227.15 (1), Stats.

**NOTE:** The copy of the rule as submitted to the Rules Clearinghouse must include the full text of the rulemaking order including the analysis, the EIA, and any other documents submitted to the Rules Clearinghouse with the proposed rule. Submit the hearing information and proposed rule as two separate Word documents; do not combine them in a single document. The EIA must be submitted as a PDF.

3. Any independent economic impact analysis prepared under s. 227.137 (4m), Stats.

4. An initial regulatory flexibility analysis if the proposed rule will have an effect on small businesses, as defined in s. 227.114 (1), Stats., or a statement indicating that the proposed rule will not have an effect on small business, and the email address and telephone number of the small business regulatory coordinator. An initial regulatory flexibility analysis must contain all of the following:



- a. A description of the types of small business that will be affected by the rule.
  - b. A brief description of the proposed reporting, bookkeeping, and other procedures required for compliance with the rule.
  - c. A description of the types of professional skills necessary for compliance with the rule.
5. The deadline for submitting comments on the rule.

*NOTE:* All proposed rules submitted to the Rules Clearinghouse are available for review and open for comment at the Legislature's Administrative Rules website, <https://docs.legis.wisconsin.gov/code/chr>. The rule remains open for comment until the comment deadline, which is added to the website by LRB upon filing of the hearing notice or rule text containing the deadline. Comments submitted through the website are automatically forwarded to the email address provided to LRB by the agency for receipt of comments. On reaching the comment deadline, comments are no longer accepted through the website. Failure of an agency to specify a comment deadline will result in the website accepting comments until final publication or withdrawal of the rule.

6. Any additional matter prescribed by statutes as applicable to the specific agency or class of rules under consideration.

[s. 227.17 (3), Stats.]

*NOTE:* LRB and LC have created a template for a hearing notice. The template is available at: <https://legis.wisconsin.gov/lrb/pubs/administrative-register-templates>.

**(2) RULEMAKING WITHOUT HEARING.** (a) *Thirty-day notice procedure.* 1. 'Required notice.' If an agency uses the procedure under s. 227.16 (2) (e), Stats., a public hearing may not be required. Under the s. 227.16 (2) (e), Stats., procedure, the agency sends a written notice to LRB for publication in the Register. Except for the date, time, and place of hearing, the notice should contain all of the elements of a notice of hearing listed in sub. (1) (d). The notice must state that the proposed rule will be adopted without public hearing, unless a petition is received by the agency, within 30 days after publication of the notice, signed by any of the following:

- a. Twenty-five natural persons who will be affected by the rule.

b. A municipality that will be affected by the rule.

c. An association that is representative of a farm, labor, business, or professional group that will be affected by the rule.

2. 'Petition received.' If the agency receives a petition within 30 days after publication of the notice, it may not proceed with the proposed rule until it has given notice and held a public hearing under ss. 227.17 and 227.18, Stats. [See sub. (1).]

3. 'Petition not received.' If the agency does not receive a petition within 30 days after publication of the notice, it may submit the proposed rule to the Governor for approval under s. 227.185, Stats., without any other action being required.

*NOTE:* LRB and LC have created a template for a notice of rulemaking without public hearing. The template is available at: <https://legis.wisconsin.gov/lrb/pubs/administrative-register-templates>.

(b) *Rules adopted under s. 227.16 (2) (b) or (d), Stats.* 1. Rules may be adopted without hearing for one of the following purposes: (1) to bring an existing rule into conformity with a statute that has been changed or enacted or with a controlling judicial decision [s. 227.16 (2) (b), Stats.]; or (2) to promulgate a rule as directed by JCRAR under s. 227.26 (2), Stats. [s. 227.16 (2) (d), Stats.] Unlike rules adopted using the 30-day notice procedure under s. 227.16 (2) (e), Stats., the provision does not contain any specific notice and procedural requirements of rules adopted under s. 227.16 (2) (b) or (d), Stats.

2. It is suggested that in addition to the elements described in s. 2.03 (2), the following be included in the Notice of Submittal of Proposed Rule to Legislative Council Rules Clearinghouse published in the Register:

a. The specific purpose of the rulemaking and the statutory authority for proceeding without a hearing.

b. The place where comments on the proposed rule should be submitted and the deadline for submitting those comments.

c. The text of the proposed rule in the form specified in s. 227.14, Stats., including the plain language analysis, fiscal estimate, and EIA.

3. Upon the expiration of the comment period and receipt of the written report from the Rules Clearinghouse, the agency may submit the final draft of the rulemaking order to the Governor for approval and then to the Legislature for review. [s. 2.07.]

(c) *Repeal of unauthorized rules under s. 227.26 (4), Stats.* Rulemaking orders to repeal unauthorized rules using the procedure under s. 227.26 (4), Stats., are exempt from all of the procedural requirements for permanent rules under ss. 227.135 to 227.19, Stats., specifically including the notice and hearing requirements of ss. 227.17 and 227.18, Stats. [See s. 2.04, for a complete treatment of rules adopted under s. 227.26 (4), Stats.]

(d) *General applicability of ch. 227, Stats., to rulemaking without hearing.* 1. Except in the case of an emergency rule or a proposed rule to repeal an unauthorized rule, if a rule is promulgated without public hearing under one of the exceptions described in par. (b) or (c), the agency must complete all other procedural requirements for promulgating a permanent rule under ch. 227, Stats., including the publication of a statement of scope, preparation of an EIA, submission of the rule to the Rules Clearinghouse, with notice published in the Register, approval of the final rule by the Governor, and submission of the rule for legislative review.

2. In its notice of submittal of proposed rules to the Rules Clearinghouse [s. 2.03 (2)] and its proposed rulemaking order, an agency should note that the proposed rules are being promulgated without hearing under s. 227.16 (2) (b), (d), or (e), Stats., as applicable.

3. As with all rules, a place to submit comments and a deadline for submitting those comments is required as a part of the rule analysis under s. 227.14 (2) (a) 8., Stats., and should be included in the notice of submittal of proposed rules to the Rules Clearinghouse, notice of rulemaking without hearing, or both.

**NOTE:** As with any proposed rule, a rule that will be adopted without a hearing will be open for comment at the Legislature's Administrative Rules website, <http://docs.legis.wisconsin.gov/code>, as discussed in the note following sub. (1) (d) 5. **(3)** INFORMAL OR INFORMATIONAL HEARINGS. Before preparing a statement of scope for a proposed rule, an agency may hold hearings to solicit public comment on a general subject area that may result in future rulemaking. Hearings of this nature do not satisfy the hearing requirements of s. 227.16, Stats. Notices for informal or informational hearings may be published in the Register. [s. 227.136 (7), Stats.]

**2.06 Conduct of rulemaking hearings. (1) PURPOSE OF HEARINGS.** A public hearing on a proposed rule is intended to elicit the greatest possible public participation in presenting facts, views, or arguments on the proposed rule. The hearing is not a mere formality.

**NOTE:** As stated in *HM Distributors of Milwaukee v. Dept. of Agri.*, 55 Wis. 2d 261, 268 (1972): "The purpose of a public hearing is to give interested parties not only a chance to be heard, but to have an influence in the final form of the regulations involved."

**NOTE:** Agencies should hold rulemaking hearings in facilities that are accessible to individuals with disabilities. Agencies should note in their rulemaking notice of hearing

where there is an accessible entrance for the building in which the hearing is to be held.

**(2) PROCEDURE.** (a) The procedure to be followed in conducting rulemaking hearings is set forth in s. 227.18, Stats. This procedure does not supersede other statutory procedures relating to the specific agency or to the proposed rule or class of rules. The person conducting the hearing must do all of the following:

1. Explain the purpose of the hearing and describe how testimony will be received.
2. Present, at the beginning of the hearing, a summary of the factual information on which the proposed rule is based, including information obtained from advisory committees, informal conferences, or consultations.
3. Afford each interested person an opportunity to present facts, views, or arguments in writing, whether or not there was an opportunity to present them orally.
4. Keep a record of the hearing that the agency deems desirable and feasible.

*NOTE:* An audio recording of a hearing is acceptable. [See *HM Distributors of Milwaukee v. Dept. of Agri.*, 55 Wis. 2d 261, 268 (1972).]

(b) The person conducting the hearing may do any of the following:

1. Limit oral presentations if the hearing would be unduly lengthened by reason of repetitious testimony.
2. Question or allow others present to question persons appearing.
3. Administer oaths or affirmations to any person appearing.
4. Continue or postpone the hearing to a time and place as it determines.

(c) Section 227.18, Stats., contains no specific requirements or qualifications for the person designated by the agency to conduct the hearing.

**(3) ABSENCE OF OFFICER OR QUORUM.** Under s. 227.18 (3), Stats., if the “agency officer or a quorum of the board or commission responsible for promulgating the proposed rule” is not present at the hearing, all of the following procedures apply:

*NOTE:* It appears that the “agency officer ... responsible for promulgating the proposed rule” and “the board or commission responsible for promulgating the proposed rule” are “the individual or body with policy-making powers over the subject matter of the proposed rule” as that term is used in s. 227.135, Stats.

(a) At the beginning of a hearing, the person conducting the hearing must inform those present that any person who presents testimony at the hearing may present his or her argument to the agency officer, board, or commission responsible for promulgating

the proposed rule prior to adoption of the proposed rule, if, at the hearing, the person so requests in writing.

(b) The agency officer, board, or commission responsible for promulgating the proposed rule may do any of the following:

1. Require that arguments be presented to the agency in writing.

2. If oral arguments are permitted, impose reasonable limitations on the length and number of appearances to conserve time and preclude undue repetition.

(c) Arguments before the agency or board or commission responsible for promulgating the proposed rule must be limited to those included the record of the hearing.

**2.07 Submission of final draft of rules to the Governor and Legislature. (1)**

APPROVAL BY GOVERNOR. After conducting any required hearing and making any necessary changes to the rule, an agency must submit its proposed rulemaking order, in final draft form, to the Governor for approval. Whenever an agency submits the proposed rulemaking order to the Governor, the agency must notify JCRAR that the rule has been submitted to the Governor for approval. The agency is not required to submit notice of submittal to the Governor to LRB for publication in the register. [s. 227.185, Stats.]

(2) SUBMISSION TO LEGISLATURE. (a) Upon receipt of the Governor's written approval, the agency must submit the proposed rule, in final draft form, to the Chief Clerk of each house of the Legislature for review as provided in s. 227.19 (2), Stats. The proposed rule must be submitted for review less than 30 months after the statement of the scope for the proposed rule was published in the Register or the rule is considered withdrawn as provided in ss. 227.135 (5) and 227.14 (6) (c) 1. a., Stats. [See s. 3.03, regarding the procedure for submission of proposed rules to the Legislature and review by the Legislature.]

(b) If a proposed rule is submitted to the Legislature after its final general-business floorperiod in the biennial session, the proposed rule is considered as being received on the first day of the next regular session of the Legislature. [s. 227.19 (2), Stats.]

(c) When an agency submits a rule in final draft form to the Chief Clerks of the Legislature, it must submit to LRB for publication in the Register a statement that the proposed rule has been submitted to the chief clerks. The statement to LRB must include the date of the Governor's written approval of the rule under s. 227.185, Stats.

**2.08 Filing and publishing final rule. (1) CERTIFIED COPY.**

(a) An agency must file with LRB a certified copy of each permanent rule and each emergency rule that it promulgates. The certified copy of a permanent rule may not be filed with LRB until legislative review under s. 227.19, Stats., is complete. [s. 227.19 (5) (c), Stats.]. No rule is

valid and no rule will be published by LRB until the certified copy has been filed. [s. 227.20, Stats.]

(b) LRB publishes all final permanent and emergency rules that are filed with LRB in the first Register published after filing of the rule. LRB then incorporates the text of each filed final permanent rule in the Administrative Code and publishes the updated Administrative Code chapters in an “end-of-month register,” in accordance with the deadlines under sub. (3), below. [ss. 35.93 (2) and 227.21, Stats.] Except for emergency rules and permanent rules that specify a later effective date, s. 227.22 (2), Stats., provides that the rule is effective on the first day of the month commencing after publication in the Register of the Administrative Code chapter affected by the certified rule. For example, if an updated Administrative Code chapter is published in the Register on March 27, the rule changes in the updated chapter then take effect on April 1, unless a later date is specified. [See s. 2.10 for the treatment of emergency rules.]

(c) The final rule should be updated to revise the designation and titling from “proposed” to “final” rule, even if there have been no changes since the rule was initially proposed. After the rule is filed with LRB, no changes may be made to the text of the rule, except for the correction of obvious nonsubstantive errors, which may be corrected under s. 35.17, Stats., and items that can be revised under s. 13.92 (4), Stats., such as numbering, titles, addresses, and cross-references. LRB has a duty to publish the rules as filed. Once a certified rule has been filed, LRB will make no changes that are arguably substantive, and the agency will need to promulgate another rule to make any changes it considers necessary. [See 52 Op. Att’y Gen. 315 (1963).]

(d) The final rule filed with LRB must be prepared on 8-1/2 by 11 inch paper.

(e) The final rule filed with LRB must be certified.

*NOTE:* LRB and LC have created a template for a certificate for a final rule. The template is available at: <https://legis.wisconsin.gov/lrb/pubs/administrative-register-templates>.

(f) When an agency files a rule that was submitted to the SBRRB under s. 227.14 (2g), Stats., the agency must include with the rule whichever of the following is applicable:

1. The final regulatory flexibility analysis or a summary of the analysis prepared under s. 227.19 (3), Stats., and a summary of the comments of the legislative standing committees.

2. The statement of the SBRRB’s determination that the rule will not have a significant economic impact on a substantial number of small businesses, including the stated reason for the board’s decision.

[s. 227.114 (6), Stats.]

**(2) ELECTRONIC COPY.** (a) In addition to the certified copy of the rule, the rule must be submitted electronically to LRB as a Microsoft Word document. The electronic copy may be delivered prior to the filing of the certified copy and LRB requests that the electronic copy be emailed as soon as possible. The email address is [Admin-Code-Register@legis.wi.gov](mailto:Admin-Code-Register@legis.wi.gov). The electronic copy must match the certified copy exactly, except that the electronic copy need not have an actual signature.

(b) If the filed rule includes graphics, such as maps, that are not embedded in the Word document, it is preferred that the material be submitted electronically as JPEG, GIF, or TIFF files.

**(3) PUBLICATION OF RULES; DEADLINES.** (a) Except in the case of an extremely large rulemaking order or in times of unusual rule-filing volume, the Administrative Code chapters affected by any rule received by LRB during a given month will be published in the following month's end-of-month Register as described in sub. (4), effective on the first day of the month following publication, unless a later effective date is designated by the agency. For example, the code chapters affected by a final rule received on October 15 will generally be published in the end-of-month Register for November and become effective December 1. Rules will generally be processed in the order received by LRB.

(b) If time permits, LRB routinely grants exceptions to the deadline upon email or phone request. Flexible deadlines and communication between agencies and LRB enables LRB to accept new material up to the latest possible date, consistent with requirements of time for processing and publication of the material.

**(4) PUBLICATION OF RULES; PROCEDURE.** After certified copies of final permanent rules are filed with LRB, the following occurs:

(a) LRB staff incorporates the rule into the appropriate Administrative Code chapters.

(b) LRB staff reviews the updated chapters for completeness and history note correctness. LRB sends a proof copy of each affected chapter and LRB's working copy of the rulemaking order, with questions, errors, changes, and corrections noted, to the agency for proofreading.

(c) The agency is responsible for final proofreading of the proof copy. Upon completion of proofreading, the agency provides LRB with the agency's approval to publish the chapters as shown in the proof copy or noting the agency's corrections, comments, and responses to LRB questions and comments. A second proof copy for corrections is usually not sent to agencies for review unless specifically requested.

**NOTE:** While LRB strives to incorporate new material into the Administrative Code as accurately as possible, transcription errors can occur. LRB does not perform a word-for-word

comparison of the rulemaking order with the chapter proofs. It is the responsibility of the agency to verify that the rulemaking order is correctly presented in the Administrative Code proof copy.

(d) LRB publishes the approved, final version of updated chapters in an end-of-month Register. These updated chapters are published in the Administrative Code on the first day of the month following their publication in the Register. The month and volume number of the Register of publication is published at the bottom of each PDF Administrative Code page, and before the chapter table of contents in the HTML version of each chapter, indicating for current chapters the date the chapter was last published in the Register and, for archived chapters, the date of original publication.

**(5) EFFECTIVE DATE OF RULES.** A rule is effective on the first day of the month following publication of the affected Administrative Code Chapters in the Register, unless any of the following applies:

(a) A statute sets a different effective date for the rule, in which case the agency should cite the statute and the applicable effective date in the effective date SECTION.

(b) A later date is set by the agency in the adopted rulemaking order.

(c) The rule has a significant economic impact on small business, as defined in s. 227.114 (1), Stats., in which case the rule as it applies to small businesses is effective no earlier than the first day of the third month beginning after publication. The determination of significant economic impact is to be made by the SBRRB under s. 227.14 (2g), Stats. Both the general effective date and the effective date for small businesses should be noted in the final order. In order to avoid confusion, an agency may wish to consider adopting the first day of the third month after publication as a single effective date for the rule.

**EXAMPLE:** A rule is published in the November Register. The rule has a significant impact on small business. The rule would be effective the following February 1. [s. 227.22, Stats.]

**NOTE:** See s. 1.03 (4), regarding effective date provisions in rules.

**(6) HISTORY NOTES.** LRB prepares a history note for each rule section published in the Administrative Code, as follows:

(a) *Date and number of publication.* Each Administrative Code section revised or created subsequent to the original January 1, 1956 printing date of the Administrative Code is followed by a history note containing entries, subdivided by semicolons, that indicate the date and volume number of the Register in which a rulemaking order was published, the date on which the rulemaking order became effective, and a brief description of the treatment of the section by the rulemaking order. This date and number link to a menu containing links to the final rulemaking orders published in that Register



and the Administrative Code text inserted and removed in that Register, so that all rulemaking orders cited in a history note and all versions of Administrative Code chapters as affected by the cited rulemaking orders may be directly linked to from the history note. History notes also include entries for editorial corrections made by LRB, indicating the authority for and type of correction and the Register in which the corrected Administrative Code chapter was published.

(b) *Clearinghouse number.* Starting in 2001, the Clearinghouse Rule number for each rulemaking order affecting an Administrative Code section has been included as part of the history note entry for the rulemaking order. This number is a link to an “infopage” for the rule that contains a link to a copy of the final rulemaking order and the procedural history of the rule, with links to all available documents filed during the rulemaking process for the rulemaking order.

(c) *Abbreviations.* The following abbreviations are used in the history notes: “CR” is used for Clearinghouse Rules; “cr.” is used for “create”; “am.” for “amend”; “cons” for “consolidate”; “recr.” for “repeal and recreate”; “renum.” for “renumber”; “r.” for “repeal”; “emerg.” for “emergency”; and “eff.” for “effective.”

(7) ADMINISTRATIVE CODE SUBJECT MATTER INDEX. LRB maintains a subject matter index for the Administrative Code, reviewing final permanent rulemaking orders filed with it and makes changes to this index as are necessary to keep it current. This index is published at: <http://docs.legis.wisconsin.gov/code/index/index>.

**2.10 Emergency rules. (1) USE AND PURPOSE.** (a) If preservation of the public peace, health, safety, or welfare necessitates placing a rule into effect prior to the time it could be effective if the agency were to comply with the notice, hearing, legislative review, and publication requirements, applicable to the promulgation of permanent rules, the agency may adopt that rule as an emergency rule using the process provided in s. 227.24, Stats. Emergency rules are time-limited and agencies often engage in the promulgation of corresponding permanent rules while the emergency rule is in effect.

*NOTE:* In order to prevent a gap in coverage of a rule in transition from emergency rule to a permanent rule, it is generally necessary to commence the procedure for adoption of permanent rules at the same time or before the emergency rules are effective.

(b) Legislation may also include provisions that grant an agency the authority to engage in specified rulemaking using the emergency rule procedure provided under s. 227.24, Stats., without any finding of emergency. In that case, in addition to exempting the rulemaking from the emergency requirement, the Legislature may exempt the authorized rulemaking from some procedural requirements under s. 227.24, Stats., or may alter those requirements, particularly as to the length of the period the rule may be

in effect. A rule promulgated under a specific legislative grant of authority to use s. 227.24, Stats., procedures is generally still referred to as an emergency rule and will be included by LRB in the list of emergency rules in effect published in each register and in the menu of active emergency rules on the Legislature's website. Unless otherwise noted, all references to emergency rules in this section include rules promulgated under legislative authority to use the procedure provided under s. 227.24, Stats.

(c) If JCRAR determines that a statement of policy or an interpretation of a statute meets the definition of a rule, JCRAR may direct the agency to promulgate the statement or interpretation as an emergency rule within 30 days after JCRAR's action. [s. 227.26 (2) (b), Stats.] These emergency rules are not required to have a finding of emergency. [s. 227.24 (3), Stats.]

**(2) PROCEDURE; EXEMPTIONS.** Section 227.24, Stats., provides the procedure for promulgating an emergency rule, which omits a number of the requirements that apply to permanent rules and is described in detail below. When using the emergency rule procedure, none of the following that apply to permanent rules is required:

(a) Economic impact analysis under s. 227.137, Stats. [s. 227.137 (5), Stats.]

(b) Housing impact analysis under s. 227.115, Stats. [s. 227.115 (4), Stats.]

(c) Submittal of proposed rule to Rules Clearinghouse, and notice thereof, under ss. 227.14 (4m) and 227.15, Stats. [s. 227.15 (1), Stats.]

*NOTE:* LRB offers pre-promulgation review and editing of emergency rules if an agency wishes to have its rule reviewed. [See s. 2.02 (3).]

(d) Pre-promulgation notice of hearing under s. 227.17, or other notice of rulemaking under s. 227.16, Stats., and hearing under s. 227.18, Stats. A hearing is, however, required after promulgation. [s. 227.16 (2) (c), Stats. See sub. (7).]

(e) Notice to the chief clerks of the houses of the Legislature and review by committees of the Legislature under s. 227.19, Stats. [s. 227.19 (7), Stats.]

**(3) STATEMENT OF SCOPE.** In order to promulgate an emergency rule, an agency must first prepare a statement of the scope of the proposed emergency rule. All provisions of s. 227.135, Stats., apply to statements of scope prepared for emergency rules. [For the full treatment of statements of scope, see s. 2.01.]

**(4) APPROVAL OF RULE BY GOVERNOR.** (a) An agency must submit the proposed emergency rule in final draft form to the Governor for approval. An agency may not publish an emergency rule or file a certified copy of the rule with LRB until the Governor approves the emergency rule in writing.

(b) Insert the following in the rule, prior to the introductory clause:

The statement of scope for this rule, SS \_\_\_\_, was approved by the Governor on \_\_\_\_ (date), published in Register \_\_\_\_ (Register Number), on \_\_\_\_

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(Register publication date), and approved by \_\_\_\_\_ (name of policy making body or individual for the agency as required by s. 227.135 (2), Stats.) on \_\_\_\_\_ (date).

This emergency rule was approved by the Governor on \_\_\_\_\_ (date).

**EXAMPLE:** The statement of scope for this rule, SS 001-11, was approved by the Governor on July 20, 2011, published in Register No. 733A2, on August 14, 2011, and approved by the Natural Resources Board on August 28, 2011. This emergency rule was approved by the Governor on September 15, 2011.

**(5) EFFECTIVE DATE, PUBLICATION, AND FILING.** (a) 1. Except as otherwise provided in legislation, an emergency rule takes effect upon publication in the official state newspaper or on a later date as specified in a statement published with the rule.

**EXAMPLE:**

SECTION \_\_. EFFECTIVE DATE. This rule takes effect upon publication in the state newspaper and shall remain in effect for 150 days, as provided in s. 227.24 (1) (c), Stats., subject to extensions under s. 227.24 (2), Stats.

**NOTE:** An emergency rule need only be published one time to meet the publication requirement of s. 227.24, Stats. It is the agency's responsibility to contact the official state newspaper for publication of an emergency rule. The *Wisconsin State Journal* is currently the official state newspaper. DOA has prepared a form [DOA3428] that must be used when sending material for legal notices including emergency rules. The form may be downloaded from the Bureau of Procurement's website at:

<https://vendornet.wi.gov/Download.aspx?type=contract&Id=cc73d1da-b0c7-e611-80f8-0050568c7f0f&filename=DOA-3428+Public+or+Legal+Notice+Order>. Instructions for completing the form are available at <https://vendornet.wi.gov/Download.aspx?type=contract&Id=cc73d1da-b0c7-e611-80f8-0050568c7f0f&filename=DOA-3428I+Instructions+for+Completing+Legal+Notice+Order.pdf>. An agency may contact Bill Goff at DOA's Bureau of Procurement, for further questions on preparing a purchase order for the publication of an emergency rule, at [william2.goff@wisconsin.gov](mailto:william2.goff@wisconsin.gov).

2. If legislation authorizing the use of emergency rulemaking procedures without requiring the agency to find an emergency provides for a different effective date or rule duration than s. 227.24 (1) (c), Stats., include both the date and duration provided for in the legislation, citing to the authorizing act, rather than to s. 227.24 (1) (c), Stats.

**EXAMPLE:**

SECTION \_\_. EFFECTIVE DATE. This rule takes effect upon publication in the state newspaper and shall remain in effect until May 1, 2024, as provided in 2019 Wisconsin Act 299, Section 5 (1).

(b) 1. In addition to publication in the newspaper, a certified copy of the emergency rule must be filed with LRB in order for the rule to be valid. [s. 227.24 (3), Stats.]

2. The agency must also submit an electronic copy of the rule and fiscal estimate as an attachment via email for publication in the Register. [s. 227.24 (3), Stats.] The electronic copy may be delivered prior to the filing of the certified copy. LRB requests that the electronic copy be emailed as soon as possible and that the email include the anticipated newspaper publication date.

3. Upon the filing of a certified copy of an emergency rule, LRB will assign a discrete identifying number to the emergency rule, calculate the expiration date of the rule, and publish the text of the rule in the next Register whose filing deadline has not been reached. LRB inserts in the notice section of each issue of the Register a list of all emergency rules currently in effect that contains the agency name, the expiration date of the rule, the Administrative Code chapters affected, the relating clause for the rule, and a link to the text and procedural history of the rule. Due to the temporary nature of emergency rules, the Administrative Code is not updated to incorporate the text of emergency rules into affected provisions, but an alert is inserted into each Administrative Code chapter (HTML only, not PDF) affected by an emergency rule indicating the existence of the emergency rule and providing a link to the infopage for the rule. The alert is removed from the Administrative Code when the emergency rule expires or is replaced by a permanent rule.

(c) When an emergency rule is adopted, the agency must mail a copy of the rule, the statement of emergency finding or a statement that the rule is promulgated at the direction of JCRAR under s. 227.26 (2) (b), Stats., and the rule's fiscal estimate, to each member of the Legislature and to the Chief Clerk of each house of the Legislature. The required mailing may be by email. The agency is also to take other steps it considers feasible to make the rule known to persons who will be affected by it. [s. 227.24 (3), Stats.]

(d) If the emergency rule may have an economic impact on small business as defined in s. 227.114 (1), Stats., the agency must submit a copy of the emergency rule to the SBRRB on the same day it files the emergency rule with LRB. [s. 227.24 (3m), Stats.]

**(6) EFFECTIVE PERIOD; EXTENSION.** (a) An emergency rule remains in effect only for a period of 150 days unless it is extended as described under par. (b), unless a different period is authorized by law.

(b) 1. An agency may petition JCRAR for extensions of the effective period of an emergency rule or part of an emergency rule. The committee may extend a rule's effective period for a period specified by the committee, not to exceed 60 days. Any number of extensions may be granted, but the total period for all extensions may not exceed 120 days. [s. 227.24 (2) (a), Stats.]

2. In making a request for an extension, the agency must, unless otherwise provided by law, provide the committee with all of the following:

a. Evidence of a threat to the public peace, health, safety, or welfare that can be avoided only by extending the emergency rule.

b. Evidence that a permanent rule cannot be in effect on or before the date the emergency rule expires.

3. a. An agency's request for extension of an emergency rule must be in writing and include a copy of the emergency rule and a cover letter with the expiration date and the number of days requested for extension.

b. Under s. 227.24 (2) (am), Stats., the extension request must be made to JCRAR no later than 30 days before the initial expiration date of the emergency rule.

**NOTE:** Contact JCRAR co-chair staff for deadlines for extension requests.

c. Whenever JCRAR extends all or part of an emergency rule, it must file a statement of its action with the agency and LRB. [s. 227.24 (2) (c), Stats.] The LRB will then, in the next register, update the emergency rule's expiration date provided on the Legislature's web site.

**NOTE:** The Attorney General has opined that an administrative agency cannot perpetuate an emergency rule by refiling the identical rule in accordance with s. 227.24, Stats., before or immediately after the effective period. [See 62 Op. Att'y Gen. 305 (1973).]

**(7) PUBLIC HEARING.** (a) Except as provided in par. (b), below, an agency is required to hold a public hearing on an emergency rule within 45 days after the adoption of the emergency rule. [See s. 227.24 (4), Stats.]

(b) If the agency intends to promulgate a proposed permanent rule corresponding to the emergency rule and submits the proposed permanent rule to the Rules Clearinghouse within 45 days after the effective date of the emergency rule, the agency

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must hold a single public hearing on the emergency rule and permanent rule within 90 days after the effective date of the emergency rule or within 30 days after receiving the Rules Clearinghouse report on the permanent rule, whichever occurs later. [See s. 227.24 (4), Stats.]

(c) An agency must provide notice of hearing on an emergency rule. It is recommended that agencies meet the requirements for hearing notices for permanent rules under s. 227.17, Stats., following the procedures and using the form provided in s. 2.05. An agency may combine the notice of hearing for an emergency rule and corresponding permanent rule in a single document if a single hearing on both rules as described in par. (b), above, is held.

(8) FORM. (a) 1. Except as provided in subds. 2. and 3., below, the order adopting emergency rules must include or be accompanied by a statement of the emergency finding by the agency. [See s. 227.24 (3), Stats.] The finding may be in substantially the following form:

#### FINDING OF EMERGENCY

The (agency) finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. The facts constituting the emergency are as follows:

[Here insert information to justify use of emergency rule procedure.]

2. For a rule promulgated under a specific legislative grant of authority to use s. 227.24, Stats., without a finding of emergency, include a statement explaining the authority granted including any exemptions from procedural requirements of s. 227.24, Stats., and variations of the time limits under s. 227.24, Stats., citing the specific legislation that grants the authority.

3. For a rule promulgated at the direction of JCRAR under s. 227.26 (2) (b), Stats., in lieu of a finding of emergency, include a statement that the rule is being promulgated at the direction of the joint committee for review of administrative rules under s. 227.26 (2) (b), Stats.

#### EXEMPTION FROM FINDING OF EMERGENCY

The Legislature by (statute section or SECTION in a Wisconsin Act) provides an exemption from a finding of emergency for the adoption of the rule under s. 227.24, Stats.

(b) As with a permanent rule, the emergency rule must contain a plain language analysis that meets the requirements of s. 227.14, Stats., which must be printed with the text of the rule when it is published. [s. 227.24 (1) (e) 1m., Stats. See s. 1.01, regarding structure and arrangement of rulemaking orders.]

(c) A fiscal estimate must also be prepared for each emergency rule, which the agency must mail to each member of the Legislature within 10 days after publication. The agency must send an electronic copy of the fiscal estimate to LRB for publication in the Register. [s. 227.24 (1) (e) 2., Stats. See s. 2.025 (3), regarding fiscal estimates.]

**2.11 Petition for rules. (1) WHO MAY PETITION.** Under s. 227.12, Stats., a municipality, an association that is representative of a farm, labor, business, or professional group, or five or more persons having an interest in a rule may petition an agency requesting it to promulgate a rule.

**(2) FORM OF PETITION.** A petition must clearly and concisely state all of the following:

- (a) The substance or nature of the rulemaking requested.
- (b) The reason for the request.
- (c) The petitioner's interest in the requested rule.
- (d) A reference to the agency's statutory authority to promulgate the requested rule.

**(3) AGENCY RESPONSE.** (a) Within a reasonable period of time after receiving a petition for rules, an agency must either deny the petition in writing or proceed with the requested rulemaking.

(b) If the agency denies the petition, it must promptly notify the petitioner of the denial, including the reason for the denial.

(c) If the agency proceeds with the requested rulemaking, all of the procedures set out in ch. 227, Stats., and described in this Part 2 of the Manual must be followed.

**2.12 Review of rules and legislative acts. (1) BIENNIAL REPORTS TO JCRAR.** (a) Section 227.29 (1), Stats., requires each agency to submit a report to JCRAR by March 31 of each odd-numbered year listing all of the rules administered by that agency that are any of the following:

- 1. Unauthorized rules, as described in s. 227.26 (4), Stats. [See s. 2.04.]
- 2. Rules for which the authority to promulgate has been restricted.
- 3. Rules that are obsolete or that have been rendered unnecessary.
- 4. Rules that are duplicative of, superseded by, or in conflict with another rule, a state statute, a federal statute or regulation, or a court ruling.
- 5. Economically burdensome rules. ("Economically burdensome" is not defined by statute.)

(b) If an agency identifies an unauthorized rule in the report and the rule is not already subject to repeal in ongoing rulemaking, s. 227.29 (3), Stats., requires the agency to submit a petition to repeal the unauthorized rule, using the expedited process under s. 227.26 (4), Stats., described in s. 2.04 within 30 days after making the report. [See s. 227.29 (2), Stats., for additional specific reporting requirements regarding the other items subject to review.]

**(2) REVIEW OF LEGISLATIVE ENACTMENTS.** (a) Section 227.29 (4), Stats., requires agencies to review legislative acts to determine whether any part of an act does any of the following:

1. Eliminates or restricts the agency's authority to promulgate any of the agency's rules.

2. Renders any of the agency's rules obsolete or unnecessary.

3. Renders, for any reason, any of the agency's rules not in conformity with or superseded by a state statute, including due to statutory numbering or terminology changes in the act.

4. Requires or otherwise necessitates rulemaking by the agency.

(b) 1. If an agency determines that any rule has been rendered without authority, the agency must submit a petition to repeal the unauthorized rule, using the expedited process under s. 227.26 (4), Stats., described in s. 2.04.

2. For rules identified as not in conformity with or superseded by a state statute that can be corrected by the legislative reference bureau using its authority under s. 13.92 (4) (b), Stats., an agency must submit a request to the legislative reference bureau to use that authority to make the correction.

3. For rules identified as not in conformity with or superseded by a state statute that cannot be corrected under s. 13.92 (4) (b), Stats.; rules identified as obsolete, unnecessary, or otherwise in need of revision by rulemaking; or instances that otherwise require or necessitate rulemaking by the agency, the agency must prepare and submit a statement of scope for a proposed rule to DOA for review and approval by the Governor under s. 227.135 (2), Stats., unless an enactment requires otherwise or the agency submits a notice to JCRAR explaining why it is unable to submit the statement of scope within that time period and an estimate of when the agency plans to do so.

(c) Any required action described in par. (b), above, must be taken within six months after the applicable effective date of the act that affected the rule.



## PART 3

### RULES REVIEW PROCEDURE

**3.01 Submission of proposed rules to Legislative Council staff. (1) WHEN SUBMITTED.** An agency is required to submit proposed rules to the Rules Clearinghouse for review prior to any public hearing on the proposed rules, or, if no hearing is required, prior to submission to the Governor for review. [s. 227.15 (1), Stats.]

*NOTE:* A proposed rule should be submitted in electronic format as a Word document to [Clearing.House@legis.wisconsin.gov](mailto:Clearing.House@legis.wisconsin.gov).

*NOTE:* A public hearing on a proposed rule may not be held until the agency receives the report described in sub. (3), below, from the Rules Clearinghouse or until after the Rules Clearinghouse's initial review period of 20 working days, whichever comes first. The notice must be published in the Register at least 10 calendar days prior to the date set for the public hearing. However, an agency may, before receiving the Clearinghouse Report, act to schedule the date of a public hearing. [s. 227.15 (1), Stats.]

**(2) AGENCY RESPONSIBILITIES.** Proposed rules must be drafted in accordance with s. 227.14, Stats., and follow the format and drafting style of bills prepared for the Legislature and the drafting guidelines set forth in this Manual. [s. 227.14 (1), Stats.] Proposed rules must be accompanied by the name and telephone number of all of the following:

- (a) The agency person to be contacted if there are substantive questions on the rules.
- (b) The agency person responsible for the agency's internal processing of the rules.

*NOTE:* When there is a change in the agency person who is responsible for processing rules, the Clearinghouse and LRB should be notified by an email message sent to [Clearing.House@legis.wisconsin.gov](mailto:Clearing.House@legis.wisconsin.gov) and [Admin-Code-Register@legis.wi.gov](mailto:Admin-Code-Register@legis.wi.gov).

**(3) LEGISLATIVE COUNCIL STAFF RESPONSIBILITIES.** (a) Under s. 227.15, Stats., the Legislative Council staff acts as a clearinghouse for rule drafting and cooperates with an agency and LRB to do all of the following:

- 1. Review the statutory authority under which the agency intends to promulgate the rule.

2. Ensure that the procedures for the promulgation of a rule required by ch. 227, Stats., are followed.

3. Review the proposed rule for form, style, and placement in the Administrative Code.

4. Review the proposed rule to avoid conflict with or duplication of existing rules.

5. Review the proposed rule to provide adequate references to related statutes, rules, and forms.

6. Review the proposed rule for clarity, grammar, and punctuation and to ensure plain language.

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

8. Review the proposed rule for compliance with the permit action deadline requirements of s. 227.116, Stats.

[s. 227.15 (2), Stats.]

(b) The period for Rules Clearinghouse review is 20 working days following the receipt of the proposed rule. With the consent of the Director of the Legislative Council staff, the review period may be extended for an additional 20 working days. [s. 227.15 (1), Stats.]

(c) The Rules Clearinghouse assigns a Clearinghouse Rule number to the proposed rule, records the submission of the rules in the Bulletin of Proceedings of the Wisconsin Legislature and prepares two numbered rule jackets, one for each house. When the review of proposed rules is completed, the Rules Clearinghouse returns the rules, the rule jackets, and a Clearinghouse Report containing the results of the review under par. (a) to the agency.

**3.02 Submission of Petition for Expedited Repeal of a Rule. (1) WHEN SUBMITTED.** An agency is required to submit a petition for expedited repeal of a rule that the agency determines is an unauthorized rule. [s. 227.26 (4), Stats.]

*NOTE:* A proposed rule should be submitted to the Legislative Council in an electronic Word document to both [Clearing.House@legis.wisconsin.gov](mailto:Clearing.House@legis.wisconsin.gov) and [Admin-Code-Register@legis.wisconsin.gov](mailto:Admin-Code-Register@legis.wisconsin.gov).

**(2) LEGISLATIVE COUNCIL STAFF RESPONSIBILITIES.** (a) The Legislative Council acts as a clearinghouse for petitions for expedited repeal of rules. The Rules Clearinghouse reviews a petition for expedited repeal of a rule to determine whether the petition proposes to repeal an unauthorized rule and reports that determination to JCRAR. In addition, the staff does all of the items in s. 3.01 (3) (a), above.

(b) The period for Rules Clearinghouse review is 20 working days following the receipt of the petition for expedited repeal of a rule. The period may be extended as specified in s. 3.01 (3) (b), above.

(c) The Rules Clearinghouse assigns a Clearinghouse Number to the petition in the same manner as a proposed rule, records the submission of the petition in the Bulletin of Proceedings of the Wisconsin Legislature, and prepares two numbered rule jackets, one for each house. When the review of the petition is completed, the Rules Clearinghouse submits the petition, the respective rule jackets, and a Clearinghouse Report containing the results of the review, to the co-chairs of JCRAR.

**3.03 Submission of proposed rules to Legislature. (1) WHEN SUBMITTED.** Following approval of the Governor under s. 227.185, Stats., an agency submits a proposed rule to the Legislature by notifying the Chief Clerk of each house that the proposed rule is in final draft form. [s. 227.19 (2), Stats.] Each Chief Clerk should receive from the agency the appropriate rule jacket prepared under s. 3.01 (3) (c). Prior to transmittal to the Chief Clerks, the agency records on each rule jacket the date of any agency public hearing held regarding the proposed rule. If a public hearing is not required, the agency records this fact on each rule jacket.

*NOTE:* The proposed rule must be submitted to the Legislature for review less than 30 months after the statement of the scope for the proposed rule is published in the Register or the rule will be considered withdrawn. [ss. 227.135 (5) and 227.14 (6) (c) 1. a., Stats.]

*NOTE:* An agency may not divide a rule into two separate rulemaking orders following receipt of the Clearinghouse Report. The Clearinghouse rule number and rule jackets are unique to the originally submitted rulemaking order and form the basis of the system used to record, handle, and monitor statutory deadlines on final draft rules.

**(2) ITEMS INCLUDED IN SUBMISSION.** The notification to the Chief Clerks must be in triplicate and include, as required in s. 227.19 (3), Stats., all of the following:

- (a) The proposed rule.
- (b) The rule analysis. [s. 227.14 (2), Stats.; and s. 1.02 (2).]
- (c) The fiscal estimate. [s. 227.14 (4), Stats.]
- (d) Any statement, suggested changes, or other material submitted to the agency by the SBRRB. [s. 227.14 (2g), Stats.]

(e) A copy of any original, revised, and independent economic impact analyses. [s. 227.137 (2), (4), and (4m), Stats.]

(f) A copy of any energy impact report received from the Public Service Commission. [s. 227.117 (2), Stats.]

(g) A copy of the Clearinghouse Report. [s. 227.15 (2), Stats.]

(h) An agency report to the Legislature that includes all of the following:

1. A detailed statement explaining the basis and purpose of the proposed rule, including how the proposed rule advances relevant statutory goals or purposes. [s. 227.19 (3) (a), Stats.]

2. A summary of public comments to the proposed rule and the agency's response to those comments. Include an explanation of any modification made in the proposed rule as a result of public comments or testimony received at a public hearing or any modification made for any other reason. [s. 227.19 (3) (b), Stats.]

3. A list of the persons who appeared or registered for or against the proposed rule at a public hearing. [s. 227.19 (3) (c), Stats.]

4. Any changes to the rule summary or the fiscal estimate. [s. 227.19 (3) (cm), Stats.]

5. A response to the recommendations in the Clearinghouse Report indicating acceptance of the recommendations in whole, acceptance of the recommendations in part, rejection of the recommendations in whole, or rejection of the recommendations in part, and the specific reason for rejecting any recommendation. [s. 227.19 (3) (d), Stats.]

6. For a proposed rule that will have an effect on small businesses, a final regulatory flexibility analysis that contains the information in s. 227.19 (3) (e), Stats. A final regulatory flexibility analysis is not required for a proposed rule if the SBRRB determines that the rule will not have a significant economic impact on a substantial number of small businesses. [s. 227.19 (3m), Stats.]

7. If an energy impact report regarding the proposed rule was submitted, an explanation of the changes, if any, that were made in the proposed rule in response to that report. [s. 227.19 (3) (f), Stats.]

8. If applicable, an analysis for a proposed rule that directly or indirectly may increase or decrease the cost of the development, construction, financing, purchasing, sale, ownership, or availability of housing in this state. [s. 227.115, Stats.]

9. A response to any report prepared by the SBRRB. [s. 227.19 (3) (h), Stats.]

**(3) ELECTRONIC SUBMISSION.** An agency must submit **electronically** to the Rules Clearinghouse a copy of the agency report to the Legislature and a copy of the final proposed rule. The documents should be emailed, in Word format, to [Clearing.House@legis.wisconsin.gov](mailto:Clearing.House@legis.wisconsin.gov).

(4) PUBLICATION OF NOTICE. The agency must submit a notice to LRB for publication in the Register stating that a proposed rule has been submitted to the Chief Clerk of each house of the Legislature. [s. 227.19 (2), Stats.] The notice must include the Clearinghouse number, introductory clause, and the date of submittal to the Chief Clerks. The notice and all documents under sub. (2) should be emailed, in Word format, to LRB. [See also s. 2.07 (2).]

(5) PLACE OF DELIVERY. Clearinghouse rule jackets should be delivered to the following offices:

<u>Office</u>	<u>Location</u>
Senate Chief Clerk	Room B20 Southeast, State Capitol
Assembly Chief Clerk	17 West Main Street, Room 401

**3.04 Independent economic impact analysis prior to legislative review.** Prior to gubernatorial approval of a final proposed rule, either co-chair of JCRAR may request and contract for the preparation of an independent economic impact analysis of a proposed rule. If the analysis indicates that a proposed rule has \$10,000,000 or more in implementation and compliance costs are reasonably expected over a two-year period, the agency may not promulgate the rule absent authorizing legislation or a germane modification to the proposed rule that reduces costs below the \$10,000,000 threshold. [ss. 227.137 (4m) (a) and 227.139, Stats.]

**3.05 Legislative review. (1) REFERRAL TO COMMITTEES.** Each presiding officer must, within 10 working days of receipt by the Legislature for review, direct the Chief Clerk to refer the rule jackets to one standing committee of the particular house. If submittal to the Chief Clerks takes place after the last day of the Legislature's final general-business floorperiod in the biennial session, the rules shall be considered received on the first day of the next regular session of the Legislature for the purposes of determining the running of time periods for legislative committee review described in this section, unless the presiding officers of both houses refer the rule jackets before the first day of the next regular session. [s. 227.19 (2), Stats.]

(2) COMMITTEE REVIEW. (a) Upon receipt of notice that a proposed rule has been referred to a committee, the chairperson of the committee shall notify, in writing, each committee member of the referral. [s. 227.19 (4) (a), Stats.]

(b) The committee review period lasts for 30 days from the date the rule jacket is referred. If, within the 30-day period, a committee chair takes either of the following actions, the committee review period is extended for an additional 30 days: (1) requests in writing that the agency meet with the committee to review the proposed rule; or (2) publishes or posts notice that the committee will hold a meeting or hearing to review the

proposed rule and immediately sends a copy of the notice to the agency. This action does not extend the review period of the committee in the other house. [s. 227.19 (4) (b), Stats.]

(bm) If a proposed rule is received by the Chief Clerks after the last day of the Legislature's final general-business floorperiod in the biennial session and is referred for committee review before the first day of the next regular session of the Legislature, the committee review period extends to the date that the next Legislature convenes. If a committee has not concluded its jurisdiction before the next Legislature convenes, the presiding officer of the appropriate house shall re-refer the proposed rule in the manner specified in sub. (1). [s. 227.19 (4) (b) 1m. and 6., Stats.]

(c) A committee may waive its jurisdiction over a proposed rule by adopting, by a majority vote of a quorum of the committee, a motion waiving the committee's jurisdiction. This action does not waive the jurisdiction of the committee in the other house. [s. 227.19 (4) (c), Stats.]

(d) 1. If a committee, by a majority vote of a quorum of the committee, requests modifications in a proposed rule, and the agency, in writing, agrees to consider modifications, the review period for both committees is extended either to the 10th working day following receipt by the committees of the modified proposed rule or a written statement to the committees that the agency will not make modifications or to the expiration of the initial or extended committee review period, whichever is later. There is no limit either on the number of modification agreements that may be entered into or on the time within which modifications may be made. Upon receipt of a modification or a written statement that an agency will not make modifications, the chairperson of the committee should notify each committee member of the receipt of the modification or written statement. [s. 227.19 (4) (b) 2., Stats.]

2. If a committee in one house requests modifications, this does not preclude the committee in the other house, to which the proposed rule was referred, from taking action on the proposed rule. Since an agency is not required to comply with a request for modifications, if both committees recommend modifications that differ from each other, an agency may determine which of the recommendations to follow. However, as described in subd. 1., both committees have an opportunity to review any modifications that are submitted.

(e) On its own initiative, an agency may submit germane modifications to a proposed rule to a standing committee during the review period. If the modifications are submitted within the final 10 days of the review period, the review period for both committees is extended for 10 working days. If an agency modification is submitted to a committee after the committee in the other house has concluded its jurisdiction over the proposed rule, the jurisdiction of the committee of the other house is revived for 10 working days. An agency also may modify a proposed rule following standing committee review, if the modification is germane to the subject matter of the proposed rule. If this is done, the modified rule must be resubmitted to the Chief Clerk in each

house of the Legislature for referral and the normal committee review. [s. 227.19 (4) (b) 3. and 4., Stats.]

**NOTE:** Whenever a modification of a rule is made, an agency must submit electronically a copy of the modification to the Rules Clearinghouse at [Clearing.House@legis.wisconsin.gov](mailto:Clearing.House@legis.wisconsin.gov).

(f) A committee may object to a proposed rule, or part of a proposed rule, only for one or more of the following reasons in s. 227.19 (4) (d), Stats.:

1. An absence of statutory authority.
2. An emergency relating to public health, safety, or welfare.
3. Failure to comply with legislative intent.
4. Being contrary to state law.
5. A change in circumstances since enactment of the earliest law upon which the rule is based.
6. Being arbitrary and capricious or imposing an undue hardship.
7. For a proposed rule of the Department of Safety and Professional Services that establishes standards for the construction of a dwelling, an increase in the cost of constructing or remodeling a dwelling by more than \$1,000.

(g) If a committee objects, the committee chairperson must immediately notify the chairperson of the committee in the other house to which the proposed rule was referred. The committee in the other house may then take no further action other than also to object. [s. 227.19 (4) (b) 5., Stats.]

**NOTE:** Since agencies are not routinely notified when committee review periods end, an agency should review the history of the rule on the legislative website, which will indicate when committee review periods have ended, or contact the staff to the chairpersons of the committees or the Chief Clerk of either house.

**(3) REFERRAL TO JCRAR.** (a) When a committee's jurisdiction over a proposed rule is concluded, the rule is referred to JCRAR. The review period for JCRAR is 30 days, but may be extended for an additional 30 days as in the case of an initial reviewing committee. JCRAR may take executive action within its review period with respect to any proposed rule, or part of a proposed rule, to which no committee objected.

(b) JCRAR may use two alternative types of objection processes as follows:

1. Temporary objection process:

a. If a proposed rule received an objection from a standing committee, JCRAR is required to take executive action within its review period and may either nonconcur in an objection, object to the proposed rule, or seek rule modifications as in the case of a committee during initial review of the proposed rule.

b. JCRAR may object to a proposed rule only for one or more of the reasons listed under sub. (2) (f), above. [s. 227.19 (5) (a) and (b), Stats.]

c. An agency may not promulgate a rule until JCRAR nonconcur in the objection of the committee, concurs in the approval of the committee, otherwise approves the proposed rule, or waives its jurisdiction over the proposed rule; until the expiration of the review period if no committee has objected to the proposed rule; or until a bill that sustains an objection fails to be enacted. If a portion of a proposed rule receives an objection, the portion that receives no objection may be promulgated. [s. 227.19 (5) (c) and (d), Stats.; see also s. 3.06.]

2. Indefinite objection process:

a. As an alternative to the temporary objection process, JCRAR may indefinitely object to a proposed rule. JCRAR may make the indefinite objection for one or more of the same reasons listed under sub. (2) (f), above. [s. 227.19 (5) (dm), Stats.]

b. Under the indefinite objection process, an agency may not promulgate a rule following the indefinite objection by JCRAR unless a bill authorizing such promulgation was enacted into law. [See also s. 3.07.]

(c) During the JCRAR review period, JCRAR may, upon a majority vote of a quorum of the committee, request and contract for the preparation of an independent economic impact analysis of a proposed rule. If the analysis indicates that a proposed rule has \$10,000,000 or more in implementation and compliance costs are reasonably expected over a two-year period, the agency may not promulgate the rule absent authorizing legislation or a germane modification to the proposed rule that reduces costs below the \$10,000,000 threshold. [ss. 227.19 (5) (b) 3. and 227.139, Stats.]

**3.06 Legislative consideration of temporary rules objection. (1)** If JCRAR approves a temporary objection to a proposed rule, it shall, within 30 days, meet and take executive action regarding introduction of a bill in each house to support the objection. [s. 227.19 (5) (e), Stats.]

**(2)** If the bill is introduced on or after February 1 of an even-numbered year and before the next regular session of the Legislature commences, JCRAR must reintroduce the bills on the first day of the next regular session of the Legislature, unless either house adversely disposes of either bill. Adverse disposition of a bill occurs when one house has voted in any of the following ways:



- (a) To indefinitely postpone the bill.
  - (b) To nonconcur in the bill.
  - (c) Against ordering the bill engrossed.
  - (d) Against ordering the bill to a third reading.
  - (e) Against passage.
  - (f) Against concurrence.
- [s. 227.19 (5) (g), Stats.]

(3) After introduction, the bills are referred to an appropriate committee in each house of the Legislature, to the calendar scheduling committee, or directly to the calendar. If the committees make no report within 30 days after referral, the bills are considered reported without recommendation. No later than 40 days after referral, the bills must be placed on the calendars of the respective houses of the Legislature according to the rules of the respective houses governing the placement of proposals on calendars. A bill received in the second house after passage in the first house must be referred, reported, and placed on the calendar in the same manner as an original bill introduced as described in this subsection. [s. 227.19 (6) (b), Stats.]

(4) If both bills required by the law are defeated or fail to be enacted in any other manner during a regular session, then the rule may be promulgated. If either bill becomes law, the agency may not promulgate the proposed rule, or part of the proposed rule, that was objected to unless a later law specifically authorizes promulgation of the proposed rule. [s. 227.19 (5) (f), Stats.]

(5) Like other bills, the bills introduced by JCRAR are subject to signature or veto by the Governor.

**3.07 Legislative consideration of indefinite rules objection.** (1) If JCRAR approves an indefinite objection to a proposed rule, any member of the Legislature may introduce a bill to authorize promulgation of the proposed rule or any part of the proposed rule. [s. 227.19 (5) (em), Stats.]

(2) After introduction, the bill may be referred, reported, and placed on the calendar in the same manner as any other bill that is introduced in the Legislature. It is also subject to signature or veto by the Governor.

(3) If the bill becomes law, the agency may promulgate the proposed rule or part of the rule that was objected to. If the bill is defeated or fails to be enacted in any other manner, the agency may not promulgate the proposed rule or part of the proposed rule that was objected to unless a subsequent law specifically authorizes its promulgation. [s. 227.19 (5) (fm), Stats.]

**3.08 Withdrawal or recall of rules. (1) WITHDRAWAL OF RULES.** An agency may withdraw a proposed rule from the rule review process by notifying the Chief Clerk of each house of the Legislature and the Rules Clearinghouse in writing of its intention not to promulgate the rule. If not withdrawn in that manner, a proposed rule is deemed withdrawn on the earliest of the following: December 31 of the fourth year after the year in which it is submitted to the Rules Clearinghouse unless filed with LRB by that date, or, if not submitted to the Legislature, 30 months after publication of the statement of scope for the proposed rule. [s. 227.14 (6), Stats.]

**(2) RECALL OF RULES.** An agency may, during a standing committee review period, recall a proposed rule from the Chief Clerk of each house of the Legislature. If the agency decides to continue the rulemaking process for the proposed rule, the agency may resubmit it, either in the recalled form or with one or more germane modifications, to the Chief Clerk of each house and the committee review period begins again. [s. 227.19 (4) (b) 3m., Stats.]

**3.09 Treatment of rules in effect by JCRAR; other powers. (1) POWERS OF JCRAR.**  
**(a) Rule suspension.** JCRAR may suspend a rule, including an emergency rule, at any time following promulgation after receiving testimony at a public hearing. JCRAR may suspend a rule only for one or more of the following reasons:

1. An absence of statutory authority.
2. An emergency relating to public health, safety, or welfare.
3. Failure to comply with legislative intent.
4. Being contrary to state law.
5. A change of circumstances since enactment of the earliest law upon which the rule is based.
6. Being arbitrary and capricious or imposes an undue hardship.
7. For a proposed rule of the Department of Safety and Professional Services that establishes standards for the construction of a dwelling, an increase in the cost of constructing or remodeling a dwelling by more than \$1,000.

[s. 227.26 (2) (d), Stats.]

**(b) Identification of policy or interpretation as a rule.** If JCRAR determines that a statement of policy or an interpretation of a statute is a rule, it may direct the agency to promulgate the statement or interpretation as an emergency rule within 30 days of JCRAR's action. [s. 227.26 (2) (b), Stats.]

**(c) Hearings.** By a vote of a majority of its members, JCRAR may require any agency issuing rules to hold a public hearing in respect to general recommendations of JCRAR and to report its actions to JCRAR within a time specified by JCRAR. The agency hearing shall be held not more than 60 days after receipt of notice that JCRAR is requiring the agency to hold a hearing. [s. 227.26 (3), Stats.]

(2) ACTION ON SUSPENDED RULE. (a) Within 30 days of its suspension of a rule, JCRAR must meet and take executive action regarding the introduction, in each house of the Legislature, of a bill to support the suspension. [s. 227.26 (2) (f), Stats.]

(b) If the bills required under par. (a) are introduced on or after February 1 of an even-numbered year and before the next regular session of the Legislature commences, unless either house adversely disposes of either bill, JCRAR must reintroduce the bills on the first day of the next regular session of the Legislature. Adverse disposition occurs when one house has voted in any of the following ways:

1. To indefinitely postpone the bill.
2. To nonconcur in the bill.
3. Against ordering the bill engrossed.
4. Against ordering the bill to a third reading.
5. Against passage.
6. Against concurrence.

[s. 227.26 (2) (j), Stats.]

(c) After introduction, the bills are to be referred to an appropriate committee in each house of the Legislature, to the calendar scheduling committee, or directly to the calendar. If the committees make no report within 30 days after referral, the bills are considered reported without recommendation. No later than 40 days after referral, the bills must be placed on the calendars of the respective houses of the Legislature according to the rules of the respective houses governing the placement of proposals on calendars. A bill received in the second house after passage in the first house must be referred, reported, and placed on the calendar in the same manner as an original bill introduced as described in this paragraph. [s. 227.26 (2) (h), Stats.]

(d) If both bills are defeated or fail to be enacted in any other manner during a regular session, then the rule stands, except that JCRAR may suspend it again. If either bill becomes law, the suspended rule is repealed and may not be promulgated again unless a later law specifically authorizes such action. [s. 227.26 (2) (i), Stats.]

(e) Like other bills, the bills introduced by JCRAR are subject to signature or veto by the Governor.

**3.10 Time periods.** Unless otherwise provided, all time periods refer to calendar days.

SG:MSK:MED:jal

APPENDIX A

CHECKLIST FOR DOCUMENT SUBMISSIONS IN THE  
RULE PROMULGATION PROCESS

## Checklist for Document Submissions in the Rule Promulgation Process

The following checklist identifies the primary documents in the rule promulgation process<sup>1</sup> and the entity to which each document must be submitted. Some documents and submissions are required only when certain conditions arise. Unless otherwise noted, each document should be submitted electronically to the cited entity.<sup>2</sup>

The checklist is organized in the chronological order in which the documents are created during the rulemaking process.

- Statement of scope of proposed rule.** [s. 227.135 (2) and (3), Stats.; s. 2.01 (3) and (4), Manual.]
  - To DOA.
  - Upon the Governor's approval:
    - To the head of the agency.
    - To LRB.
    - To DOA.
    - To the Chief Clerk of each house of the Legislature.
  
- Notice of preliminary hearing and comment period.** [s. 227.136 (2), Stats.; s. 2.01 (5), Manual.]
  - To LRB.
  
- Proposed rulemaking order, fiscal estimate, and economic impact analysis.** [ss. 227.137 (4), 227.14 (2g), and 227.15 (1), Stats.; ss. 2.03 (1) and 3.01 (1), Manual.]
  - To the Legislative Council Administrative Rules Clearinghouse, by email, in Word format.
  - To the Small Business Regulatory Review Board (SBRRB).

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<sup>1</sup> The checklist does not include the documents used in an expedited repeal of an unauthorized rule under s. 227.26 (4), Stats.

<sup>2</sup> The following email addresses should be utilized for electronic submissions:

- Governor: [SBOAdminRules@spmail.wi.gov](mailto:SBOAdminRules@spmail.wi.gov).
  - DOA: [DOARulesReview@wi.gov](mailto:DOARulesReview@wi.gov).
  - LRB: [Admin-Code-Register@legis.wi.gov](mailto:Admin-Code-Register@legis.wi.gov).
  - Legislative Council Administrative Rules Clearinghouse: [Clearing.House@legis.wi.gov](mailto:Clearing.House@legis.wi.gov).
  - Small Business Regulatory Review Board: [SBRRB@wisconsin.gov](mailto:SBRRB@wisconsin.gov).
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- In addition, send only the economic impact analysis:
  - To the Governor.
  - To DOA.
  - To the Chief Clerk of each house of the Legislature, by mail.
  
- **Notice of submittal to the Rules Clearinghouse of the proposed rulemaking order.** [s. 227.14 (4m), Stats.; s. 2.03 (2), Manual.]
  - To LRB.
  - To DOA.
  
- **Notice of public hearing.** [s. 227.17 (1), Stats.; s. 2.05 (1), Manual.]
  - To LRB.
  - To DOA.
  - To a local newspaper, if required.
  - To each member of the Legislature who has filed a written request with LRB.
  
- **Notice of rulemaking without public hearing.** [s. 227.16 (2) (e), Stats.; s. 2.05 (2), Manual.]
  - To LRB.
  
- **Final proposed rulemaking order and report.** [ss. 227.185 and 227.19 (2), Stats.; ss. 2.07 and 3.03, Manual.]
  - To the Governor.
    - Notify the JCRAR co-chairs of the submission to the Governor.
  - Upon the Governor's approval:
    - To the Chief Clerk of each house of the Legislature, by mail, with rule jackets.
    - To the Rules Clearinghouse, by email, in Word format.
    - To LRB, by email, in Word format, with notice of submission to Legislature.
  
- **Germane modification.** [s. 227.19 (4) (b) 3., Stats.; s. 3.05 (2) (e), Manual.]
  - To the Chief Clerk of each house of the Legislature, by mail.
  - To the Rules Clearinghouse, by email, in Word format.
  
- **Final rulemaking order.** [s. 227.20 (1), Stats.; s. 2.08, Manual.]
  - To LRB, in two formats:
    - By mail, in paper format, as a certified copy.
    - By email, in Word format.

**APPENDIX B**

**FLOW CHART OF RULE PROMULGATION PROCESS**

# Rule Promulgation Process

Agency decision to promulgate rules, including: (1) the preparation, approval by the Governor, publication, and approval by the agency head, of a scope statement that describes the rules' objectives, current and proposed policies, policy alternatives, statutory authority, and the resources necessary to develop the rules; (2) preliminary hearing on the scope statement, if applicable; and (3) preparation of a draft of the rules and accompanying documents that meet format standards suggested by the Rules Clearinghouse and the LRB.

Prior to public hearing or legislative review, all proposed rules submitted to Rules Clearinghouse for advisory, technical review. Review must take place within 20 working days, unless period extended for additional 20 working days by Director of Legislative Council Staff. Rules returned to agency for processing.

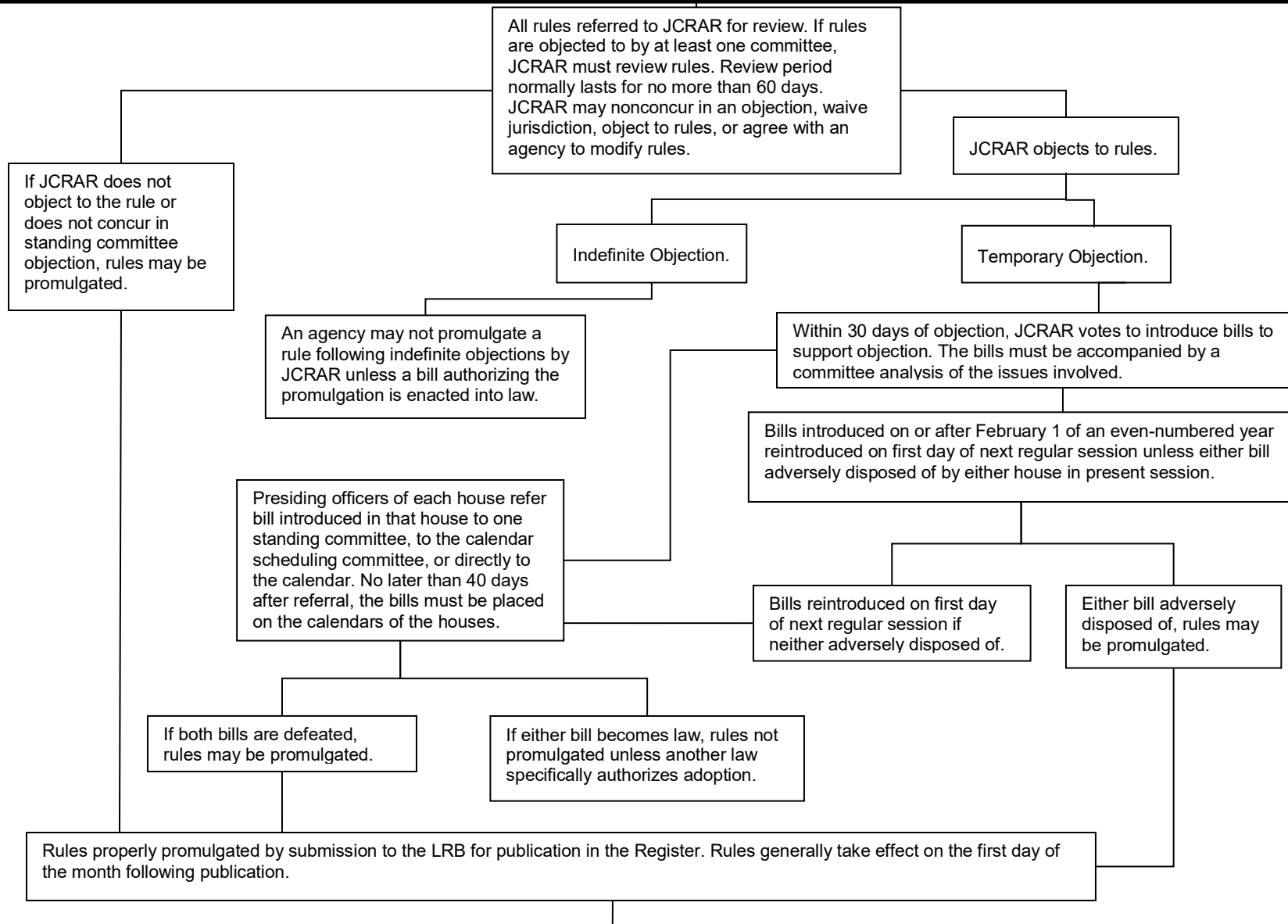
Agency notifies the public of a public hearing on the proposed rules and conducts a public hearing, unless notice and hearing are not required under the statutes.

After approval by the Governor, rules in final draft form submitted to the Chief Clerk in each house of the Legislature along with report containing justification for rules, agency reaction to Rules Clearinghouse report, agency reaction to any public testimony, and statement of public appearances and registrations for or against the rules at any public hearing. Rules submitted after the last day of the Legislature's final general-business floor period in the biennial session are considered to be received on the first day of the next regular legislative session unless the presiding officers of both houses direct referral to committees before that date.

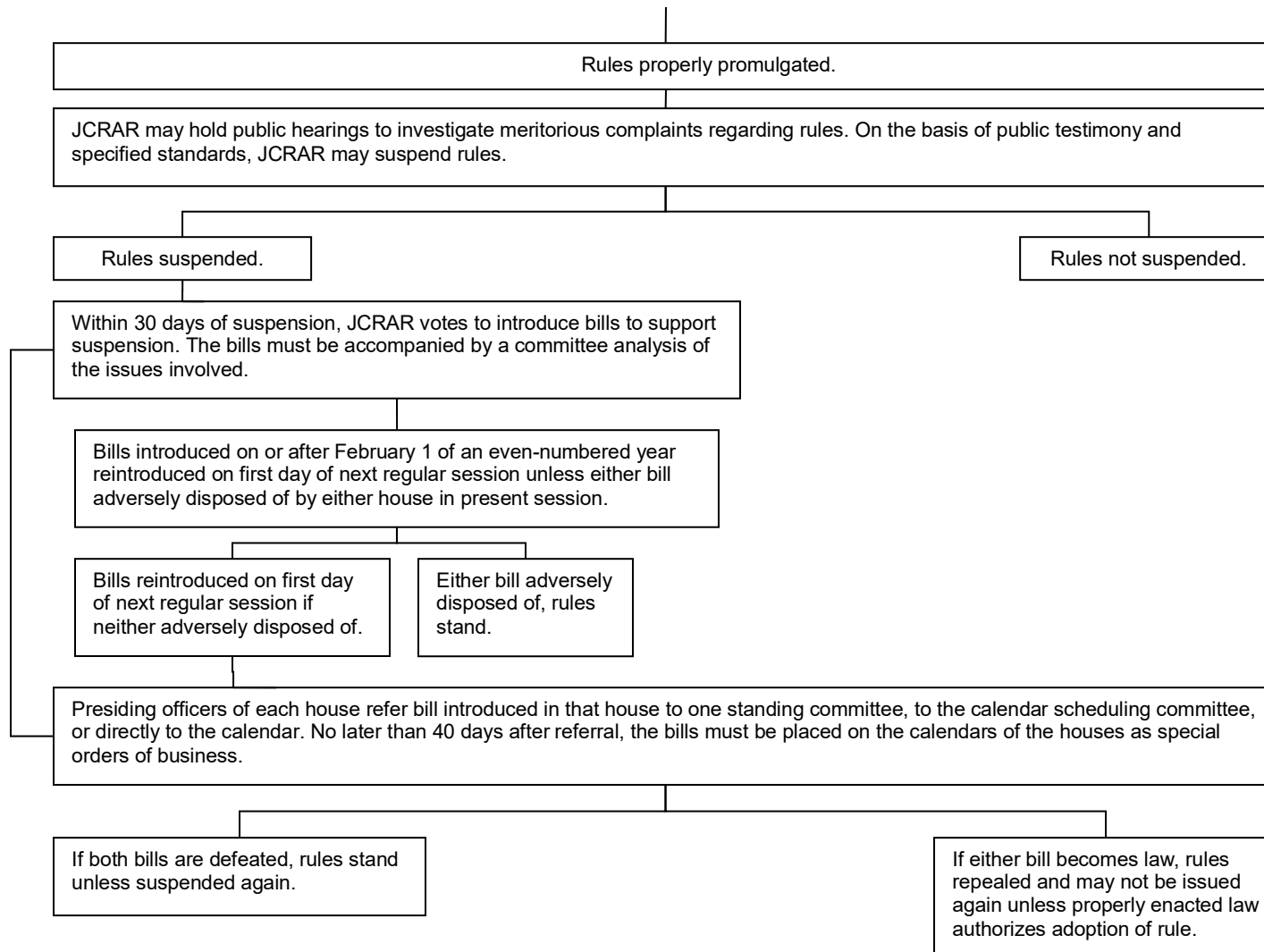
Within 10 working days, each presiding officer directs the Chief Clerk to refer the rules and report to one committee. Unless objected to by at least one committee, rule review period normally may last for no more than 60 days. If a committee and agency agree to modifications, then the review period is extended to the 10th working day following committee receipt of modified rules. An agency may submit germane modifications, on its own initiative, during or following a committee review period.



# Rule Promulgation Process



# Rule Promulgation Process



Prepared by:

Wisconsin Legislative Council Staff  
November 2020