



WISCONSIN LEGISLATIVE COUNCIL

ADMINISTRATIVE RULES PROCEDURES MANUAL

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

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INTRODUCTION

This is the edition of the Administrative Rule Procedures Manual for use in 2008 to 2011. It is a joint effort of the Legislative Reference Bureau and the Legislative Council Rules Clearinghouse. Its purpose is to provide agency personnel with information on the three basic aspects of administrative rule-making: drafting, promulgation, and legislative review.

PART 1, on drafting format and style, follows the style used by the Legislative Reference Bureau in drafting bills for consideration by the Wisconsin Legislature. Part 1 also contains the standards applied by the Legislative Council Rules Clearinghouse when reviewing proposed rules under s. 227.15, Stats.

The rule-making procedures described in **PART 2** of this Manual 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 important information relating to filing deadlines for material published in the *Wisconsin Administrative Register*.

The procedures for Rules Clearinghouse and standing committee review of proposed rules are set forth in **PART 3**. This Part also summarizes the statutes relating to review of existing rules by the Joint Committee for Review of Administrative Rules.

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PART 1

DRAFTING FORMAT AND STYLE

1.01 Drafting style. (1) **CLARITY.** To the extent possible, rules shall adhere to the format and drafting style of bills prepared for the legislature. The purpose of administrative rules is to supplement, implement, or interpret legislation. Avoid rhetorical flourishes and other language tending to evoke an emotional response from the reader. Draft administrative rules in concise simple sentences. Express ideas and concepts positively using present tense and the active voice. Avoid Latin and other foreign terms.

(2) **MANDATORY AND PERMISSIVE ACTIONS.** 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”

(3) **SEX-NEUTRAL LANGUAGE.** 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.” In other cases, a pronoun is unnecessary and should be deleted; for example, “The commissioner or ~~his~~ a designee shall be present.”

(4) **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.

(5) **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: The following are examples of when the numeral “1” is used rather than the word “one”--January 1; 1 percent; 1, 5, or 7; or \$1.

(6) **PARENTHESES.** Avoid using parentheses. If certain material is important to the thought or concept expressed in the rule, the material should be set apart with commas, not parentheses. Otherwise, place the material, if necessary, in an explanatory note immediately following the rule itself. Also, “(s)” should not be added to a word to indicate that the word may be singular or plural. Use the singular form.

(7) **DEFINITIONS.** (a) The use of definitions is an important technique to achieve consistency and clarity of terminology within a chapter or section of rules. If a definition of a

word or term applies to an entire chapter, the definition should appear at or near the beginning of the chapter. If a definition applies only to a particular rule section or subsection, it should appear only in that section or subsection, not somewhere else in the chapter or in a different chapter. Also the extent of the applicability of the definitions should be clearly stated; for example, the definitions might be preceded by the phrase “In this chapter:” or “In this section:”. Definitions are arranged alphabetically.

(b) A definition is always drafted as a complete sentence. Substantive provisions are never incorporated as part of a definition.

EXAMPLES OF INCORRECT STYLE:

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

DHS 83.04 (18) “Department” means the Wisconsin department of health services, which shall administer this chapter.
(Additional substance added.)

EXAMPLE OF CORRECT STYLE:

DHS 83.04 (18) “Department” means the Wisconsin department of health services.

(c) The use of the term “means” in a definition limits the scope of the definition solely to the example or examples stated. Use of the term “includes” expands the scope of the definition to encompass other reasonably related examples not specifically enumerated. If a rule is interpreting a statute which contains a definition using the term “includes,” the rule cannot use the term “means” in defining the same word. If a rule uses a definition which is identical to one found in the statutes, the definition may be drafted as a simple reference to the statutory definition; for example, “‘Obligation’ has the meaning given in s. 150.01 (16), Stats.” In definitions and in substantive provisions of a rule, “including, but not limited to,” should be avoided since it has the same meaning as “including.”

(8) ACRONYMS. 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. If some purpose is served by using the full phrase interchangeably with the acronym, include both in the definition; for example, “‘EIR’ or ‘environmental impact report’ means”

(9) AVOID CERTAIN WORDS AND PHRASES. (a) Do not use slashed alternatives, such as “and/or,” in drafting administrative rules. 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.”

(b) Avoid the use of the words “currently,” “now,” and “formerly,” since these terms are meaningless once rules are printed. If necessary, make reference to a certain date; 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 . . . [legislative reference bureau inserts date].” This permits the legislative reference bureau to substitute the actual date.

(c) 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.” [Also see s. 1.07 (1) (a), Manual.] 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.” Avoid the use of the vague term “etc.”

(d) 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.”

1.02 Arrangement of rule-making orders. (1) INTRODUCTORY CLAUSE. The beginning of each draft of a rule-making order includes an enumeration of the sections treated by the proposed order and the nature of the treatment and an introductory clause consisting of a relating clause concisely stating the subject matter of the proposed order. Group the sections treated in the following order: to repeal, to renumber, to renumber and amend, to amend, to repeal and recreate, to create. If a rule will have an impact on small business, include the phrase “and affecting small business” in the relating clause, so that the Legislative Council can separately identify the rule on its Web site. [See s. 227.15 (1m), Stats.]

EXAMPLE:

The Wisconsin (name of agency) proposes an order to repeal ATCP 7.02 (1); to renumber ATCP 7.02 (2); to renumber and amend ATCP 7.03; to amend ATCP 7.05 (3) (a) and (b) and 7.04 (title) and (2); to repeal and recreate ATCP 7.02 (3) and 7.05 (1); and to create ATCP 7.025, relating to dairy plant trustees.

(2) RULE SUMMARY. (a) Following the introductory clause, the order shall contain all of the following headings and if there is no information under a particular heading, the heading should be included and the text should state that there is no information:

1. Statute interpreted.
2. Statutory authority.
3. Explanation of agency authority.
4. Related statute or rule.
5. Plain language analysis.
6. Summary of, and comparison with, existing or proposed federal regulations.
7. Comparison with rules in adjacent states.
8. Summary of factual data and analytical methodologies.

9. Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report.
10. Effect on small business.
11. Agency contact person (including e-mail and telephone).
12. Place where comments are to be submitted and deadline for submission.

(b) The statute or statutes granting general rule-making authority may be cited when there is no statute that specifically permits or directs an agency to promulgate rules on the subject matter contained in the draft. Since all authority for administrative rules is conferred by statute, it is important for agencies to identify specifically the statutes that authorize promulgation. Also, an agency should carefully review a proposed rule for consistency with all relevant statutes.

NOTE: If the only source of authority that the agency can cite is the general authority set forth in s. 227.11 (2) (a), Stats., the agency should also cite the specific statutes enforced or administered by it that relate to the substance of the rule.

(c) The purpose of the summary of the rule 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 rule and the changes made, if any, in existing rules. It should be written in plain, simple English.

(3) TEXT OF RULE. In drafting a chapter or section of administrative rules, 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. 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 could be divided into appropriate chapters. The recommended sequence of material in a rule chapter or rule section is as follows:

- (a) Purpose of the chapter or section. A purpose statement is not necessary, but if it is included, it should be the first item.
- (b) Definitions of words or terms used in the chapter or section.
- (c) Substantive provisions in their order of importance, time sequence, or other logical arrangement.
- (d) Exceptions, exemptions, or exclusions, if any, to the chapter or section.
- (e) Benefits, sanctions, or results of compliance or noncompliance with the chapter or section.

NOTE: See s. 1.04, Manual, for arrangement of text in SECTIONS.

(3m) INITIAL APPLICABILITY. If there is an existing rule 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 on or after the effective date, and to apply the existing rule to events occurring before the effective date. An initial applicability clause may be used also 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 license renewal applications that are submitted on the effective date of this rule.

(4) EFFECTIVE DATES. (a) Each rule shall have an effective date clause. If an agency intends that a rule take effect on the first day of the month following publication in the register, the effective date clause shall cite s. 227.22 (2) (intro.), Stats.

EXAMPLE:

SECTION __. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro.), Stats.

NOTE: See s. 1.01 (9) (b), Manual, regarding inclusion of the effective date in the text of the rule.

(b) If a rule will take effect on a specified date, the effective date clause shall specify that date.

(c) If the agency desires a particular effective date for a rule, it should confirm the proposed date with the legislative reference bureau to be certain that the desired date is feasible.

(d) Because an effective date provision is not a permanent part of a rule, it is not included in the text of a rule being promulgated. An effective date is set forth as an unnumbered provision at the end of a rule-making order. The legislative reference bureau will include the effective date in the Wisconsin administrative register and in the appropriate place in the administrative code as a history note.

(5) EMERGENCY RULE. If the rule is an emergency rule, it shall include a statement of the facts constituting an emergency. [See s. 2.12, Manual.]

(6) FINAL REGULATORY FLEXIBILITY ANALYSIS. When a rule is sent to the legislature for standing committee review, if the rule will have an effect on small businesses, it shall contain a final regulatory flexibility analysis. This requirement does not apply if an agency, after following the requirements in s. 227.114, Stats., determines that the rule will not have a significant economic impact on a substantial number of small businesses and includes a statement of the reasons for this determination with the rule. A final regulatory flexibility analysis shall contain as much information about all of the following as the agency can feasibly obtain and analyze with its existing staff and resources:

(a) The agency's reason for including or failing to include in the rule any of the methods specified under s. 227.114 (2), Stats., for reducing its impact on small business.

(b) A summary of issues raised by small businesses during the hearings on the rule, any changes in the rule as a result of alternatives suggested by small businesses, and the reasons for rejecting any alternatives suggested by small businesses.

(c) The nature of any reports and the estimated cost of their preparation by small businesses that must comply with the rule.

(d) The nature and estimated cost of other measures and investments that will be required of small businesses in complying with the rule.

(e) The additional cost, if any, to the agency of administering or enforcing a rule which includes any of the methods specified under s. 227.114 (2), Stats.

(f) The impact on public health, safety, and welfare, if any, caused by including in the rule any of the methods specified under s. 227.114 (2), Stats.

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

(7) FISCAL ESTIMATES. (a) A fiscal estimate is required on all proposed rules. The fiscal estimate shall 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, vocational, technical and adult education district, and sewerage district.

2. A projection of the rule’s anticipated state fiscal effect in the current biennium and a projection of the full annualized fiscal effect.

3. 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 shall base its fiscal estimate on the fiscal effect of the statute.

(c) If during the rule-making process the rule is substantially revised so that the fiscal effect is significantly changed, the agency shall prepare a revised fiscal estimate prior to promulgating the rule-making order. The revised fiscal estimate shall be published in the register.

(d) 1. The fiscal estimate shall accompany any rule which is submitted to the legislative council 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 shall be provided to the legislative reference bureau when a notice of hearing on the rule is filed for publication in the register. If the agency initiates the rule-making process with a 30-day notice pursuant to s. 227.16 (1) (e), Stats., the full fiscal estimate shall be provided to the legislative reference bureau for publication with the notice.

(8) HOUSING REPORTS. If a rule directly or substantially affects the development, construction, cost, or availability of housing in Wisconsin, the department of commerce is required to prepare a report on the rule before it is submitted to the legislative council rules

clearinghouse. The department of commerce is required to prepare the report within 30 days of submission of the rule to the department. The report shall contain information about the effect of the rule on housing, including the specific information required under s. 227.115 (3) (a), Stats. The report shall be included in the agency’s report to the legislature under s. 227.19 (3), Stats. [See s. 227.19 (3) (g), Stats.]

1.03 System of numbering. (1) GENERAL. (a) Each chapter of administrative rules may be divided into sections, subsections, paragraphs, subdivisions, and subdivision paragraphs. When any section, or part of a section, is divided into smaller subunits, at least two subunits shall be created. In order to preserve clarity and uniformity and to simplify drafting, the legislative reference bureau is required to number rules sections according to the decimal system and to divide sections into subsections whenever feasible. If requested by the agency prior to submitting the rule to the legislative council rules clearinghouse, the legislative reference bureau may give advance approval of the titles and numbering the agency proposes to use in the rule.

(b) All subunits of a rule should end with a period, rather than a comma or semicolon or the word “and” or “or,” except for introductory material, which ends with a colon. This facilitates insertion or deletion of subunits in the future without having to move the word “and” or “or” in the next-to-the-last subunit.

(c) As an example, the parts of s. HFS 103.065 (4) (d) 2. a. and the abbreviations to be used when constructing cross–references in rule text are as follows:

HFS 103.	065	(4)	(d)	2.	a.
Chapter	Section	Subsection	Paragraph	Subdivision	Subdivision
(ch.)	(s.)	(sub.)	(par.)	(subd.)	paragraph

(2) UNITS. The following are specific details about subdividing rules:

(a) *Subchapters.* A chapter may be divided into subchapters for organizational purposes, but it is not necessary to use subchapters.

(b) *Sections.* Each section must be properly numbered to include the agency’s code letter designation followed by the rule’s chapter and section number. For example, “s. ATCP 10.03” means a rule of the department of agriculture, trade and consumer protection which appears in chapter ATCP 10.

(c) *Subsections.* The subunit of a rule immediately below a section is a “subsection,” which is designated by a numeral enclosed in parentheses: “(1)”.

(d) *Paragraphs.* A subsection may be divided into “paragraphs,” which are designated by lower–case letters enclosed in parentheses: “(a),” except that the capital letter “L” is used to distinguish the letter from the numeral one.

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

(f) *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 lower-case letters followed by a period: “a.” Subdivision paragraphs may not be further divided.

(g) *Future insertions.* The use of the decimal system allows for the convenient insertion of new rules sections in their proper numerical location without the necessity of renumbering existing rules sections. 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 can be numbered s. ATCP 10.035. As another example, see s. 182.0175, Stats., which was inserted between ss. 182.017 and 182.018, Stats. Furthermore, new subsections or paragraphs can be created and inserted between two existing subsections or paragraphs by merely adding a lower-case letter after the numeral or letter previously used. For example, “(2m)” can be used for a subsection inserted between subs. (2) and (3); and “(am)” can be used for a paragraph inserted between pars. (a) and (b).

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

For example, if you insert two new subsections between subs. (3) and (4), number them subs. (3g) and (3r).

(h) *Introductory material.* When dividing a unit of a rule into subunits, it may be necessary to precede the subunits with introductory material. The introductory material always ends in a colon and leads into the subunits. It is designated “(intro.)” and usually contains words like “all of the following” or “any of the following.”

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 “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:”.

Subsection (1) in the example is divided into 3 parts. The material after “(1)” and before the second colon is referred to as “s. RL 8.01 (1) (intro).” The 3 parts of sub. (1) are sub. (1) (intro.), par. (a), and par. (b).

1.04 Arrangement of sections. (1) GENERAL. The text of a rule-making order is divided into sequentially numbered SECTIONS; that is, each decimal-numbered provision (section) of a rule, or part of a rule, in the draft generally is placed in a separate SECTION of the draft (denoted as SECTION 1, SECTION 2 and so forth) and arranged in the numerical order of the decimal-numbered provisions as they appear in the rules at the time of drafting. Each SECTION begins with a treatment clause; for example, “Adm 1.01 is created to read:” is a treatment clause.

(2) SPECIFIC TREATMENT. (a) Same treatment. 1. When a series of consecutively numbered rules sections are affected in their entirety by the same treatment, they may be included in a single SECTION of the draft.

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 and recreation of consecutively numbered rules sections, or a renumber and amend of the rules sections, may be included in the same SECTION of the draft.

EXAMPLE:

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)

3. When a number of full rules sections are affected in their entirety by the same treatment, but they are not consecutively numbered, they may not be included in a single SECTION of the draft.

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)

4. When two or more subsections, paragraphs, subdivisions, or subdivision paragraphs of the same rules sections are affected by the same treatment, they may be included in the same SECTION of the draft even though there are unaffected subunits intervening.

EXAMPLE:

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

Adm 20.02 (1) (text)

(2) (text)

(5) (text)

5. When a rule section is renumbered 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.

EXAMPLE:

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

(b) *Different treatment.* When 2 or more subsections, paragraphs, subdivisions, or subparagraphs of the same rule section are affected by different treatments, then each is treated separately, in numerical order, in separate SECTIONS of the draft.

(c) *Renumbering sections.* When a rule section is to be renumbered, the present rule number, as opposed to the proposed new number, determines the sequence of treatment in the draft.

1.05 Titles. (1) USE OF TITLES. All rules chapters and sections must have titles. Titles to any unit of a rule are not part of the substance of the rule itself. If titles are also used for subsections, paragraphs or subdivisions, they should be utilized in a consistent manner; that is, if any subsection of a particular rule section is titled, then all of the subsections in that section should be titled. If any paragraph of a particular subsection is titled, then all of the paragraphs in that subsection should be titled. Titles may not be used for units below the subdivision level.

(2) **FORMAT.** For drafting purposes:

(a) Chapter and subchapter titles are written in solid capital letters; for example, CHAPTER DHS 61, COMMUNITY MENTAL HEALTH, DEVELOPMENTAL DISABILITY AND ALCOHOLISM AND OTHER DRUG ABUSE SERVICES; and SUBCHAPTER II, COMMUNITY MENTAL HEALTH PROGRAMS.

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

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

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

(e) 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.’

(3) **REVISING TITLES.** (a) If a title is to be revised, the notation “(title)” shall be included in the introductory and treatment clauses of the rule and inserted before the amended title to notify the reader that the title has been amended.

(b) Titles to units of a rule are amended by use of strike-throughs and underscores.

(c) If a rule provision containing a title is amended, the title is shown even if it is not amended. If a rule provision not containing a title is amended, the title of any larger unit of which the provision is a part is not shown; however, the title of the larger unit is shown if the amended provision is introductory material that is immediately preceded by the title.

1.06 Amending rules. (1) STRIKING AND UNDERSCORING. When amending a rule, language to be removed is stricken-through (~~stricken-through~~) and new material to be inserted is underscored (underscored). When material is deleted and material is added in the same location, the new underscored material always immediately *follows* the stricken material. Even if the stricken material consists of more than one sentence, the new underscored material which replaces the stricken material is inserted at the end of all stricken material. Underscoring is not used when creating an entire rule unit; strike-throughs are not used when repealing an entire rule unit.

(2) 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:	Correct:
section .	Section <u>s</u> .
sections .	sections <u>ss</u> .
subchapter .	subchapter <u>subch</u> .
miles	mile <u>miles</u>

(3) CHANGING THE BEGINNING OF A SENTENCE. When language at the beginning of a sentence is stricken and the sentence begins with a word in the sentence, 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 OF INCORRECT STYLE:

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

EXAMPLE OF CORRECT STYLE:

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

(4) PERIODS. Periods are usually preserved in material being amended. Periods are not stricken or underscored unless a new sentence is created, an old sentence is eliminated or 2 or more existing sentences are combined.

(5) REPEALING AND RECREATING. If major changes are being made to an existing rule, the existing rule may be repealed and recreated rather than amended. A repealed and recreated rule should be shown as it will appear after promulgation, without strike-throughs and underscores.

1.07 References to other provisions; citations. (1) GENERAL. (a) 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 specific.

(b) It is not necessary to reproduce chapter, section, or subsection titles in a reference in the text of a rule; just use the numerical reference.

(c) When existing rules are renumbered, repealed, or repealed and recreated, carefully review other rules which contain references to the revised rules and make any needed cross-reference changes.

(2) INTERNAL AND EXTERNAL REFERENCES. Differing format is used for internal and external references. An internal reference is a reference to another portion of the administrative code which is within the same unit as the portion where the reference occurs, thus making a fully concise 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 of the recommended format for internal and external citations are as follows:

<i>Citation</i>	<i>Internal</i>	<i>External</i>
Statutes	_____	s. 15.01, Stats.
Rules chapters	this chapter	ch. Comm 14
Rules subchapters	this subchapter	subch. IV [same chapter], subch. IV of ch. Comm 14 [different chapter]
Rules sections	this section	s. Comm 14.24
Rules subsections	this subsection	s. Comm 14.24 (2) [different section], sub. (2) [same section]
Rules paragraphs	this paragraph	s. Comm 14.24 (2) (a) [different section], sub. (2) (a) [different subsection], and par. (a) [same subsection]
Rules subdivisions	this subdivision	s. Comm 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. Comm 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. Comm 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. Comm 14.18 (1) and (2) [different section]
Consecutive series	subs. (1) to (5)	s. Comm 14.18 (1) to (5)

NOTE: References to “Wis. Adm. Code” should not be used when making external references. For example, a simple reference to “s. Comm 14.24 (1) clearly refers to the administrative code and not the statutes, because the number “14.24 (1)” is preceded by the reference to “Comm.” Material relating to “Comm” can only be found in the Wisconsin administrative code and not in the statutes.

(3) FEDERAL STATUTES AND REGULATIONS. (a) When citing a federal law, use the U.S. code reference; for example, 42 USC 1396a (a) (13). If an agency wishes to include a reference to a public law or a named federal act, this could be done in a note. An exception to this citation requirement is permitted for citations to the Internal Revenue Code, which is a term that is

defined in the statutes. When citing a provision in the Internal Revenue Code, cite either the U.S. code provision or a section of the Internal Revenue Code, as defined in either s. 71.01 (6) or 71.22 (4), Stats.

(b) When citing a federal regulation that is currently in force, use the code of federal regulations reference; for example, 22 CFR 13.2.

NOTE: See s. 2.08, Manual, for the use in rules of the incorporation, by reference, of standards established by technical societies and organizations of recognized national standing.

1.08 Repetition of language. (1) STATUTORY LANGUAGE. Avoid unnecessary repetition of statutory language. Statutory language may be used if necessary to convey the intent of a particular rule.

(2) FEDERAL REGULATIONS. If an agency is required to adopt federal regulations in addition to its own administrative rules to implement a statute, the agency may include the verbatim federal regulations in its rules. The federal regulation language shall be clearly indicated to distinguish it from the remainder of the rule.

1.09 Notes to rules. (1) EXPLANATORY MATERIAL. 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 can be obtained, the explanatory material follows the applicable rule section and is labeled “Note:” or “Example:”. Notes may not include substantive requirements and are not part of the substantive law created by rule.

(2) REFERENCE 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 web site from which the form may be obtained. A copy of the form shall be attached to the rule or a statement shall be included indicating where a copy of the form may be obtained at no charge. The legislative reference bureau shall insert the note in the administrative code.

1.10 Time periods for action on permit applications. Each rule that includes a requirement for a business to obtain a permit shall 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.

NOTE: Under s. 560.41 (2), Stats., “permit” means any approval of a regulatory agency required as a condition of operating a business in this state.

PART 2

PROMULGATION PROCEDURE

NOTE: **PART 2** of this Manual sets forth the internal activities of an agency when it prepares and promulgates an administrative rule. **PART 3** of this Manual sets forth the process of legislative review of administrative rules. Separate **PARTS** were used so that each process can be reviewed and highlighted in a self-contained segment of the Manual. However, the rule promulgation procedure to be followed by an agency is a sequence which combines, in one process, actions described separately in **PARTS 2** and **3**. A flow chart that sets forth the rule promulgation procedure is contained in the **APPENDIX**.

2.003 Submission of materials to the state administrative rules web site. Agencies shall submit in electronic format to adminrules@wisconsin.gov, for inclusion in the state's administrative rules web site, all publicly available materials regarding rules that are submitted to the department of administration, the legislative council rules clearinghouse, the chief clerks, the legislative reference bureau, legislative standing committees, and the joint committee for review of administrative rules. This includes statements of scope, submissions to the clearinghouse of proposed rules and accompanying materials such as fiscal estimates, economic impact reports, reports made by the small business regulatory review board, notices regarding hearings, final proposed rules and reports to the legislature that are sent to the chief clerks for referral to standing committees, emergency rule-making orders, requests for extensions for emergency rules, modifications to proposed rules, withdrawals or recalling of proposed rules, and final rules that are submitted to the legislative reference bureau for publication.

NOTE: The state administrative rules web site on which all of these materials may be found is at <http://adminrules.wisconsin.gov>.

2.005 Statement of scope of proposed rules. (1) Before an agency can begin working on a proposed administrative rule, including drafting the proposed rule, a statement of scope must be prepared, reviewed by the head of the agency, and published in the Wisconsin Administrative Register.

- (2) The scope statement shall contain all of the following:
 - (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.
 - (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 will 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.

(3) The scope statement shall be presented to the agency head or policy-making body for approval. No further work may be done on the proposed rule until the scope statement is approved. If, after 30 days, the agency head has not disapproved the scope statement, the scope statement is considered approved.

(4) After the scope statement is approved, the agency shall send the scope statement to the legislative reference bureau for publication in the Wisconsin administrative register and a copy to the secretary of the department of administration.

NOTE: In addition to the paper copy of the scope statement, the legislative reference bureau requires an electronic copy of the scope statement as an attachment via e-mail. The legislative reference bureau requests that the electronic copy be mailed as soon as possible and would prefer receiving the e-mail prior to the filing of the original paper notice. The e-mail address is bruce.hoesly@legis.wisconsin.gov.

(5) The agency generally can resume action on the proposed rule 11 days after the day of publication in the Wisconsin administrative register. [See s. 227.135 (2), Stats.]

NOTE: Publication of the register is on the 1st and 15th of the month. See s. 2.06 of this Manual for the deadline schedule for the register.

(6) A statement of scope does not need to be prepared for an emergency rule. [See s. 227.135, Stats.]

NOTE: For examples of actual scope statements filed by agencies with the legislative reference bureau, consult prior issues of the administrative register, available on the web at: <http://www.legis.state.wi.us/rsb/regindex.htm>.

2.007 Economic impact reports. (1) Section 227.137, Stats., provides, in certain cases, an agency must prepare an economic impact report on a proposed rule after it prepares its scope statement and before the agency submits the proposed rule to the legislature. The department of administration (DOA) will require the preparation of an economic impact report if all of the following circumstances exist:

(a) The rule is promulgated by the departments of agriculture, trade and consumer protection; commerce; natural resources; transportation; or workforce development.

(b) The report is requested by a municipality, an association that represents a farm, labor, business, or professional group, or five or more persons that would be directly and uniquely affected by the rule.

(c) The request for the preparation of the report was submitted no later than 90 days after the publication of the scope statement or no later than 10 days after publication of the notice for a public hearing on the rule, whichever is earlier.

(d) The rule would cost affected persons \$20 million or more to comply with the rule during each of the five years after the rule's implementation, or the rule would adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities.

(2) The economic impact report must contain information on the effect of the rule on business and the economy and include all of the following:

(a) An analysis and quantification of the problem addressed by the rule, including any risks to public health or the environment.

(b) An analysis and quantification of the economic impact of the rule, including costs reasonably expected to be incurred by the state, governmental units, associations, businesses, and affected individuals.

(c) An analysis of the benefits of the rule, including how the rule reduces risks and addresses problems the rule is designed to address.

(3) DOA may at any time direct one of the five affected agencies to prepare an economic impact report for a rule.

(4) Section 227.138, Stats., provides that if an economic impact report is prepared, DOA must review the proposed rule and issue a report. In this report, DOA must determine whether the economic impact report is supported by its own documentation; there is statutory authority for the rule; the rule is consistent with and not duplicative of other state rules or federal regulations; and the agency has adequately documented the data and methodologies used in support of the rule and the related findings supporting the regulatory approach chosen in the rule. The DOA review of the economic impact report is not subject to judicial review. The rule may not be submitted to the legislature until it has been approved by DOA.

2.01 Submittal to legislative council staff. (1) A copy of the proposed rule shall be submitted to the legislative council staff as provided in s. 227.15, Stats. See s. 3.01, Manual, for the requirements for submitting proposed rules to the legislative council staff for review.

(2) The agency shall send to the legislative reference bureau, to be published in the Wisconsin administrative register, and to the secretary of the department of administration, a notice that it has submitted a proposed rule to the legislative council staff.

(3) The notice in sub. (2) shall include all of the following:

(a) The date the proposed rule was submitted to the legislative council staff.

(b) The subject matter of the proposed rule.

(c) Whether a public hearing is required. If the date of the hearing is known, that may also be included in this notice. Agencies may include the name of the contact person.

(d) The organizational unit that is responsible for preparing the rule.

(4) The notice shall be approved by the agency head or policy-making body. [See s. 227.14 (4m), Stats.]

2.02 Notice and public hearings. (1) GENERAL RULE. Except as provided in s. 227.16, Stats., all rule-making by an agency shall be preceded by notice and public hearing as required under ss. 227.17 and 227.18, Stats., or any other specific statute.

(2) EXCEPTIONS. Public hearing and notice on a proposed rule is not required if any of the following apply:

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

(b) The proposed rule is adopted as an emergency rule. Notice and public hearing are required after emergency rule adoption. [See s. 2.12, Manual, and s. 227.16 (2) (c), Stats.]

(c) The proposed rule is being promulgated as directed by the joint committee for the review of administrative rules under s. 227.26 (2), Stats. [See s. 227.16 (2) (d), Stats.]

(d) The proposed rule is published under the 30-day notice procedure in s. 2.05, Manual. [See s. 227.16 (2) (e), Stats.]

NOTE: If one of these exceptions is utilized, the agency should do all of the following:

(a) Review s. 227.16 (4), Stats., if applicable, and its statutory authority to see if a hearing is mandated. [See 63 Atty. Gen. 152.]

(b) Note in its order adopting rules that the rules were adopted under the procedure of s. 227.16 (2), (b), (c), (d), or (e), Stats.

(c) Except for emergency rules, continue with the promulgation procedure by notifying the legislative council staff and the chief clerk of each house of the legislature under ss. 227.15 and 227.19, Stats., respectively. [See, also, ss. 3.01 and 3.02, Manual.]

2.03 Informal or informational hearings. An agency may hold hearings to solicit public comment on a general subject area that may result in future rule-making. Hearings of this nature do not satisfy the requirement of s. 227.16 (1), Stats. Notices for informal or informational hearings may be published in the Wisconsin administrative register. [See s. 227.16 (6), Stats.]

NOTE: Agencies are encouraged to publish notices of this type in the register. The register is sent to subscribers of an agency's code as part of their upkeep subscription.

2.04 Ten-day notice procedure. (1) GENERAL. If a hearing is required, the agency shall follow the notice procedure set forth in this section. [See s. 227.17, Stats.]

(2) **SUBMISSION TO LEGISLATIVE REFERENCE BUREAU.** The agency shall send written notice of a hearing to the legislative reference bureau for publication in the Wisconsin administrative register and, if required, to a local newspaper under s. 227.17 (1) (a), Stats.

NOTE: In addition to a paper copy of the notice, the legislative reference bureau requires an electronic copy of the notice as an attachment via e-mail. The legislative reference bureau requests that the electronic copy be e-mailed as soon as possible and would prefer receiving the e-mail prior to the filing of the original paper notice. The e-mail address is bruce.hoesly@legis.wisconsin.gov.

(3) **SUBMISSION TO LEGISLATORS.** The agency shall send written notice of a hearing to every member of the legislature who has filed a request for a notice in writing with the legislative reference bureau. Upon request, the legislative reference bureau shall furnish to an agency the names and addresses of those legislators who have requested notice.

NOTE: This provision has not been utilized by legislators in many years. If a legislator indicated an interest in this submission, the legislative reference bureau would notify all agencies.

(4) **OTHER NOTICE.** The agency shall take whatever steps it deems necessary to convey notice to interested persons, including 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.

(5) **DATES FOR NOTICE.** The notice shall be given at least 10 calendar days prior to the date set for a hearing. Notice through the Wisconsin administrative register is deemed to have been given on the effective date of the issue of the register in which the notice first appears or, if applicable, on the date prescribed under s. 227.22 (4), Stats. The deadlines for filing notices in the register for 2008-2011 are set forth in s. 2.06, Manual.

EXAMPLE:

The notice is filed on or before November 1 and published in the mid-month register prior to a November 15 effective date. The earliest date for the hearing would be November 25.

The notice is filed on or before November 15 and published in the end-of-month register prior to a December 1 effective date. The earliest date for the hearing would be December 11.

(6) **INFORMATION INCLUDED IN NOTICE.** The notice shall include all of the following:

(a) A statement of the time, date, and place of the hearing.

(b) Either the text of the proposed rule in the form specified in s. 227.14, Stats., or an informative summary of the effect of the proposed rule. If the agency chooses to publish an informative summary rather than the full text of the proposed rule, the notice shall include a description of how a copy of the text may be obtained from the agency at no charge.

Date and Time Location

The public hearing sites are accessible to people with disabilities. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please contact _____ [or similar language, if applicable].

Copies of Proposed Rule [If an agency does not print the full text of the rule]

[Here describe how a copy of the text may be obtained from the agency at no charge.]

Analysis Prepared By (name of agency)

[Here insert analysis according to requirements of s. 227.14 (2), Stats., and s. 1.02 (2), Manual under headings as shown below.]

Statutes interpreted

Statutory authority

Explanation of agency authority

Related statute or rule

Plain language analysis

Summary of, and comparison with, existing or proposed federal regulations

Comparison with rules in adjacent states

Illinois:

Iowa:

Michigan:

Minnesota:

Summary of factual data and analytical methodologies

Analysis and supporting documentation used to determine effect on small businesses

Effect on small business

[Insert initial regulatory flexibility analysis as described in s. 227.17 (3) (f), Stats., or a statement to the effect that the proposed rule does not affect small business.]

Agency contact person

[Insert the name, office, e-mail address, and telephone number of person or persons who can answer questions concerning the proposed rule.]

Place where comments are to be submitted and deadline for submission

[Insert the place where comments on the proposed rule should be submitted and the deadline for submitting those comments, if the deadline is known at the time the proposed rule is submitted to the legislative council staff under s. 227.15, along with any other information necessary to register comments with the agency in regard to the proposed rule.]

Fiscal Estimate

[Here the legislative reference bureau will print the fiscal information or a summary of the fiscal information required under s. 227.14 (4), Stats., or, if the text is not printed, then add: A copy of the proposed rules and the full fiscal estimate may be obtained from the (agency) upon request.]

Text of Proposed Rule

[Here insert the text of the rule in the format required in s. 227.14 (1), (1m), or (1s), Stats., if the agency elects to print the proposed rule. If an agency does not print the full text of the rule, an informative summary must be included in the notice, as required under s. 227.17 (3) (b), Stats.]

2.05 Thirty-day notice procedure. (1) GENERAL. If the agency uses the following notice procedure, a public hearing may not be required [see s. 227.16 (2) (e), Stats.].

(2) SUBMISSION TO LEGISLATIVE REFERENCE BUREAU. If the agency intends to adopt a proposed rule without public hearing, it shall send a written notice to the legislative reference bureau for publication in the Wisconsin administrative register. The notice shall include a copy of the proposed rule and the fiscal estimate required under s. 227.14 (4), Stats. The notice shall 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 one 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.

NOTE: In addition to a paper copy of the notice, the legislative reference bureau requires an electronic copy of the notice as an attachment via e-mail. The legislative reference bureau requests that the electronic copy be e-mailed as soon as possible and would prefer receiving the e-mail prior to the filing of the original paper notice. The e-mail address is bruce-hoesly@legis.wisconsin.gov.

(3) 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 s. 2.02, Manual.]

(4) 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 presiding officers of each house of the legislature under s. 227.19 (2), Stats. [See s. 3.02, Manual.]

(5) FORM. The following 30-day notice form is suggested:

NOTICE IS HEREBY GIVEN That pursuant to ss. ___ (statutory authority for adopting rules) ___, Stats., and interpreting ss. ___, Stats., and according to the procedure set forth in s. 227.16 (2) (e), Stats., the ___ (agency) ___ will adopt the following rule as proposed in this notice, without public hearing unless, within 30 days after publication of this notice (legislative reference bureau to insert date), the ___ (agency) ___ is petitioned for a public hearing by 25 natural persons who will be affected by the rule; a municipality that will be affected by the rule; or an association that is representative of a farm, labor, business, or professional group that will be affected by the rule:

Analysis Prepared By (name of agency)

[Here insert analysis according to the requirements of s. 227.14 (2), Stats., and s. 1.02 (2), Manual under headings as shown below.]

Statutes interpreted

Statutory authority

Explanation of agency authority

Related statute or rule

Plain language analysis

Summary of, and comparison with, existing or proposed federal regulations

Comparison with rules in adjacent states

Illinois:

Iowa:

Michigan:

Minnesota:

Summary of factual data and analytical methodologies

Analysis and supporting documentation used to determine effect on small businesses

Effect on small business (initial regulatory flexibility analysis)

[Insert initial regulatory flexibility analysis or a statement to the effect that the proposed rule does not affect small business.]

Agency contact person

[Insert the name, office, e-mail address, and telephone number of the person or persons who can answer questions concerning the proposed rule.]

Place where comments are to be submitted and deadline for submission

Fiscal Estimate

[Here the legislative reference bureau will print the fiscal information or a summary of the fiscal information required under s. 227.14 (4), Stats., or, if the text is not printed, then add: A copy of the proposed rules and the full fiscal estimate may be obtained from the (agency) upon request.]

Text of Proposed Rule

[Here insert the text of the rule in the format required in s. 227.14 (1), (1m), or (1s), Stats.]

2.06 Deadlines for filing notices. The filing deadlines for publication of a notice of hearing or notice of proposed rule-making in the Wisconsin administrative register in 2008 to 2011 are as follows:

<i>Mid-Month Register</i>	<i>End-of-the-Month Register</i>
2008	
September 2	September 15
October 1	October 15
November 3	November 14
December 1	December 15
2009	
January 5	January 15
February 2	February 13
March 2	March 16
April 1	April 15
May 1	May 15
June 1	June 15
July 1	July 15
August 3	August 17
September 1	September 15
October 1	October 15

November 2	November 16
December 1	December 15
2010	
January 4	January 15
February 1	February 15
March 1	March 15
April 1	April 15
May 3	May 17
June 1	June 15
July 1	July 15
August 2	August 16
September 1	September 15
October 1	October 15
November 1	November 15
December 1	December 15
2011	
January 3	January 17
February 1	February 14
March 1	March 15
April 1	April 15
May 1	May 15
June 1	June 15
July 1	July 15
August 1	August 15
September 1	September 15
October 3	October 17
November 1	November 15
December 1	December 15

2.07 Conduct of rule-making 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 rule-making hearings in facilities that are accessible to individuals with disabilities. Agencies should note in their rule-making notice of hearing where there is an accessible entrance for the building in which the hearing is to be held.

(2) **PROCEDURE.** The procedure to be followed in conducting rule-making 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 agency, through its authorized representative shall do all of the following:

(a) Conduct the public hearing; explain the purpose of the hearing; and describe how testimony will be received.

(b) 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.

(c) 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.

(d) Keep a record of the hearing in such manner as it deems desirable and feasible.

NOTE: A tape recording of a hearing is acceptable. [See *HM Distributors*, cited in the note following s. 2.07 (1), Manual.]

(e) May limit oral presentations if the hearing would be unduly lengthened by reason of repetitious testimony.

(f) May question or allow others present to question persons appearing.

(g) May administer oaths or affirmations to any person appearing.

(h) May continue or postpone the hearing to a time and place as it determines.

(3) **ABSENCE OF OFFICER OR QUORUM.** If the agency representative, 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 [see s. 227.18 (3), Stats.]:

(a) At the beginning of a hearing, the presiding officer shall inform those present that any person who presents testimony at the hearing may present arguments to the agency, officer, board, or commission prior to adoption of the proposed rule, if, at the hearing, the person makes such a request in writing to the presiding officer.

(b) If required by the agency, the arguments under par. (a) shall be presented to the agency in writing. If oral arguments are permitted by the agency, the agency may impose reasonable limitations on the length and number of appearances to conserve time and preclude undue repetition.

(c) If a record of the hearing has been made, then arguments before the agency under par. (a) shall be limited to the record of the hearing.

2.08 Incorporation of standards by reference. (1) GENERAL. With the consent of the attorney general, an agency may incorporate standards, established by technical societies and organizations of recognized national standing, by reference in rules without reproduction of the standards in full. Consent for incorporation shall be granted only if the rule is of limited public interest and the incorporated standards are readily available in published form or are available on optical disk or in another electronic format. The analysis to the rule shall indicate that consent has been given.

(2) WRITTEN REQUEST. If an agency desires to incorporate standards by reference in a rule, the agency shall submit a written request to the attorney general. The request, with a copy of the proposed rule and the standards, shall contain information on all of the following:

(a) Whether the rule is of limited public interest.

(b) The extent of unwarranted expense, if permission to incorporate the standards by reference is not granted.

(c) Whether the standards were established by a technical society or organization of recognized national standing.

(d) Whether the standards are readily available in published form or are available on optical disk or in another electronic format.

NOTE: A request under this section should be initiated early in the rule-making process so that permission is granted prior to submitting the proposed rules to the legislature under s. 227.19, Stats.

(3) FORMAT. (a) If the attorney general consents to incorporating standards by reference in a rule, the reference shall be to the specific issue or issues of books or pamphlets in which the standards are published.

(b) The rule incorporating standards by reference shall state how the incorporated material may be obtained. This shall be done in a note following the provision of the rule in which the reference occurs. The books and pamphlets containing the standards shall be filed at the office of the agency and the legislative reference bureau.

(4) AMENDMENTS. If standards that have been adopted by reference are changed, an agency may adopt the changed version only with the written consent of the attorney general. The changes cannot be adopted prospectively or automatically.

(5) SECONDARY STANDARDS. If a standard to be incorporated by reference contains secondary standards, the agency shall expressly delete or adopt the secondary standard by rule and make a separate request for incorporation of the secondary standards by reference.

NOTE: The question of incorporating by reference provisions of the United States code or federal regulations is discussed in 59 Atty. Gen. 31 and 68 Atty. Gen. 9. Factors affecting the incorporation decision are whether the federal material is substantive law, whether there is an attempt to incorporate future amendments of the federal material, whether the material is of limited public interest and whether the material is readily available to the public. If an agency is planning to incorporate federal laws or regulations in the administrative code, it should first contact the attorney general's office for an opinion on the validity of its intended action.

2.09 Submission of rules to the legislature. After conducting any required hearing and making any necessary revisions, an agency shall submit its proposed rule in final draft form to the chief clerk in each house of the legislature as provided in s. 227.19, Stats. A notice that a proposed rule was submitted to the presiding officers shall be sent to the legislative reference bureau for publication in the register. See s. 3.02, Manual, regarding submission of a proposed rule to the legislature.

2.10 Form of order adopting rules. (1) SAMPLE ORDER. Under s. 227.14, Stats., an agency shall adhere substantially to the following form in preparing a proposed rule for publication or distribution and in preparing an adopted rule for filing with the legislative reference bureau.

(ORDER) or (PROPOSED ORDER) of the (Agency)
[Here insert the introductory clause under s. 1.02 (1), Manual.]
Analysis prepared by (name of agency).
(Here insert analysis.)
Text of the rule.

This rule shall take effect on _____ [as provided in s. 227.22 (2) (intro.), Stats., _____], [pursuant to authority granted by s. 227.22 (2) (a) or (b), Stats.] [as an emergency rule. Facts constituting the emergency are as follows:]

[Use the alternative that fits the particular situation.]

Dated: _____ Agency: _____
(signature and title of officer)

(2) ADDITIONAL REFERENCE. See s. 1.02, Manual, for further discussion of the order adopting rules.

2.11 Filing rule. (1) CERTIFIED COPY. (a) When promulgated, a certified copy of the rule is filed by the agency with the legislative reference bureau. No rule is valid until a certified copy has been filed. [See s. 227.20, Stats.] An uncertified copy also is filed with the legislative

*SEAL, if any

_____ (officer)

NOTE: If the agency uses the ORDER ADOPTING RULES and CERTIFICATE forms shown in this paragraph and s. 2.10, Manual, and places the CERTIFICATE at the top, followed by the ORDER ADOPTING RULES, it will meet the filing and certification requirements of the legislative reference bureau.

(c) If the filed rule contains graphics, such as maps, that material shall be submitted electronically as JPEG, GIF, or TIFF files.

(2) PUBLICATION IN REGISTER. A rule received by the legislative reference bureau on or before the 15th day of a given month usually will be published in the register before the end of the next month, effective on the first day of the following month, unless a different future effective date is designated by the agency. An effective date other than the first day of the month following the month of publication shall be noted in the order adopting the rule. [See s. 2.10 (1), Manual.]

EXAMPLE: A rule order filed between August 16 and September 15 will be published in the October register and will be effective November 1.

NOTE: Unless notified otherwise by the agency, the legislative reference bureau will attempt to process the rules immediately. Large rule orders must be processed by the legislative reference bureau as far in advance of the 15th day of a month as possible. Only material that will result in the production of 20 code pages or less may be accepted after the 15th day of a month for publication at the end of the following month. Deadlines for filing rules are necessary to enable the legislative reference bureau to accept new material up to the latest possible date, consistent with requirements of time for processing, composition, proofreading, printing, and distribution of the material. The cooperation of those agencies that contact the legislative reference bureau and file material in advance of the deadlines is most helpful.

(3) PRINTING OF RULES. After rules are filed with the legislative reference bureau, all of the following steps in the printing process occur:

NOTE: The time required to complete each step relates directly to the amount of material filed by an agency and the number of agencies filing rules in a particular month.

(a) The legislative reference bureau staff prepares the agency's rules in the proper format for printing, including correcting style mistakes, inserting history notes and indicating printing instructions where needed.

(b) The copy is used to update the code data base and to prepare a proof copy.

(c) A proof copy is sent to the agency for proofreading.

(d) The proofed copy, with errors marked clearly in the margin, is sent back to the legislative reference bureau for corrections. A second proof copy is not sent to agencies for review unless specifically requested.

(e) The corrected copy along with all material for a particular month is sent to the printer by the legislative reference bureau.

(f) The printer delivers copies of the printed rules to document sales sometime in the last 2 weeks of the month.

(g) The document sales staff assembles the material to be mailed with the Wisconsin administrative register the before the end of the month.

2.115 Effective date of rules. A rule is effective on the first day of the month following publication, unless any of the following apply:

(1) A statute sets a different effective date for that rule.

(2) A later date is set by the agency in the adopted rule order.

(3) The rule is adopted as an emergency rule under s. 227.24, Stats.

(4) The publication of the register is delayed beyond the end of the month.

NOTE: If the register is delayed, then the effective date will be determined pursuant to s. 227.22 (4), Stats.

(5) The rule has a significant economic impact on small business, as defined in s. 227.114 (1), then the rule as it applies to small businesses is effective no earlier than the first day of the third month beginning after publication.

EXAMPLE: A rule is published in the November register. The rule has a significant impact on small business. The rule would be effective on February 1.

2.12 Emergency rules. (1) PURPOSE. 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, of the statutes, the agency may adopt that rule as an emergency rule. [See s. 227.24, Stats.]

(2) PUBLICATION AND FILING. (a) An emergency rule takes effect upon publication in the official state newspaper or on a later date as is specified in a statement published with the rule. An emergency rule remains in effect only for a period of 150 days unless it is extended under s. 227.24 (2), Stats., or is a rule promulgated under s. 186.012 (4), 215.02 (18), or 220.04 (8), 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. See the department of administration purchasing bulletin 15-83330-05L. An agency may contact the department of administration, bureau of procurement, for assistance in preparing a purchase order for the publication of an emergency rule. The general telephone for the bureau is (608) 266-2605. The department of administration has prepared a form [DOA 3539] that can be used when sending material for legal notices including emergency rules. Forms can be downloaded from the bureau of procurement's web site at vendornet.state.wi.us/vendornet. The bureau of procurement suggests that all orders be faxed to the *Wisconsin State Journal* [(608) 252-6333].

(b) In addition to publication, a certified copy of the emergency rule shall be filed with the legislative reference bureau in order to validate the rule. A second uncertified copy of the emergency rule order shall be filed with the legislative reference bureau. The legislative reference bureau inserts in the notice section of each issue of the Wisconsin administrative register a brief description of emergency rules currently in effect.

NOTE: In addition to the paper copies of the rule, the legislative reference bureau requires an electronic copy of the rule as an attachment via e-mail. The legislative reference bureau requests that the electronic copy be e-mailed as soon as possible and would prefer receiving the e-mail prior to the filing of the original paper notice. The e-mail address is bruce.hoesly@legis.wisconsin.gov.

(c) When an emergency rule is adopted, the agency shall mail a copy of the rule, the statement of emergency finding or a statement that the rule is promulgated at the direction of the joint committee for the review of administrative rules 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 undertaken by electronic mail.* The agency shall take other steps it considers feasible to make the rule known to persons who will be affected by it.

(d) If the emergency rule has a significant economic impact on small business as defined in s. 227.114 (1), Stats., the agency shall submit a copy of the emergency rule to the small business regulatory review board on the same day it sends copies to the legislature.

(3) EXTENSION OF EMERGENCY RULES. (a) An agency may petition the joint committee for review of administrative rules 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. In making the request for an extension, the agency shall provide the committee with all of the following:

* Upon request, the chief clerk of each house will forward electronic copies of emergency rules to the members of the legislature to satisfy the statutory requirement.

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

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

NOTE: Contact staff of the joint committee for review of administrative rules for deadlines for extension requests.

NOTE: The attorney general has stated 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 Atty. Gen. 305 (1973).]

(b) 1. An agency's request for extension for an emergency rule shall 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.

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

3. Whenever the joint committee extends all or part of an emergency rule, it shall file a statement of its action with the agency and the legislative reference bureau.

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

NOTE: A notice of proposed rule-making under s. 227.16 (2) (e), Stats., described in s. 2.05, Manual, does not meet the requirement of a public hearing under s. 227.24 (4), Stats.

(b) If the agency intends to promulgate an emergency rule as a permanent rule and submits the proposed permanent rule to the legislative council clearinghouse within 45 days of the adoption of the emergency rule, the agency must hold the public hearing on the emergency rule and permanent rule within 90 days of the adoption of the emergency rule or within 30 days after receiving the legislative council clearinghouse report on the rule, whichever occurs later.

(c) An agency shall file a notice of hearing on an emergency rule in the manner described in s. 2.04, Manual.

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

(5) FORM. (a) The order adopting emergency rules shall include a paragraph 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. A statement of the facts constituting the emergency is:

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

OR

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.

(b) Under s. 227.24 (1) (e), Stats., the plain language analysis shall be printed with the text of the rule when it is published. The contents of the analysis are set forth in s. 1.02 (2), Manual. Also, a fiscal estimate must be prepared, which the agency shall mail to each member of the legislature within 10 days after publication.

2.13 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 5 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 shall state clearly and concisely all of the following:

- (a) The substance or nature of the rule-making 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 shall either deny the petition in writing or proceed with the requested rule-making.

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

(c) If the agency proceeds with the requested rule-making, the procedures described in this chapter of the Manual shall be followed.

2.14 Ordering code reprints. To order reprints of its rules, an agency shall use the following procedure:

(1) All orders for the reprinting of parts of the administrative code should be submitted directly to Kathie Benson, Document Sales & Distribution, Department of Administration at 202 South Thornton Avenue, Madison, WI 53703 or via interdepartmental mail. Kathie Benson will process your order and ensure timely delivery of your order (see sub. (3)).

(2) The order should be placed on a Publishing Services Order Form. This form is located at <http://publishingdistribution.wi.gov>; click on “Publishing/Print” to access the order form. If you have difficulty printing this form, please call Tony Kannenberg at 608–266–5384 and he will forward a form to you. Complete the basic information on the top portion of the form, including a valid customer use code, contact person, and phone number. Indicate the code name, fill in the finishing information area, how many copies, and a delivery address. Keep a copy for your records and forward one copy to Kathie Benson at the Thornton Avenue address; this may be forwarded electronically.

(3) The orders you send to Kathie Benson at Document Sales will be processed after the subscription mailing orders have been completed. Send your orders, if possible, by the end of the month in which the changes occur.

EXAMPLE: A code will be published in June with a July 1 effective date. The order should be sent to Document Sales by June 30.

NOTE: Kathie Benson can be reached at 608–264–9418 or e-mail kathie.benson@wisconsin.gov.

2.15 History notes. The legislative reference bureau prepares a history note for each section in the code, as follows:

(1) **DATE AND NUMBER OF PUBLICATION.** Each rule, as it was originally filed and printed under ch. 221, laws of 1955, which became part of ch. 227, Stats., was dated “1–2–56.” Any rule revised or created subsequent to the original printing date is followed by a history note indicating the date and number of the Wisconsin administrative register in which it was published and the date on which the amendment or the rule became effective. The absence of a history note at the end of a section means that the rule has remained unchanged since the original printing in 1956. The date line at the bottom of a page indicates the month and register in which the page was released.

(2) **REPEAL AND RECREATION OF A CHAPTER.** In some instances an entire code or chapter has been repealed and recreated subsequent to the original printing date. When this occurs, a history note to this effect is placed at the beginning of a chapter. A separate history note appears after each section indicating the date when the revision became effective.

(3) **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 “recreate”; “renum.” for “renumber”; “r.” for “repeal”; “emerg.” for “emergency”; and “eff.” for “effective.”

(4) **CLEARINGHOUSE NUMBER.** Starting in 2001, the Clearinghouse Rule number designation has been added to history notes. This number identifies a specific rule order and will facilitate online searches, showing the viewer the rule revision as it appears in rule order format.

2.16 Indexing agency rules. The legislative reference bureau will review agency rules for entries in a general index to the code. Agencies may prepare a separate index that can be printed as part of its published code. Agencies are encouraged to prepare a separate index for rules that are technical in nature or of great length.

NOTE: See the index following chs. Comm 20 to 25, prepared by the department of commerce, for an example of a separate index.

PART 3

RULES REVIEW PROCEDURE

3.01 Submission of proposed rules to legislative council staff. (1) **WHEN SUBMITTED.** An agency shall submit proposed rules to the legislative council staff for review after the agency makes a decision to promulgate rules and prior to any public hearing on the proposed rules; or, if no hearing is required, prior to notification of the chief clerks of each house of the legislature. A public hearing on a proposed rule may not be held until the agency receives the report described in sub. (3) from the legislative council staff or until after the legislative council staff's initial review period of 20 working days, whichever comes first. However, an agency may, before receiving the legislative council staff report, act to schedule the date of a public hearing.

NOTE: Under s. 227.14 (6) (c), Stats., a proposed rule is considered withdrawn on December 31 of the 4th year after the year in which it is submitted for legislative council staff review unless it is filed with the legislative reference bureau under s. 227.20, Stats., or withdrawn by the agency before that date. See s. 3.06, Manual.

NOTE: A proposed rule should be submitted by *both* of the following methods to the Legislative Council staff: (1) in paper format to the Legislative Council, One East Main Street, Suite 401, Madison, WI; *and* (2) in electronic format to "clearinghouse@legis.state.wi.us".

(2) **AGENCY RESPONSIBILITIES.** Proposed rules shall be drafted in accordance with s. 227.14, Stats., and shall follow the drafting guidelines set forth in this Manual. Proposed rules also shall be accompanied by all of the following information:

(a) The citation of any federal statutes or regulations which require adoption of the proposed rules or are relevant to the substance of the proposed rules.

(b) The citation of any court decision directly relevant to the proposed rules.

(c) The name and telephone number of all of the following:

1. The agency person to be contacted if there are substantive questions on the rule.

2. The agency person responsible for the agency's internal processing of the rules.*

(3) **LEGISLATIVE COUNCIL STAFF RESPONSIBILITIES.** (a) Under s. 227.15, Stats., the legislative council staff shall act as a clearinghouse for rule drafting and cooperate with an agency and the legislative reference bureau to do all of the following:

* When there is a change in the agency person who is responsible for processing rules, the clearinghouse should be notified by an e-mail message sent to "clearinghouse@legis.state.wi.us."

1. Review the statutory authority under which the agency intends to adopt the rule.
2. Ensure that the procedures for the promulgation of a rule required by ch. 227, Stats., are followed.
3. Review proposed rules for form, style, and placement in the administrative code.
4. Review proposed rules to avoid conflict with or duplication of existing rules.
5. Review proposed rules to provide adequate references to related statutes, rules, and forms.
6. Review proposed rules for clarity, grammar, and punctuation and to ensure plain language.
7. Review proposed rules to determine potential conflicts and to make comparisons with related federal regulations.
8. Review proposed rules for compliance with the permit action deadline requirements of s. 227.116, Stats.
9. Streamline and simplify the rule-making process.

(b) The period for council staff review shall be 20 working days following the receipt of proposed rules. With the consent of the director of the legislative council staff, the review period may be extended for an additional 20 working days.

(c) The legislative council staff shall assign clearinghouse rule numbers to proposed rules, record the submission of the rules in the bulletin of proceedings of the Wisconsin legislature and prepare 2 numbered rule jackets. When the review of proposed rules is completed, the legislative council staff shall return 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 proposed rules to legislature. (1) WHEN SUBMITTED. An agency shall submit a proposed rule to the legislature by notifying the chief clerk of each house that the proposed rule is in final draft form. Each chief clerk shall receive from the agency the appropriate rule jacket prepared under s. 3.01 (3) (c), Manual. Prior to transmittal to the chief clerks, the agency shall record on each rule jacket the date of any public hearing held regarding the proposed rule. If a public hearing is not required, the agency shall record this fact on each rule jacket.

NOTE: An agency may not divide a rule into 2 separate rule-making orders following receipt of the Clearinghouse report. The Clearinghouse rule number and rule jackets are unique to the originally submitted rule-making order and form the basis of the system used to record, handle, and monitor statutory deadlines on final draft form rules.

An agency must submit **electronically** a copy of the notice and the agency report to the Legislature to the Legislative Council staff at clearinghouse@legis.state.wi.us.

It would be helpful if the submission of rules that are based on a specific act include a reference to both the act number and bill number.

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

- (a) The proposed rule.
- (b) A preface that meets the requirements of s. 1.02 (2), Manual.
- (c) References to applicable forms.
- (d) A statement explaining the need for the proposed rule.
- (dm) A detailed statement explaining the basis and purpose of the proposed rule, including how the proposed rule advances relevant statutory goals or purposes.
- (e) A list of persons who appeared or registered for or against the proposed rule at any public hearing held by the agency
- (em) A summary of public comments to the proposed rule and the agency's response to the comments.
- (f) An explanation of modifications made in the proposed rule as a result of the public comments or testimony received at public hearings.
- (g) The legislative council staff clearinghouse report.
- (h) A response to legislative council staff recommendations in the clearinghouse report, indicating acceptance of the recommendations in whole, acceptance of recommendations in part, rejection of recommendations, and specific reasons for rejecting recommendations.
- (i) If required, a final regulatory flexibility analysis.
- (j) A copy of an economic impact report.
- (k) A copy of a report prepared by the department of administration regarding an economic impact report.
- (L) Any change to the proposed rule's plain language analysis or fiscal estimate.

(3) NOTICE. The agency shall place a notice in the Wisconsin administrative register stating that a proposed rule has been submitted to the chief clerk of each house of the legislature. The notice shall include the clearinghouse number, introductory clause, and the date of submittal to the chief clerks.

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

<i>Office</i>	<i>Location</i>	<i>Recipient</i>
Senate Chief Clerk	Room B20 Southeast, State Capitol	Jeff Renk
Assembly Chief Clerk	17 West Main Street, Room 401	Kay Inabnet

3.03 Standing committee review. (1) REFERRAL TO COMMITTEES. Each presiding officer shall, within 10 working days of submittal to the legislature for review, direct the chief clerk to refer the rules jackets to one standing committee of the particular house. If submittal to the chief clerks takes place on or after September 1 of an even-numbered year, 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.

(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.

(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 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.

(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.

(d) 1. If a committee, by a majority vote of a quorum of the committee, recommends 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 committee 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 shall notify, in writing, each committee member of the receipt of the modification or written statement.

2. If a committee 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 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 committee review, if the modification is germane to the subject matter of the proposed rule. If this is done, the modified rule shall be submitted to the chief clerk in each house of the legislature for referral and the normal committee review.

NOTE: Whenever a modification of a rule is made, an agency shall submit electronically a copy of the modification to the Legislative Council staff at “clearinghouse@legis.state.wi.us.”

(f) A committee may object to a proposed rule, or part of a proposed rule, only for one or more of the following reasons:

1. An absence of adequate 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 the original date of passage of the earliest law upon which the rule is based.
6. Being arbitrary and capricious or imposing an undue hardship.

(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.

(h) An agency may not promulgate a proposed rule during the review period unless both committees waive their jurisdiction over the proposed rule.

(i) If the review period for both committees ends and neither committee has objected to the proposed rule, the agency may promulgate the proposed rule. If the review period for both committees ends and only a portion of the proposed rule has been objected to, the agency may promulgate the portion that was not objected to.

NOTE: Since agencies are not routinely notified when committee review periods end, an agency should review the history of the rule on the legislative web site, which will indicate when committee review periods end, contact the chairpersons of the committees, or contact the chief clerk of either house.

(3) RULES RECEIVING OBJECTION. (a) If a committee objects to a proposed rule, the rule shall be referred to the joint committee for review of administrative rules. The review period for

the joint committee is 30 days, but may be extended for an additional 30 days as in the case of an initial reviewing committee. The joint committee shall 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. An agency may not promulgate a rule which has received an objection by a committee unless there is nonconcurrence by the joint committee in the objection or until a bill which sustains the objection fails of enactment. The joint committee may object to a proposed rule only for one or more of the reasons listed under sub. (2) (f).

(b) If a portion of a proposed rule receives an objection, the portion that receives no objection may be promulgated.

3.04 Legislative consideration of rules objection. (1) If the joint committee for review of administrative rules objects 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.

(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, the joint committee for review of administrative rules shall 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 3rd reading.
- (e) Against passage.
- (f) Against concurrence.

(3) After introduction, the bills shall 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 shall be considered reported without recommendation. No later than 40 days after referral, the bills shall 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 2nd house after passage in the first house shall be referred, reported, and placed on the calendar in the same manner as an original bill introduced as described in this subsection.

(4) If both bills required by the law are defeated or fail of enactment in any other manner during a regular session, then the rule may be promulgated.

(5) Like other bills, the bills introduced by the joint committee are subject to signature or veto by the governor.

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

1. There is an absence of adequate statutory authority for promulgation of the rule.
2. There is an emergency relating to public health, safety, or welfare.
3. The rule fails to comply with legislative intent.
4. The rule is contrary to state law.
5. There has been a change of circumstances since the original date of passage of the earliest law upon which the rule is based.
6. The rule is arbitrary and capricious or imposes an undue hardship.

(b) *Identification of policy or interpretation as a rule.* If the joint committee 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 the joint committee's action.

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

(2) TREATMENT OF SUSPENDED RULE. (a) Within 30 days of its suspension of a rule, the joint committee shall meet and take executive action regarding the introduction, in each house of the legislature, of a bill to support the suspension.

(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, the joint committee shall 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 3rd reading.
5. Against passage.

6. Against concurrence.

(c) After introduction, the bills shall 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 shall be considered reported without recommendation. No later than 40 days after referral, the bills shall 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 2nd house after passage in the first house shall be referred, reported, and placed on the calendar in the same manner as an original bill introduced as described in this subsection.

(d) If both bills are defeated or fail of enactment in any other manner during a regular session, then the rule shall stand and the joint committee may not 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.

(e) Like other bills, the bills introduced by the joint committee are subject to signature or veto by the governor.

3.06 Withdrawal or recalling of rules; time periods. (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 legislative council staff in writing of its intention not to promulgate the rule. After withdrawing a proposed rule, an agency that decides to promulgate the proposed rule must begin the process over with a new statement of scope and rule-making order. [Also see the first note following s. 3.01 (1), Manual.]

(1m) RECALLING 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 rule-making process for the proposed rule, the agency shall resubmit it, either in the recalled form or with one or more germane modifications, to the chief clerk in each house and the committee review period begins again.

(2) TIME PERIODS. Unless otherwise provided, all time periods refer to calendar days.

RS:RNS:BH:tlu:jal

APPENDIX

FLOW CHART OF RULE PROMULGATION PROCEDURE

Review of Administrative Rules in Wisconsin

Agency decision to promulgate rules, including: (1) the preparation and publication 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; and (2) preparation of a draft of the rules that meets format standards suggested by the Legislative Council Staff and the Legislative Reference Bureau.

Prior to public hearing or legislative review, all proposed rules submitted to Legislative Council Staff 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 under ch. 227, Stats.

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.

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 Legislative Council Staff 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 on or after September 1 of an even-numbered year are considered to be received on the first day of the next regular legislative session.

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.

Rules not objected to.

Rules objected to.

If rules objected to by at least one committee, JCRAR* must review rules. Review period normally may last for no more than 60 days. JCRAR may concur in an objection, object to rules, or agree with an agency to modify rules.

JCRAR does not concur in standing committee objection.

JCRAR objects to rules.

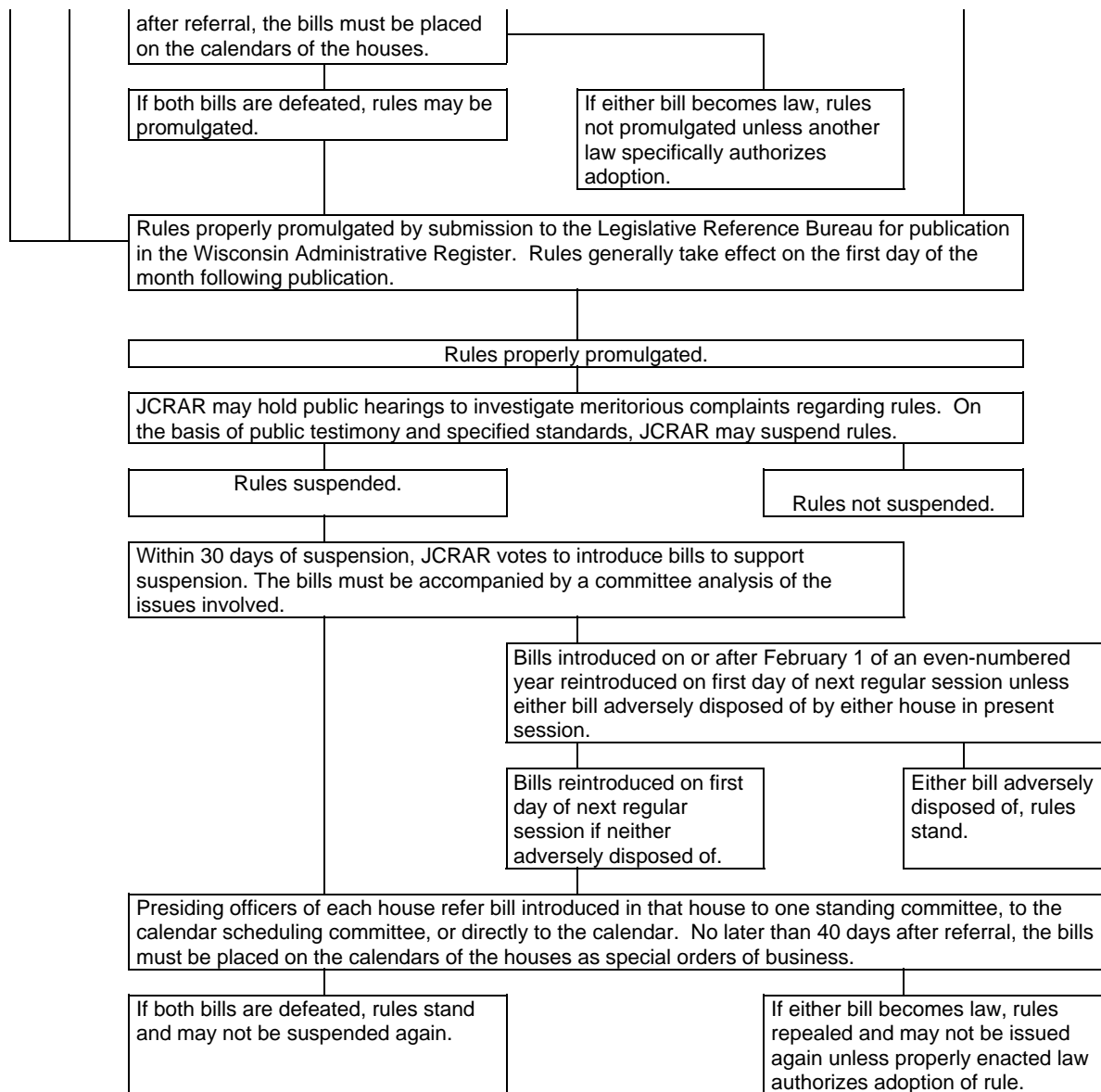
Within 30 days of objection, JCRAR votes to introduce bills to support objection. The bills must be accompanied by a committee analysis of the issues involved.

Bills introduced on or after February 1 of an even-numbered year reintroduced on first day of next regular session unless either bill adversely disposed of by either house in present session.

Presiding officers of each house refer bill introduced in that house to one standing committee, to the calendar scheduling committee, or directly to the calendar. No later than 40 days

Bills reintroduced on first day of next regular session if neither adversely disposed of.

Either bill adversely disposed of, rules may be promulgated.



*JCRAR is the Joint Committee for Review of Administrative Rules.

Prepared by:

Wisconsin Legislative Council Staff
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