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Review of Administrative Rules

An “administrative rule” is a regulation, standard, policy statement, or order of general application promulgated by a state agency. An administrative rule has the force and effect of law.

Rules are issued by an agency:

- To make specific, implement, or interpret provisions of statutes that are enforced or administered by the agency; or
- To establish procedures for the agency to follow in administering its programs.

Rules are published in the 18-volume Wisconsin Administrative Code. Each legislator is entitled to a set of Administrative Code volumes upon written request to the Department of Administration. Electronic access is available for the Administrative Code at <http://www.legis.state.wi.us/rsb/code.htm>.

The legislative rules review procedure is contained in ch. 227, Stats. This review procedure affords legislators the opportunity to affect the content of policies, having the force and effect of law, that regulate the lives of Wisconsin citizens. These procedures are summarized in Chart 1 and Chart 2 attached to this document.

The authority of the Legislature to review and suspend administrative rules that are in effect has been in place since the 1965 Session. The ability to review all administrative rules before they are promulgated has existed since November 2, 1979. The process has allowed legislators to intervene in numerous rule-making proceedings for the benefit of their constituents. [An administrative agency may promulgate an emergency rule without complying with the pre-promulgation legislative review procedures described in this document. In general, an

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emergency rule simply takes effect upon publication in the official state newspaper. However, once it takes effect, the rule has the force and effect of law and may be suspended under the same process that is applied to permanent rules.]

A Rule Begins With an Agency

When an agency decides to promulgate an administrative rule (that is, to either create a new rule or modify or repeal an existing rule), it must first draft the proposed rule. The **Administrative Rules Procedures Manual**, prepared by the Legislative Council and the Legislative Reference Bureau, sets forth, in detail, the format and style to be used by the agency in preparing rule drafts.

When the draft of a rule is ready, the agency must submit it to the Legislative Council for review.

Duties of the Rules Clearinghouse

The Legislative Council functions as an administrative rules clearinghouse. Upon receipt of a proposed administrative rule, the Legislative Council staff assigns the rule a Clearinghouse rule number, records the date of the submission of the rule in the Bulletin of Proceedings of the Wisconsin Legislature, and prepares two numbered rule jackets, one for the Assembly and one for the Senate.

Following receipt of a proposed rule, the Legislative Council staff reviews the proposed rule for form, style, and technical adequacy. Of particular importance to the legislative branch, the Legislative Council staff also specifically:

- Reviews the proposed rule to determine whether there is statutory authority for the agency to adopt the proposed rule; and
- Reviews the text of the proposed rule for clarity and the use of plain language.

The Legislative Council staff review may reveal whether an agency is attempting to regulate matters beyond its legal authority or whether a lack of clarity and precision in a proposed rule will inappropriately affect those persons regulated by the rule.

The period for Legislative Council review is 20 working days following receipt of the proposed rule. With the consent of the Director of the Legislative Council, the review period may be extended for an additional 20 working days. (Extensions are very rarely necessary.) A written report containing the staff critique of the rule is then forwarded to the agency promulgating the rule.

In 2001, the Legislature, through its service agencies, began providing electronic access to all proposed administrative rules. The new system mirrors the process already in place for legislative proposals. Interested persons are able to use the Internet to search for proposed rules directly or to link to them from the Legislature's Bulletin of Proceedings. The site contains the initial version of the proposed rule, all modified versions of the proposed rule submitted to the Legislature, and the related agency report to the Legislature. Electronic access is available for proposed rules submitted after 2000. Following the enactment of 2003 Wisconsin Act 145, the Internet site must also include a section devoted to rules affecting small businesses. [See <http://www.legis.state.wi.us/lc/> and the executive branch website at <https://apps4.dhfs.state.wi.us/admrules/public/Home>.]

Agency Responsibilities

After the completion of the Legislative Council review, an agency, in most instances, is required to hold a public hearing on the proposed rule. Following the hearing, or if no hearing is required, the agency is required to submit the final version of the proposed rule to the Legislature.

When the agency sends the final draft of a rule to the chief clerk of each house, the agency must include a report that contains, among other things:

- Conclusions and recommendations of the agency that demonstrate the need for the proposed rule.
- Explanations of modifications made in the proposed rule as a result of testimony received at public hearings.
- A list of persons who appeared or registered for or against the proposed rule at any public hearing held by the agency.
- A response to Legislative Council staff recommendations, contained in the Rules Clearinghouse report, indicating acceptance of the recommendations, rejection of the recommendations, and specific reasons for rejecting any recommendation.
- A final regulatory flexibility analysis, if the proposed rule will have an effect on small businesses.
- A copy of an economic impact report, if required.
- A copy of a report prepared by the Department of Administration regarding an economic impact report.
- A detailed statement explaining the basis and purpose of the proposed rule, including how the proposed rule advances relevant statutory goals or purposes.
- A summary of public comments to the proposed rule and the agency's response to the comments, including an explanation of a modification made as a result of public comments.
- Any change to the proposed rule's plain language analysis or fiscal estimate.

The other parts of the report include a plain language analysis of the proposed rule, copies of or references to related forms, and a fiscal estimate of the cost of the rule.

Referral of Rule by Presiding Officer

Within 10 working days following receipt of a proposed administrative rule, the presiding officer of each house refers the rule to one standing committee.

Committee Review Period

Generally, the committee review period extends for 30 days after referral of a proposed rule by the presiding officer. However, a committee review period may be extended. The review period may be extended for an additional 30 days if the chair, within the initial 30-day period, takes either of the following actions:

- The chair requests in writing that the agency meet with the committee to review the proposed rule; or
- The chair publishes or posts a 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.

The agency is prohibited from promulgating the proposed rule until the conclusion of the committee review period, unless both committees waive their jurisdiction over the rule prior to the end of the review period.

Authority of Reviewing Committees

If both committees fail to take any action during the review period, the agency may complete promulgation of the proposed rule.

If a committee, by majority vote of a quorum of the committee, recommends modifications in a proposed rule (and the agency, in writing, agrees to make modifications), the review period for both committees is extended to the later of:

- The 10th working day following receipt by the committees of the modified proposed rule; or
- The expiration of the initial or extended committee review period.

There is no limit on the number of times that modifications may be sought, prior to the conclusion of the committee review period.

An agency may unilaterally propose rule modifications during, or following, the committee review period.

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

- An absence of adequate statutory authority.
- An emergency relating to public health, safety, or welfare.
- Failure to comply with legislative intent.
- Being contrary to state law.
- A change in circumstances since the original date of passage of the earliest law upon which the rule is based.
- Being arbitrary and capricious or imposing an undue hardship.

Responsibilities of JCRAR

If either reviewing committee objects to a proposed rule, the rule must be referred to the Joint Committee for Review of Administrative Rules (JCRAR). The JCRAR must take executive action on the rule and may:

- Nonconcur in a committee objection;
- Object to the rule (that is, concur with the reviewing committee); or
- Seek rule modifications.

The review period for JCRAR is 30 days. The review period may be extended for an additional 30 days (or more, if modifications are agreed to) in the same manner as by the initial reviewing committee.

If JCRAR objects to a rule, it must introduce, within 30 days, a bill in each house of the Legislature to prevent the promulgation of the rule. If both bills are defeated, or fail to be enacted, the agency may promulgate the proposed rule that received an objection. If either bill is enacted, the agency may not promulgate the proposed rule that was objected to unless a subsequent law specifically authorizes its promulgation.

**Legislative
Review After
Promulgation
of a Rule**

The statutes give JCRAR authority to suspend rules that have been promulgated and are in effect:

- If JCRAR has first received testimony on the suspension at a public hearing; and
- If the suspension is based on one or more of the reasons, listed in the authority of reviewing committees, above, that a committee may cite when objecting to a proposed rule.

If JCRAR suspends a rule, it must introduce, within 30 days, a bill in each house of the Legislature to repeal the suspended rule. If both bills are defeated or fail to be enacted in any other manner, the rule remains in effect and JCRAR may not suspend it again. If either bill is enacted, the rule is repealed and may not be promulgated again by the agency unless a subsequent law specifically authorizes such action.

CHART 1
REVIEW OF **PROPOSED** ADMINISTRATIVE RULES
IN WISCONSIN

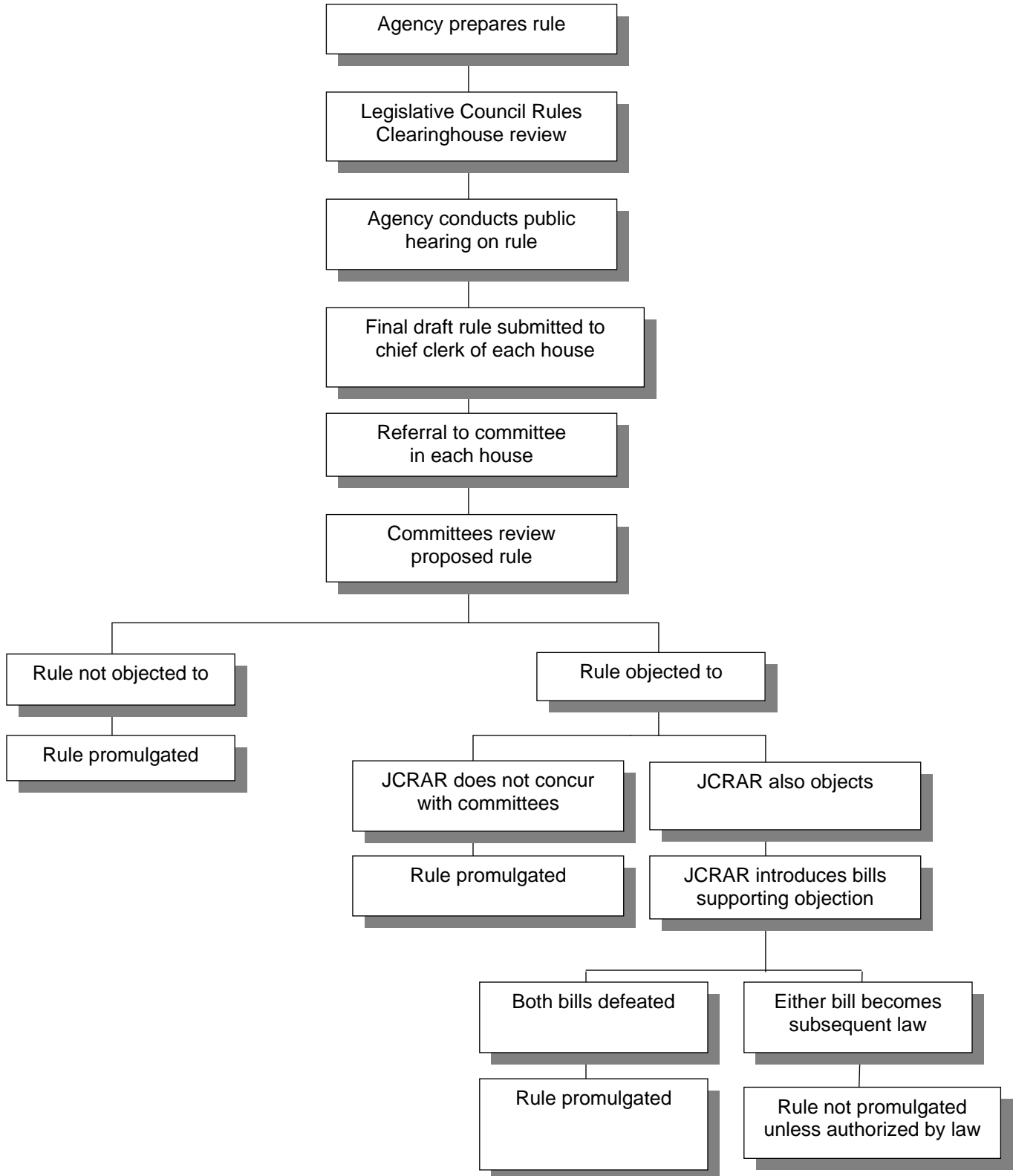
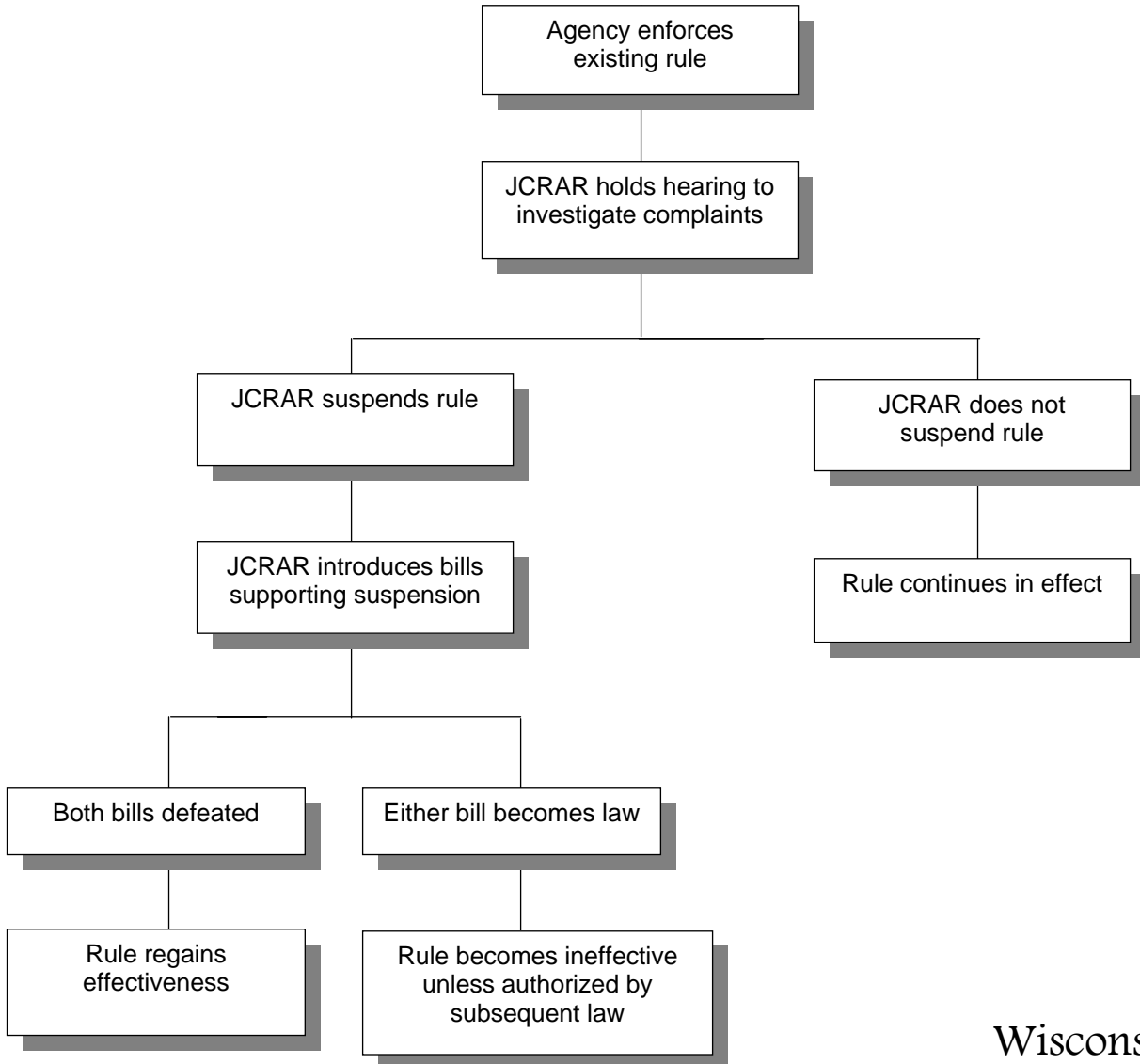


CHART 2
REVIEW OF **EXISTING** ADMINISTRATIVE RULES
IN WISCONSIN



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