

Key

Opportunity for public input

Legislative review

Governor review

Rulemaking process stops

Agency may promulgate rule.

Footnotes

1. No public hearing is required if:
 - A. Proposed rule brings rules into conformity with a new statute or judicial decision.
 - B. The proposed rule is being promulgated under direction of JCRAR .
 - C. Agency chooses optional 30-day notice procedure (as depicted in chart).
2. Committee review—30 days. If a committee objects to the rule, the committee in the other house must cease action on the rule. When the committees object to, approve, or waive their jurisdiction over the rule, they must submit a report to the chief clerk within 5 working days. The chief clerk then refers the rule and report to JCRAR within 5 working days. The 30-day review period extends if:
 - A. Committee requests to meet with agency or gives notice they will hold a hearing (additional 30 days).
 - B. Committee votes to request modifications. If agency agrees to modifications, review period extends to the 10th working day after the committee receives modified proposed rule.
 - C. Committee requests energy impact analysis. The review period extends to the 10th working day after the committee receives the PSC report.
 - D. Agency submits germane modifications to committees. If made within the last 10 days of review period, the review period extends 10 more working days.
3. JCRAR review – 30 days after referral from committee. JCRAR MUST act on parts of rules committees objected to. 30 day review period extends if:
 - A. JCRAR requests to meet with agency or notices a hearing (additional 30 days)
 - B. JCRAR votes to request modifications. If agency agrees to modifications, the review period extends to the 10th working day after JCRAR receives the modified proposed rule.
 - C. JCRAR requests an independent economic impact analysis. (Extends to the 10th working day after receiving the report)

Terms

DOA Department of Administration

JCRAR Joint Committee on Review of Administrative Rules

LC Legislative Council

LRB Legislative Reference Bureau

PSC Public Service Commission

Wisconsin Administrative Rules Promulgation Process

Before Rulemaking Begins

- Agency may form an optional advisory committee (227.13) and hold an optional public hearing on the general subject matter of a potential rule (227.136(7)).
- A municipality, professional group, or 5 or more people with an interest in a rule may petition an agency to request it promulgate a rule. (227.12(1))

Scope Statement Approval

1. Agency prepares scope statement and submits to DOA. (227.135)
2. DOA determines whether agency has explicit authority (227.135(2)) and reports to governor.
3. Governor approves scope statement. (227.135(2))
4. Agency sends approved scope statement to LRB and the “individual or body with policy-making powers” (227.135(2)). Agency also sends scope statement to DOA secretary and legislature (227.135(3)).
5. LRB publishes scope statement. (227.135(3))
 - a. Scope statement expires 30 months after publication. (227.135(5))

Preliminary Public Comment Period

6. Within 10 days of publication, JCRAR chair may request a preliminary public hearing and comment period on the statement of scope. (227.136(1)) The agency can also do so on its own (227.136(2)).
7. Agency submits notice of preliminary public hearing and comment period to LRB (227.136(2))
8. Agency holds preliminary hearing no sooner than the third day after publication of the notice. (227.136(3))

Analyses Prepared by Agency Before Submittal to LC

Economic impact analysis (227.137)

Housing impact analysis (227.115)

Fiscal estimate (227.14(4)(a))

Other Analyses Throughout Rulemaking Process

Energy impact analysis (at the request of the legislature) (227.117)

Regulatory flexibility analysis (initial report due with hearing notice)

Small Business Regulatory Review Board report

Economic Impact Analysis

9. If economic impact is greater than \$10 million over a 2-year period, agency must stop work on the rule. (227.139(1))
10. Legislature must enact a bill granting agency authority in order for the agency to begin rulemaking again. (227.139(2)(a)) OR Agency can modify and provide a revised

economic impact analysis for less than \$10 million (227.139(2)(b)) and continue modified rulemaking.

Submittal of Proposed Rule to LC (227.15)

11. Agency gives notice of submittal to LC to LRB and DOA secretary. (227.14(4m))
12. Agency submits proposed rule and required analyses to LC. (227.15(1))
 - *Proposed rule expires on Dec. 31 of the 4th year after submittal (if it has not been filed) (227.14(6)(b))
 - a. Economic impact analysis (227.137(4)) and housing impact analysis (227.115(2)) must also be submitted to legislature, DOA, and governor.
 - b. Agency also must submit relevant proposed rules to the Small Business Regulatory Review Board (227.14(2g)), which will prepare a report.
13. LC reviews the rule and provides agency a written report within 20 working days. (227.15(1))
14. Agency can hold public hearing after LC written report (227.15(1))
15. JCRAR co-chairs can request independent economic impact analysis any time between LC submittal and submission for governor approval (227.137(4m)). The independent analysis must be completed within 60 days of contracting for it (227.137(4m)(c)3.). The agency cannot submit the rule for governor approval until the independent analysis is complete (227.137(4m)(d)).

No Hearing Required (227.16(2))

No hearing is required if a) the proposed rule brings rules into conformity with a new statute or judicial decision; b) the rule is being promulgated under direction of JCRAR; or c) the agency opts to use the 30-day notice procedure.

Optional 30-Day Notice Procedure (227.16(e))

1. Agency sends LRB the rule as submitted to LC in electronic format with notice that rule will be promulgated without public hearing.
2. If a petition is sent to the agency within 30 days asking for a public hearing by 25 people affected by the rule, a municipality affected by the rule, or a professional group affected by the rule, the agency must hold a public hearing.

Hearings

16. Agency sends notice of hearing to LRB to publish in the register and to the DOA secretary at least 10 days before hearing. (227.17)
 - a. Initial regulatory flexibility analysis must also be submitted with hearing notice. (227.17(3)(f))
17. Legislature can request energy impact analysis from PSC up to 30 days after hearing (227.117). PSC must submit the report to committees and agency within 30 days. (227.19(4)(b)2m.)

Governor Approval

18. Agency submits final draft to governor for approval and sends notice to JCRAR. (227.185)

Legislative Review

*(Process may be put on hold if legislature is not in session.)

19. After governor approval, agency submits final draft rule to legislature with final regulatory flexibility analysis (if Small Business Regulatory Review Board determines small business impact) (227.19(3)(e)) and other analyses. Rule referred to committees. (227.19(2))
20. 30-day committee review period (227.19(4)(b))
 - a. Extends if:
 - i. Committee requests to meet with agency or gives notice they will hold a hearing (additional 30 days).
 - ii. Committee votes to request modifications. If agency agrees to modifications, the review period extends to the 10th working day after the committee receives the modified proposed rule. (227.19(4)(b)2.)
 - iii. Committee requests energy impact analysis. The review period extends to the 10th working day after the committee receives the PSC report (227.19(4)(b)2m.).
 - iv. Agency submits germane modifications to committees. If made within the last 10 days of the review period, the review period extends 10 more working days. (227.19(4)(b)3.)
 - b. Agency can recall the proposed rule, then later resubmit to be re-referred to committees. (227.19(4)(b)3m.)
 - c. If a committee objects to the rule, the committee in the other house must cease action on the rule. (227.19(4)(b)5.)
 - d. When the committees object to, approve, or waive their jurisdiction of the rule, they must submit a report to the chief clerk within 5 working days. The chief clerk then refers the rule and report to JCRAR within 5 working days. (227.19(4)(e)-227.19(5)(a)).
21. JCRAR review – 30 days after referral from committee (227.19(5)(b))
 - a. JCRAR MUST act on parts of rules committees objected to. (227.19(5)(b)1.)
 - b. 30 day review period extends if:
 - i. JCRAR requests to meet with agency or notices a hearing (additional 30 days) (227.19(5)(b)1.).
 - ii. JCRAR votes to request modifications. If agency agrees to modifications, review period extends to the 10th working day after JCRAR receives modified proposed rule. (227.19(5)(b)2.)
 - iii. JCRAR requests an independent economic impact analysis. (Extends to the 10th working day after receiving the report (227.19(5)(b)3.))
 - c. Agency can promulgate any part of a rule JCRAR does not object to. (227.19(5)(c))
22. If JCRAR objects:

- a. JCRAR must take executive action to introduce bill to prevent promulgation within 30 days of the objections, then introduce the bills within 5 days of the executive action (227.19(5)(e)). The bills go to committees, which have 40 days to recommend them, otherwise they are reported without recommendation and placed on the next calendar (227.19(6)(b)). If the bills ultimately fail, the agency can promulgate (227.19(5)(f)).
- b. A legislator can introduce a bill to authorize promulgation (227.19(5)(em)). If the bill becomes law, the agency can promulgate. (227.19(5)(fm))

Withdrawal of Rules

Agency can withdraw a rule any time before filing by giving notice to the legislature and LC (227.14(6)(b)). The rulemaking process starts over after any withdrawal.

Filing Rules

23. Once the agency can promulgate, it must file the rule with LRB. (227.20(1))
24. The rule is effective the first day of the month following the date of publication (unless otherwise specified). If the rule has a significant small business impact, it is effective the 3rd month following the date of publication. (227.22)

After Rule is Finalized

- JCRAR can request a retrospective economic impact analysis (227.138).
- JCRAR can request agencies promulgate as an emergency rule any agency statement of policy/statutory interpretation that JCRAR thinks is a rule. Agency has 30 days to promulgate the emergency rule. (227.26(2)(b))
- JCRAR can hold public hearings to investigate complaints about rules (227.26(2)(c)).
 - After public hearing, JCRAR can vote to suspend a rule (227.26(2)(d)).
 - After suspension, JCRAR has 30 days to take executive action to introduce bill to support suspension. JCRAR then has 5 working days to introduce the bill (227.26(2)(f)).
 - Leadership can send the bill to committees, calendar committees, or directly to calendar. (227.26(2)(h))
 - Committees have 30 days to take action; otherwise the bill is reported without recommendation.
 - Bill is placed on calendar no more than 40 days after committee referral.
 - If a bill passes, the rule is repealed and cannot be implemented again without specific statutory requirement.
If the bills fail, the rule remains in effect and JCRAR cannot suspend it again. (227.26(2)(i))
- JCRAR can request an agency hold a public hearing on rule within 60 days of the JCRAR request (227.26(3)).
- Agencies must biennially review rules and enactments (227.29).

Other notes

- Agencies must give additional participation opportunities to small businesses under 227.114(4)