

Appendix C

Wisconsin Elections Commission



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Administrative Rulemaking Process

Step :	Description:	Authority:	Provide to Admin. Rules Website and Gov.? ¹
1	Commission authorizes staff to draft a Statement of Scope for a proposed rule.	Wis. STAT. §§5.05(1)(f), 227.135	--
2	Staff drafts proposed Statement of Scope.	Wis. STAT. §§5.05(1)(f), 227.135(1), 227.24(1)(e)	--
3	Staff electronically submits ² proposed Statement of Scope to the Governor for consideration and approval (pdf. for Gov. Office).	Wis. STAT. §227.135(2); 2011 Executive Order #50, §II, ¶5	Yes
4	Staff receives Governor's approval of Statement of Scope in writing.	Wis. STAT. §227.135(2); 2011 Executive Order #50, §II, ¶5	Yes
5	Staff submits Governor-approved Statement of Scope to the Legislative Reference Bureau ³ for publication in the Administrative Register within 30 calendar days of receipt of Governor's written approval; staff also sends Statement of Scope to Secretary of the Department of Administration to the chief clerks of each house of the legislature for distribution to the co-chairpersons of JCRAR with a statement on the date it was approved by the Governor ⁴ .	Wis. STAT. §227.135(3), 2011 Executive Order #50, §II, ¶9	Yes
6	Statement of Scope is published in the Administrative Register for at least ten (10) days.	Wis. STAT. §227.135(2)	Yes
7	Commission approves Statement of Scope after it has been published in the Administrative Register for at least	Wis. STAT. §227.135(2)	--

¹ Email to SBOAdminRules@spsmail.wi.gov; DOARulesReview@wi.gov. MANUAL, p. 38.

² Email to SBOAdminRules@spsmail.wi.gov. (Forwarded to Governor by DOA) 2011 Executive Order #50, §I, ¶4; §II, ¶1.

³ Email to Admin-Code-Register@legis.wi.gov. MANUAL, p. 35, Rule 2.001(2).

⁴ Emailing to SBOAdminRules@spsmail.wi.gov satisfies the WEC's duty to send to the Department of Administration. 2011 Executive Order #50, §I, ¶4. Via chief clerks of both houses: ted.blazel@legis.wisconsin.gov, michael.queensland@legis.wisconsin.gov.

	ten (10) days. Staff cannot begin drafting the rule until the Commission approves the scope.		
8	Before initiating the preparation of the Economic Impact Analysis, Staff reviews Statement of Scope to determine whether it has changed in any meaningful way while being developed, and shall submit revised Statement of Scope to the Governor if any such changes occurred.	Wis. STAT. §§227.135(4), 2011 Executive Order #50, §IV, ¶2	--
9	Staff drafts language of proposed rule.	Wis. STAT. §§227.135(2), 227.137, 227.14	--
	Staff drafts analysis of proposed rule. Analysis includes a place to submit comments and a deadline for submitting those comments.	Wis. STAT. §227.14(2)	--
	Staff drafts fiscal estimate of proposed rule.	Wis. STAT. §227.14(4)	--
10	(Optional) Staff submit proposed rule to Legislative Reference Bureau for “presubmission editing” and drafting comments.	MANUAL, p. 36, Rule 2.007.	--
11	Staff solicits information and advice from entities and individuals that may be affected by proposed rule by 1) posting proposed language on Wis. Admin. Rules website, 2) accepting comments for at least 14 calendar days (if little or no economic impact), or at least 30 days (if moderate impact), or at least 60 days (if significant impact)	2011 Executive Order #50, §IV, ¶¶1, 3.	Yes
12	Staff prepares Economic Impact Analysis for proposed rule with information obtained from entities and individuals that may be affected by the rule and with local governmental units that respond to WEC’s solicitation for information, unless rule will not have an economic impact.	Wis. STAT. §§227.137(2), (3); 2011 Executive Order #50, §IV, ¶¶1, 4, 8.	--
	Economic Impact Analysis includes determination as to whether the proposed rule would adversely affect in a material way the economy, a sector of the economy, productivity, jobs, or the overall economic competitiveness of the state.	Wis. STAT. §227.137(3)(e); 2011 Executive Order #50, §IV, ¶1, 5.	--
13	If the Commission intends to establish an advisory committee, the Commission must provide ⁵ a list of members to the Governor prior to establishing the committee (recommended if the EIA indicates that the rule will have a significant economic impact). <i>*Unlikely this will occur with the rules the Commission promulgates*</i>	Wis. STAT. §227.13; 2011 Executive Order #50, §III, ¶1; §IV, ¶6.	Yes
13	Staff prepares notice of submission of proposed rule to Rules Clearinghouse.	Wis. STAT. §§227.14(4m), 227.17	--

⁵ Email to AdminsitrativRules@wisconsin.gov.

14	Commission approves notice of submission of proposed rule to Rules Clearinghouse, which includes the proposed rule order and Economic Impact Analysis.	WIS. STAT. §§227.14(4m)	--
15	Staff provides proposed final draft of proposed rule and Economic Impact Analysis to Legislative Council Rules Clearinghouse, ⁶ Governor/Secretary of DOA, ⁷ and Legislature. ⁸ (pdf. for Gov. Office) <i>**Hard copy of economic impact analysis and proposed rule must be provided to Clearinghouse before it is considered filed and can be published in the register.</i>	WIS. STAT. §227.137(4); 2011 Executive Order #50, §IV, ¶1	Yes
	Staff submits, to Legislative Reference Bureau for publication in Administrative Register, notice of submission of proposed rule to Rules Clearinghouse.	WIS. STAT. §§227.14(4m), 227.17	Yes
	Staff submits proposed rule to the Small Business Regulatory Review Board if rule may have an economic impact on small businesses.	WIS. STAT. §227.14(2g)	Yes
16	Staff submits revised Economic Impact Statement to Governor if there is a significant change in economic impact.	WIS. STAT. §227.137(4); 2011 Executive Order #50, §IV, ¶9.	Yes
17	Staff coordinates with Department of Administration to complete review and report if the Economic Impact Analysis indicates that the rule will cost \$10,000,000+ for implementation and compliance. Staff may not submit a report to the Legislature until DOA provides this report to the agency, if required.	WIS. STAT. §§227.137(3)(c), 227.137(3)(b)2, 227.19(2); 2011 Executive Order #50, §IV, ¶11.	Yes
18	Within 20 working days of receipt of rule and Economic Impact Analysis, Rules Clearinghouse provides staff with advisory and technical review report. 20 days starts once they receive the hard copy of the rule.	WIS. STAT. §227.15	Yes
19	Staff publishes notice ⁹ of public hearing at least ten (10) days prior to the hearing (if hearing required); ¹⁰ staff also provides such notice to Legislative Reference Bureau,	WIS. STAT. §§227.16, 227.17(2), (3), 227.18;	Yes

⁶ Email to: Clearing.House@Legis.wisconsin.gov.

⁷ Email to SBOAdminRules@spsmail.wi.gov. See 2011 Executive Order #50, §I, ¶4; §IV, ¶1.

⁸ Via chief clerks of both houses: ted.blazel@legis.wisconsin.gov, michael.queensland@legis.wisconsin.gov.

⁹ Staff must provide notice to every member of the Legislature who has filed a request for notice in writing with the LRB. Staff may receive a list of the names and addresses of those legislators from LRB upon request. MANUAL, Rule. 2.04(3).

¹⁰ Hearing not required if: 1) proposed rule brings an existing rule into conformity with a statute that has been changed or enacted or with a controlling judicial decision. WIS. STAT. §227.16(2)(b); 2) proposed rule is adopted as an emergency rule. WIS. STAT. §227.16(2)(c), and MANUAL, Rule 2.12; 3) proposed rule is being promulgated as directed by JCRAR under WIS. STAT. §227.26(20)(b). WIS. STAT. §227.16(2)(d), and MANUAL, Rule 2.06; 4) proposed rule published under the 30-day notice procedure in WIS. STAT. §227.16(2)(e). MANUAL, Rule 2.05; or 5) proposed rule consists of one or more forms that impose a requirement that meets the definition of a rule. WIS. STAT. §227.23.

	and to Legislators. ¹¹ Staff is also required to take whatever steps it deems necessary to convey notice to interested persons.		MANUAL, Rule 2.04(3), Rule 2.04(4).	
	Staff holds public hearing, if required. Hearing may not occur until staff receives Rules Clearinghouse review report. Hearing to give interested parties a change to be heard and to have influence over final form of rule.		WIS. STAT. §§227.15(1), 227.16; <i>HM Distributors of Milwaukee v. Dept. of Agri.</i> , 55 Wis. 2d 261, 268 (1972)	--
Alt. 20	Alt. 20.a.	If staff uses 30-day notice procedure instead of a public hearing, staff must provide notice to the Legislative Reference Bureau for publication in the Administrative Register.	WIS. STAT. §227.16(2)(e)	Yes
	Alt. 20.b.	If staff receives a petition within 30 days of publication, staff may not proceed with proposed rule until it holds a public hearing.	MANUAL, Rule 2.05(2)	Yes
		If staff does not receive a petition within 30 days of publication of the notice, staff may submit the proposed rule to the Governor for approval.	MANUAL, Rule 2.05(2)	Yes
21	Staff prepares final draft of rule, with analysis and fiscal estimate.		WIS. STAT. §§227.14(1), (2), 227.15(7); 2011 Executive Order #50, §V, ¶1.	--
22	Staff submits final draft of rule to Governor within 30 days after the public comment period.		WIS. STAT. §227.185; 2011 Executive Order #50, §V, ¶1; MANUAL, Rule 2.09(1)	Yes
23	Governor provides written approval of final draft of rule to staff.		WIS. STAT. §227.185; 2011 Executive Order #50, §V, ¶4	Yes
24	Staff prepares report for Legislature, with the proposed rule, the rule summary, reference to applicable forms, the fiscal estimate, any statement from SBRRB, the economic impact analysis, any DOA report, any energy impact report from PSC, the Rules Clearinghouse report, statement of the basis and purpose of proposed rule, summary of public comments, list of persons who appeared or registered for or against the proposed rule, any changes to the rule summary or fiscal estimate, response to recommendations from Rules Clearinghouse, final regulatory flexibility analysis for a rule that impacts small business, any changes to any energy impact report, any DOA report on housing, any response to any SBRRB report.		WIS. STAT. §227.19(3)	--
25	Staff prepares notice to chief clerk of each house of the legislature when the rule is in final draft form.		WIS. STAT. §227.19(2)	--
	Staff prepares notice of submission of rule to the Legislature.		WIS. STAT. §227.19(2)	--

¹¹ Staff must provide notice to every member of the Legislature who has filed a request for notice in writing with the LRB. Staff may receive a list of the names and addresses of those legislators from LRB upon request. MANUAL, Rule. 2.04(3).

	Staff records on each rule jacket the date of any agency public hearing held regarding the proposed rule.	MANUAL, Rule 3.03	--
26	Staff submits notice, report, and rule to Legislature in triplicate. ¹²	WIS. STAT. §227.19(2); MANUAL, Rule 3.02(1)	Yes
	Staff submits, to the Legislative Reference Bureau for publication in the Administrative Register, notice of submission of rule to the Legislature.	WIS. STAT. §227.19(2)	Yes
27	Presiding officer directs each chief clerk to refer the rule jackets to one standing committee in each house.	WIS. STAT. §227.19(2)	--
28	Committee reviews the rule. Committee may request modifications of a proposed rule. Committee may object to a proposed rule if there is an absence of statutory authority, emergency relating to public health/safety/welfare, failure to comply with legislative intent, contrary to state law, change in circumstances since enactment of the law, arbitrary and capricious or imposing undue hardship.	WIS. STAT. §227.19(4)	--
29	When committee finishes review, rule referred to JCRAR. JCRAR review lasts 30 days, but may be extended. JCRAR will consider any committee objections, may make its own objections, ¹³ may seek modifications, and may approve part/whole of the rule. WEC may not promulgate the rule until JCRAR non-concurs in any objection or concurs in the approval.	WIS. STAT. §227.19(5)	--
30	When promulgated, staff files a certified copy of the rule and a Microsoft Word version of the rule with the Legislative Reference Bureau for incorporation in the Administrative Code and publication in the Administrative Register.	WIS. STAT. §§227.20, 227.21, 227.22; MANUAL, Rule 3.02(4)	Yes
31	Legislative Reference Bureau publishes rule in administrative register, and rule is effective upon first day of the month commencing after publication.	WIS. STAT. §227.22	Yes

¹² Via chief clerks of both houses: ted.blazel@legis.wisconsin.gov, michael.queensland@legis.wisconsin.gov.

¹³ If JCRAR objects, then it must take executive action within 30 days regarding introduction of a bill in each house to support the objection. WIS. STAT. §227.19(5)(e).