



# Powers of the Joint Committee for Review of Administrative Rules

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State agencies promulgate administrative rules pursuant to rulemaking authority conferred by the Legislature, following the process prescribed in ch. 227, Stats. Under this process, the Legislature retains oversight of the rulemaking process through the review of proposed rules by the Legislative Council's Administrative Rules Clearinghouse, legislative standing committees in each house, and the Joint Committee for Review of Administrative Rules (JCRAR).

This issue brief describes the role of JCRAR and its cochair in the oversight of the administrative rulemaking process as well as their role in oversight of the existing administrative code.<sup>1</sup>

## OVERSIGHT OF THE RULEMAKING PROCESS

### Scope Statement Hearing

The first opportunity for legislative oversight of the rulemaking process begins just after the agency publishes a scope statement in the administrative register. Within 10 days after publication, the cochairpersons of JCRAR may direct an agency to hold a preliminary hearing on the proposed rule. Upon such a request, the agency may not perform any activity in connection with drafting of the proposed rule until the hearing is held and the agency head approves the scope statement.<sup>2</sup>

### Independent EIA

Prior to an agency's submission of a final proposed rule to the Governor and the Legislature, an individual cochair of JCRAR may request an independent EIA on the proposed rule. The request must be approved by the organization committee for the cochair's house of the Legislature. If approved, a contract may be entered into for an entity other than the agency to prepare an EIA.<sup>3</sup> Similarly, during the JCRAR review period, JCRAR may request an independent EIA on a proposed rule. The request must be approved by the organization committees for both houses.<sup>4</sup>

## REVIEW OF PROPOSED RULES

Following referral to standing committees of each house, the Chief Clerks refer proposed rules to JCRAR for a period ending 30 days after referral from the Senate or Assembly, whichever is later. This review period may be extended an additional 30 days if the cochairpersons take certain actions.

JCRAR may take one or more of three actions on a proposed rule. First, the committee may vote to waive its jurisdiction or affirmatively approve the rule. Second, the committee may request modifications to a proposed rule. In that case, if the agency agrees, in writing, to consider making modifications, the committee's review period is extended for 10 days from the time the modifications are received from the agency. Third, JCRAR may object to all or part of a rule. JCRAR may object only for one or more statutory reasons, including absence of statutory authority; emergency; failure to comply with legislative intent; arbitrariness or capriciousness; or imposition of an undue hardship.<sup>5</sup>

JCRAR may object to a rule or part of a rule using one of two methods. Under the first method, it must introduce a bill in each house of the Legislature to support the objection. If either bill becomes law, the agency may not promulgate the rule or part of the rule that was objected to, unless a later law specifically authorizes promulgation of the rule. Alternatively, JCRAR may choose to indefinitely object to a

proposed rule. Under this method, an agency may not promulgate the rule or part of the rule, unless the Legislature specifically authorizes the promulgation through enactment of new legislation.

Absent any action on the proposed rule, the rule is deemed approved under passive review at the end the JCRAR's review period and is returned to the agency for promulgation in the administrative register.

## EXTENSION OF EMERGENCY RULES

When an agency promulgates an emergency rule, the rule is temporary in nature and is initially effective for a period of 150 days. JCRAR may grant an extension for up to an additional 60 days. The total period for all extensions granted may not exceed 120 days.<sup>6</sup>

## REPEAL OF UNAUTHORIZED RULES

As an alternative to the general rulemaking process, an agency may use a petition process to repeal unauthorized rules. Under this process, which applies to rules that an agency may not enforce due to repeal or amendment of law, an agency must submit a petition for repeal to JCRAR and the Clearinghouse. Following Clearinghouse review and issuance of a report to JCRAR, the committee may vote to approve the petition, allowing the agency to publish the repeal in the administrative register.<sup>7</sup>

## ADMINISTRATIVE CODE OVERSIGHT

### Retrospective EIA

For any existing rule, JCRAR, may vote to direct an agency to prepare a retrospective EIA. The request may be made for one or more chapters, or any sections or other subunits of a rule. A retrospective EIA must address the same categories of analysis and determinations as an initial EIA, and must include a specific comparison between the expected economic effect when the rule was proposed and the actual economic effect.<sup>8</sup>

### Suspension of Existing Rules

JCRAR may suspend a permanent rule or emergency rule that has been promulgated and is in effect if JCRAR has first received testimony about the rule at a public hearing and the suspension is based on one or more of the reasons a committee may cite when objecting to a proposed rule.<sup>9</sup>

If JCRAR suspends a rule, it must, within 30 days, introduce a bill in each house 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.

### Requirement to Promulgate Policy as a Rule

If JCRAR determines that an agency's statement of policy or an interpretation of a statute meets the definition of a rule, it may direct the agency to promulgate the statement or interpretation as an emergency rule within 30 days of JCRAR's action. Further, JCRAR may require any agency that is promulgating a policy as a rule to hold a public hearing and to report its actions to JCRAR.<sup>10</sup>

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<sup>1</sup> For a description of the complete rulemaking process, see the Legislative Council's, "Wisconsin Legislator Briefing Book, Chapter 4: Administrative Rulemaking" (November 2018).

<sup>2</sup> s. 227.135 (2), Stats.

<sup>3</sup> s. 227.137 (4m), Stats.

<sup>4</sup> s. 227.19 (5) (b) 3., Stats.

<sup>5</sup> Objection by a committee triggers mandatory consideration of the rule by JCRAR. [s. 227.19 (4) (d), Stats.]

<sup>6</sup> s. 227.24 (2), Stats.

<sup>7</sup> s. 227.26 (4), Stats.

<sup>8</sup> s. 227.138, Stats.

<sup>9</sup> s. 227.26 (2), Stats.

<sup>10</sup> s. 227.26 (2) (b) and (3), Stats.