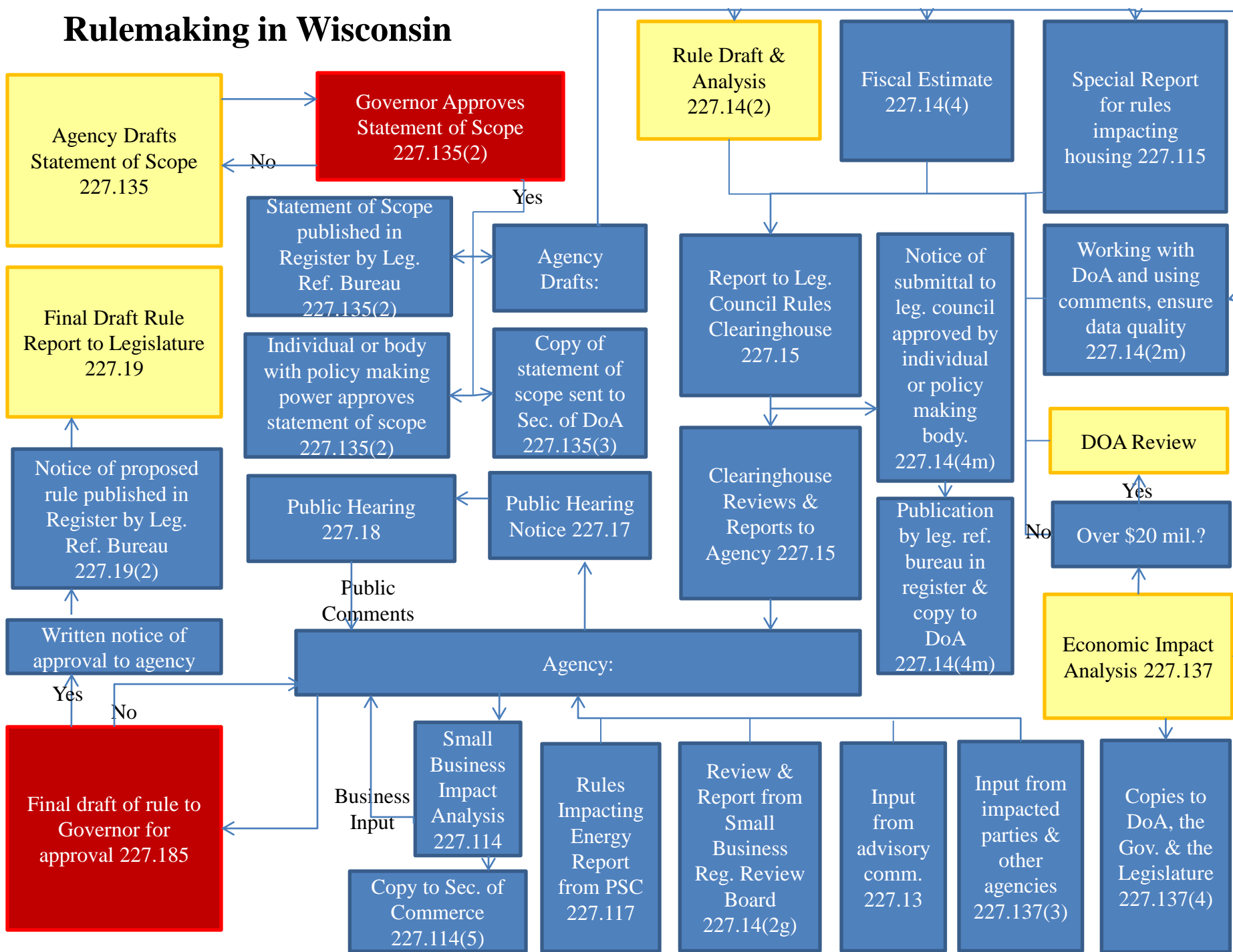


Rulemaking in Wisconsin



Point of In-Depth Analysis

Agency Drafts
Statement of
Scope 227.135

- A description of the objective of the rule.
- A description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives.
- The statutory authority for the rule.
- Estimates of the amount of time that state employees will spend to develop the rule and of other resources necessary to develop the rule.
- A description of all of the entities that may be affected by the rule.
- A summary and preliminary comparison of any existing or proposed federal regulation that is intended to address the activities to be regulated by the rule.

Critical Juncture

- An agency that has prepared a statement of the scope of the proposed rule shall present the statement to the governor.
- The agency may not send the statement to the legislative reference bureau for publication until the governor issues a written notice of approval of the statement.
- No state employee or official may perform any activity in connection with the drafting of a proposed rule except for an activity necessary to prepare the statement of the scope of the proposed rule until the governor approves the statement.
- If at any time the agency changes the scope of the proposed rule in any meaningful or measurable way, including changing the scope of the proposed rule so as to include in the scope any activity, business, material, or product that is not specifically included in the original scope of the proposed rule, the agency shall prepare and obtain approval of a revised statement of the scope from the governor.
- No state employee or official may perform any activity in connection with the drafting of the proposed rule except for an activity necessary to prepare the revised statement of the scope of the proposed rule until the revised statement is so approved.

Governor Approves
Statement of Scope
227.135(2)

Point of In-Depth Analysis

Rule Draft &
Analysis
227.14(2)

- A reference to each statute that the proposed rule interprets, each statute that authorizes its promulgation, each related statute or related rule, and an explanation of the agency's authority to promulgate the proposed rule under those statutes.
- A brief summary of the proposed rule.
- A summary of and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule.
- A comparison with similar rules in Illinois, Iowa, Michigan, and Minnesota.
- A summary of the factual data and analytical methodologies that the agency used in support of the proposed rule and how any related findings support the regulatory approach chosen for the proposed rule.
- Any analysis and supporting documentation that the agency used in support of the agency's determination of the rule's effect on small businesses under s. 227.114 or that was used when the agency prepared an economic impact analysis under s. 227.137 (3).
- Proposed rules that require businesses to get permits must include a permitting timeline. s. 227.116

Point of In-Depth Analysis

Economic Impact Analysis 227.137

- An economic impact analysis of a proposed rule shall contain information on the economic effect of the proposed rule on specific businesses, business sectors, public utility ratepayers, local governmental units, and the state's economy as a whole.
- When preparing the analysis, the agency shall solicit information and advice from businesses, associations representing businesses, local governmental units, and individuals that may be affected by the proposed rule.
- The agency shall prepare the economic impact analysis in coordination with local governmental units that may be affected by the proposed rule. The agency may request information that is reasonably necessary for the preparation of an economic impact analysis from other businesses, associations, local governmental units, and individuals and from other agencies. The economic impact analysis shall include all of the following:
 - An analysis and quantification of the policy problem that the proposed rule is intending to address, including comparisons with the approaches used by the federal government and by Illinois, Iowa, Michigan, and Minnesota to address that policy problem and, if the approach chosen by the agency to address that policy problem is different from those approaches, a statement as to why the agency chose a different approach.
 - An analysis and detailed quantification of the economic impact of the proposed rule, including the implementation and compliance costs that are reasonably expected to be incurred by or passed along to the businesses, local governmental units, and individuals that may be affected by the proposed rule.
 - An analysis of the actual and quantifiable benefits of the proposed rule, including an assessment of how effective the proposed rule will be in addressing the policy problem that the rule is intended to address.
 - An analysis of alternatives to the proposed rule, including the alternative of not promulgating the proposed rule.
 - A determination made in consultation with the businesses, local governmental units, and individuals that may be affected by the proposed rule 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 this state.

Point of In-Depth Analysis

DOA Review
227.137(6)

- If an economic impact analysis regarding a proposed rule indicates that a total of \$20,000,000 or more in implementation and compliance costs are reasonably expected to be incurred by or passed along to businesses, local governmental units, and individuals as a result of the proposed rule, the department of administration shall review the proposed rule and issue a report. The report shall include all of the following findings:
 - That the economic impact analysis is supported by related documentation contained or referenced in the economic impact analysis.
 - That the agency has statutory authority to promulgate the proposed rule.
 - That the proposed rule, including any administrative requirements, is consistent with and not duplicative of other state rules or federal regulations.
 - That the agency has adequately documented the factual data and analytical methodologies that the agency used in support of the proposed rule and the related findings that support the regulatory approach that the agency chose for the proposed rule.
- Before issuing its report, the department of administration may return a proposed rule to the agency for further consideration and revision with a written explanation of why the proposed rule is being returned.
 - If the agency head disagrees with the department's reasons for returning the proposed rule, the agency head shall so notify the department in writing.
 - The secretary of administration shall approve the proposed rule when the agency has adequately addressed the issues raised during the department's review of the rule.
- The agency may not submit a proposed rule to the legislature for review until the agency receives a copy of the department's report and the approval of the secretary of administration.

Critical Juncture

Final draft of rule
to Governor for
approval 227.185

- After a proposed rule is in final draft form, the agency shall submit the proposed rule to the governor for approval.
 - Interpreted as including all information that is sent to the Legislature in the Final Draft Rule Report under Wis. Stat. § 227.19
- The governor, in his or her discretion, may approve or reject the proposed rule.
- If the governor approves a proposed rule, the governor shall provide the agency with a written notice of that approval.
- No proposed rule may be submitted to the legislature for review unless the governor has approved the proposed rule in writing.

Point of In-Depth Analysis

Final Draft Rule
Report to
Legislature
227.19

- Report to the legislature shall include a copy of:
 - The proposed rules
 - The material from the analysis prepared under s. 227.14(2)
 - Any new forms created by the proposed rule, or a description of where to locate a copy
 - The fiscal estimate
 - The original, and if applicable the revised, economic impact analysis
 - Any report prepared by the department of administration under s. 227.137 (6)
 - Any energy impact report received from the public service commission under s. 227.117 (2)
 - Recommendations from the legislative council staff
- The report shall also include all of the following:
 - 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 those comments, and an explanation of any modification made in the proposed rule as a result of public comments or testimony received at a public hearing.
 - A list of the persons who appeared or registered for or against the proposed rule at a public hearing.
 - Any changes to the analysis prepared under s. 227.14 (2) or the fiscal estimate.
 - A response to the legislative council staff recommendations under s. 227.15
- If the rule will have an effect on small business, the report must include a final regulatory flexibility analysis, which includes information on:
 - The agency's reason for including or failing to include in the proposed rule any of the methods specified under s. 227.114 (2) for reducing its impact on small businesses.
 - A summary of issues raised by small businesses during the hearings on the proposed rule, any changes in the proposed rule as a result of alternatives suggested by small businesses and the reasons for rejecting any alternatives suggested by small businesses.
 - The nature of any reports and the estimated cost of their preparation by small businesses that must comply with the rule.
 - The nature and estimated cost of other measures and investments that will be required of small businesses in complying with the rule.
 - 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).
 - 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).
- If an energy impact report regarding the proposed rule was required, an explanation of the changes, if any, that were made in the proposed rule in response to that report.
- The report of the department of commerce, as required by s. 227.115, if a proposed rule directly or substantially affects the development, construction, cost, or availability of housing in this state.
- A response to any report prepared by the small business regulatory review board under s. 227.14 (2g).

Invalidating Rules

- Unconstitutional
- Lacks “explicit” statutory authority
- Agency failed to follow the process in Wis. Stat. Ch. 227

Implementation

- Administrative Rules Procedure Manual from Legislative Council
- Executive order from the Governor