

A 50-State Review of Regulatory Procedures

Supplementary State Administrative Procedure Reports

The authors would like to thank reviewers in each of the 50 states for helpful feedback on these reports. Any remaining mistakes are the authors' alone.



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Alabama's Administrative Procedures

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Rulemaking

Alabama has informal, notice-and-comment rulemaking.¹ Proposed regulations in Alabama are initiated through a notice of intent to adopt. The notice of intent to adopt must include a statement describing the substance of the intended action and must specify a notice period of at least 35 days, “during which period interested persons may present their views.”² The purpose of the notice period is to afford those interested parties reasonable opportunity to submit data, views, or arguments.³ The state does not require preproposal notices prior to issuing a proposed regulation.

Executive Review

Through executive order, the Office for Regulatory Oversight of Boards and Commissions has been set up in the Office of the Governor. State boards and commissions that regulate a business or a profession are asked to voluntarily submit their regulatory actions for review by the Office for Regulatory Oversight of Boards and Commissions to ensure that the submitted actions are “based upon clear state policy.” The secretary of the office can veto or modify the submitted actions as they deem necessary.⁴

Legislative Review

All new regulations are reviewed by the Joint Committee on Administrative Regulation Review (JCARR).⁵ JCARR has 45 days to hold public hearings and review new rules. JCARR must give notice to the agency of either its approval or disapproval within the 45-day period. If JCARR fails to give notice, the rule is deemed approved.⁶ In determining whether to approve or disapprove rules, JCARR reviews the fiscal note prepared by the agency and considers factors such as whether there is statutory authority for the rule; whether the absence of the rule would significantly harm public health, safety, or welfare; whether there are less restrictive methods of achieving the rule's purpose; whether the rule directly or indirectly increases the costs of goods and services; and what effects would arise from the increase in cost from the rule.⁷

If JCARR disapproves a rule, it must give notice to the agency. Within 15 days, the agency may submit an appeal of the disapproval to the lieutenant governor. The lieutenant governor then

¹ ALA. CODE § 41-22-5 (2021).

² § 41-22-5(a)(1).

³ § 41-22-5(a)(1)–(2).

⁴ ALA. EXEC. ORDER NO. 7 (2015).

⁵ § 41-22-22.

⁶ § 41-22-23(b)(1).

⁷ § 41-22-23(f)–(g).

has an additional 15 days to review the appeal and hold public hearings, if deemed necessary.⁸ If the lieutenant governor sustains the disapproval, JCARR is notified, and the disapproval is final.⁹ If the lieutenant governor approves the rule, or fails to act within 15 days, the rule becomes effective upon the adjournment of the next regular session of the legislature, unless prior to that time the legislature adopts a joint resolution that overrides the approval of the lieutenant governor and sustains the action of the committee.¹⁰ If the lieutenant governor fails to approve or disapprove the regulation, the rule is suspended until the adjournment of the next regular session of the legislature, but it is then reinstated, unless the legislature passes a joint resolution of disapproval.¹¹ The governor's signature is required for joint resolutions to become law.

New board and commission rules—specifically those of boards and commissions that regulate professions and have a controlling number of members who are active market participants in the profession—are also reviewed by the Legal Division of the Legislative Services Agency, as part of a market competition review.¹² If, upon review, the Legal Division determines that a rule is expected to restrict competition, JCARR will review the substance of the rule as well as its impact on competition. During consideration, public hearings are held, and there is opportunity for public comment. On the basis of its findings, JCARR will then approve, disapprove, disapprove with a suggested amendment, or allow the agency to withdraw the rule. If no action is taken, the rule does not become effective and is placed on the agenda of each subsequent meeting.¹³ In this sense, JCARR has de facto veto power over regulations deemed by the Legal Division to restrict competition.

Independent Review

Alabama does not have independent review of new regulations.

Impact Analysis

Alabama requires two forms of impact analysis. The first is a fiscal note, which is prepared by the agency if a rule is expected to have an economic impact. The fiscal note is submitted to JCARR for consideration during its review of each rule.¹⁴ The note evaluates the need for the rule, the expected benefit of the rule, and the costs and benefits associated with the rule. It also provides an explanation of why the rule is considered to be the most cost-effective and cost-efficient means of achieving the stated purpose. (This condition could be interpreted as a requirement that the agency simultaneously choose the most cost-effective method and maximize net benefits.) The fiscal note also looks at the effect of the rule on competition, the effect of the rule on employment in the geographic area in which the rule would be implemented, the source of revenue to be used for

⁸ § 41-22-23(b)(2).

⁹ § 41-22-23(b)(3).

¹⁰ § 41-22-23(b)(4)–(5).

¹¹ § 41-22-23(b)(5).

¹² § 41-22-22.1(a).

¹³ § 41-22-22.1(b).

¹⁴ § 41-22-23(f).

implementing and enforcing the rule, the parties that will bear the costs of the rule, and the parties that will benefit directly and indirectly from the rule.¹⁵

The second form of analysis required is a business impact statement. If, before the end of the notice period, a business informs the agency that it will be negatively affected by a rule, the agency must prepare and submit a business impact statement to JCARR.¹⁶ The analysis must estimate the number of businesses that will be affected by the rule, as well as the expected compliance costs for the businesses.¹⁷ Upon reviewing the business impact analysis, JCARR may request that the agency analyze and report the feasibility of alternative methods to reduce the compliance costs for businesses.¹⁸

Periodic Review

Rules are reviewed every 5 years on a staggered basis in Alabama.¹⁹ An agency must determine whether each rule should be continued, amended, or rescinded and then file a notice in the *Alabama Administrative Monthly* consistent with its determination. The head of an agency may decide that a review of a rule is not feasible by the specified date and can file a notice certifying that decision.²⁰

Alabama also requires each agency to prescribe a form that members of the public can use to petition the agency for the adoption, amendment, or repeal of a rule. An agency must either deny the petition or initiate rulemaking proceedings within 60 days of receiving a petition.²¹

A board or commission with a controlling number of active market participants may also submit a previously adopted rule to the Legal Division of the Legislative Services Agency for a determination as to whether the rule significantly restricts competition.²² If the Legal Division determines that the existing rule significantly restricts competition, it submits its findings to JCARR. JCARR then holds a meeting to review the rule and either approves the rule or notifies the agency that it agrees with the position taken by the Legal Division.²³

JCARR may also review and approve or disapprove any rule adopted before October 1, 1982.²⁴

¹⁵ § 41-22-23(f).

¹⁶ § 41-22-5.1(c).

¹⁷ *Id.*

¹⁸ § 41-22-5.1(d).

¹⁹ § 41-22-5.2(b).

²⁰ § 41-22-5.2.

²¹ § 41-22-8.

²² § 41-22-22.1(c).

²³ *Id.*

²⁴ § 41-22-23(e).

Alaska's Administrative Procedures

June 29, 2021

Rulemaking

Alaska has traditional, informal notice-and-comment rulemaking. The agency must publish a notice of proposed action at least 30 days before the adoption of a new regulation.¹ There is no minimum comment period, but interested parties are given the opportunity to submit comments for consideration at a public proceeding on a date and time chosen by the agency.² The notice of proposed action must include a provision explaining the statutory authority for the regulation.³ The state does not require preproposal notices before an agency issues a proposed rule.

Executive Review

Alaska has several forms of executive branch review of its regulations. First, the Department of Law, which is headed by the attorney general, assigns a regulations attorney. The main function of the regulations attorney is to keep agencies compliant as they draft and propose regulations by alerting them when regulations are required for the implementation of a statute and by reviewing existing rules for inefficiencies.⁴ Second, the department reviews each proposed regulation with regard to its legality, its clarity, and the existence of statutory authority and then issues a statement of approval or disapproval based on the findings.⁵ Third, all rules must be submitted to the governor, who may review and return rules within 30 days to the agency if they are inconsistent with the execution of the laws. The governor may also delegate review authority to the lieutenant governor.⁶

Legislative Review

Standing committees of the legislature may review any proposed adoption, amendment, or repeal of a regulation.⁷

Independent Review

Alaska does not have independent review of proposed regulations.

¹ ALASKA STAT. § 44.62.190(a) (2021).

² § 44.62.210(a).

³ § 44.62.200(a)(2).

⁴ § 44.62.125.

⁵ § 44.62.060(b).

⁶ § 44.62.040(c).

⁷ ALASKA STAT. § 24.05.182(a) (2021).

Impact Analysis

Alaska requires agencies to prepare a fiscal note for regulations that would require increased appropriations by the state. The fiscal note must provide an estimate of the budgetary effects of the rule for the fiscal year following adoption and for at least 2 succeeding fiscal years.⁸

Administrative Order No. 266 (2013) also requires agencies to verify the costs of implementation to the state agency and to the affected public to ensure that the least costly means consistent with legal requirements are considered or enabled.

Periodic Review

Administrative Order No. 266 (2013) requires all Alaska agencies to review existing rules every year in consultation with the Department of Law. The stated objectives of the administrative order are to ensure that compliance costs borne by the public are minimized and to identify regulations that should be amended or repealed. As a part of the review, agencies should consult with members of the public to determine if regulations are creating an unnecessary burden. Results of the review are submitted to the governor and the Office of Management and Budget, along with any recommendations for regulatory action and justifications for any proposed action.⁹ The regulations attorney in the Department of Law also has an obligation to continually review regulations, making recommendations concerning deficiencies, conflicts, and obsolete provisions in need of reorganization or revision.¹⁰

Standing committees of the legislature may review any previously adopted regulation that is within their jurisdiction.¹¹

Individuals may petition an agency for the repeal of a regulation. Within 30 days of receipt of the petition, the agency must either deny the petition in writing or schedule a public hearing.¹²

⁸ § 44.62.195.

⁹ ALASKA ADMIN. ORDER NO. 266 (2013).

¹⁰ § 44.62.125(3).

¹¹ § 24.05.182(a).

¹² § 44.62.230.

Arizona's Administrative Procedures

July 7, 2021

Rulemaking

Arizona has traditional, informal notice-and-comment rulemaking.¹ Prior to initiating a rulemaking, an agency must file a notice of docket opening (NDO) with the secretary of state for publication in the *Arizona Administrative Register*.² The NDO and notice of proposed rulemaking (NPR) may be published at the same time, but an agency must publish the NPR within 1 year of the NDO.³ After publication of the NPR, the agency must allow a period of at least 30 days for interested parties to submit written comments.⁴ If a written request for an oral proceeding is submitted to the agency within the 30-day period, a hearing is scheduled to allow for a discussion of the substance and form of the proposed rule.⁵ One year after a proposal is published in the register, a regulation expires if the agency fails to submit the rule to the Governor's Regulatory Review Council.⁶

Executive Review

Rules must be submitted to and approved by the Governor's Regulatory Review Council.⁷ The council consists of seven members and is composed of at least one member who represents the public interest, at least one member who represents the interest of the business community, and at least one small business owner. It must also include one member who is suggested by the president of the Senate and one member who is suggested by the speaker of the House of Representatives, neither of whom can be state legislators.⁸ The Office of Economic Opportunity (OEO) reviews the economic, small business, and consumer impact statements to ensure that the probable benefits of the rule outweigh the probable costs to persons within the state and that the rule imposes the lowest possible compliance costs of the available alternatives.⁹ OEO prepares a summary of this review and provides it to the council.¹⁰ The council also reviews the rule's legality according to statutory authority and legislative intent, as well as the agency's compliance with rulemaking procedures.¹¹

¹ ARIZ. REV. STAT. § 41-1022 (2021).

² § 41-1021(A)(2).

³ *Id.*

⁴ § 41-1023(B).

⁵ § 41-1023(C).

⁶ § 41-1021(A)(4).

⁷ § 41-1052.

⁸ § 41-1051(A).

⁹ § 41-1052(D)(3).

¹⁰ § 41-1052(A).

¹¹ § 41-1052(D)(5).

Certain rules are exempt from the council’s review process. Instead, such rules are reviewed and approved by the attorney general, who reviews the legality of the rule as well as the agency’s compliance with rulemaking procedures.¹²

Legislative Review

By law, an Administrative Rules Oversight Committee (AROC) exists that consists of five members of the House of Representatives, five members of the Senate, and either the governor or the governor’s designee.¹³ In practice, the AROC appears to be defunct, and the Legislative Council handles the responsibilities of the AROC.¹⁴ The committee may review and hold hearings on any proposed or final rule to determine whether the rule is consistent with statute and legislative intent. The committee may also inform the agency, the attorney general, or the Governor’s Regulatory Review Council of its findings.¹⁵

Independent Review

Arizona does not have independent review of proposed regulations.

Impact Analysis

In Arizona, regulations require agencies to prepare an economic, small business, and consumer impact statement and submit it to the Governor’s Regulatory Review Council.¹⁶ The Governor’s Regulatory Review Council forwards the statement to OEO for review. The agency may petition the council for an exemption from the economic, small business, and consumer impact statement requirement if the rule decreases or has no effect on monitoring or compliance costs.¹⁷

The statement must identify the extent and frequency of the problem that the rule is designed to change, as well as the estimated impact of the proposed rule on the frequency of the problem’s occurrence.¹⁸ Moreover, the statement must include a cost–benefit analysis that demonstrates the costs and benefits for the implementing agency, any political subdivisions of the state, and any businesses directly affected by the rule. Small businesses that are likely to be affected by a proposed rule must be identified, and the associated costs of compliance must be evaluated. The statement must identify any redistributive effects of the rule, include a statement regarding the probable effect of the rule on state revenues, and evaluate the extent to which the rule may affect private and public employment. Any less intrusive or less costly alternative methods of achieving the rule’s purpose must be specified, including a monetization of the costs

¹² § 41-1044(B).

¹³ § 41-1046(B).

¹⁴ Personal communication with an official from the Governor’s Regulatory Review Council, July 7, 2021.

¹⁵ § 41-1047.

¹⁶ § 41-1052(A).

¹⁷ § 41-1055(E).

¹⁸ § 41-1055(A).

and benefits of the other available means and, if appropriate, a rationale for not using the alternative means.¹⁹

If an interested party submits an analysis pertaining to the impact of the rule on the competitiveness of businesses in the state compared to businesses in other states, the agency must take the analysis into consideration.²⁰ Finally, as previously mentioned, there is a de facto requirement, enforced by the Governor's Regulatory Review Council, that benefits exceed costs to persons within the state and that the rule impose the lowest cost of available alternative methods.²¹ There is also a process by which members of the public can, within 2 years of a rule being finalized, appeal if they believe the impact analysis to be inaccurate.²² The burden of proof is on the member of the public making the claims. However, if the Governor's Regulatory Review Council upholds the appeal, it can mandate that the regulation be amended or repealed.²³

Periodic Review

Arizona requires agencies to review rules every 5 years to determine if they should be amended or repealed.²⁴ The agency prepares a report that includes an analysis of whether the rule is effective in achieving its stated objectives; whether the rule is authorized by existing statutes; whether the rule is consistent with statutes and other agency rules; what the economic, small business, and consumer impact is compared to that described in the original impact statement; whether the probable benefits of the rule outweigh the probable costs; and whether the rule imposes the least burden and costs compared to other regulatory methods. The agency also includes any analysis submitted by an interested party pertaining to the impact of the rule on the competitiveness of businesses in the state compared to businesses in other states.²⁵ The agency's report must be submitted to the Governor's Regulatory Review Council. The council, in collaboration with OEO, reviews the agency's compliance with the stated requirements of the analysis and either approves or returns the report.²⁶ Depending on the agency's findings, the council may require that the agency amend or repeal the rule.²⁷ If the agency does not amend or repeal the rule by the date specified by the council, the rule will expire automatically.²⁸ This provision acts as a sunset provision, albeit one that is triggered on a case-by-case basis. The Governor's Regulatory Review Council may review rules outside of the 5-year mandatory review period if requested by at least four council members.²⁹

¹⁹ § 41-1055(B).

²⁰ § 41-1055(I).

²¹ § 41-1052(D)(3).

²² § 41-1056.01.

²³ § 41-1056.01(G).

²⁴ § 41-1056.

²⁵ § 41-1056(A)(1)–(7).

²⁶ § 41-1055(C).

²⁷ § 41-1056(E).

²⁸ § 41-1056(E)–(G).

²⁹ § 41-1056(D).

The AROC may review rules that are alleged to be duplicative and onerous. In practice, this responsibility appears to fall to the Legislative Council since the AROC is defunct.³⁰ As part of the review, the legislature may hold hearings regarding the allegations. A report is supposed to be prepared by December 1 of each year to recommend legislation if deemed appropriate.³¹

Through executive order, Arizona has a one-in, three-out policy for regulations, which has been in place since 2020.³² The state has had a moratorium in place since 2015.³³

³⁰ Personal communication with an official from the Governor's Regulatory Review Commission, July 7, 2021.

³¹ § 41-1048.

³² ARIZ. EXEC. ORDER NO. 2021-02 (2021); ARIZ. EXEC. ORDER NO. 2020-02 (2020).

³³ ARIZ. EXEC. ORDER NO. 2015-01 (2015).

Arkansas's Administrative Procedures

March 11, 2021

Rulemaking

Arkansas has informal, notice-and-comment rulemaking.¹ In Arkansas, rulemaking proceedings are initiated through a notice of intended action. The notice of intended action must include a statement describing the substance of the intended action and must specify a notice period of at least 30 days.² The purpose of the notice period is to afford interested parties a reasonable opportunity to submit data, views, or arguments, orally or in writing. An agency must grant the opportunity for an oral hearing if requested by at least 25 people, by a government subdivision or agency, or by an association that has at least 25 members.³ The state does not require preproposal notices or a disclosure of statutory authority before issuance of a proposed regulation.

Executive Review

Pursuant to Executive Order No. 15-02, administrative rules must be approved by the governor before an agency can publish a notice of public comment and begin the public comment period. If the governor determines a rule or regulation unnecessarily burdens business, the rule or regulation must not be submitted to the legislature and cannot become effective.⁴

Legislative Review

In Arkansas, all rules must be filed with the Legislative Council at least 30 days prior to the expiration of the public comment period. The Legislative Council assigns the rule to the Administrative Rules Subcommittee of the Legislative Council (ARSLC) for review. The ARSLC must allow members of the public to submit comments during the review period. Following the review period, a regulation is considered approved unless a majority of the members of the ARSLC vote for the proposed rule to not be approved. If a rule is approved by the ARSLC, it will also be considered approved by the Legislative Council unless a majority of the members of the Legislative Council vote for the proposed rule to not be approved.⁵ The ARSLC and the Legislative Council may vote to not approve a rule only if the rule is inconsistent with state law, federal law, or legislative intent.⁶

During a regular, fiscal, or extraordinary session of the General Assembly, the Administrative Review Subcommittee of the Joint Budget Committee and the Joint Budget

¹ ARK. CODE § 25-15-204 (2021).

² § 25-15-204(a)(1).

³ § 25-15-204(a)(2).

⁴ ARK. EXEC. ORDER NO. 15-02 (2015).

⁵ ARK. CODE § 10-3-309(c) (2021).

⁶ § 10-3-309(f).

Committee shall perform the functions of the ARSLC and the Legislative Council, respectively.⁷ Actions taken by the Administrative Review Subcommittee of the Joint Budget Committee and by the Joint Budget Committee have the same effect as they would under the Legislative Council. The Joint Budget Committee files a report of its actions with the Legislative Council.

The Legislative Council, the Joint Budget Committee, or their relevant subcommittees may refer a rule to a committee of the General Assembly for consideration. The committee of the General Assembly may provide its views and opinions to the committee or subcommittee that referred the rule.⁸

Independent Review

Arkansas does not have independent review of proposed regulations.

Impact Analysis

In Arkansas, all agencies must file a financial impact statement for a proposed rule with the secretary of state and the Legislative Council. The purpose of the financial impact statement is to estimate any new or increased compliance costs borne by a private individual, entity, or business or state, county, or municipal government.⁹ If the financial impact statement reveals that the rule will create new or increased costs of at least \$100,000, the promulgating agency must submit a written statement that includes the following: (a) an explanation of the rule's basis and purpose, (b) a list of any other less costly options and an explanation of why they were not adopted, (c) a description of the extent to which existing rules may have contributed to the problem and whether changes to existing rules can provide a remedy, and (d) a plan for review of the rule at least once every 10 years.¹⁰

Periodic Review

Arkansas has a 12-year (previously 24-year) sunset provision.¹¹ A rule may remain in effect for more than 12 years if an extension is approved by the governor and the Legislative Council.¹²

Arkansas has divided all existing regulations into six groups and requires each agency to file a final rule report according to the schedule for the assigned groups. A 2-year period for review and a deadline for submission is assigned for each group.¹³ The final report must detail the legal authority and justification for each rule that will continue to be enforced, as well as the justification for the repeal of a rule.¹⁴ The Legislative Council may refer particular rules to the

⁷ § 10-3-309(e).

⁸ § 10-3-309(g).

⁹ ARK. CODE § 25-15-202(3) (2021).

¹⁰ § 25-15-204(e)(4).

¹¹ Act 65 of 2021 amended the 24-year timeframe, making it a 12-year period.

¹² § 25-15-401.

¹³ § 25-15-401(c).

¹⁴ § 25-15-401(e).

subject-matter interim committees of the House and Senate.¹⁵ The Legislative Council considers any recommendations made by the subject-matter interim committee and makes a final determination regarding the rules scheduled for continuation and repeal.¹⁶ If an agency determines that a rule does not meet the definition of a rule under the Arkansas Administrative Procedure Act, and desires to repeal the rule, the agency may file a written request with the Legislative Council requesting that the rule be repealed.¹⁷ The Legislative Council may accept the written request, thereby allowing the rule to be repealed on a fast-track basis with notification to the secretary of state.¹⁸

Separately, after each regular or fiscal session of the General Assembly, each agency reviews any newly enacted laws to determine whether any existing or new rules should be repealed or amended. An agency must issue a report detailing its findings and file the final version of the new, amended, or repealed rule with the secretary of state and the Legislative Council, or with the Joint Budget Committee if the General Assembly is in session.¹⁹

If a financial impact statement reveals that a regulation will create a new or increased cost of at least \$100,000 per year, an agency must create a plan to review the rule at least once every 10 years. The review considers whether the rule is achieving the statutory objectives, whether the benefits of the rule justify the costs, and whether the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.²⁰

Individuals may petition an agency for the repeal of a regulation. Within 30 days of receipt of the petition, the agency must either deny the petition in writing or initiate rulemaking proceedings.²¹

¹⁵ § 25-15-401(f).

¹⁶ § 25-15-401(g).

¹⁷ § 25-15-404(b).

¹⁸ § 25-15-404(c).

¹⁹ § 25-15-216.

²⁰ § 25-15-204(e)(4).

²¹ § 25-15-204(d).

California's Administrative Procedures

March 17, 2021

Rulemaking

California has traditional, informal, notice-and-comment rulemaking.¹ Adoption, amendment, or repeal of regulations in California is initiated through the publication of a notice of proposed action. The notice of proposed action must include a reference to the statutory authority under which the regulation is proposed² and must allow a public comment period of at least 45 days.³ A public hearing is held if scheduled by the agency⁴ or if requested by an interested party no later than 15 days before the end of the comment period.⁵ A proposed rulemaking action will expire if it is not completed and transmitted to the Office of Administrative Law (OAL) within 1 year of the date on which the notice of proposed action was published in the *California Regulatory Notice Register*.⁶ The state does not require an agency to make preproposal notices before issuing a proposed regulation.

Executive Review

The OAL was established in California to reduce the number of administrative regulations and to improve the quality of the regulations that are adopted.⁷ It is part of the executive branch of the state government but works closely with the legislature. The director of the OAL is appointed by the governor and is subject to confirmation by the Senate.⁸

All proposed regulations that are subject to the California Administrative Procedure Act must be submitted to the OAL for review.⁹ The OAL must either approve or disapprove a regular rulemaking action within 30 working days,¹⁰ though some actions have different review deadlines. For example, emergency rulemaking actions must be approved or disapproved within 10 calendar days.¹¹ If the OAL fails to act within 30 working days, the regular rulemaking action is considered approved.

When a regulation is disapproved by the OAL, it is returned to the agency.¹² The OAL may disapprove and return a regulation if the agency has failed to comply with the specified

¹ CAL. GOV. CODE § 11346 (2021).

² § 11346.5(a)(2).

³ § 11346.4(a).

⁴ § 11346.5(a)(1).

⁵ § 11346.8(a).

⁶ § 11346.4(b).

⁷ § 11340.1(a).

⁸ § 11340.2.

⁹ § 11346.2.

¹⁰ § 11349.3(a).

¹¹ § 11349.6(b).

¹² § 11349.3(b).

procedures for the adoption of regulations, including but not limited to meeting the content requirements of the notice of proposed action, completing the economic impact assessment or standardized regulatory impact analysis, ensuring that the proposed regulation is not in conflict with existing state regulations, and issuing a statement as to why less burdensome alternatives were not adopted.¹³ A disapproved regulation that has been returned to the agency may be rewritten and resubmitted to the OAL within 120 days of receipt of the OAL's disapproval decision.¹⁴ Alternatively, an agency may contest the OAL's disapproval decision by filing a written request for review with the governor's legal affairs secretary.¹⁵ The governor may overrule the decision of the OAL.¹⁶

Legislative Review

California does not have legislative review of regulations.

Independent Review

California does not have independent agency review of regulations.

Economic Impact Analysis

California has several forms of impact analysis. The first is an economic impact assessment, which is prepared by the agency if the regulation is not considered to be a major regulation.¹⁷ A *major regulation* is any proposed adoption, amendment, or repeal of a regulation that is estimated to have an economic impact on California businesses and individuals in excess of \$50 million.¹⁸ The economic impact assessment evaluates the impact of the regulation on the creation or elimination of jobs within the state, the creation of new businesses or elimination of existing businesses within the state, and the expansion of businesses currently doing business within the state, as well as the benefits of the regulation to the health and welfare of residents, worker safety, and the environment.¹⁹

A second form of analysis is a standardized regulatory impact analysis. The Department of Finance, in consultation with the OAL and other state agencies, adopted regulations for conducting the standardized regulatory impact analysis.²⁰ If a regulation is deemed a major regulation, the standardized regulatory impact analysis will replace the economic impact assessment.²¹ The standardized regulatory impact analysis must assess the same areas as the economic impact assessment. It must also assess the competitive advantages or disadvantages for

¹³ § 11349.1(d).

¹⁴ § 11349.4(a).

¹⁵ § 11349.5(a).

¹⁶ § 11349.5(e).

¹⁷ § 11346.3(b).

¹⁸ § 11342.548.

¹⁹ § 11346.3(b)(1)(A)–(D).

²⁰ § 11346.36(a).

²¹ § 11346.3(c)(1).

businesses currently doing business within the state; the impact of the regulation on investment in the state; the incentives for innovation in products, materials, or processes; and the benefits of the regulation on the safety of residents and quality of life.²² In addition, the standardized regulatory impact analysis must include a cost–benefit analysis that includes an analysis of both the monetary and nonmonetary costs and benefits of the proposed regulation, a comparison of proposed regulatory alternatives, an assessment of the proposed regulation’s potential effects on state funds and affected local government agencies, and the cost of enforcement and compliance to the agency and affected businesses, as well as several other analyses.²³ The standardized regulatory impact analysis is submitted to the Department of Finance upon completion.²⁴ Within 30 days of receipt, the Department of Finance must comment on the extent to which the analysis adheres to the standardized regulatory impact analysis requirements.²⁵

Periodic Review

California does not have a systematic process for periodic review of existing regulations.

If requested by a standing, select, or joint committee of the legislature, the OAL can initiate a review of any existing regulation.²⁶ The OAL can also initiate a review if the statutory authority for a regulation has been repealed or has become ineffective.²⁷ The OAL uses the same standards to assess existing regulations as it would for proposed regulations, and it makes all relevant information regarding the review available to the public.²⁸ Following its review, the OAL can decide that an existing regulation should be repealed.²⁹ The adopting agency has the opportunity to show cause for why the regulation should not be repealed.³⁰ The OAL shall consider this information and determine whether repeal is still warranted.³¹ The governor may overrule the OAL’s decision within 30 days after delivery of the statement specifying the reasons for the OAL’s decision to repeal the regulation, thereby allowing the regulation to remain in effect.³²

Any interested person may petition an agency for the adoption, amendment, or repeal of a regulation.³³ The agency must either deny the petition or schedule the matter for a public hearing.³⁴

²² § 11346.3(c)(1)(C)–(F).

²³ § 11346.36(b).

²⁴ § 11346.3 (f).

²⁵ *Id.*

²⁶ § 11349.7.

²⁷ Personal communication with an official from the Office of Administrative Law, March 17, 2021.

²⁸ § 11349.7.

²⁹ *Id.*

³⁰ § 11349.7(a).

³¹ § 11349.7(c).

³² § 11349.7(d).

³³ § 11340.6.

³⁴ § 11340.7.

Colorado's Administrative Procedures

July 12, 2021

Rulemaking

Colorado has traditional, informal notice-and-comment rulemaking.¹ When contemplating any new regulation, an agency must establish a representative group of participants who have an interest in the subject to submit views or otherwise participate informally in conferences on the proposals under consideration.² Proposed regulations in Colorado are initiated through a notice of proposed rulemaking, which must include a reference to the authority under which the rule is proposed and must describe the substance of the rule.³ No earlier than 20 days after the publication of the notice of proposed rulemaking, a public hearing is held to allow interested parties the opportunity to submit data, views, or arguments orally or in writing.⁴ Within 180 days after the last public hearing, an agency must either adopt or terminate a rule by publishing a notice to that effect in the *Colorado Register*.⁵

Executive Review

Colorado has two forms of executive review. The first is a preliminary review of the proposed rule by the Office of the Executive Director in the Department of Regulatory Agencies (DORA).⁶ The executive director or their designee determines, after consultation with the agency, whether a cost-benefit analysis is required for the regulation. If a cost-benefit analysis is required, the executive director (or the designee) studies the analysis and may advise the agency to make amendments to the rule that will reduce the rule's economic impact.⁷

The second form of review is conducted by the attorney general.⁸ All rules must be submitted to the attorney general for an opinion as to the constitutionality and legality of the regulation. If an agency fails to submit a rule to the attorney general for an opinion, the rule is void.

Legislative Review

All rules must be submitted to the Office of Legislative Legal Services within 20 days after the date when the attorney general's opinion was received.⁹ If an agency fails to submit a rule to the

¹ COLO. REV. STAT. § 24-4-103 (2021).

² § 24-4-103(2).

³ § 24-4-103(3)(a).

⁴ § 24-4-103(3)(a); § 24-4-103(4)(a).

⁵ § 24-4-103(4)(d).

⁶ § 24-4-103(2.5)(a).

⁷ § 24-4-103(2.5)(b).

⁸ § 24-4-103(8)(b).

⁹ § 24-4-103(8)(d).

Office of Legislative Legal Services within the specified period, the rule is void. The Committee on Legal Services reviews every rule to determine whether that rule is within an agency's rulemaking authority, as well as for form and compliance with filing procedures. Upon request by any member of the committee or by any other member of the General Assembly, a full legal review is conducted.

By affirmative vote, the Committee on Legal Services submits rules, comments, and proposed legislation at the next regular session of the General Assembly. Any member of the General Assembly can introduce a bill that rescinds or deletes portions of a rule.¹⁰ Colorado also has a 1-year sunset provision, whereby rules require reauthorization by the legislature.¹¹ This provision is discussed in more detail in the section on periodic review.

Independent Review

Colorado does not have independent agency review of regulations.

Impact Analysis

Colorado has two forms of impact analysis. The first is a cost-benefit analysis, which is prepared by an agency at the request of the executive director of DORA or their designee.¹² The cost-benefit analysis must be conducted and made available for public inspection at least 10 days prior to the scheduled hearing. The analysis must include the reason for the rule and a list of at least two other possibilities, along with their associated costs and benefits. The analysis must also consider the costs and benefits to the economy, including the impact on economic growth, creation of jobs, and economic competitiveness, as well as the impact on consumers, private markets, and small businesses. In addition, the analysis must examine the direct costs that the government will incur in administering the rule, as well as the direct and indirect costs incurred by businesses and other entities that are required to comply with the rule.

The second form of analysis is a regulatory analysis.¹³ A regulatory analysis is conducted by an agency if requested by any member of the public at least 15 days prior to the scheduled date of the hearing. The regulatory analysis must include a description and a qualitative and quantitative assessment of the impact of the rule on different classes of people, including an assessment of who will bear the costs and who will benefit from the proposed rule. The analysis must also examine the probable costs to agencies and the impact on state revenues. Finally, the analysis must compare the costs and benefits of the regulation to the probable costs and benefits of inaction and must describe any less costly or less intrusive methods that were considered.

Periodic Review

In Colorado, all rules that are adopted within a 1-year period that begins on November 1 and continues through October 31 are scheduled to expire on May 15 of the following year.¹⁴ The

¹⁰ *Id.*

¹¹ § 24-4-103(8)(c).

¹² § 24-4-103(2.5)(a).

¹³ § 24-4-103(4.5)(a).

¹⁴ § 24-4-103(8)(c).

General Assembly may postpone the expiration of a rule by passing a bill to that effect. In practice, this provision acts as a form of legislative review of new regulations, rather than a periodic review of existing regulations. Nevertheless, the process is set up as a sunset review and, therefore, is discussed as a form of periodic review here.

DORA establishes a schedule for the periodic review of all rules for each state agency.¹⁵ Each agency conducts a review of all existing rules to assess their appropriateness and cost-effectiveness and to determine if they should be continued, modified, or repealed.¹⁶ Agencies must grant ample opportunity for public participation in the review process, and a report on the results of the review must be submitted to the staff of the Legislative Council.¹⁷ Periodic review must not be scheduled during the year following any scheduled sunset review of the department or agency.¹⁸

Any interested person may petition an agency for the amendment or repeal of a rule. Action on a petition is based on agency discretion, but all related petitions must be considered when an agency undertakes rulemaking procedures.¹⁹

¹⁵ § 24-4-103.3.

¹⁶ § 24-4-103.3(1).

¹⁷ § 24-4-103.3(2).

¹⁸ § 24-4-103.3(3).

¹⁹ § 24-4-103(7).

Connecticut's Administrative Procedures

May 11, 2021

Rulemaking

Connecticut has traditional, informal notice-and-comment rulemaking.¹ Proposed regulations in Connecticut are initiated by an agency posting a notice of its intended action on Connecticut's eRegulations system. The notice must specify a comment period of at least 30 days, include a reference to the statutory authority under which the rule is proposed, and describe the purpose of the regulation.² An agency will hold a public hearing on the proposed rule if requested by at least 15 people, by a governmental subdivision or agency, or by an association with at least 15 members.³ The state does not require preproposal notices prior to issuing a proposed regulation.

Executive Review

All proposed regulations that are posted on Connecticut's eRegulations system must also be submitted to the attorney general.⁴ No rule can become effective until it has received the approval of the attorney general or their designated representative. The attorney general's review is limited to a determination of the legal sufficiency of the rule. If the attorney general (or the designated representative) fails to give notice to the agency of any legal insufficiency within 30 days of receipt of a rule, the rule is deemed to have been approved.

In addition, pursuant to an executive order,⁵ executive agencies must submit drafts of proposed regulations to the Office of Policy and Management and to the Office of the Governor for approval before issuing a notice of intent to regulate. The Office of Policy and Management ensures that agencies produce a rigorous impact analysis for their rules and that they, among other factors, identify goals, strive to produce benefits that justify costs, and regulate only if there is a clear need.

Legislative Review

In Connecticut, all proposed rules are submitted to the standing Legislative Regulation Review Committee (LRRC) for consideration. The LRRC consists of eight members of the House of Representatives, who are appointed by the speaker of the House, and six members of the Senate, who are appointed by the president pro tempore.⁶ The LRRC reviews all proposed regulations and may hold public hearings at its discretion.⁷ The LRRC can approve, disapprove, or reject a

¹ CONN. GEN. STAT. § 4-168 (2021).

² § 4-168(a)(1).

³ § 4-168(b).

⁴ § 4-169.

⁵ CONN. EXEC. ORDER NO. 37 (2013).

⁶ § 4-170(a).

⁷ § 4-170(c).

regulation in whole or in part on the basis of its determination.⁸ If the LRRC rejects a rule, the proposing agency may resubmit a revised version of the regulation after receiving the approval of the attorney general.⁹ However, if the LRRC disapproves a rule, the proposing agency may not adopt the rule in substantively similar form, unless the full legislature passes a bill reversing the committee's disapproval.¹⁰

Any regulation that is disapproved by the LRRC must be submitted to the General Assembly.¹¹ The speaker of the House and the president pro tempore of the Senate refer the disapproved regulation to an appropriate committee for consideration. By a resolution, the General Assembly can either sustain or reverse a vote of disapproval by the LRRC. The Constitution of Connecticut provides that the legislature can override executive branch regulations without the approval of the governor.¹²

An agency must also submit a copy of its prepared fiscal note to the Office of Fiscal Analysis.¹³ The Office of Fiscal Analysis then must submit an analysis of the fiscal note to the LRRC.

Independent Review

Connecticut does not have independent agency review of regulations.

Impact Analysis

Connecticut has two forms of impact analysis. The first is a fiscal note, which must be prepared by an agency and submitted to the LRRC and the Office of Fiscal Analysis.¹⁴ The fiscal note must include an estimation of the rule's impact on expenses and revenues of the state and any municipalities of the state. The fiscal note must also consider the impact on small businesses in the state, including an estimation of the number of small businesses that could be affected and the projected compliance costs for those small businesses.¹⁵

The second form of analysis is a regulatory flexibility analysis, which is prepared before or at the same time as the fiscal note. This analysis concerns whether a proposed regulation is expected to have an adverse impact on small businesses.¹⁶ The regulatory flexibility analysis must identify the purpose of the proposed regulation, the number and the types of businesses that may be affected by the rule, the types of compliance costs imposed on small businesses, and the extent to which the proposed regulation provides alternative compliance methods for small businesses.¹⁷

⁸ § 4-170(c).

⁹ § 4-170(e).

¹⁰ § 4-170(d); § 4-171(b).

¹¹ § 4-171.

¹² CONN. CONST. art. XVIII.

¹³ § 4-170(b)(5).

¹⁴ *Id.*

¹⁵ § 4-168(a)(6).

¹⁶ § 4-168(a)(6); § 4-168a(c).

¹⁷ § 4-168a(b).

The Department of Economic and Community Development and the joint standing committee of the General Assembly concerning matters of commerce will assist and advise the agency with respect to its efforts to comply with the requirements and to grant regulatory flexibility to small businesses.¹⁸

In addition, pursuant to an executive order,¹⁹ for those regulations with a “significant impact,” agencies must produce an impact analysis in which the agency identifies goals; strives to achieve benefits that justify costs, encourage economic progress, and promote the development of jobs; and identifies best practices for regulation, using the most innovative and least burdensome tools to achieve regulatory ends. Regulations must also be written in plain language.

Periodic Review

Connecticut does not have a standardized process for periodic review of existing regulations. However, any interested individual may petition an agency for the repeal of a regulation. Within 30 days of receiving a petition, an agency must either deny the petition in writing or initiate rulemaking.²⁰

¹⁸ § 4-168a(c).

¹⁹ CONN. EXEC. ORDER NO. 37 (2013).

²⁰ § 4-174.

Delaware's Administrative Procedures

March 22, 2021

Rulemaking

Delaware has traditional notice-and-comment rulemaking, though the state also has a hearing process that resembles the formal rulemaking process at the federal level in that it includes a burden of proof requirement and the opportunity to cross-examine witnesses.¹ Proposed regulations in Delaware are initiated by an agency's filing a notice in the *Delaware Register of Regulations*. The notice describes the nature of the proceedings and provides a reference to the statutory authority under which the regulation is proposed.² An agency must provide a comment period of at least 30 days following the publication of the notice, and it may hold a public hearing at its discretion. Following the comment period, on the basis of the submitted evidence and information, the agency shall determine whether a regulation should be adopted, amended, or repealed.³ The state does not require preproposal notices before issuing a proposed regulation.

Executive Review

Delaware does not have executive review of proposed regulations.

Legislative Review

Delaware does not have legislative review of proposed regulations.

Independent Review

Delaware does not have independent review of proposed regulations.

Impact Analysis

If it is deemed that a proposed regulation is substantially likely to impose additional costs upon individuals or small businesses, an agency must prepare a regulatory impact statement to be published with the notice. The regulatory impact statement must include a description of the purpose of the regulation, an identification of the individuals or small businesses that would be subject to compliance under the regulation, an estimate of the potential cost of compliance for individuals and small businesses, and a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.⁴ The regulatory impact statement is

¹ DEL. CODE tit. 29, § 10125 (2021).

² § 10115.

³ § 10118.

⁴ § 10404A.

accompanied by a regulatory flexibility analysis, which contains a discussion of methods of reducing costs and burdens of proposed regulations on individuals and small businesses.⁵

Periodic Review

In Delaware, regulations are reviewed every 4 years to determine if they should be amended or repealed. Each agency is assigned a 3-month regulatory review period to solicit public input and conduct its own internal review. An agency reviews all regulations that were promulgated at least 4 years before the review period. During the review period, agencies must conduct at least one public hearing, accept written submissions online or by mail or fax, and adopt procedures for input to be provided anonymously. Following the regulatory review period, an agency evaluates the regulations and submits any revisions to the *Delaware Register of Regulations*. A report is submitted to the General Assembly detailing the regulations that were eliminated or modified.⁶

Any interested individual may petition an agency for the adoption, amendment, or repeal of a regulation. An agency must either deny the petition or initiate rulemaking.⁷

⁵ § 10404B.

⁶ § 10407.

⁷ § 10114.

Florida's Administrative Procedures

March 5, 2021

Rulemaking

Regulation proposals in Florida are initiated by an agency's publishing a notice of rule development in the *Florida Administrative Register*.¹ The notice of rule development must include an explanation of the purpose and effect of the proposed rule and must cite the agency's legal authority. An agency holds public workshops for the purpose of rule development. These advance notices of rulemaking requirements are not required for rule repeals.

Following the completion of the rule development requirements, an agency posts a notice of its intended action in the *Florida Administrative Register*. The notice must include an explanation of the purpose and effect of the proposed rule and provide a reference to the rulemaking authority.² If an affected person so requests within 21 days of publication of the notice of intended action, a hearing is conducted to give affected persons the opportunity to present evidence and arguments related to all issues under consideration.³

Executive Review

If an agency determines that the proposed action will have an adverse effect on small businesses, the agency must send written notice to the rules ombudsman in the Executive Office of the Governor.⁴ The rules ombudsman may recommend regulatory alternatives to reduce the impact of the rule on small businesses. If an agency does not adopt any of the recommended alternatives, it must file a written statement with the Joint Administrative Procedures Committee (JAPC) explaining the reasons for the failure to adopt such alternatives.

In 2011, then-governor Rick Scott signed Executive Order No. 11-01, which created the Office of Fiscal Accountability and Regulatory Reform (OFARR) and required that departments under the governor's authority submit rules to OFARR for review.⁵ This executive order was subsequently revised several times⁶ because of legal controversies surrounding a regulatory freeze in the executive order. The legal soundness of Executive Order No. 11-01 and its revisions was subsequently put on stronger footing by act of the legislature.⁷ On November 11, 2019, agencies in Florida received a directive from Governor Ron DeSantis outlining changes to the OFARR rulemaking review process.⁸ The directive states that OFARR will review proposed rules to determine whether they may impede entry into a profession or place unreasonable

¹ FLA. STAT. § 120.54(2)(a) (2021).

² § 120.54(3)(a).

³ § 120.54(3)(c).

⁴ § 120.54(3)(b).

⁵ FLA. EXEC. ORDER NO. 11-01 (2011).

⁶ See FLA. EXEC. ORDER NO. 11-72 (2011); FLA. EXEC. ORDER NO. 11-211 (2011).

⁷ See H.B. 7055, 2012 Leg., 44th Sess. (Fla. 2012).

⁸ Governor Ron DeSantis, letter to governor's agency heads (November 11, 2019).

restrictions on individuals seeking employment in a profession and whether the rule is the most cost-effective and efficient method of imposing a regulation. No notice of proposed rulemaking may proceed without the consent of OFARR, which has authority to stop or suspend rulemakings.

Legislative Review

At least 21 days before the proposed adoption date, agencies in Florida must file proposed rules with the JAPC.⁹ JAPC reviews the rulemaking authority of the agency to determine whether the notice gave the public sufficient information about the purpose and effect of the rule. JAPC also reviews the necessity of the rule, the complexity of the rule, and the regulatory costs of the rule and considers whether the rule will require additional appropriations.¹⁰ In conducting its review, JAPC consults with legislative standing committees that have jurisdiction over the subject areas of the rule.¹¹

JAPC may object to a proposed rule by notifying the agency and the speaker of the House of Representatives and the president of the Senate to that effect.¹² After receipt of an objection, an agency has 30 days (if headed by an individual) or 45 days (if headed by a collegial body) to (a) make modifications that address JAPC's objection, (b) withdraw the rule entirely, or (c) notify JAPC that it refuses to modify or withdraw the rule.¹³ If an agency fails to respond to JAPC's objections within the specified time period, the rule will be withdrawn if it is not in effect.¹⁴ If an agency notifies JAPC that it refuses to modify or withdraw the rule in line with a stated objection, JAPC files a notice with the Department of State to be published in the *Florida Administrative Register*.¹⁵ In addition, JAPC may submit a recommendation to the speaker of the House of Representatives and the president of the Senate that legislation be introduced to address JAPC's objection. JAPC may also request that the agency suspend the adoption of the proposed rule pending consideration of proposed legislation. The agency may either elect to temporarily suspend the rule or notify JAPC of its refusal to temporarily suspend the rule. JAPC may prepare legislation to address an objection for pre-filing and introduction in the next regular session of the legislature. If proposed legislation to address an objection fails to become law, any temporary suspension of the rule will expire.¹⁶

For rules costing more than \$1 million in the aggregate within 5 years of implementation of the rule, the legislature must affirmatively approve these regulations through the passage of legislation.¹⁷ Otherwise, such rules are prohibited.

⁹ § 120.54(3)(a)(4).

¹⁰ § 120.545(1).

¹¹ § 120.545(2).

¹² *Id.*

¹³ § 120.545(3).

¹⁴ § 120.545(4).

¹⁵ § 120.545(7).

¹⁶ § 120.545(8).

¹⁷ § 120.541(3).

Independent Review

Florida does not have independent agency review of regulations.

Impact Analysis

In Florida, agencies are encouraged to prepare a statement of estimated regulatory costs for all proposed rules.¹⁸ However, an agency must prepare a statement of estimated regulatory costs if it receives a written proposal for a lower-cost alternative by any affected party, if it is determined that a proposed rule could have an adverse impact on small businesses, or if the rule is likely to directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate within 1 year of adoption.¹⁹

The statement of estimated regulatory costs must include an economic analysis, in which the agency considers the impact of a rule on private sector job creation or employment, private sector investment, business competitiveness, and other regulatory costs.²⁰ If the economic analysis indicates costs in excess of \$1 million in the aggregate within 5 years of the rule's implementation, the rule must be submitted to the speaker of the House of Representatives and the president of the Senate to be ratified by the legislature (with some exceptions).²¹ When writing the statement of estimated regulatory costs, the agency must also estimate the number and types of individuals and entities that will likely be affected by the rule and the costs to the agency, individuals in the state, or any state and local government entity. The statement must further include an analysis of the rule's impact on small businesses, counties, and cities and a description of any alternative regulatory methods.²²

An agency must also consider the potential impact of a rule on small businesses, counties, or cities independently of the statement of estimated regulatory costs.²³ Agencies must attempt to tier rules to reduce disproportionate impacts on small businesses, counties, or cities by establishing alternative compliance costs.

Finally, OFARR can require an agency to prepare a cost–benefit analysis, risk analysis, or job impact analysis.²⁴

Periodic Review

As a part of Governor Ron DeSantis's 2019 directive, agencies must include a sunset provision in proposed or amended rules going forward.²⁵ The sunset provision can be no longer than 5 years. An expired rule can be reinstated by going through the normal rulemaking process.

¹⁸ § 120.54(3)(b).

¹⁹ § 120.541(1)(a).

²⁰ § 120.541(2)(a).

²¹ § 120.541(3).

²² § 120.541(2)(b)–(g).

²³ § 120.54(3)(b).

²⁴ FLA. EXEC. ORDER NO. 11-01 (2011).

²⁵ Governor Ron DeSantis, letter to governor's agency heads (November 11, 2019).

Any interested individual may petition an agency for the repeal of a regulation. Within 30 days of the date of filing the petition, an agency must either deny the petition in writing or initiate rulemaking proceedings.²⁶

²⁶ § 120.54(7).

Georgia's Administrative Procedures

March 5, 2021

Rulemaking

Georgia has traditional, informal notice-and-comment rulemaking.¹ When proposing regulations, regulators must give the public at least 30 days' notice of their intended action. The purpose of the 30-day notice period is to allow all interested parties ample opportunity to submit data, views, or arguments. The notice must contain a synopsis that describes the purpose and main features of the rule and include a citation to the statutory authority pursuant to which the rule is being proposed. An oral hearing is conducted if requested by at least 25 people who will be directly affected by the proposed rule.² The state does not require preproposal notices before the issuance of a regulation proposal.

Executive Review

Georgia does not have executive review of regulations.

Legislative Review

In Georgia, when agencies issue a notice of their intended action, the notice must also be transmitted to the Office of Legislative Counsel. The legislative counsel transfers a copy of the notice to the presiding officers of each house, who in turn assign the notice to the chair of the appropriate standing committee in each house for review.³

A standing committee may file an objection to the adoption of a proposed rule by a two-thirds vote of the members of the committee. An agency may continue to adopt a rule following the objection of a standing committee, but it must notify the presiding officers of the Senate and House of Representatives, the chairs of the committees to which the rule was referred, and the legislative counsel within 10 days after the adoption of the rule. Both branches of the General Assembly may consider the rule during the next legislative session, and either branch may introduce a resolution for the purpose of overriding the rule. If the resolution is adopted by two-thirds of the votes of each branch of the General Assembly, the rule is void on the following day. If the resolution is adopted by a majority but less than two-thirds of the votes of either branch, the resolution is submitted to the governor for approval or veto.⁴

Independent Review

Georgia does not have independent review of proposed regulations.

¹ GA. CODE § 50-13-4(a)(1) (2021).

² § 50-13-4(a)(2).

³ § 50-13-4(e).

⁴ § 50-13-4(f).

Impact Analysis

Georgia does not require impact analysis of proposed regulations. However, during the formulation and adoption of any rule, agencies are directed to reduce the economic impact of rules on small businesses by establishing alternative compliance standards or by allowing exemptions for small businesses.⁵

Periodic Review

Georgia does not have a standardized process for the periodic review of existing regulations. However, any interested individual may petition an agency for the repeal of a regulation. Within 30 days of the submission of a petition, an agency must either deny the petition in writing or initiate rulemaking proceedings.⁶

⁵ § 50-13-4(a)(3).

⁶ § 50-13-9.

Hawaii's Administrative Procedures

July 1, 2021

Rulemaking

Regulation proposals in Hawaii are initiated by an agency's giving at least 30 days' notice before a public hearing.¹ The notice must describe the topic of the proposed rule and detail the means by which interested parties can submit views on the adoption of the rule. The agency may decide either to make a final decision during the public hearing or to announce a date on which it intends to make its decision. Hawaii does not require the disclosure of the agency's statutory authority in the notice.

In Hawaii, every department whose rules affect small businesses has an advisory committee on small business within it.² When an agency is proposing rules that affect small businesses, the agency may consult the departmental advisory committee.³ Each agency must also develop its own procedure for soliciting comments from affected small businesses during the drafting of proposed rules.

Executive Review

Hawaii has several forms of executive branch review. Under Administrative Directive No. 09-01, all rules must receive the attorney general's approval as to form before being submitted for review to the governor's office; to the director of the Department of Budget and Finance; and to the director of the Department of Business, Economic Development, and Tourism.⁴ All rules must receive the approval of the governor before the formal publication of the notice of public hearing. In addition, all proposed rules are resubmitted to the governor following the public hearing and are subject to the final approval of the governor.

The Small Business Regulatory Review Board, which exists within the Department of Business, Economic Development, and Tourism, can review any proposed or amended rule.⁵ The members of the board are appointed by the governor. Some members must be picked from a list of nominees submitted by the president of the Senate, the speaker of the House of Representatives, and the board itself.⁶ Any proposed rule that affects small businesses requires the submission of a small business statement to the Small Business Regulatory Review Board and the departmental advisory committee on small business after the public hearing is held.⁷ The small business statement provides a summary of comments made by the public and small business representatives on the proposed rule.

¹ HAW. REV. STAT. § 91-3(a) (2021).

² § 201M-4(a).

³ § 201M-4(b).

⁴ HAW. ADMIN. DIRECTIVE NO. 09-01 (2009).

⁵ § 201M-5(a).

⁶ § 201M-5(b).

⁷ § 201M-3.

A small business impact statement is also produced for review by the governor and the board if the regulation affects small businesses.⁸ If the board determines that the adoption of a proposed rule will have a significant economic impact on a substantial number of small businesses, the board may recommend changes to the rule to reduce its impact on small businesses or may recommend that the rule be withdrawn.⁹

Legislative Review

Hawaii does not have legislative review of regulations.

Independent Review

Hawaii does not have independent agency review of regulations.

Impact Analysis

Hawaii has two forms of impact analysis. The first is required under Administrative Directive No. 09-01 whenever an agency requests executive approval for the proposed adoption of a rule.¹⁰ An agency must explain the purpose of the proposed rule, identify any financial impacts on the state, describe any impacts on the public or the economy, discuss any alternative measures that were considered, and identify any potential impact on small businesses in the state.

The second form of analysis is a small business impact statement, which is prepared by the agency and submitted to the governor, the departmental advisory committee on small business, and the Small Business Regulatory Review Board.¹¹ The small business impact statement must describe the types of businesses that will bear the costs of the proposed rule or directly benefit from it, identify any increase in compliance costs, assess the probable monetary costs and benefits to the implementing agency, and describe any alternative methods that were considered or used to reduce the impact on small business.

Periodic Review

In Hawaii, each agency that has existing rules that have been determined to affect small businesses must submit a report to the Small Business Regulatory Review Board by June 30 of each odd-numbered year.¹² The report must describe the specific purpose of the rules affecting small businesses and list any other reasons that justify continued implementation. In addition, the Small Business Regulatory Review Board provides the agency with a list of any rules that have generated complaints or concerns, including any rules that may conflict with other rules or exceed statutory authority.¹³ The agency must respond by submitting a further report addressing those concerns. Upon considering the agencies' reports and soliciting testimony from the public, the

⁸ HAW. ADMIN. DIRECTIVE NO. 09-01.

⁹ § 201M-5(a).

¹⁰ HAW. ADMIN. DIRECTIVE NO. 09-01.

¹¹ § 201M-2; HAWAII ADMINISTRATIVE DIRECTIVE NO. 09-01.

¹² § 201M-7(a).

¹³ § 201M-7(b).

Small Business Regulatory Review Board submits an evaluation report to the legislature each even-numbered year. The evaluation report includes an assessment for each rule of whether the public interest significantly outweighs the regulation's effect on small business. The report also makes legislative proposals to eliminate or reduce effects on small business.¹⁴

Any interested individual may petition an agency for the repeal of a regulation. Within 30 days of receiving the petition, the agency must either deny the petition in writing or initiate proceedings.¹⁵

In addition, any affected small business may file a written petition objecting to all or part of a rule.¹⁶ The agency must forward a copy of the petition to the Small Business Regulatory Review Board and may consult with the appropriate departmental advisory committee on small business. The agency submits a written determination to the Small Business Regulatory Review Board within 60 days of receiving the petition. If the agency determines that the petition warrants the repeal of the rule, it can then initiate proceedings. If the agency determines that the petition does not warrant the repeal of the rule, any affected small business may seek a review of the decision by the Small Business Regulatory Review Board, which may in turn recommend that the agency initiate proceedings.

¹⁴ § 201M-7(c).

¹⁵ § 91-6.

¹⁶ § 201M-6.

Idaho's Administrative Procedures

March 17, 2021

Rulemaking

Before proposing a regulation, agencies must determine whether negotiated rulemaking is feasible, and if they determine that it is, they must publish a notice of intent to promulgate a rule.¹ The aim of the notice is to facilitate negotiated rulemaking and seek consensus on the content of the proposed regulation, thereby improving the substance of proposed rules.² Proposed regulations in Idaho are initiated with the issuance of a notice of proposed rulemaking in the state bulletin.³ The notice must disclose the agency's statutory authority for the rulemaking, describe the substance of the proposed rule, and explain whether negotiated rulemaking was used; if negotiated rulemaking was not used, the notice must explain why. The agency must also provide a description of any negative fiscal impact on the state general fund greater than \$10,000 during the fiscal year that the rule becomes effective.

Following the publication of the notice of proposed rulemaking, the agency must allow a public comment period of at least 21 days.⁴ If at least 25 people, a political subdivision, or a state agency requests an opportunity for a public hearing within 14 days of publication, the agency must provide it.

Executive Review

Idaho does not require executive review of regulations by statute. However, by executive order, the Division of Financial Management (DFM) oversees a regulatory moratorium which in practice serves as an opportunity for executive review.⁵ DFM must authorize any new regulations by providing an exemption from the moratorium. Review consists of a review by a DFM analyst, an analyst from the governor's policy office and sign-off from the DFM administrator. The same executive order establishes a retrospective review process, overseen by DFM, by which agencies can amend regulations on a 5-year schedule. As part of reviews, DFM reviews several forms of economic analysis (see section on impact analysis). A letter is also required that must be signed by the head of the regulating agency, explaining the need for the regulation, before the rule may proceed.

Legislative Review

Following the publication of a notice of proposed rulemaking, the notice and the full text of the rule are submitted to the director of the Legislative Services Office. The Legislative Services Office analyzes the rule and then refers the material under consideration to the germane joint

¹ IDAHO STAT. § 67-5220(1) (2021).

² § 67-5220(2).

³ § 67-5221.

⁴ § 67-5222.

⁵ IDAHO EXEC. ORDER No. 2020-01 (2020).

subcommittee⁶ (that is, is a joint committee composed of subcommittees from each chamber with oversight on a particular topic).⁷ If a majority of the members of the subcommittees from each chamber makes the same objection to a rule, the objection is transmitted to the agency.⁸ In addition, the germane joint subcommittee produces a report for each rule and submits it to the agency, to the membership of the standing committee with oversight in each chamber, and to the legislature in the next regular session.

Standing committees of the legislature may review any rule that has been published in the bulletin or in the administrative code that has been submitted for review.⁹ If the rule is reviewed, the findings of the standing committees are reported to the membership of the body. The bodies of the legislature together may adopt a concurrent resolution approving the rule or, if it is determined that the rule is not consistent with legislative intent, rejecting the rule. The rejection of a regulation by concurrent resolution prevents the agency's finalization of the rule. The governor's signature is not required for adoption of the concurrent resolution, and thus concurrent resolutions remain veto proof over the executive.

In addition, Idaho has a 1-year sunset provision, which, unless extended by statute, applies to all regulations in the administrative code. In practice, this provision acts as a requirement that regulations receive approval from the legislature soon after adoption, as well as on an annual basis.¹⁰

Independent Review

Idaho does not have a statutorily mandated independent agency review of regulations.

Impact Analysis

Idaho has several forms of impact analysis. The first is a fiscal impact statement, which is published as a part of the notice of proposed rulemaking if the regulation is expected to have a fiscal impact on the state general fund in excess of \$10,000 during the fiscal year that the rule will become effective.¹¹

The second form of analysis is a statement of economic impact.¹² A statement of economic impact is required if requested by the germane joint subcommittee or if the rule is expected to impose or increase a fee or charge of some kind. The statement of economic impact contains an evaluation of the costs and benefits of the rule, including any health, safety, or welfare costs and benefits, as well as an estimation of the costs that may be imposed on the agency or on citizens and businesses of the state.

⁶ § 67-5223(1).

⁷ § 67-454.

⁸ *Id.*

⁹ § 67-5291; § 67-5201(22). There is some legal ambiguity as to whether legislative standing committees may review any regulation in effect or only those that have been submitted for review.

¹⁰ § 67-5292.

¹¹ § 67-5221 (1)(c).

¹² § 67-5223 (2&3).

By executive order, agencies undergo periodic reviews of their regulation. As part of this process, agencies must periodically repeal and, if necessary, refile regulations anew, at which point a retrospective analysis is required.¹³ In practice, this analysis is known as a prospective analysis, rather than a retrospective analysis, and is submitted to DFM, along with an Administrative Rules Request Form, when an agency seeks permission to regulate from DFM. The idea appears to be that a forward-looking analysis of an existing regulation being refiled is similar to a retrospective analysis of that same regulation.

Periodic Review

In Idaho law, a sunset provision causes every rule to expire automatically on July 1 of each year.¹⁴ Rules can be extended by statute, but they will continue to face expiration annually on July 1 of each succeeding year unless extended by statute in each such succeeding year.

In addition, Executive Order 2020-01 requires agency review of all rules within a 5-year period according to a schedule established by the Division of Financial Management.¹⁵ The review schedule is staggered across agencies and within agencies if the agency has more than five rule chapters. At the start of this review, agencies must repeal their respective rule chapters. If an agency wishes to renew an existing chapter, it must refile the regulation, and a retrospective analysis must be conducted to determine whether the benefits of the rule justify the costs and whether there are any less restrictive alternatives. The new rule chapter must reduce the overall regulatory burden or remain neutral, as compared to the previous version of the chapter. The agency must also hold at least two public hearings during the rulemaking process to maximize public participation, and it must make the retrospective analysis available for public inspection.

Any interested individual may petition an agency for the amendment or repeal of a regulation, or for a waiver or variance from a specified rule. The agency must either deny the petition in writing, stating its reasons for the denial, or initiate rulemaking proceedings.¹⁶

¹³ IDAHO EXEC. ORDER No. 2020-01 (2020).

¹⁴ § 67-5292.

¹⁵ IDAHO EXEC. ORDER No. 2020-01.

¹⁶ § 67-5230.

Illinois's Administrative Procedures

March 23, 2021

Rulemaking

In Illinois, agency rulemaking is governed by the Illinois Administrative Procedure Act.¹ An agency must provide an opportunity for small businesses, not-for-profit corporations, and small municipalities to participate in the rulemaking process before or during the notice period for proposed rules.² There are several ways in which an agency can satisfy that requirement, including an advance notice of possible rulemaking or a statement that the rule may have an impact on these entities. The agency may also directly notify the affected entities or conduct public hearings concerning the likely impact of the rule.

Proposed regulations in Illinois are initiated when an agency posts a notice, referred to as a *first notice*, and the text of a proposed rulemaking in the *Illinois Register*.³ The notice must allow for a public comment period of at least 45 days, and it must include a reference to the specific statutory authority under which the rule is being proposed; a description of the subjects and issues involved; and the time, place, and way in which individuals may present their views. An agency must hold a public hearing if requested by at least 25 individuals, an association representing at least 100 individuals, the governor, the Joint Committee on Administrative Rules (JCAR), or a unit of local government.⁴ An agency may submit a proposed rule, along with any changes made in response to public comment, to JCAR for review any time after the end of the 45-day minimum public comment period.⁵ This submission to JCAR is called a *second notice*.

Three other types of rulemakings do not require advance public notice: emergency rules, preemptory rules, and required rulemakings, all of which take effect immediately upon filing with the secretary of state. Emergency rules are valid for a maximum of 150 days. If an agency intends that the policy contained in an emergency rule become permanent, it must file a proposed rulemaking that allows for public notice and comment. Agencies cannot adopt the same emergency rule more than once every 24 months unless an exemption is granted in statute.⁶ Preemptory rules are dictated by a higher authority (e.g., federal laws or regulations, court rulings, or collective bargaining agreements) that allows the agency no discretion in how the rule is enforced or implemented. Preemptory rules must be filed within 30 days after the action that prompted their adoption.⁷ Required rulemakings concern the internal organization of agencies, procedures for making public information accessible (including Freedom of Information Act rules), or agencies' own rulemaking procedures.⁸

¹ 5 ILL. COMP. STAT. 100 (2021).

² 5 ILL. COMP. STAT. 100/5-30(b).

³ 5-40(b).

⁴ 5-30(b).

⁵ 5-40(c).

⁶ 5-45.

⁷ 5-50.

⁸ 5-15.

Executive Review

In Illinois, the secretary of state has a significant role in ensuring agency compliance with the codification system. The secretary of state can make changes in the numbering and location of rules and can recommend changes to the sections and headings proposed by agencies, as well as add notes concerning the statutory authority and the dates proposed and adopted.⁹ However, there is no formal executive review of regulations regarding the substance or legality of rulemakings.

Legislative Review

JCAR meets monthly to review all proposed rules to determine whether each rule is within the statutory authority upon which it is based, whether it is in proper form, and whether the proposing agency granted ample notice of its intended action. JCAR must review a proposed rule within 45 days of receiving a second notice, but this period can be extended an additional 45 days by agreement with the agency. During second notice, any changes to the rule must be agreed to by JCAR and the agency. In addition, JCAR may examine whether the agency considered alternatives to the rule and whether the rule is designed to minimize economic impacts on small businesses.¹⁰ JCAR also reviews emergency, preemptory, and required rulemakings after they have been adopted to determine whether the agency used those forms of rulemaking appropriately.

JCAR may take any of four actions concerning a rulemaking:

- Issue a certificate of no objection.
- Issue a recommendation advising the agency to address a problem or concern in the future.
- Issue an objection indicating a serious issue that must be addressed before the rule is adopted.
- Issue a filing prohibition or suspension (defined later) that halts the rulemaking process until the issue is resolved.

If a proposed rulemaking receives no objection, or if it receives a recommendation, the agency may file a final adopted version with the secretary of state, and the rule will take effect upon filing or at a later date specified by the agency. Recently adopted rules are published in the *Illinois Register*, noting any changes since the first notice.

If JCAR objects to a proposed, emergency, preemptory, or required rule,¹¹ the agency may modify the rule to address the objections, withdraw the rule, or refuse to modify or withdraw the rule.¹² Failure of an agency to respond to an objection from JCAR constitutes withdrawal of the proposed rule.¹³ If an agency refuses to modify or withdraw a rule to which JCAR has objected, JCAR may draft and introduce legislation to the General Assembly.¹⁴

⁹ 5-80(b).

¹⁰ 5-110(a).

¹¹ 5-120.

¹² 5-110(c).

¹³ *Id.*

¹⁴ 5-110(g).

In addition, if JCAR determines that a proposed rule constitutes a serious threat to the public interest, safety, or welfare, it may issue a statement to that effect (known as a *filing prohibition*) by a vote of three-fifths of its appointed members.¹⁵ If a filing prohibition is issued, a rule may not be filed with the secretary of state.¹⁶ JCAR can remove a filing prohibition by a simple majority vote if the agency agrees to modify the rulemaking. A filing prohibition that is not lifted within 180 days becomes permanent, unless a member of the General Assembly introduces and the body approves a joint resolution to discontinue the prohibition against the proposed rule.¹⁷

JCAR may take a similar action (called a *suspension*) against emergency, peremptory, or required rules by a three-fifths vote if it determines that the rule constitutes a serious threat to the public interest. A suspension also becomes permanent after 180 days, if not lifted by JCAR or by action of the General Assembly.¹⁸

A proposed rule must complete the JCAR review process and be adopted within a year of its first notice publication; otherwise, it expires and cannot be adopted.¹⁹

Independent Review

Illinois does not have independent agency review of proposed regulations.

Impact Analysis

An economic impact analysis is required when a rule may have an adverse impact on small businesses.²⁰ The economic impact analysis must identify the types and number of small businesses subject to the rule. It must also contain a projection of the costs of compliance, a statement of the probable positive and negative economic effects on affected small businesses, and a description of any less intrusive or less costly methods of achieving the regulation's objective.

More generally, whenever an agency proposes a rule that may have an impact on small businesses, not-for-profit corporations, or small municipalities, the agency must explore methods of reducing the impact of the rule on these entities, including exploring less stringent compliance measures or exemptions for the affected entities.²¹

In addition, the Business Assistance Office may prepare its own impact analysis at its discretion if it believes that an analysis is warranted. Or it may do so at the request of 25 interested individuals, an association representing 100 individuals, the governor, a local unit of government, or JCAR.²²

¹⁵ 5-115(a).

¹⁶ 5-115(b).

¹⁷ 5-115(c).

¹⁸ 5-125.

¹⁹ 5-40(e).

²⁰ 5-30(c).

²¹ 5-30(a).

²² 5-30(c)(4).

Periodic Review

JCAR develops a schedule for the periodic evaluation of all existing regulations in Illinois. Each rule must be reviewed at least once every 5 years.²³ When evaluating rules, JCAR considers the economic and budgetary effects of existing regulations.²⁴

In addition, a rule may specify a date on which it will be scheduled for automatic repeal. The repeal is effective on the date specified, provided that notice is given in the *Illinois Register*.²⁵

²³ 5-130(a).

²⁴ 5-130(b).

²⁵ 5-55.

Indiana's Administrative Procedures

March 25, 2021

Rulemaking

Indiana has traditional, informal notice-and-comment rulemaking.¹ The state does not have a minimum required number of days for comment, but it does have several preproposal requirements (see “Executive Review” for more regarding the regulatory moratorium in place since 2013). Before proposing a regulation, agencies in Indiana must issue a notice of intent to adopt a rule. The notice must include an overview of the intent and scope of the proposed rule and the statutory authority for the rule.² This preproposal notice must be issued at least 28 days before the agency publishes the actual text of the proposed rule, which must accompany a notice of a public hearing.³ After the hearing, the agency may finalize language of the rule for approval by the attorney general and the governor before publication (see “Executive Review”).

If a rule has not been finalized a year after its publication of its notice of intent to adopt a rule, the agency must file a notice with the publisher of administrative rules explaining the delay and stating when the rule is expected to be finalized. After a year, or after the date specified in the notice to the publisher, whichever is later, if the rule is not finalized, a new rulemaking action must be initiated.⁴ Environmental rules in Indiana are not subject to the 1-year deadline.⁵

Executive Review

By a governor's executive order, a regulatory moratorium has been in place since 2013.⁶ The order allows for exemptions for rules, such as those that repeal existing rules or reduce their regulatory impact, those that implement a federal mandate when no waiver is permitted, or those that address matters of emergency or health or safety. Before filing a notice of intent to file a regulation, agencies must obtain a waiver exempting the rule from the moratorium from the Office of Management and Budget.⁷

After their language is finalized, the attorney general reviews regulations for legality,⁸ as well as several other factors.⁹ Rules approved by the attorney general are submitted to the governor for approval.¹⁰ The governor has 15 days to review a regulation (which can be extended

¹ IND. CODE § 4-22 (2021).

² § 4-22-2-23(b).

³ § 4-22-2-23(b); § 4-22-2-24.

⁴ § 4-22-2-25.

⁵ Personal communication with official from state Office of Management and Budget (March 24, 2021).

⁶ IND. EXEC. ORDER NO. 13-03 (2013).

⁷ IND. OFF. OF MGMT. AND BUDGET, RULE APPROVAL PROCESS. Available at <https://www.in.gov/omb/2626.htm> (accessed March 24, 2021).

⁸ § 4-22-2-31.

⁹ § 4-22-2-32.

¹⁰ § 4-22-2-33.

to 30 days) and can approve or disapprove rules without cause. If a governor neither approves nor disapproves a rule in the allocated amount of time, it is deemed approved, and the agency may proceed with it to publication.¹¹

Under Executive Order No. 2-89, agencies submit rules to the State Budget Agency and prepare assessments of the rules' fiscal impact, the accuracy of which is evaluated by the State Budget Agency.¹² As discussed later, the Office of Management and Budget prepares a cost-benefit analysis for all rules.¹³ For rules expected to have a total economic impact of greater than \$500,000 on regulated parties, agencies submit the rule to the Office of Management and Budget,¹⁴ and it has 45 days after receiving the proposed rule to prepare a fiscal impact statement concerning the economic effects of the regulation.¹⁵

Legislative Review

Indiana has several forms of impact analysis that must be submitted, along with any assumptions and data used to support the analysis, to the Legislative Council for review.¹⁶ The council ensures that agencies have achieved the regulatory goal in the least restrictive manner and that they have, to the extent possible, minimized costs to regulated entities, taxpayers, users of government services, and consumers.¹⁷ The council also evaluates several other criteria,¹⁸ including small business impacts, and it reviews rules resubmitted as part of the state's sunset review process.¹⁹

Independent Review

For rules expected to impose requirements or costs on small businesses, a separate economic impact statement must be prepared.²⁰ The agency prepares the economic impact statement; then the rule and economic analysis are submitted to the small business ombudsman for review.²¹ The small business ombudsman is designated by the Indiana Economic Development Corporation,²² which is "not a state agency but an independent instrumentality exercising essential public functions."²³ The small business ombudsman reviews the regulation and its accompanying analysis and submits formal comments to the agency.²⁴ Like any comment on a proposed

¹¹ § 4-22-2-34.

¹² IND. EXEC. ORDER NO. 2-89 (1989).

¹³ § 4-3-22-13.

¹⁴ § 4-22-2-28(c).

¹⁵ § 4-22-2-28(d).

¹⁶ § 4-22-2-28(h)(i).

¹⁷ § 4-22-2-19.5.

¹⁸ § 4-22-2-28(h)(i).

¹⁹ § 4-22-2.5-3.1.

²⁰ § 4-22-2.1-5(a).

²¹ § 4-22-2.1-6.

²² § 5-28-17-6.

²³ § 5-28-3-2(a).

²⁴ § 4-22-2.1-6(a)(1)-(2).

rulemaking, these comments must be given full consideration by the agency.²⁵ However, the agency may adopt any version of the rule consistent with its other statutory mandates, irrespective of recommendations in the ombudsman's comments.²⁶

Impact Analysis

Indiana has several overlapping analytical requirements. First, an agency must prepare an estimate of the fiscal impacts of a rule, as required under Executive Order No. 2-89.²⁷ The State Budget Agency has guidelines for agencies for both fiscal impact analyses and cost-benefit analyses.²⁸

The Office of Management and Budget technically prepares a cost-benefit analysis for all rules.²⁹ However, if the agency determines a rule will have a total estimated economic impact of greater than \$500,000 on all regulated persons, a fiscal impact statement is prepared by the Office of Management and Budget. The agency provides the Office of Management and Budget with the data and assumptions used to estimate the preliminary economic impact (to assess whether the rule meets the \$500,000 threshold). The Office of Management and Budget has 45 days to prepare the analysis after receiving the proposed rule. The analysis evaluates impacts on the state, as well as impacts on all persons regulated by the proposed rule.³⁰ The analysis must include an estimate of the total economic impact of the rule, which means the annual economic impact on all regulated persons, beginning with the first 12-month period after the rule is fully implemented.³¹ The analysis must also determine whether the proposed rule creates an unfunded mandate on a state agency or political subdivision.³²

Another form of analysis that may be required is an economic impact statement. The agency, rather than Office of Management and Budget, prepares this analysis when the agency determines that the rule will impose requirements or costs on small businesses. The economic impact statement must include an estimate of the number of small businesses affected, an estimate of administrative costs for small businesses, an estimate of total economic costs for small businesses, and a regulatory flexibility analysis, which considers whether any less intrusive or less costly alternative methods can achieve the same purpose.³³

Periodic Review

Indiana has a sunset provision for administrative rules, whereby regulations expire 7 years after taking effect (unless an earlier sunset is specified).³⁴ Before agencies readopt an expiring

²⁵ § 4-22-2.1-6(c).

²⁶ § 4-22-2.1-6(c)(1).

²⁷ IND. EXEC. ORDER NO. 2-89 (1989).

²⁸ FIN. MGMT. CIRCULAR 2010-04.

²⁹ § 4-3-22-13.

³⁰ § 4-22-2-28(d)(1)-(2).

³¹ § 4-22-2-28(g)(2).

³² § 4-22-2-28(d)(2).

³³ § 4-22-2.1-5(b).

³⁴ § 4-22-2.5-2.

regulation, they must undergo a review process.³⁵ As part of this review, they consider factors such as whether the rule is still needed, whether less costly or less intrusive alternatives exist, how complex the rule is, whether the rule is duplicative of or conflicts with other laws, and how much technological or economic conditions have changed since the rule was first enacted. The agency must also review the most recent economic impact statement and consider whether factors analyzed in the statement have changed or whether additional alternatives should be considered. Although regulations expire on a staggered basis, an agency may readopt multiple expiring rules all at once in a single rulemaking, unless it receives a request from a member of the public to consider a rule separately.³⁶ The governor also has the ability to delay the expiration of a sunset rule for up to a year.³⁷ Although the agency ultimately has discretion as to whether to allow a rulemaking to expire under the state's sunset process, the Legislative Council reviews readopted regulations, giving particular attention to impacts on small business.³⁸

³⁵ § 4-22-2.5-3.1.

³⁶ § 4-22-2.5-4.

³⁷ § 4-22-2.5-5.

³⁸ § 4-22-2-28(h)(i).

Iowa's Administrative Procedures

May 12, 2021

Rulemaking

Iowa has traditional, informal notice-and-comment rulemaking.¹ The state allows a minimum of 20 days for interested parties to submit comments and to demand an opportunity to make an oral presentation to the agency, if one has not already been scheduled;² however, the state does not require preproposal notices before the issuance of a proposed regulation. Proposed regulations must be adopted within 180 days of either the notice being published or the last day of oral presentations on the proposed rule, whichever is later. If it is not so adopted, the rulemaking process is terminated.³

Executive Review

The governor's office reviews regulations.⁴ A regulation cannot proceed through either phase of the rulemaking process until the governor's office assigns it an identification number for tracking purposes.⁵ If the governor finds that a regulation is "unreasonable, arbitrary, capricious, or otherwise beyond the authority delegated to the agency," the governor may file an objection with the agency and administrative code editor.⁶ From that point, in any proceeding for judicial review or for enforcement of the rule, the agency has the burden of proving that the rule is not unreasonable, arbitrary, capricious, or beyond its authority.⁷ The governor may also rescind a new regulation for any reason within 70 days of its effective date.⁸

Legislative Review

The Administrative Rule Review Committee (ARRC) in Iowa selectively reviews regulations (proposed or already in effect).⁹ The ARRC may object to a regulation by a majority vote of its members.¹⁰ As discussed previously, the burden of proof then rests on the agency in any judicial or enforcement proceeding to establish that the rule is not capricious, unreasonable, arbitrary, or beyond its authority.

¹ IOWA CODE § 17A.4 (2021).

² § 17A.4(1)(b).

³ *Id.*

⁴ § 7.17.

⁵ § 17A.2(4); § 17A.4(1)(a); § 17A.5(1).

⁶ § 17A.4(6)(a).

⁷ *Id.*

⁸ § 17A.4(7).

⁹ § 17A.8(6).

¹⁰ § 17A.4(6)(a).

The ARRC may also delay the effective date of a regulation or a portion of a regulation. Such a delay requires a vote of two-thirds of the committee's members.¹¹ Delayed regulations are referred to the speaker of the House and the president of the Senate, who then refer regulations to their relevant standing committees.¹² (The ARRC may also refer regulations to these entities without any delay of the rule.)¹³ Once a regulation has been referred to a standing committee, the standing committee has 21 days to review it.¹⁴ The standing committee may then introduce a joint resolution disapproving the regulation, to be voted upon by the General Assembly. If the joint resolution is passed with a majority of members from each chamber, the regulation is not effective. If a joint resolution is not passed, the rule may go into effect. The joint resolution does not require the signature of the governor because of a provision in the state constitution.¹⁵ The standing committee may also introduce regular legislation relating to the regulation, which does require the signature of the governor.¹⁶

Independent Review

Iowa does not have independent agency review of new regulations.

Impact Analysis

Iowa requires three forms of impact analysis: a fiscal impact statement, a jobs impact statement, and a regulatory analysis. The fiscal impact statement has an economic trigger and is produced by the regulating agency. The statement is required when a rule incurs "additional annual expenditures of at least one hundred thousand dollars or combined expenditures of at least five hundred thousand dollars within five years by all affected persons, including the agency itself."¹⁷ The statement is submitted to the Legislative Services Agency, which analyzes the statement and writes a summary of it for the ARRC. The rule may not be invalidated on the grounds that the statement is inaccurate or insufficient as long as the agency has made a "good-faith effort."

A jobs impact statement is generally required for all rules, although exceptions can be made for rulemaking done on an expedited basis.¹⁸ The jobs impact statement is prepared by the agency, and when the regulation is proposed, the statement is published in the *Iowa Administrative Bulletin* in the preamble of the regulation (unless the administrative rules coordinator determines this is impractical).¹⁹ The jobs impact statement identifies the purpose of the rule, the statutory authority, the costs of the rule (to both public and private entities), and the

¹¹ § 17A.8(9)(a).

¹² § 17A.8(9)(b).

¹³ § 17A.8(7).

¹⁴ § 17A.8(9)(b).

¹⁵ IOWA CONST. art. III, § 40.

¹⁶ § 17A.8(9)(b).

¹⁷ §17A.4(4).

¹⁸ § 17A.4B(8).

¹⁹ § 17A.4B(4).

rule's impact on employment.²⁰ The statement gives special attention to the manufacturing and agricultural sectors.²¹

Finally, a regulatory analysis, which is a small business impact analysis, is required if, within 32 days of publishing the proposed rule, the administrative rules coordinator or the ARRC requests it.²² The regulatory analysis is also required if at least 25 persons sign a request and each qualifies as representing a small business, or if a written request is made by an organization representing at least 25 such persons.²³ The analysis details who will be affected by the rule, the costs to the agency and effects on state revenues, the costs and benefits of the rule relative to the costs and benefits of inaction, a determination of whether less costly methods exist for achieving the same objective, and a description of alternative methods seriously considered by the agency.²⁴ The agency is legally required to reduce the rule's impact on small businesses by reducing compliance and reporting costs, setting less stringent deadlines, and establishing performance standards (to replace design or operational standards), as long as it is legally permissible and feasible to do so.²⁵

Periodic Review

As discussed previously, the ARRC has the authority to review any existing regulation.²⁶ There is also a process through which any interested person may petition an agency requesting a review.²⁷ More generally, every 5 years, agencies have to conduct a comprehensive review of their regulations to identify and eliminate regulations that are "outdated, redundant, or inconsistent or incompatible with statute or its own rules or those of other agencies."²⁸ As part of this process, agencies are to consult with major stakeholders and constituent groups. The agency provides a summary of the results of its review to the administrative rules coordinator and the ARRC.

²⁰ § 17A.4B(1)(d)(1)–(6).

²¹ § 17A.4B(7).

²² § 17A.4A(1).

²³ *Id.*

²⁴ § 17A.4A(2)(a)(1)–(6).

²⁵ § 17A.4A(2)(b)–(c).

²⁶ § 17A.8(6).

²⁷ § 17A.7(1).

²⁸ § 17A.7(2).

Kansas's Administrative Procedures

March 15, 2021

Rulemaking

Kansas has traditional, informal notice-and-comment rulemaking.¹ The state requires a minimum of 60 days for the public to comment on proposed rules.² Generally, a hearing must be held.³ Agencies must address substantial arguments on the proposed regulation.⁴

Executive Review

Kansas has three forms of executive branch review of its regulations. First, all proposed regulations, as well as their accompanying economic impact statements, are reviewed by the director of the budget.⁵ The review ensures the accuracy and completeness of the agency's economic impact statement. The director makes an independent determination of the implementation and compliance costs expected to be incurred or passed along to businesses, local government, and individuals over any 2-year period. The director also performs an independent analysis of the factors required in the economic impact statement.

Second, the secretary of administration must approve the regulation's organization, style, orthography, and grammar.⁶ Third, all proposed regulations are reviewed by the attorney general to ensure legality.⁷ The attorney general must promptly furnish an opinion as to the legality of the proposed rule. No regulation can be filed unless the attorney general approves it as to its legality.⁸

No regulation may be filed with the secretary of state unless it receives formal approval by the director of the budget, the secretary of administration, and the attorney general.⁹

Legislative Review

All proposed regulations are reviewed by the Joint Committee on Administrative Rules and Regulations during the public comment period.¹⁰ The committee issues a report to the legislature

¹ KAN. STAT. § 77-421 (2021).

² § 77-421(a)(1)(F). Note exceptions for regulations dealing with hunting and fishing and with prior authorization of prescription-only drugs under Medicaid in § 77-421(a)(2).

³ § 77-421(a)(1)(E).

⁴ § 77-421(b)(1).

⁵ § 77-420(a). The sequence of review, per § 77-420(c) and (d), is director of the budget, secretary of administration, attorney general.

⁶ § 77-420(c).

⁷ § 77-420(d).

⁸ § 77-420(e)(3).

⁹ § 77-420(e).

¹⁰ § 77-436(c).

indicating any concerns about the proposed regulation.¹¹ The committee may introduce legislation for consideration by the full chamber,¹² but it has no veto authority over regulations.¹³ Such legislation would be considered like any other bill before the legislature.

Independent Review

Kansas has no independent review of new regulations.

Impact Analysis

Every new or amended regulation must be accompanied by an economic impact statement.¹⁴ The impact statement must describe the intended goal of the regulation and its costs and benefits and must state whether the proposed rule is mandated by federal law or is required as part of a federally subsidized program.¹⁵ In addition, the impact statement must consider the extent to which the regulation will restrict business activity and growth, identify which businesses would be directly affected (explained with a distributional analysis), and describe the measures taken by the agency to minimize costs to business and economic development.¹⁶ In addition, the agency must produce a dollar estimate of the total implementation costs of the regulation and an assessment of whether that figure exceeds \$3 million over any 2-year period.¹⁷ If a regulation is deemed to have costs above this threshold, the agency must hold a public hearing to ascertain whether the costs are necessary to achieve the legislative intent.¹⁸ The director of the budget must also issue a report to the Joint Committee on Administrative Rules and Regulations when a regulation exceeds that threshold.¹⁹

Kansas also requires an environmental benefit statement for environmental regulations.²⁰ This statement must summarize research indicating the level of risk to public health or the environment being removed or controlled by the regulation. The statement must also detail the specific contaminants that are being controlled and the level at which the contaminants are considered harmful according to current research. The environmental impact statement must further include information about costs, such as the capital and annual costs of compliance, the estimated costs of paperwork, and the costs of inaction, and it must indicate who will bear the

¹¹ § 77-436(d).

¹² § 77-436(c), (e).

¹³ Starting in 1974, the legislature did have the authority to modify and approve or reject any regulation, but this authority was found to be unconstitutional in *State ex rel. Stephan v. Kansas House of Representatives*, 236 Kan. 45, 687 P.2d 622 (1984). See Briefing Book article J-1, “Administrative Rule and Regulation Legislative Oversight,” available at <http://www.kslegresearch.org/KLRD-web/Briefing-Book-2021.html>.

¹⁴ § 77-416(a).

¹⁵ § 77-416(b)(1)(A)–(B).

¹⁶ § 77-416(b)(1)(C).

¹⁷ § 77-416(b)(1)(C)(vi).

¹⁸ § 77-420(a)(3)(A).

¹⁹ § 77-420(b).

²⁰ § 77-416(d).

costs.²¹ The statement must also include a detailed statement of the data and methodology used in estimating the costs in the statement.²²

Periodic Review

Kansas has no requirements for periodic review of regulations.

²¹ § 77-416(e).

²² § 77-416(e)(4).

Kentucky's Administrative Procedures

January 25, 2021

Rulemaking

Kentucky has traditional, informal notice-and-comment rulemaking.¹ The state requires that the comment period run from the date the regulation is filed until 11:59 p.m. on the last day of the month following the month in which the regulation is published.² There are no preproposal notice requirements for regulations. Generally, however, a hearing must be held.³ When a regulation is filed, the agency provides a list of statutes that give statutory authority for the regulation.⁴

Executive Review

The governor reviews some regulations, including when the relevant subcommittee reviewing the regulation finds a deficiency.⁵ At that point, the governor must issue a determination to the Legislative Research Commission and the regulations compiler stating whether the regulation will be withdrawn, be amended, or become effective despite the finding of deficiency.⁶ The governor must sign all emergency regulations also.⁷ Historically, in addition to reviewing deficient regulations, each governor has determined to what extent their office reviews regulations before filing.⁸

Legislative Review

The Administrative Regulation Review Subcommittee reviews all regulations after the comment period process has been completed.⁹ After holding a public meeting,¹⁰ the subcommittee makes a recommendation to the Legislative Research Commission, and findings are published in the *Administrative Register of Kentucky*.¹¹ Regulations are then referred to the relevant subcommittee in the House or Senate with subject-matter jurisdiction,¹² which then has 90 days to review a regulation, during which time the committee may hold a public hearing.¹³ Recommendations

¹ KY. REV. STAT. § 13A.270 (2021).

² § 13A.270(1)(c).

³ § 13A.270(1)(a).

⁴ § 13A.220(4)(e).

⁵ § 13A-330.

⁶ § 13A-330(1)(b).

⁷ § 13A.190(10).

⁸ Personal communication with a Kentucky administrative regulations compiler (January 25, 2021).

⁹ § 13A.290(1).

¹⁰ § 13A.290(1)–(2).

¹¹ § 13A.290(5).

¹² § 13A.290(6).

¹³ § 13A.290(7).

made by all of these committees are nonbinding.¹⁴ That said, the committees are empowered to find regulations deficient upon a majority vote of their members.¹⁵ A deficiency finding triggers the executive review by the governor discussed previously. A regulation is not considered adopted or effective unless it has completed the legislative review process.¹⁶ The standing committees with subject-matter jurisdiction are restricted to the 90-day review period. However, the regulating agency may request a deferral.¹⁷ The Administrative Regulation Review Subcommittee can defer consideration of regulations up to 12 times,¹⁸ after which point the regulation expires.¹⁹

Independent Review

Kentucky has no independent review of new regulations.

Impact Analysis

Kentucky's administrative procedures have requirements for three forms of analysis: a regulatory impact analysis, a fiscal note, and a federal mandate analysis. The regulatory impact analysis is required for every rulemaking²⁰ and must include a description of the need for the regulation, as well as an explanation of how the regulation conforms with authorizing statutes.²¹ It must also include a description of the costs and benefits of the rulemaking to individuals, businesses, and state and local governments,²² as well as a description of the entities affected by the regulation and the costs to the government agency to implement the rule.²³

Agencies must also consider how their rules affect state or local governments, including cities, counties, fire departments, and school districts.²⁴ The fiscal note focuses on costs and cost savings to these entities.²⁵ The fiscal note must include an estimate of the impact of the administrative regulation on the expenditures and revenues of state or local governments for the first full year that the administrative regulation will be in effect.²⁶

Agencies prepare both the regulatory impact analysis and the fiscal note. However, the Legislative Research Commission reviews the regulatory impact analysis and may request

¹⁴ § 13A.290(8).

¹⁵ § 13A.290(10)(b); § 13A.290(9)(c)(2).

¹⁶ § 13A.010(3); § 13A.010(6).

¹⁷ § 13A.300(2).

¹⁸ § 13A.300(2)(f).

¹⁹ § 13A.315(1)(d).

²⁰ § 13A.240.

²¹ *Id.*

²² § 13A.240(1)(f)(2)–(3).

²³ § 13A.240(1)(e); § 13A.240(1)(g).

²⁴ § 13A.250.

²⁵ § 13A.250(1).

²⁶ § 13A.250.

further information or data from the agency.²⁷ The agency may also request the advice and assistance of the Legislative Research Commission in the preparation of the fiscal note.²⁸

When promulgating regulations and amending existing administrative regulations in response to a federal mandate, an administrative agency must also produce a federal mandate analysis comparing proposed state regulatory standards to federal standards.²⁹

Periodic Review

The Administrative Regulation Review Subcommittee also has the authority to review existing regulations as it sees fit.³⁰ Moreover, Kentucky also has a 7-year sunset clause attached to regulations.³¹ Agencies are responsible for submitting regulations to a certification process if they want those regulations to remain in effect.³² As part of this process, the agency must review the regulation to ensure compliance with current law³³ and issue a certification letter to the regulations compiler³⁴ explaining why the regulation will be amended or will remain in effect without amendment.³⁵ The letter must include a statement in support of the decision.³⁶ If the regulation is to be amended, the agency has 18 months to do so.³⁷ If a letter stating that a regulation will remain in effect without amendment is filed before the regulation expires according to the last effective date, the sunset date resets to 7 years after the date the certification letter was received.³⁸

²⁷ § 13A.240(2).

²⁸ § 13A.250(3).

²⁹ § 13A.245.

³⁰ § 13A.290(1)(b)(3).

³¹ § 13A.3102.

³² § 13A.3104.

³³ § 13A.3104(1)(a).

³⁴ § 13A.3104(1)(b).

³⁵ § 13A.3104(2)(d).

³⁶ § 13A.3104(2)(e).

³⁷ § 13A.3104(3)(a).

³⁸ § 13A.3104(4)(b).

Louisiana's Administrative Procedures

March 8, 2021

Rulemaking

Louisiana has informal notice-and-comment rulemaking.¹ The state requires agencies to give notice of intended action at least 90 days before taking action on a rule.² There is no formal legal requirement for a minimum comment period, though in practice a minimum of 20 days are allotted for public review or comment.³ Some specific types of regulations, such as regulations for occupational licensing or environmental regulations,⁴ have requirements for hearings. But there is no general agency requirement to hold a hearing. There is no requirement for preproposal notices. Agencies must disclose the statutory authority under which they are issuing the rule.⁵ Rules cannot be finalized if more than 12 months has elapsed since the notice of intent was published in the *Louisiana Register*.⁶

Executive Review

Through an executive order, the governor may suspend or veto any regulation within 30 days of its adoption.⁷ There are exemptions for tax rules and several other categories of regulations.⁸ The governor also reviews regulations that have been deemed unacceptable by either the House or the Senate oversight subcommittee with jurisdiction over the regulation.⁹ The governor has 10 calendar days to review such regulations. If the governor does not act, they signify approval of the actions of the legislature through omission, and the proposed rule cannot be adopted. The agency may not propose a similar regulation for at least 4 months thereafter.¹⁰ The Office of Attorney General plays a role as the recipient of emergency regulations and oversees rulemaking for some boards and commissions.¹¹

¹ LA. REV. STAT. tit. 49, § 953 (2021).

² § 953(1)(a).

³ Personal communication with an official from the *Louisiana Register* (March 8, 2021). Based on § 953(A)(2)(a).

⁴ For occupational licensing regulations, see LA. REV. STAT. tit. 37, §§ 41–47 (2021).

⁵ LA. REV. STAT. tit. 49, § 953(1)(a)(vi) (2021).

⁶ § 968(H).

⁷ § 970(A).

⁸ § 967.

⁹ § 968(F)–(G).

¹⁰ § 968(G).

¹¹ § 953(B); personal communication with an official from the *Louisiana Register* (March 8, 2021).

Legislative Review

All rules are submitted in reports filed with the relevant standing committees in the legislature.¹² The chair of the standing committee may form an oversight subcommittee to review the report and potentially hold hearings.¹³ However, in practice, the review is usually conducted at the full committee level.¹⁴ Reports include a copy of the proposed rule, a summary of the rule, a citation to the enabling legislation, a description of the need for the rule, and a statement of the fiscal and economic impacts approved by the Legislative Fiscal Office.¹⁵

Each oversight committee may hold an oversight hearing no earlier than 5 days and no later than 30 days after the day the agency turns in its summary report. During the oversight hearing, the committee will make a determination of all of the following:

- Whether the rule change conforms with the intent and scope of the enabling legislation purporting to authorize its adoption
- Whether the rule change conforms with, and is not contrary to, all applicable provisions of law and of the state constitution
- Whether the rule is advisable or has relative merit
- Whether the rule change is acceptable or unacceptable to the oversight subcommittee¹⁶

The oversight subcommittees do not have veto power. They do have wide discretion to deem a regulation acceptable or unacceptable.¹⁷ If they find a regulation unacceptable, the rule report goes to the governor for further review, as specified previously.¹⁸ If the subcommittee fails to conduct a hearing or make a determination regarding a rule, the rule may go into effect.¹⁹ However, the Legislative Fiscal Office must sign off on fiscal statements.²⁰ The legislature may also introduce a concurrent resolution to suspend, amend, or repeal any rule; body of rules; or fee increase, decrease, or repeal.²¹ There is no limitation on the length of time the legislature may choose to suspend an administrative rule. Concurrent resolutions do not require the governor's signature, only those of the presiding officers of the legislature.²²

¹² § 968(B).

¹³ § 968(D)(2)(b).

¹⁴ § 968(N); personal communication with an official from the *Louisiana Register* (March 8, 2021).

¹⁵ § 968(C)(1)–(5).

¹⁶ Personal communication with a senior attorney for the Louisiana Senate (March 8, 2021).

¹⁷ § 968(D)(3)(d).

¹⁸ § 968(F)–(G).

¹⁹ § 968(E)(2).

²⁰ § 968(C)(5); § 953(3)(A)(a)–(b).

²¹ § 969.

²² Personal communication with a senior attorney for the Louisiana Senate (March 8, 2021).

Independent Review

Louisiana has an Occupational Licensing Review Commission, which reviews occupational licensing regulations.²³ Rules are reviewed to ensure that they (a) increase economic opportunities for citizens by promoting competition and encouraging innovation and job growth and (b) use the least restrictive regulation necessary to protect consumers from present or potential harm.²⁴ In the event that the commission disapproves a regulation, the occupational licensing board that proposed the rule may not move forward with promulgation of the regulation until such time as the occupational regulation is approved by the commission.²⁵

Impact Analysis

As part of the rulemaking report, regulating agencies must produce two estimates—one of the fiscal impact and one of the economic impact of the regulation—both of which must be approved by the Legislative Fiscal Office.²⁶ The economic impact statement must include the estimated number of the small businesses affected, the estimated costs required for compliance with the proposed rule, the probable impact on affected small businesses, and any less intrusive or less costly alternative methods.²⁷ For every rule, agencies must also prepare a regulatory flexibility analysis, which focuses on creating exemptions or identifying less costly options for small businesses.²⁸

Agencies are also required to state in writing the impact of rules on family formation, stability, and autonomy in the form of a family impact statement.²⁹ A poverty impact statement is also required; in that statement, agencies consider the impact of such rules on child, individual, or family poverty.³⁰

Periodic Review

Louisiana maintains open public review of all agency regulations. An interested person may petition an agency for the adoption, amendment, or repeal of a rule.³¹ Within 90 days of the submission of a petition, the agency must either deny the petition or initiate rulemaking proceedings. Any petition for rulemaking must be included in the agency's annual rule report, which is reviewed by the legislature.³² This procedure is part of an annual rulemaking review, which is performed by the legislature during regular session.³³

²³ LA. REV. STAT. tit. 37, §§ 41–47 (2021).

²⁴ § 44.

²⁵ § 44(3)(b)(iv).

²⁶ LA. REV. STAT. tit. 49, § 953(A)(3)(a)–(b) (2021).

²⁷ § 965.5.

²⁸ § 965.6.

²⁹ § 972.

³⁰ § 973.

³¹ § 953(C)(1)

³² § 968(K)(2).

³³ § 968(K)–(N).

Agencies must also conduct a public hearing once every 6 years for the purpose of allowing interested persons the opportunity to comment on rules they believe to be contrary to law, outdated, unnecessary, overcomplex, or burdensome.³⁴

³⁴ § 953(C)(2)(a).

Maine's Administrative Procedures

January 28, 2021

Rulemaking

Maine has traditional, informal notice-and-comment rulemaking.¹ The agency may not adopt a final rule until 30 days or more after the proposal is published.² When adopting the rule, the agency must identify the underlying federal or state law that serves as the legal basis for the rule.³ There is no requirement for preproposal notices or for the regulating agency to hold a hearing, except for rules defined in statute as major substantive rules.⁴ If not adopted in final form, proposed rules expire 120 days after views or arguments are submitted to the agency for consideration.⁵

Executive Review

The attorney general in Maine reviews adopted rule filings for legality. If not approved by the attorney general within 150 days of comments being submitted, the regulation expires.⁶

Legislative Review

Rules in Maine fall into two categories: (a) routine technical rules and (b) major substantive rules.⁷ Routine technical rules are mostly procedural rules establishing standards and procedures for the conduct of business with an agency.⁸ Major substantive rules require significant agency discretion in drafting, or they are expected to result in a significant increase in the cost of doing business, create serious burdens for local governments, or have several other economic factors.⁹ The vast majority of annual rule filings are routine technical rules.

Major substantive rules are subject to review by the legislative standing committee with jurisdiction in the relevant area.¹⁰ The committee reviews materials submitted to it by the agency,¹¹ including an economic impact statement, and it may also choose to hold a hearing.¹² The committee's review is centered on a number of criteria, most of which relate to the legality

¹ ME. REV. STAT. tit. 5, § 8052 (2021).

² § 8052(5)(B).

³ § 8052(8).

⁴ § 8052(1).

⁵ § 8052(7)(A).

⁶ § 8052(7)(B).

⁷ § 8071(2)(B).

⁸ § 8071(2)(A).

⁹ § 8071(2)(B)(2).

¹⁰ § 8072.

¹¹ § 8072(2).

¹² § 8072(4).

of the rule or the degree to which it conforms with legislative intent,¹³ but the review also includes some economic considerations.¹⁴

The committee concludes its review by making a recommendation to the full legislature that the legislature authorize the rule in whole or in part, authorize the rule with amendments, or disapprove the regulation.¹⁵ The agency may move forward with the regulation if the full legislature fails to act on the rule.¹⁶ However, rules submitted outside of the rule acceptance period may not be finalized until the legislature has had an opportunity to review them.¹⁷ If the legislature decides to use a legislative instrument to expressly authorize or disapprove a rule, it must pass both chambers, and the governor's signature is required.

Independent Review

Maine has no independent review of regulations.

Impact Analysis

Maine has three forms of impact analysis, each of which is produced by the regulating agency. First, the agency must produce an estimate of the fiscal impact accompanying every regulation.¹⁸ The estimate, called a *fiscal impact note*, must describe the estimated cost to municipalities and counties. Additionally, at the time they are preparing rules, agencies are required to put together a fact sheet summarizing information about the rule, including information about fiscal impacts.¹⁹ For regulations estimated to have a fiscal impact greater than \$1 million, additional information is required in the fact sheet, including information about economic impacts and benefits of the rule that cannot be quantified in monetary terms, as well as a description of the major individuals, interest groups, and businesses affected by the rule.²⁰

Second, an economic impact statement is required for any rulemakings with an impact on small businesses.²¹ The statement identifies the type and number of small businesses affected, compliance costs associated with the rule, and any less intrusive alternatives the agency may have considered.²²

Finally, the agency also has the option of performing a cost-benefit analysis.²³

Periodic Review

Maine has no process for periodic review of regulations.

¹³ *Id.*

¹⁴ § 8072(4)(H).

¹⁵ § 8072(5).

¹⁶ § 8072(11).

¹⁷ § 8072(11)(B).

¹⁸ § 8063.

¹⁹ § 8057-A(1).

²⁰ § 8057-A(2).

²¹ § 8052(5-A).

²² § 8052(5-A)(1)–(4).

²³ § 8063-A.

Maryland's Administrative Procedures

February 15, 2021

Rulemaking

Maryland has traditional, informal notice-and-comment rulemaking.¹ The agency must wait 45 days after the publication of a proposed rule in the *Maryland Register* before finalizing a regulation. The promulgating agency must permit public comment for at least 30 days of the 45-day period.² A regulation is not effective unless it contains a citation of the statutory authority for the regulation.³

Executive Review

Maryland has several forms of executive branch review of its regulations. First, the attorney general reviews regulations for legality.⁴ The regulation may not be adopted and is not effective unless approved by the attorney general (some specific commissions have their own unit counsels who may make these determinations). The governor also has some review responsibilities when the relevant legislative committee votes to oppose a regulation (see “Legislative Review”).⁵

Maryland also has an Advisory Council on the Impact of Regulations on Small Businesses, which exists within the Department of Commerce, an executive branch department. The council includes members of the public, members of the legislative branch, and members of the executive branch. In that sense, the council could be considered an independent agency.⁶ However, since it is within the Department of Commerce, its review of regulations is considered a function of the executive branch here.

The Advisory Council on the Impact of Regulations on Small Businesses examines whether the regulation in question has a significant impact on small businesses and provides an estimate of the cost to small businesses.⁷ If a proposed regulation establishes a standard that is more restrictive than the standard established under federal law, the council must identify alternative approaches that may be less restrictive and must provide an estimate of the benefits of the rule. If the council finds that a proposed regulation has a significant impact on small businesses, it must submit a written report of its findings to the Joint Committee on Administrative, Executive, and Legislative Review and the Department of Legislative Services.⁸

¹ MD. CODE ANN., STATE GOV'T § 10-110 (2021).

² § 10-111(a)(3).

³ § 10-106.

⁴ § 10-107.

⁵ § 10-111.1 and 10-136.

⁶ MD. CODE ANN., ECON. DEV. § 3-505 (2021).

⁷ § 3-505(a)(1-3).

⁸ § 3-505(d).

Legislative Review

The promulgating agency must submit proposed regulations, as well as certain accompanying materials (for example, see the small business impacts discussed later), to the Joint Committee on Administrative, Executive, and Legislative Review and to the Department of Legislative Services.⁹ The committee is not required to take any action with respect to a proposed regulation that has been submitted, nor does failure by the committee to approve or disapprove the proposed regulation mean that the committee approves or disapproves the proposed regulation. The committee is supposed to review the regulation with the 45-day time period allotted between when the regulation is published in the *Maryland Register* and when it can be finalized. The committee can delay the implementation of the regulation, however, for between 30 and 105 days, depending on a schedule determined by the regulating agency.¹⁰

The committee's review focuses mainly on whether the rule conforms with the statutory authority of the regulating agency and whether it is in line with legislative intent.¹¹ The committee can vote to oppose a regulation (in which case the governor makes the final decision as to whether to withdraw the regulation), amend it, or adopt it without change.¹² The committee's disapproval, in this sense, is nonbinding. However, the governor must give approval for a regulation before it can move forward to adoption if it has been disapproved by the committee.¹³

Independent Review

See the paragraph on review by the Advisory Council on the Impact of Regulations on Small Businesses, discussed previously in "Executive Review."

Impact Analysis

Maryland has a number of different impact analysis requirements. First, an economic impact statement, prepared by the agency, is required for all rules (except emergency regulations).¹⁴ The statement must include the estimated economic impact on revenues and expenditures of units of the state and local governments and groups, such as consumer, industry, taxpayer, or trade groups.¹⁵ It must also include a statement of purpose.¹⁶

⁹ MD. CODE ANN., STATE GOV'T § 10-110(d) (2021).

¹⁰ § 10-111(a)(2)(ii).

¹¹ § 10-111.1(b)(1)–(2).

¹² § 10-111.1(c)(2)–(3).

¹³ § 10-111.1(d).

¹⁴ § 10-112.

¹⁵ § 10-112(a)(3)(i).

¹⁶ § 10-112(a)(3)(ii).

Regulations that increase or decrease a fee for a license to practice any business activity or profession have to be accompanied by a written explanation.¹⁷ A fiscal impact statement is required for emergency regulations.¹⁸

Finally, the agency is required to conduct an analysis of the impacts of its rule on small businesses.¹⁹ The findings of that analysis, in addition to any findings made by the Advisory Council on the Impact of Regulations on Small Businesses, are submitted to the Joint Committee on Administrative, Executive, and Legislative Review and the Department of Legislative Services. Each analysis is produced by the regulating agency, except for the advisory council's small business impact statement, which is produced by the advisory council and its staff.²⁰

Periodic Review

Every 8 years, the governor is required to issue an executive order directing agencies to conduct a review and evaluation of their regulations.²¹ Agencies are required to produce a work plan explaining their procedures for reviewing regulations, for ensuring the participation of stakeholders, and for gathering and reviewing scientific information related to the regulations.²² The main criteria evaluated as part of the reviews are whether regulations continue to be necessary for the public interest; continue to be supported by statutory authority and judicial opinions; are obsolete or otherwise are appropriate for amendment or repeal; and assist the executive branch in being accountable and responsive to the public interest. Agencies must also ensure that the evaluation takes place in a timely and orderly manner.²³ The end result of the review is a report, produced by the agency, describing information that was collected as part of the review and containing a summary of rulemaking actions the agency is taking as a result.²⁴ The report is submitted to the Joint Committee on Administrative, Executive, and Legislative Review, which can provide comments to the agency. The committee either deems the report approved, or if there is a disagreement between the committee and the agency, the governor can approve the report or require changes from the agency before the report is approved.²⁵

¹⁷ § 10-110(d).

¹⁸ § 10-111 (b)–(c).

¹⁹ § 10-110(d).

²⁰ MD. CODE ANN., ECON. DEV. § 3-505 and § 3-506 (2021).

²¹ MD. CODE ANN., STATE GOV'T § 10-133 (2021).

²² § 10-134.

²³ § 10-132.

²⁴ § 10-135.

²⁵ § 10-136.

Massachusetts's Administrative Procedures

December 20, 2020

Rulemaking

Massachusetts has traditional, informal notice-and-comment rulemaking.¹ Agencies must publish a notice of proposed rulemaking at least 21 days before the date of a public hearing. The notice must refer to the statutory authority under which the action is being proposed.

Executive Review

Massachusetts does not have any executive review of regulations written in statute. However, there is an executive review process in place through executive orders.² Agencies are required to produce a business/competitiveness impact statement that includes a competitiveness review and assesses disruptive economic impacts on small businesses (see requirements later in “Impact Analysis”). The rule and impact statement are submitted to the relevant cabinet secretary for approval, as well as to the secretary of administration and finance.

Legislative Review

Massachusetts does not have any legislative review of regulations.

Independent Review

Massachusetts does not have any independent agency review of regulations.

Impact Analysis

In Massachusetts, agencies must estimate regulations' fiscal impact, as well as their impact on small businesses.³ For fiscal impact, the agency must evaluate effects on both the public and the private sectors for the first and second year, with a projection over the first 5-year period.

The small business impact statement evaluates features such as less stringent compliance or reporting requirements for small businesses and alternative regulatory methods that mitigate adverse impacts on small businesses. By executive order, the statement must also identify the need for the regulation, assess alternatives, conduct a cost–benefit analysis, and ensure that a rule's costs do not exceed the benefits.⁴

¹ MASS. GEN. LAWS ch. 30A, § 2 (2020).

² MASS. EXEC. ORDER NO. 562 (2015).

³ 30A, § 5.

⁴ MASS. EXEC. ORDER NO. 562 (2015).

Periodic Review

Regulations in Massachusetts are reviewed at least once every 12 years after being finalized to ensure that they minimize economic impacts on small businesses.⁵ The review considers factors similar to the requirements under federal periodic review under the Regulatory Flexibility Act of 1980, which is a federal statute that requires agencies to conduct reviews of their rules to assess impacts on small businesses.⁶ Reviews in Massachusetts consider factors such as the continuing need for the rule or regulation; the nature of complaints or comments received from the public concerning the rule or regulation; the complexity of the rule or regulation; the extent to which the rule or regulation conflicts with, overlaps, or duplicates other federal, state, or local rules and regulations; the length of time since the rule or regulation has been enacted, changed, amended, or modified; and the degree to which technology, economic conditions, or other factors have changed in the areas affected by the rule or regulation.

On a few occasions, Massachusetts governors have ordered agencies to sunset all their regulations and reinstate only those that meet certain desirable criteria. These reviews have been mandated through executive orders.⁷

An interested person in Massachusetts may also petition an agency requesting the adoption, amendment, or repeal of any regulation.⁸

⁵ 30A, § 5A.

⁶ 5 U.S.C. § 610.

⁷ See MASS. EXEC. ORDER NO. 384 (1996); MASS. EXEC. ORDER NO. 562 (2015).

⁸ 30A, § 4.

Michigan's Administrative Procedures

March 22, 2021

Rulemaking

Michigan has a process that resembles traditional, informal notice-and-comment rulemaking, but we do not classify it as such because of the lack of a statutory requirement for a formal comment period.¹ Before initiating any changes or additions to rules, an agency must file a request for rulemaking with the Michigan Office of Administrative Hearings and Rules (MOAHR).² MOAHR is within the Department of Licensing and Regulatory Affairs.³ The request for rulemaking must include the state or federal basis for the rule, statutory or regulatory; the problem the rule intends to address; and the significance of the problem. An agency cannot proceed with a rulemaking until MOAHR has approved the request for rulemaking.⁴

Once approval is granted, the agency must hold a hearing related to the rulemaking. It publishes a notice in newspapers available in the state, as well as in the *Michigan Register*.⁵ The notice must be published a minimum of 10 days prior to the hearing and not more than 60 days before it.⁶ The notice must also reference the statutory authority under which the action is being proposed.⁷ There is no required comment period, but the public can present data, views, questions, and arguments at the hearing.⁸

Executive Review

As discussed previously, MOAHR reviews requests from agencies to promulgate new rulemakings. MOAHR reviews proposed rules, coordinates the processing of rules across agencies, works with agencies to streamline the rulemaking process, and considers efforts designed to improve public access to the rulemaking process.⁹ The office's responsibilities are set

¹ MICH. COMP. LAWS § 24.231 (2021).

² § 24.239(1).

³ § 445.2031.

⁴ § 24.239(3).

⁵ § 24.242(1); § 24.242(1)(3).

⁶ § 24.242(1).

⁷ § 24.241(2)(a).

⁸ § 24.241(1).

⁹ § 24.234(2).

forth in Executive Reorganization Order No. 1995-5,¹⁰ which has been codified in statute.¹¹ That executive order sets up a regulatory review process, which MOAHR carries out; it also imposes certain economic analysis requirements on agencies.

The governor also plays a role by signing or vetoing resolutions that the legislature may adopt disapproving of a particular regulation.

Legislative Review

Agencies submit copies of their proposed rules to the Legislative Service Bureau, which issues a formal certification indicating that the proposed rule is proper as to all matters of form, classification, and arrangement.¹² The Senate and House fiscal agencies receive a copy of the rule and the regulatory impact statement and analyze proposed rules for possible fiscal implications that would result in additional appropriations. These agencies report their findings to the Senate and House appropriations committees.¹³ Legislative standing committees can also decide to hold hearings on rules that fall under their jurisdiction.¹⁴

The Joint Committee on Administrative Rules may approve rules, object to them, or propose changes to them.¹⁵ If the committee files an objection, bills of disapproval are introduced for review by both houses of the legislature.¹⁶ If the legislation is defeated in either house, the rule can take effect. If the legislation is enacted by the legislature, the rule cannot take effect, but the governor can override the legislature's objection, in which case the rule may be filed.¹⁷

¹⁰ A number of executive orders have shifted regulatory review responsibilities to different executive branch offices over the years. For example, Executive Order No. 1995-6 (1995) transferred the rulemaking duties of the attorney general's office to the newly created Office of Regulatory Reform within the Executive Office of the governor. Executive Order No. 2005-1 (2005) transferred the functions of the Office of Regulatory Reform to the newly created State Office of Administrative Hearings and Rules. Executive Order No. 2011-5 (2011) created the Office of Regulatory Reinvention within the Department of Licensing and Regulatory Affairs and transferred all rulemaking functions from State Office of Administrative Hearings and Rules to the Office of Regulatory Reinvention. Executive Order No. 2016-4 (2016) transferred the Office of Regulatory Reinvention and its functions to the newly created Office of Performance and Transformation within the Department of Technology, Management, and Budget. Executive Order No. 2019-6 (2019) transferred the Office of Regulatory Reinvention's functions to MOAHR. The Administrative Rules Division is the division within MOAHR that handles all rulemaking functions. Most of the executive orders indicate that any reference to previous office names should now be considered a reference to the current office because their functions remain the same. However, the Michigan Administrative Procedures Act of 1969 has not been amended each time the office overseeing the rule promulgation process has been moved between departments or renamed. The authors are grateful to an official from the Administrative Rules Division for explaining the discrepancies in the names of offices that exist between Administrative Procedures Act chapters and actual state review processes.

¹¹ § 24.234(1); MICH. COMP. LAWS § 10.151 (2021).

¹² § 24.245(1).

¹³ § 24.245(5).

¹⁴ § 24.250.

¹⁵ § 24.245a(1)

¹⁶ § 24.245a(4).

¹⁷ § 24.245a(8)–(9).

Independent Review

Michigan does not have any independent agency review of regulations.

Impact Analysis

Regulatory agencies in Michigan are required to produce a regulatory impact statement. The regulatory impact statement has a very extensive list of elements that it must contain.¹⁸ These elements include, among other things, the following:

- The behavior the rule is designed to alter
- The harm the rule is designed to address
- The change in the frequency of the targeted behavior expected from the rule
- The businesses, groups, or individuals who will be directly affected by, bear the cost of, or directly benefit from the rule
- Reasonable alternatives to regulation under the proposed rule that would achieve the same or similar goals
- The feasibility of establishing market-based mechanisms to address the problem that the rule is addressing
- The estimated cost of rule on the agency promulgating the rule
- The estimated statewide compliance costs of the proposed rule on individuals
- Any disproportionate impact the proposed rule may have on small businesses
- The estimated primary and direct benefits of the rule
- Estimated cost reductions to businesses, individuals, groups of individuals, or governmental units as a result of the rule
- Estimated secondary or indirect benefits of the rule
- The sources the agency relied on in compiling the regulatory impact statement, including the methodology used to determine the existence and extent of the impact of a proposed rule and a cost–benefit analysis of the proposed rule

The regulatory impact statement is reviewed by MOAHR, which, among other functions, ensures that the agency designs the rule to achieve the regulatory objective in the most cost-effective manner allowed by law.¹⁹

When an agency proposes a rule that will have a disproportionate impact on small businesses because of the size of those businesses, the agency must consider exempting small businesses and, if not, proposing the rule in a way that reduces its economic impact on small businesses.²⁰

Periodic Review

Each agency submits to MOAHR a program to review annually its existing rules to determine whether any should be modified or eliminated.²¹ The agency must identify any legislative

¹⁸ § 24.245(3).

¹⁹ § 10.151(7).

²⁰ § 24.240.

²¹ § 10.151(12).

mandates that require the agency to promulgate rules that the agency believes are either unnecessary or outdated. Members of the public may request that MOAHR review existing rules that they consider duplicative, unnecessarily burdensome, or no longer necessary.²²

²² § 10.151(14).

Minnesota's Administrative Procedures

May 21, 2021

Rulemaking

A preproposal notice is required before an agency publishes a notice of intent to adopt a rulemaking.¹ At least 60 days before the publication of a hearing notice or notice of intent to adopt a rulemaking, the agency must solicit comments from the public on the subject of the possible rulemaking. The notice must include a description of the subject matter of the proposal and the types of groups and individuals likely to be affected.

Minnesota has a unique form of rulemaking that resembles formal rulemaking at the federal level.² The state requires a 30-day comment period on proposed rules.³ Notices of proposed adoptions must include a citation to the specific statutory authority for the proposed rule.⁴ If, during the comment period, 25 or more persons submit a written request for a public hearing, the agency must hold such a hearing, and hearings are overseen by an administrative law judge.⁵ Even if there is no hearing, the agency eventually submits the record for the rulemaking to an administrative law judge.⁶ Within 14 days, the administrative law judge then approves or disapproves the rule, considering the rule's legality, the need for the rule, and the reasonableness of the rule.⁷

When a hearing is conducted, the agency must submit into the record a statement of need and reasonableness and other documents in support of the proposed rule. The agency may also present oral evidence, and interested persons may present written or oral evidence. The administrative law judge overseeing the hearing must allow the questioning of agency representatives or witnesses. Additional written material may be submitted for 5 days after the hearing and, at the judge's discretion, for up to 20 days.⁸ After the hearing, the administrative law judge prepares a report.⁹ If the agency has not submitted its notice of adoption to the *Minnesota State Register* within 180 days of the issuance of the administrative law judge's report, the rule is automatically withdrawn.¹⁰

A rule must be disapproved by the judge or chief judge if all of the relevant procedural requirements were not followed, if the rule is not rationally related to the agency's objective, or if the record does not demonstrate the need for or reasonableness of the rule. The same is true if

¹ MINN. STAT. § 14.101(1) (2021).

² 5 U.S.C. §§ 556–57.

³ § 14.25(1).

⁴ § 14.22(1)(a); see also § 14.14(1a), whereby notices of rule hearings must also include a citation to statutory authority.

⁵ § 14.14(2a).

⁶ § 14.26.

⁷ § 14.26(3).

⁸ § 14.15(1).

⁹ § 14.15.

¹⁰ § 14.19.

the rule is substantially different from the proposed rule; exceeds the discretion allowed by the agency's enabling statute or other applicable law; is unconstitutional or illegal; or improperly delegates the agency's powers to another agency, person, or group.¹¹

If the judge approves the rule, the judge sends a report and the hearing record to the agency. The agency may not adopt the rule for at least 5 working days after receiving the report, so that interested persons may examine it. If the judge disapproves the rule, the judge must submit the report and the hearing record to the chief judge for review. The chief judge must review the rule and the judge's report and prepare another report within 10 days. If the chief judge disapproves the rule, the chief judge must explain why and tell the agency what changes or actions are necessary for approval. The agency must resubmit the rule to the chief judge for review after changing it.¹²

If the judge establishes that the need or reasonableness of the rule has not been established and the chief judge signs off on the judge's decision,¹³ the regulating agency may not adopt the rule until it submits the proposed rule to the Legislative Coordinating Commission and to the standing committees in the House of Representatives and Senate that have primary jurisdiction over state governmental operations.¹⁴ These committees may then provide advice and comment.¹⁵ The agency may not adopt the rule until it has received and considered the advice of the commission and committees. However, the agency is not required to wait for advice for more than 60 days after the commission and committees have received the agency's submission. When 60 days have passed, the agency may proceed with the rulemaking.

Executive Review

The governor of Minnesota may selectively veto a regulation or a portion of a regulation.¹⁶ This authority applies only to the extent that the agency itself would have the authority, through rulemaking, to take such an action.

Legislative Review

Regulations with costs exceeding a certain threshold require affirmative approval from the legislature, or else small businesses (and cities) can claim a temporary exemption. As part of its proposal, an agency must determine if the cost of complying with its proposed rule will exceed \$25,000 in the first year after the rule takes effect.¹⁷ This determination must be made before the close of the hearing record or, if there is no hearing, before the agency submits the record to the

¹¹ MINN. R. § 1400.2100 (2021).

¹² § 1400.2240.

¹³ § 14.15(3)–(4).

¹⁴ Importantly, the process for submitting to the Legislative Coordinating Commission is available only if the sole defect in the rule is the establishment of need and reasonableness. If the administrative law judge identifies other legal defects, that procedure is not available. *See* § 1400.2240.

¹⁵ § 14.15(4).

¹⁶ § 14.05(6).

¹⁷ § 14.127(1).

administrative law judge.¹⁸ If the agency determines that the cost exceeds the threshold (or if the administrative law judge disapproves the agency's determination that the rule does not exceed this threshold), any business that has fewer than 50 full-time employees (or any statutory or home rule charter city that has fewer than 10 full-time employees) may file a written statement claiming a temporary exemption from the rule. At that point, the rule does not apply to the business (or city) until the rule is approved by a law enacted by the legislature.¹⁹

The standing committees of the House or Senate with jurisdiction over the subject matter of a proposed rule may also delay a regulation by a majority vote, which advises the agency that the rule should not be adopted as proposed. Then the agency may not adopt the rule until it changes the regulation in accordance with the committee's recommendations or until the legislature adjourns the annual legislative session that began after the vote of the committee.²⁰

Independent Review

Whether a hearing is required for a rulemaking or not, administrative law judges in Minnesota review proposed regulations to determine the need for or reasonableness of the rule.²¹ If the administrative law judge disapproves the regulation and the chief administrative law judge signs off on this decision, rules are sent to the Legislative Coordinating Commission and to the relevant standing committees in the House of Representatives and Senate with primary jurisdiction for further review.

Impact Analysis

Agencies in Minnesota have to produce a statement of need and reasonableness for their regulations.²² The statement must include the following information: a description of the classes of persons who will be affected, including those who will bear costs and those who will benefit; the cost to the agency; a description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered and the reasons for which they were rejected; a determination of whether there are less costly methods for achieving the same objective as the proposed rule; an estimate of compliance costs and how they break down across affected parties; the probable costs or consequences of not adopting the proposed rule; and several other factors.²³ The statement is reviewed by the administrative law judge as part of the judge's determination as to the need and reasonableness of the regulation.

Periodic Review

By December 1 of each year, an agency must submit to the governor, the Legislative Coordinating Commission, the standing committees in the legislature with jurisdiction over the agency, and the revisor of statutes a list of any rules or portions of rules that are obsolete,

¹⁸ § 14.127(2).

¹⁹ § 14.127(3).

²⁰ § 14.126(1)–(2).

²¹ § 14.16; § 14.26.

²² § 14.131.

²³ § 14.131(1)–(8).

unnecessary, or duplicative of other state or federal statutes or rules.²⁴ The list must include an explanation of why each rule or portion of a rule is obsolete, unnecessary, or duplicative of other state or federal statutes or rules.

²⁴ § 14.05(5).

Mississippi's Administrative Procedures

January 12, 2021

Rulemaking

Mississippi has traditional, informal notice-and-comment rulemaking.¹ Agencies must publish a notice of proposed rulemaking at least 25 days prior to a rule being adopted,² and the public must have at least 25 days to comment on the proposed action.³ The notice must provide a short explanation of the purpose of the proposed rule and cite the specific legal authority authorizing the rule.⁴ Agencies must wait at least 30 days after adoption for a rule to become effective.⁵

Executive Review

Mississippi has executive review of rulemakings for a limited number of agencies. The Occupational Licensing Review Commission, made up of the governor, attorney general, and secretary of state, reviews and approves all rulemakings for Mississippi's 29 occupational licensing boards before adoption. This review is focused on ensuring that the boards use the least restrictive means necessary to protect the public in accordance with the policies of the state of Mississippi.⁶

Legislative Review

Mississippi does not have any legislative review of regulations.

Independent Review

The Small Business Regulatory Review Committee reviews regulations in Mississippi that are expected to have an impact on small businesses. The committee is assigned to the Mississippi Development Authority, which is an executive branch department, but for administrative purposes only.⁷ It consists of 12 members, who are appointed by the governor, the lieutenant governor, and speaker of the House of Representatives, and some of whom may be senators or representatives who own small businesses. Lists of nominees for the committee are provided by local business groups.

The Small Business Regulatory Review Committee provides input to agencies about which proposed rules may have economic impacts on small businesses. It reviews rules when the state agency determines that the proposed rule has or may have an economic effect on small

¹ MISS. CODE ANN. § 25-43-3.103 (2021).

² § 25-43-3.103(1).

³ § 25-43-3.104(1).

⁴ § 25-43-3.103(1)(a)–(b).

⁵ § 25-43-3.113.

⁶ MISS. CODE ANN. § 73-47-1, *et seq.* (2021).

⁷ § 25-43-4.103.

businesses. This occurs when an economic impact statement identifies an economic effect on small businesses.⁸ In that case, the agency submits the rule and the accompanying analysis to the committee for its review. The committee can make recommendations and submit comments to the agency, the legislature, or both regarding the need for a rule or legislation.⁹ The committee can also petition an agency to amend, revise, or revoke an existing regulation because of an economic impact on small businesses.¹⁰

Impact Analysis

Agencies in Mississippi produce economic impact statements. Economic impact statements are required for significant rules or amendments, which are those with a total aggregate cost to all persons required to comply with the rule that exceeds \$100,000.¹¹ The statement must include a description of the need for the regulation, an estimate of the cost to the government and to members of the public who are directly affected, and an analysis of the impact on small businesses. There should also be an analysis of the costs and benefits of the proposed rule compared to the costs and benefits of not adopting the proposed rule. The statement must also include a description of reasonable alternative methods considered and the reasons for the agency's rejecting those alternatives, as well as a determination of whether less costly methods exist for achieving the same objective.¹²

To determine whether a regulation has an impact on small businesses for the purposes of the economic impact statement, the agency must identify the number of small businesses subject to the proposed rule, the costs of complying with the proposed rule, and the rule's probable effect on small businesses. The agency must also consider less intrusive or less costly alternative methods to alleviate burdens on small businesses, including less stringent compliance or reporting requirements, less stringent deadlines, or exemption of some small businesses from all or part of the rule.¹³

Periodic Review

Agencies in Mississippi are required to review their regulations at least every 5 years to determine whether rules should be repealed or amended or whether new rules should be adopted.¹⁴ Agencies need to continue to ensure that final rules minimize economic impacts on small businesses in a manner consistent with their objectives and statutes. Hence, as part of periodic reviews, agencies consider factors such as the continued need for the rule; complaints or comments made regarding the rule; the complexity of the rule; the extent to which the rule overlaps or conflicts with other federal, state, or local laws; and any changes to technology, economic conditions, or other factors

⁸ § 25-43-4.104(2).

⁹ § 25-43-4.103(2)(b); § 25-43-4.104(3).

¹⁰ § 25-43-4.103(2)(a)–(c).

¹¹ § 25-43-3.105(1).

¹² § 25-43-3.105(2)(a)–(h).

¹³ § 25-43-4.104(1)(d)(i)–(v).

¹⁴ § 25-43-3.114.

in the area affected by the rule since it was adopted.¹⁵ These review criteria mirror those considered as part of Regulatory Flexibility Act reviews at the federal level.¹⁶ In practice, it is not clear how well state agencies adhere to periodic review requirements.

As stated previously, the Small Business Regulatory Review Committee can also petition an agency to amend, revise, or revoke an existing regulation because of its economic impact on small businesses.¹⁷ The Occupational Licensing Review Commission also has the authority to invalidate certain rules or require that the 29 boards under its purview review and amend their rules so that they use least restrictive means necessary to regulate the boards' particular industries.¹⁸

¹⁵ § 25-43-4.104(5)(a)–(e).

¹⁶ 5 U.S.C. § 610.

¹⁷ § 25-43-4.103(2)(a)–(c).

¹⁸ MISS. CODE ANN. § 73-47-5(b)(ii) (2021).

Missouri's Administrative Procedures

June 8, 2021

Rulemaking

Missouri has traditional, informal notice-and-comment rulemaking.¹ The comment period on proposed rules or regulations may not be fewer than 30 days.² The notice must include an explanation of the proposed rule, the reasons for implementing it, and the legal authority upon which the proposed rule is based.³ Unless adopted, proposed rules expire 90 days after either the comment period ends or a public hearing is held.⁴

Executive Review

Executive Order No. 17-03 states that “[n]o State Agency⁵ shall release proposed regulations for notice and comment, amend existing regulations, or adopt new regulations at any time until approved by the Office of the Governor.”⁶

Legislative Review

The promulgating agency must submit a proposed rule to the Joint Committee on Administrative Rules (JCAR), which may hold hearings on the rule and request documents from the agency.⁷ By majority vote, the committee can recommend that the General Assembly disapprove a rule or regulation.⁸ The JCAR may disapprove a rule for various reasons, including if the rule is not in the public interest; lacks statutory authority; endangers public health, safety, or welfare; exceeds its purpose (in that it is more restrictive than necessary); or is arbitrary and capricious.⁹ The General Assembly can adopt a concurrent resolution with a majority of both chambers to disapprove and annul the rule or regulation.¹⁰ The resolution must be signed by the governor to take effect (or a veto must be subsequently overridden by two-thirds of the members of the body in which the resolution originated).¹¹

¹ MO. REV. STAT. § 536.021 (2021).

² § 536.021.2(5).

³ § 536.021.2(1)–(2).

⁴ § 536.021.5.

⁵ As defined in § 536.010.8.

⁶ MO. EXEC. ORDER No. 17-03.

⁷ § 536.028.3.

⁸ § 536.028.5.

⁹ § 536.028.5(2)(a)–(f).

¹⁰ § 536.028.7.

¹¹ § 536.028.9; *see also* MO. CONST. art. IV, § 8 and art. III, § 32.

Independent Review

In Missouri, rules with impacts on small businesses are reviewed by the Small Business Regulatory Fairness Board.¹² The board consists of members appointed by the governor and by leaders of the majority and minority parties in the House of Representatives and Senate. Members can come from either the public or the private sector, but they must be current or former owners or officers of a small business.¹³ For rules that affect small businesses, the agency must prepare a small business statement and submit it to the board.¹⁴ The board can make recommendations to the agency, but these recommendations are nonbinding.¹⁵

Impact Analysis

A fiscal note is required for any rule or regulation that is expected to result in an expenditure of public funds or reduction of public revenues of over \$500.¹⁶ Similarly, a fiscal note is required for any rule requiring an expenditure of money or reduction in income of more than \$500 for a private party.¹⁷ The fiscal note addresses factors such as the number of persons or firms affected and includes an estimate of the aggregate cost to these entities or individuals.

The agency also must determine whether its regulations affect small businesses and, if so, assess the availability and practicability of less restrictive alternatives that could achieve the same result.¹⁸ If the agency determines its rule will affect small businesses, it must prepare a small business impact statement and submit it to the Small Business Regulatory Fairness Board.¹⁹ The statement must include estimates of the monetary costs and benefits to the regulating agency (including fee revenue) and the direct and indirect costs to businesses, as well as a description of which businesses will bear the costs or directly benefit from the rule.²⁰

Periodic Review

Missouri has a 5-year staggered review process for rules. The staggered review process means that rotating portions of rules from various chapters in the regulatory code are reviewed each year, such that each portion is reviewed within the 5-year period.²¹ As part of the review process, agencies take comments from the public and issue reports detailing whether rules are still needed, are obsolete, are duplicative, or need to be amended or rescinded. Rules affecting small businesses must detail the specific public purpose or interest to justify their continued existence.²²

¹² § 536.305.

¹³ § 536.305.3.

¹⁴ § 536.303.

¹⁵ § 536.310.

¹⁶ § 536.200.1.

¹⁷ § 536.205.1.

¹⁸ § 536.300.

¹⁹ § 536.300.2.

²⁰ § 536.300.2(3)–(6).

²¹ § 536.175.

²² § 536.175.4(7).

Missouri attaches a form of sunset provision to the periodic review requirement. The agency must file a report with the JCAR and the Small Business Regulatory Fairness Board. If any rule must be reviewed but is not included in the report (or if no report is filed), the secretary of state will publish a notice of delinquency in the *Missouri Register*. The relevant rule is considered void after 60 legislative days of the next regular session of the General Assembly, unless the state agency corrects the delinquency by providing the review within 90 days of the publication of the delinquency notice.²³

Members of the public may also petition an agency to adopt, amend, or repeal any rule, and the agency must furnish a copy of the petition, together with the agency's planned course of action, to the JCAR and the commissioner of the Office of Administration.²⁴ Small businesses may also file a petition objecting to all or part of any rule.²⁵ They may also object on the basis that the small business impact statement did not consider new or significant information, that actual effects differ significantly from those projected in the small business impact statement, or that impacts were not considered at the public hearing concerning a rule at its time of adoption.

²³ § 536.175.5.

²⁴ § 536.041.

²⁵ § 536.323.1.

Montana's Administrative Procedures

March 25, 2021

Rulemaking

Montana has traditional, informal notice-and-comment rulemaking.¹ Members of the public are afforded a minimum of 28 days from the date of the proposed rule notice to submit data, views, or arguments, orally or in writing.² Each proposed and adopted rule must include a citation to the specific grant of rulemaking authority.³ Notices must also include a statement of the reasonable necessity for the proposed action.⁴ Notice of adoption of the rule must be published within 6 months of the agency's publishing of the notice of the proposed rule, or else the rule is not valid.⁵

Executive Review

The head of each department of the executive branch appoints an attorney, paralegal, or other qualified person from that department to review departmental proposal notices, adoption notices, or other notices related to administrative rulemaking.⁶ The review focuses primarily on the whether the intended action is reasonably necessary and whether the appropriate authority exists to enact the regulation.⁷

Legislative Review

When an agency begins to work on the content and wording of a proposal notice that implements legislation, the agency must contact the legislator who was the primary sponsor of the legislation.⁸ An administrative rule review committee reviews all proposed rules in Montana.⁹ The administrative rule review committee is the relevant interim committee with subject-matter jurisdiction in an area.¹⁰ Since these are interim committees, they meet in between legislative sessions, and rules are not their main focus. Committees may hold hearings on proposed regulations and make recommendations as to whether to adopt, amend, or reject a rule.¹¹ If the

¹ MONT. CODE ANN. § 2-4 (2021).

² § 2-4-302(4).

³ § 2-4-305(3).

⁴ § 2-4-302(1)(a).

⁵ § 2-4-30(7).

⁶ § 2-4-110(1).

⁷ § 2-4-110(2)(a)–(e).

⁸ § 2-4-302(2)(e).

⁹ § 2-4-402.

¹⁰ § 2-4-102; MONT. CODE ANN. § 5-5-2 (2021).

¹¹ § 2-4-402(2).

legislature is not in session, the committee can, by mail, poll all members of the legislature to determine their intent.¹²

If the committee objects to a proposed rule, the agency has 14 days to respond to the objection in writing. If the committee fails to withdraw its objection, it may vote to send the objection to the secretary of state, who publishes the objection in the state register. The agency can proceed with the rulemaking in such a case, but if the rule is litigated, the agency bears the burden of proving that the rule was enacted in substantial compliance with state rulemaking procedures. It may also be responsible for reasonable court and attorney fees in the event that it loses court challenges.¹³

The legislature may, by bill, repeal any rule in the state administrative code.¹⁴ However, as a standing practice, legislative drafters hold that the underlying statute a rule draws from should be repealed before a rule is repealed by the legislature.¹⁵ The legislature may also direct an agency to regulate in a particular domain. Although this authority is considered part of a legislative review process in the state Administrative Procedure Act, it does not differ significantly from the legislature's normal lawmaking powers.

Independent Review

Montana does not have independent review of regulations.

Impact Analysis

Upon request by the administrative rule review committee, or upon written request by 15 legislators, an agency must prepare a statement of economic impact.¹⁶ Among other things, this statement must include an analysis of the classes of persons who will be affected by the proposed rule, the probable costs to the agency, the costs and benefits of the proposed rule, and less costly or less intrusive methods for achieving the same purpose, if there are any. The statement must also include a determination as to whether the proposed rule represents an efficient allocation of public and private resources.

If the agency has not prepared a statement of economic impact but determines that the rule may have a significant effect on small businesses, the agency must prepare a small business impact analysis.¹⁷ The Office of Economic Development advises and assists agencies in complying with this requirement.

¹² § 2-4-403.

¹³ § 2-4-406.

¹⁴ § 2-4-412.

¹⁵ Personal communication with employee of the Frontier Institute in Montana (March 25, 2021).

¹⁶ § 2-4-405.

¹⁷ § 2-4-111.

Periodic Review

Each agency must review its rules at least biennially to determine whether any new rule should be adopted or any existing rule should be modified or repealed.¹⁸ The administrative rule review committee may recommend to the legislature modifications, additions, or deletions of agency rulemaking authority that the committee considers necessary.¹⁹ An interested person, or a member of the legislature on behalf of an interested person, can petition an agency requesting the promulgation, amendment, or repeal of a rule.²⁰

¹⁸ § 2-4-314(1).

¹⁹ § 2-4-314(2).

²⁰ § 2-4-315.

Nebraska's Administrative Procedures

May 11, 2021

Rulemaking

Nebraska has informal notice-and-comment rulemaking, but no formal comment period.¹ Any promulgating agency is “encouraged to and may solicit comments from the public”² by publishing the proposed rule. The governor may consider whether the public had adequate opportunity to comment during the process.³ In addition to the solicitation of public comments, public hearings must be held for all proposed rules, with some exceptions for emergency situations.⁴

Executive Review

Nebraska has an executive-level review of proposed rules. Both the governor and attorney general can stop the rule from becoming effective.⁵ The governor is required to review all rules for two factors: (a) that adequate notice of the rule was provided to the public and (b) that reasonable opportunity for public comment was provided.⁶ However, the governor is not limited to just these two factors and is allowed to review a proposed rule for other criteria deemed appropriate. For example, the governor also reviews an impact statement that describes the need for the rule, the parties affected, the fiscal effects, and other factors.⁷

In addition to being reviewed by the governor, each rule must be submitted to the attorney general for a review of the statutory authority and the constitutionality of any proposed rule. This review includes determining whether the rule that is to go into effect is substantially different from the published proposal.⁸

Legislative Review

Nebraska has a legislative review, but the legislature has minimal authority to change the rule or stop it from becoming effective. The promulgating agency must submit the proposed rule to the Executive Board of the Legislative Council (EBLC) at the same time that it submits the proposal to the governor and attorney general.⁹ The EBLC refers the rule to the standing committee with

¹ NEB. REV. STAT. § 84-907 (2021).

² § 84-906.02.

³ § 84-908(1).

⁴ § 84-907.

⁵ § 84-908(2); § 84-905.01.

⁶ § 84-908.

⁷ § 84-907.09.

⁸ § 84-905.01.

⁹ § 84-907.06.

jurisdiction. The committee may submit a written or oral statement at the public hearing on the rule or regulation.¹⁰

If the rule is being promulgated in response to specific legislation, it must be promulgated within 1 year of the legislation's enactment, or the agency must report to the EBLC why the rule has not been promulgated.¹¹

Independent Review

Nebraska does not have independent review of proposed regulations.

Impact Analysis

Under Nebraska law, all proposed rules must be reviewed for several factors. As part of the governor's review, the promulgating agency must submit several impact statements that describe

- What entities that will be impacted by the rule
- Why the rule is necessary and what legislative authority the agency is using to make the rule
- How the rule is consistent with legislative intent
- Whether the rule amounts to a mandate on local jurisdictions and, if so, whether the mandate is funded or unfunded
- Whether the rule is necessary to comply with a federal mandate
- What fiscal impact on state agencies, political subdivisions, and regulated entities may result¹²

Periodic Review

Nebraska does not have any provision for periodic review of previously promulgated rules.

¹⁰ § 84-907.07.

¹¹ § 84-907.06.

¹² § 84-907.09.

Nevada's Administrative Procedures

July 6, 2021

Rulemaking

Nevada has informal notice-and-comment rulemaking, but no formal comment period.¹ However, each agency must make available for public inspection all rules of practice and regulations adopted or used by the agency, as well as all final orders, decisions, and opinions except those expressly made confidential.² The regulation, rule, final order, or decision of an agency is not valid or effective until it has been made available for public inspection.³

Nevada has slightly different procedures for permanent and temporary regulations.⁴ For temporary rules, an agency must give at least 30 days' notice of its intended action (unless the statute permits otherwise).⁵ Additionally, temporary regulations can be adopted only "between August 1 of an even-numbered year and July 1 of the succeeding odd-numbered year"; they then expire "on November 1 of the odd-numbered year."⁶ For permanent rules, the agency must give at least 30 days' notice of its intended action and have the text approved by the Legislative Counsel Bureau.⁷ Some notable exemptions from these administrative procedures include the Nevada Gaming Control Board, which regulates Nevada's largest industry, and the Cannabis Compliance Board, which oversees one of the state's newest regulated industries.⁸

Executive Review

In the past, governors have at times established a review process for regulations.⁹ Currently, however, no formal executive review process is in place that is external to the regulating agency or department.

Within an agency, a small business impact review occurs. The director of the agency, the executive head, or another person who is otherwise responsible for the agency must sign a statement certifying that a concerted effort was made to determine the impact of the proposed regulation on small businesses and that the information contained in the statement identifying the methods used by the agency to determine the impact of a proposed regulation is accurate.¹⁰

¹ NEV. REV. STAT. § 233B.061 (2021).

² § 233B.050.

³ *Id.*

⁴ § 233B.060.

⁵ § 233B.060(b).

⁶ § 233B.063(3).

⁷ § 233B.060(a).

⁸ *See* § 233B.039(1)(e) and § 233B.039(1)(n), respectively.

⁹ NEV. EXEC. ORDER NO. 2011-01.

¹⁰ § 233B.0608(3).

Legislative Review

In Nevada, the legislature has review authority for all permanent rules. (The legislature may also examine temporary regulations adopted by an agency.)¹¹ Before adopting a rule, agencies submit proposed permanent regulations to the Legislative Counsel Bureau to ensure that they are “clear, concise and suitable for incorporation in the Nevada Administrative Code.”¹² After adoption of a regulation, the agency submits an informational statement and a copy of the regulation adopted to the Legislative Counsel Bureau for review by the Legislative Commission.¹³ The Legislative Commission then determines whether to approve the regulation. The commission may refer the regulation for review to the Subcommittee to Review Regulations.¹⁴

The commission or subcommittee may object to the regulation if it determines that the regulation does not conform to statutory authority; the regulation does not carry out legislative intent; or the small business impact statement is inaccurate or incomplete, did not adequately consider the economic effect of the regulation on small businesses, or significantly underestimated that effect. They may also object to the regulation if the agency has not provided a satisfactory explanation of the need for the regulation.¹⁵ A written notice of the objection must be attached to the regulation with a statement of the reasons for the objection, which is returned to the agency. At that point, the agency can continue to revise the regulation and resubmit it to the Legislative Commission or Subcommittee to Review Regulations for 30 days after the agency received the written notice of the objection to the revised regulation until the commission or subcommittee approves the regulation.¹⁶

Independent Review

Nevada does not have any independent review of proposed regulations.

Impact Analysis

The notice of intent to act upon a regulation must include a statement describing the need for the proposed regulation and its purpose. The notice must also include a statement of the estimated economic effects of the regulation on the business that it is to regulate and on the public. Both adverse and beneficial effects must be included in the statement, as well as both immediate and long-term effects.¹⁷

An agency must make a concerted effort to determine whether the proposed regulation is likely to impose a direct and significant economic burden on small businesses or is likely to directly restrict the formation, operation, or expansion of small businesses.¹⁸ If an agency

¹¹ § 233B.0633.

¹² § 233B.063(1); § 233B.064(1).

¹³ § 233B.067(1).

¹⁴ § 233B.067(3)(b).

¹⁵ § 233B.067.

¹⁶ § 233B.0675(1)–(2).

¹⁷ § 233B.0603.

¹⁸ § 233B.0607(1)(a)–(b).

determines that the answer to either is yes, it must conduct an analysis of the likely impact of the proposed regulation on small businesses and consider simplifying the proposed regulation, establishing different standards of compliance for small businesses, and modifying fees or fines set forth in the regulation for small businesses.¹⁹

The small business impact statement must include the estimated economic effect of the regulation on small businesses (including direct and indirect costs and benefits), ways to minimize negative impacts that the agency considered, estimated enforcement costs, and a description of how the analysis was conducted.²⁰

Periodic Review

Agencies in Nevada review their regulations at least once every 10 years to determine whether any should be amended or repealed.²¹ After completing its review, an agency must submit a report to the Legislative Counsel Bureau within 30 days. The report must include the date on which the agency completed its review and describe any regulation that must be amended or repealed. In addition, Nevada reviews its rules of practice at least every 3 years.²²

¹⁹ § 233B.0608(2)(b)–(c).

²⁰ § 233B.0609(1).

²¹ § 233B.050(e).

²² § 233B.050(d).

New Hampshire's Administrative Procedures

June 21, 2021

Rulemaking

New Hampshire has an informal notice-and-comment rulemaking process with a required public comment period (except for interim or emergency rules).¹ The promulgating agency is required to hold at least one public hearing on any proposed rule² and to provide at least 20 days' notice to the public of the hearing.³ The notice accompanying a proposed rule must also include a citation to the statutory authority for the regulation.⁴

Executive Review

New Hampshire's attorney general sometimes reviews regulations. In such cases, the attorney general submits an opinion to the director of the Office of Legislative Services, who publishes the opinions in the rulemaking register.⁵

Legislative Review

New Hampshire has a Joint Legislative Committee on Administrative Rules (JLCAR), which has review authority for all rules.⁶ The JLCAR may approve the rule, enter a conditional approval, or object to the rule. The JLCAR may object to a rule in four cases: when the rule (a) exceeds the authority of the agency, (b) is contrary to the intent of the legislature, (c) is not in the public interest, or (d) has a substantial economic impact not recognized in the fiscal impact statement.⁷

If the JLCAR objects, the agency has an opportunity to revise and resubmit the rule. The JLCAR may also send notice of the objection to relevant standing committees in the legislature, which may hold hearings or make recommendations to the regulating agency.⁸ The agency has 45 days to respond to an objection.⁹ The JLCAR may issue a final objection. In such cases, the agency may still move forward with promulgating the rule unless a joint resolution is submitted to the legislature.¹⁰ After a final objection, the JLCAR can submit a resolution condemning the rule. If approved by both chambers, this resolution invalidates the rule; submission of the

¹N.H. REV. STAT. ANN. § 541-A:3 (2021).

² § 541-A:11.

³ *Id.*

⁴ § 541-A:6(I)(b).

⁵ § 541-A:28.

⁶ § 541-A:2.

⁷ § 541-A:13(IV).

⁸ § 541-A:13(V)(b).

⁹ § 541-A:13(V)(b).

¹⁰ § 541-A:13(VII).

resolution stays the implementation of the rule. The governor's signature is required on joint resolutions.

In cases in which a final objection to a rule has been filed by the JLCAR, the burden of proof falls on the agency in any action for judicial review or for enforcement of the provision to establish that the part objected to is within the authority delegated to the agency, is consistent with the intent of the legislature, is in the public interest, or does not have a substantial economic impact not recognized in the fiscal impact statement. If the agency fails to meet its burden of proof, the court can declare the whole rule objected to, or a portion of it, invalid on that basis.¹¹

Independent Review

New Hampshire does not have independent review of proposed regulations.

Impact Analysis

All proposed rules in New Hampshire are legislatively required to have a fiscal impact statement.¹² The agency has to provide the legislature with all the data necessary for the legislative budget assistant to prepare the fiscal impact statement. The statement needs to include a narrative stating the costs and benefits to the citizens of the state and political subdivisions, a statement on the cost or benefit to the state's general or special fund, and a citation to any federal mandate for the intended action, if there is one.¹³ There must also be an analysis of the general impact on independently owned businesses, including any reporting and recordkeeping burdens imposed on businesses that employ fewer than 10 employees.¹⁴

Periodic Review

New Hampshire has a sunset provision, whereby a rule has to be reviewed and renewed within 10 years of its adoption date to remain effective.¹⁵ The agency is responsible for readopting or updating regulations and may readopt an identical rule, but it must follow the same steps outlined for newly proposed rules. Rules of agency procedure are exempt from the 10-year sunset, but they may face a separate 1-year sunset if applicable statutes change.¹⁶ Agencies are required to promulgate procedural regulations describing their organization, their general course, their method of operations, and the methods by which the public may obtain information or make submissions or requests.¹⁷

Members of the public may also petition an agency to adopt, amend, or repeal a rule.¹⁸

¹¹ § 541-A:13(VI).

¹² § 541-A:5(I).

¹³ § 541-A:5(IV).

¹⁴ § 541-A:5(IV)(e).

¹⁵ § 541-A:17(I).

¹⁶ § 541-A:17(II).

¹⁷ § 541-A:16.

¹⁸ § 541-A:4.

New Jersey's Administrative Procedures

June 17, 2021

Rulemaking

New Jersey has an informal notice-and-comment rulemaking process.¹ There is no minimum comment period. However, before the adoption of any rule, the promulgating agency must give at least 30 days' notice of its intended action. The notice must include a statement of the intended action, the time and place at which interested persons may present their views,² and a citation to the specific legal authority authorizing the regulation.³ The agency must also afford all interested persons a reasonable opportunity to submit data, views, comments, or arguments, orally or in writing.⁴

Executive Review

New Jersey has several forms of executive review. The smart growth ombudsman reviews regulations proposed by a state agency and determines whether the proposed rules are consistent with the State Development and Redevelopment Plan.⁵ If the ombudsman determines that the proposed rules are not consistent with the State Development and Redevelopment Plan, the proposed regulations are returned to the agency with recommended amendments necessary to make the proposed rules or regulations consistent with the plan. A state agency cannot file regulations for publication in the *New Jersey Register* until the ombudsman has determined that the proposed rules or regulations are consistent with the plan.

Rules proposed by a state agency must be submitted to the Office of Administrative Law (OAL).⁶ The director of the OAL can refuse to accept a notice of proposal or a notice of adoption if the director determines that the rule or regulation does not comply with the interagency rules of the OAL⁷ or if it fails to meet the "standard of clarity," which means that the document must be written in a reasonably simple and understandable manner that is easy to read.⁸

Legislative Review

Each proposed rule is submitted to the Senate, the General Assembly, and the president of the Senate and the speaker of the General Assembly, who refer the proposed rule to the appropriate standing committee in each chamber.⁹

¹ N.J. STAT. ANN. § 52:14B-4 (2021).

² § 52:14B-4(a)(1).

³ § 52:14B-4(a)(2).

⁴ § 52:14B-4(a)(3).

⁵ § 52:27D-10.4(d).

⁶ § 52:14B-4.1(1).

⁷ § 52:14B-4.1a(9)(a).

⁸ § 52:14B-4.1a(9)(b).

⁹ § 52:14B-4.1.

The Senate and General Assembly may adopt a concurrent resolution invalidating a rule or regulation, in whole or in part, or prohibiting a proposed rule or regulation.¹⁰ The governor's signature is not required on the resolution, because New Jersey has a constitutional amendment authorizing legislative override of administrative rules.¹¹ The process works as follows: If legislative review finds a regulation is not consistent with legislative intent, the legislature transmits this finding in the form of a concurrent resolution to the governor and to the head of the executive branch agency that promulgated the rule. The agency then has 30 days to amend or withdraw the existing or proposed rule or regulation. If the agency does not amend or withdraw the existing or proposed rule or regulation, the legislature can invalidate the rule, in whole or in part, with a majority of the authorized membership of each house voting in favor of a concurrent resolution invalidating the rule.

Independent Agencies

There is no provision in New Jersey for an independent agency review of proposed rules.

Impact Analysis

Proposed rules in New Jersey are required to have a variety of impact statements, including a socioeconomic impact statement, a jobs impact statement, and a regulatory flexibility statement.¹² The agency must also prepare a small business impact analysis describing which types of small businesses are expected to be affected by the rule.¹³ The agency must also prepare a housing affordability analysis, which is a description of the estimated increase or decrease in the average cost of housing that will be affected by the regulation.¹⁴ The notice must also include an agriculture industry impact statement, a smart growth development impact statement, and a racial and ethnic community criminal justice and public safety impact statement.¹⁵

Periodic Review

An agency is permitted to review rules and make changes any time it deems necessary. However, every rule expires 7 years after its effective date, unless an earlier expiration date has been established for the rule.¹⁶ The agency may readopt the rule after proper notice.¹⁷ Individuals may also petition an agency to adopt, amend, or repeal a rule.¹⁸

¹⁰ § 52:14B-4.3.

¹¹ N.J. CONST. art. V, § IV, pt. 6.

¹² § 52:14B-4(a)(2).

¹³ *Id.*

¹⁴ § 52:14B-4.1b(2).

¹⁵ § 52:14B-4(a)(2).

¹⁶ § 52:14B-5.1(b).

¹⁷ § 52:14B-5.1(c)(2).

¹⁸ § 52:14B-4(f).

New Mexico's Administrative Procedures

June 21, 2021

Rulemaking

New Mexico has a unique approach to promulgating regulations that can strictly be called neither formal nor informal rulemaking.¹ Each promulgating agency must publish a notice of its proposed action.² The notice must include the substance of the proposed action; the manner in which data, views, or arguments can be submitted to the agency; and any statutory authority or statutory requirements related to the rulemaking.³ The notice must also give the time and place of any public hearing.⁴

The agency must allow interested persons the opportunity to submit data, views, or arguments and, in some cases, the opportunity to examine witnesses.⁵ However, the agency has discretion as to how the public is given an opportunity to have its voice heard.⁶ The agency also appears to have the discretion to skip the commenting or hearing process through emergency regulations, which can be issued as long as the “rule is necessary for the preservation of the public peace, health, safety or general welfare, or if the agency for good cause finds that observance of the requirements of notice and public hearing would be contrary to the public interest.”⁷ That said, by case law, agencies are required to adopt a statement of reasons for rulemaking decisions to facilitate judicial review.⁸

Executive Review

New Mexico has no executive review for proposed rules.

Legislative Review

New Mexico has no legislative review for proposed rules.

Independent Review

New Mexico has a Small Business Regulatory Advisory Commission. The commission is part of the New Mexico Economic Development Department, and it consists of nine members who are

¹ Some specific statutory authorizations require something like formal rulemaking. For example, the Water Quality Control Commission and the Environmental Improvement Board have specific procedures that require a process akin to formal rulemaking. *See*, respectively, N.M. STAT. § 74-6-6 and § 74-1-9 (2021).

² N.M. STAT. § 12-8-4(A)(1) (2021).

³ § 12-8-4(A)(2).

⁴ § 12-8-4.

⁵ § 12-8-3(A)(4).

⁶ *Id.*

⁷ § 12-8-3(B).

⁸ *Roswell v. Water Quality Control Commission*, 505 P2d 1237 (Ct. App. 1972).

current or former small business owners. The governor appoints five of these members, and the speaker of the House of Representatives and the president of the Senate each appoint two.⁹ The commission's duties are to provide state agencies with input regarding how proposed rules may adversely affect small businesses, to consider requests from small business owners to review rules adopted by agencies, and to review rules promulgated by agencies to determine whether those rules place an unnecessary burden on small businesses and make recommendations to the agency to mitigate any adverse effects.¹⁰ The commission issues annual reports but does not have authority to "interfere with, modify, prevent or delay an agency or administrative enforcement action."¹¹

Impact Analysis

New Mexico does not have a requirement written in statute for economic analysis of regulations, but a 2018 executive order requires economic analysis for regulations.¹² The degree to which this executive order is enforced or complied with is unclear. However, it requires that regulators consider how their rules will affect prices, compliance costs, and the business environment in New Mexico. Regulators must consider alternative solutions to the problem they are addressing, and they must use the least restrictive means to achieve the rule's intended goals. They are also required to use a rule impact form and submit it to the state Sunshine Portal 48 hours before the opening of the comment period on the proposed rule.

Periodic Review

The Small Business Regulatory Advisory Commission provides an annual evaluation report to the governor and legislature, with recommendations regarding regulatory fairness for small businesses.¹³ All rules adopted must be reviewed every 5 years to ensure that they continue to minimize economic impacts on small businesses while accomplishing state objectives.¹⁴

Agencies are also subject to the provisions of the Sunset Act, which requires them to review and update rules at least once every 3 years. Each year, agencies submit a status report, which describes actions the agency took on its rules and regulations during the previous fiscal year, to the New Mexico Department of Finance and Administration and the Legislative Finance Committee.¹⁵

An interested person may also petition an agency to amend or repeal a rule.¹⁶

⁹ § 14-4A-5(A).

¹⁰ § 12-4A-5(C).

¹¹ § 12-4A-5(D).

¹² N.M. EXEC. ORDER NO. 2018-055 (2018).

¹³ § 14-4A-5(C)(4).

¹⁴ § 14-4A-6(C).

¹⁵ § 12-9-22.

¹⁶ § 12-8-7.

New York's Administrative Procedures

June 4, 2021

Rulemaking

New York has an informal notice-and-comment rulemaking process,¹ which includes a provision that requires rules to be written in plain language.² The promulgating agency must publish the proposed rule at least 60 days before it is to go into effect or before a public hearing concerning the rule is held,³ but there is no specified minimum comment period. The promulgating agency must cite the statutory authority for the rule in its notice.⁴

A process in place for emergency regulations allows agencies to circumvent some of the procedures outlined here.⁵ One estimate suggests as many as two-thirds of rulemakings may use the emergency rulemaking process.⁶

Executive Review

The commissioner of labor and the commissioner of economic development may review any job impact statement produced as part of a proposed rulemaking, and they may consult with any agency preparing such a statement to advise the agency on the potential impacts of its rulemakings.⁷ If the two commissioners concur that further evaluation of the potential impacts of a proposed rule on jobs or employment opportunities is needed, they may jointly delay the promulgation of the rule by making recommendations and specifying a period of not more than 90 days for the agency to perform additional evaluation and respond to their recommendations.⁸ In such cases, an agency may not adopt a rule until either revised versions of the rule and job impact statement are made that are acceptable to the commissioners or the delay period set by the commissioners has expired.⁹

Legislative Review

New York has an Administrative Regulations Review Commission.¹⁰ The commission is tasked with reviewing regulations on the basis of (a) statutory authority, (b) compliance with legislative

¹ N.Y. A.P.A. LAW § 2-202 (2021).

² § 2-201.

³ § 2-202(1).

⁴ § 2-202(1)(f)(i).

⁵ § 2-202(6).

⁶ Assemb. B. A08470A, 202nd State Leg., 1st Sess. (N.Y. 2017), available at: https://assembly.state.ny.us/leg/?default_fld=&leg_video=&bn=A08470&term=2017&Summary=Y&Actions=Y&Memo=Y&Text=Y.

⁷ § 2-201-A(3)

⁸ § 2-201-A(3)(b).

⁹ § 2-201-A(3)(c).

¹⁰ N.Y. LEGIS. LAW § 5B-86 (2021).

intent, (c) impact on the economy and on the government operations of the state and its local governments, and (d) impact on affected parties.¹¹ The commission can hold hearings, request and receive data from agencies, and request and receive other information from state agencies, as needed.¹²

Independent Review

New York does not have independent agency review of administrative rules.

Impact Analysis

Rules in New York are required to have several forms of regulatory analysis. In general, analyses must indicate how a rule is designed to minimize adverse economic impacts on small businesses¹³ and rural areas.¹⁴

First, if a rule is determined to have an adverse impact on jobs or employment, a job impact analysis must be conducted.¹⁵ The analysis must identify the categories of jobs or employment opportunities that will be affected by the rule, the approximate number of jobs or employment opportunities affected in each category, and any region of the state that would be disproportionately affected. It must also discuss any measures that the agency has taken to minimize adverse impacts on existing jobs and to promote the development of new employment opportunities.¹⁶

Agencies must also issue a regulatory flexibility analysis to minimize adverse economic impacts on small businesses and local governments.¹⁷ The flexibility statements must describe the types of, and estimate the number of, small businesses and local governments to which the rule will apply. The flexibility statements must also contain a description of the reporting, recordkeeping, and other compliance requirements and the kinds of professional services that a small business or local government is likely to need to comply with such requirements; an estimate of the initial capital costs and of the annual cost of complying with the rule; an assessment of the economic and technological feasibility of compliance; an indication of how the rule is designed to minimize adverse economic impacts on small businesses and local governments; and a statement demonstrating that the agency actively solicited the participation of small businesses and local governments.¹⁸

A rural area flexibility analysis is required for rules that could affect rural areas.¹⁹ The analysis must include similar criteria to those outlined in the regulatory flexibility analysis.²⁰

¹¹ § 5B-86.

¹² § 5B-87(3)–(4).

¹³ § 2-202-B(2)(e).

¹⁴ § 2-202-BB(3)(d).

¹⁵ § 2-201-A(2)(b).

¹⁶ § 2-201-A(2)(b)(i)–(v).

¹⁷ § 2-202-B.

¹⁸ § 2-202-B(2).

¹⁹ § 2-202-BB.

²⁰ § 2-202-BB(3).

Finally, a regulatory impact statement is required for all proposed rules.²¹ The regulatory impact statement must include the statutory authority for the rule; a statement explaining the need for the rule and the expected benefits; a statement detailing the projected costs of the rule; a description of any reporting requirements, local government mandates, or duplication resulting from the rule; alternative approaches and the reasons they were not incorporated into the rule; and a statement identifying whether the rule exceeds any minimum standards of the federal government.²²

Periodic Review

Every rule must be reviewed no later than by the fifth year after its adoption and every 5 years thereafter.²³ Any rule that has small business, job impact, or rural flexibility analysis must be reviewed by the third year after its initial adoption and no later than the fifth calendar year afterward, and every rule must be re-reviewed at 5-year intervals thereafter.²⁴ As part of these reviews, agencies are required to publish a list of reviewed rules, including an analysis of the need for and legal basis of each rule, and the agency must invite public comment on the need for continuation or modification of the rule.²⁵

²¹ § 2-202-A(2).

²² § 2-202-A(3)(a)–(h).

²³ § 2-207(1)(a).

²⁴ § 2-207(1)(b).

²⁵ § 2-207(2).

North Carolina's Administrative Procedures

March 10, 2021

Rulemaking

North Carolina has an informal permanent rulemaking process.¹ An agency must accept comments on a proposed rule for at least 60 days after the text is published.² An agency may not adopt a rule if more than 12 months have elapsed since the end of the comment period.³ When proposing a rule, an agency must also include a citation to the law that gives the agency the authority to adopt the rule.⁴

Executive Review

All rules affecting the expenditures of a unit of local government require a written statement of the purpose of the proposed rule and a fiscal note, which must both be submitted to the Office of State Budget and Management (OSBM).⁵ Rules that are expected to increase or that require expenditures for state or local government, affect local revenues,⁶ or have a substantial economic impact require the fiscal note. For these rules, the fiscal note must be certified by the OSBM, or the agency can request that the OSBM prepare the fiscal note if, after working with OSBM, it has exhausted all resources to prepare the fiscal note on its own.⁷ For rules having substantial economic impact, the agency must also obtain certification that the agency has adhered to all regulatory principles and that sufficient funds are available, if necessary.⁸

Legislative Review

After the approval of a rule by the Rules Review Commission and the receipt of 10 written letters of objection, the rule's effective date is delayed, and the rule is subject to legislative review. The rule may go into effect either after the General Assembly fails to pass a bill disapproving the rule or if the General Assembly fails to take action on the rule.⁹ Any rule that creates a new criminal offense or otherwise subjects a person to criminal penalties is automatically subject to the same form of legislative review as rules that are objected to by 10 or more persons.¹⁰

¹ N.C. GEN. STAT. § 150B-21.2 (2021).

² § 150B-21.2(f).

³ § 150B-21.2(g).

⁴ § 150B-21.2(c)(3).

⁵ § 150B-21.26.

⁶ § 150B-21.4(a)–(b).

⁷ § 150B-21.4(b1).

⁸ § 150B-21.4.

⁹ § 150B-21.3.

¹⁰ N.C. GEN. STAT. § 14-4.1 (2021).

Independent Review

All rules in North Carolina, except emergency rules, must be reviewed by the Rules Review Commission.¹¹ The commission is technically an executive branch entity, but it consists of 10 commissioners appointed by the General Assembly (5 on the recommendation of the president pro tempore and 5 on the recommendation of the speaker of the House).¹² The commission determines whether a rule is within the agency's authority, is clear and unambiguous, is reasonably necessary, and was adopted in accordance with the Administrative Procedure Act.¹³

If the Rules Review Commission objects to a rule, the agency may either make changes to satisfy the commission's objections or decide not to change the rule and make a written request for the commission to return the rule. When the commission returns a rule that it has objected to, the proposed rule will not be entered into the code. The commission must notify the codifier of rules of its action. It must notify the governor as well if the rule is expected to increase local government expenditures or decrease local government revenues.¹⁴ The commission may also delay implementation of the regulation by extending the time of its review of the regulation for no more than 70 days.¹⁵

Impact Analysis

When a rule affects the expenditure or distribution of funds from state or local governments, a fiscal note is required.¹⁶ For any proposed rule affecting state funds, the OSBM must certify that any state funds required to implement the rule are available.¹⁷ However, fiscal notes are not required for proposed repeals.¹⁸

A fiscal note must be prepared and submitted for review and approval to the OSBM for any proposed rule that has a "substantial economic impact," which means an aggregate financial impact of at least \$1 million in a 12-month period on all affected persons.¹⁹ The agency must obtain from the office a certification that the agency adhered to regulatory principles, and the agency may request that the OSBM prepare the fiscal note, but only after it has exhausted all resources to otherwise prepare the required fiscal note.²⁰

Each agency must quantify the costs and benefits to all parties of a proposed rule to the greatest extent possible.²¹ Before submitting a proposed rule for publication, the agency must review the details of any fiscal note prepared in connection with the proposed rule and approve the fiscal note before submission.

¹¹ § 150B-21.8.

¹² N.C. GEN. STAT. § 143B-30.1(a) (2021).

¹³ § 150B-21.9.

¹⁴ § 150B-21.12 (d).

¹⁵ § 150B-21.10; § 150B-21.13.

¹⁶ § 150B-21.26.

¹⁷ § 150B-21.4.

¹⁸ § 150B-21.4(d).

¹⁹ § 150B-21.9.

²⁰ § 150B-21.4.

²¹ § 150B-19.1(e).

Periodic Review

Each agency must conduct an annual review of its rules to identify existing rules that are unnecessary, unduly burdensome, or inconsistent with the principles set forth in statute. The agency must repeal any rule identified by this review.²²

Agencies also conduct a review of existing rules at least once every 10 years.²³ As part of this review, the agency determines whether regulations are necessary or unnecessary.²⁴ The 10-year review process is overseen by the Rules Review Commission, which assigns each title of the administrative code a date by which the review of the required section must be completed.²⁵ Rules not reviewed by that date will expire.²⁶ The commission also sets a deadline for rules deemed necessary that will be readopted. Such regulations will also expire if not readopted by the prescribed date.²⁷

²² § 150B-19.1(b)

²³ § 150B-21.3A.

²⁴ *Id.*

²⁵ *Id.*

²⁶ § 150B-21.3A(d)(1).

²⁷ § 150B-21.3A(b); § 150B-21.3A(d)(2).

North Dakota's Administrative Procedures

April 7, 2021

Rulemaking

North Dakota has an informal rulemaking process.¹ A comment period of at least 10 days is required for proposed rules.² If the rule is a substantive rule, the agency must provide a time and place for the required oral hearing.³ The agency must also declare if the proposed rule is expected to have an impact on the regulated community in excess of \$50,000.⁴ The notice must include a statement of the provision of the Constitution of North Dakota or the bill number and general subject matter of the legislation that is being implemented by the proposed rule.⁵

Executive Review

Every rule proposed in North Dakota is subject to review by the attorney general for an opinion as to its legality before final adoption.⁶ The attorney general must advise an agency of any revision or rewording of a rule necessary to correct any legal objections.

Legislative Review

The Legislative Assembly reserves to itself the authority to determine if and when rules of administrative agencies are effective.⁷ The agency is required to submit any proposed rule, regulatory analysis, or economic impact statement to the Administrative Rules Committee (ARC).⁸ If the ARC objects to all or any portion of a rule because the committee deems it to be unreasonable, arbitrary, capricious, or beyond the authority delegated to the adopting agency, the ARC may file that objection with the Legislative Council.⁹ The agency must respond to the committee's objection within 14 days.¹⁰ If the ARC still objects, the burden of persuasion is on the agency in any action for judicial review or enforcement of the rule to establish that the whole rule or portion of the rule objected to is within the procedural and substantive authority delegated

¹ N.D. CENT. CODE § 28-32 (2021).

² § 28-32-12.

³ § 28-32-11.

⁴ § 28-32-10(1)(a).

⁵ § *Id.*

⁶ § 28-32-14.

⁷ § 28-32-02.

⁸ § 28-32-08(7).

⁹ § 28-32-17.

¹⁰ § 28-32-17(3).

to the agency.¹¹ If the agency fails to meet that burden, the court declares the whole rule that was objected to, or a portion of it, invalid, and the agency must pay for court costs.¹²

The ARC may find that all or any portion of a rule is void if it determines that the agency lacks statutory authority; if there is an emergency relating to public health, safety, or welfare; if the agency has failed to comply with express legislative intent; if the rule conflicts with state law; if the rule is arbitrary and capricious; or if the agency has failed to follow proper administrative procedures.¹³

Independent Review

North Dakota does not provide for any independent agency review of proposed rules.

Impact Analysis

A regulatory analysis is required if a written request for the analysis is filed by the governor or a member of the legislative assembly within 20 days of the last published notice date of a proposed rule hearing or if the proposed rule is expected to have an impact on the regulated community in excess of \$50,000.¹⁴ The regulatory analysis must describe the classes of persons affected; the probable impact, including economic impact; the probable costs to the agency and any anticipated effect on state revenues; and any alternative methods for achieving the purpose of the proposed rule that were seriously considered and the reasons for rejecting the methods in favor of the proposed rule.¹⁵

The regulatory analysis considers using regulatory methods that will minimize any adverse impact on small entities.¹⁶ The agency must consider the establishment of less stringent compliance or reporting requirements, less stringent schedules or deadlines for compliance or reporting requirements, consolidation or simplification of compliance or reporting requirements for small entities, establishment of appropriate performance standards for small entities, and exemption of small entities from all or any part of the requirements.¹⁷

Before adopting a rule that may have an adverse impact on small entities, the agency must also prepare an economic impact statement.¹⁸ This statement considers the small entities subject to the proposed rule, the administrative and other costs required for compliance with the proposed rule, the probable cost and benefit to private persons and consumers who are affected by the rule, the probable effect of the rule on state revenues, and any less intrusive or less costly alternative methods of achieving the purpose of the rule.¹⁹

¹¹ § 28-32-17(4).

¹² § *Id.*

¹³ § 28-32-18(1).

¹⁴ § 28-32-08(1).

¹⁵ § 28-32-08(2).

¹⁶ § 28-32-08.1(2).

¹⁷ *Id.*

¹⁸ § 28-32-08.1(3).

¹⁹ *Id.*

Periodic Review

The administrative rules committee can request that an administrative agency brief the committee on its existing rules and point out any provisions that appear to be obsolete or instances in which statutory or constitutional authority has changed since the rules were adopted or amended.²⁰ Any person can petition an agency to amend or repeal a rule.²¹ North Dakota also has a provision that allows for fast-track repeal of an existing regulation, permitting the Administrative Procedure Act process to be circumvented in certain cases.²² The fast-track process is authorized when three conditions are met: (a) the agency or commission has initiated the request to the ARC to amend or repeal the rule, (b) the agency or commission has provided notice to the regulated community of the time and place at which the ARC will consider the request for amendment or repeal, and (c) the agency or commission and the ARC agree that the rule amendment or repeal eliminates a provision that is obsolete or no longer in compliance with law and that no detriment would result to the substantive rights of the regulated community from the amendment or repeal.²³

²⁰ § 28-32-18.1(1).

²¹ § 28-32-16.

²² § 28-32-18.1(2).

²³ § 28-32-18.1 (2)(a)–(c).

Ohio's Administrative Procedures

April 29, 2021

Rulemaking

Ohio has an informal notice-and-comment rulemaking process.¹ Before the public hearing of an agency, a promulgating agency must provide reasonable public notice of at least 30 days.² The notice must provide a summary of the rule and the reason for it.³ At the public hearing for a proposed rule, anyone affected by the proposed action may appear and be heard in person or may have a legal representative present the person's position, arguments, or contentions. Such a person may offer and examine witnesses and present evidence to show that the proposed rule will be unreasonable or unlawful.⁴ The agency must also accept and consider all written arguments, even those of people that do not attend the hearing.⁵

Executive Review

Ohio's Common Sense Initiative Office (CSIO) is established within the governor's office⁶ and is overseen by the lieutenant governor.⁷ When a state agency is drafting new rules, or preparing existing rules for amendment or as part of the state's 5-year review process, the agency must determine if the rules have an adverse impact on business.⁸ If an agency determines that they do, it is required to submit the rules to the CSIO for review.⁹

Agencies engage with stakeholders throughout the Common Sense Initiative process, first meeting with a representative group of stakeholders to understand the potential impact of a new rule or change to an existing rule. The agency considers any feedback it receives and prepares a draft of the proposed rules. The agency completes a Common Sense Initiative business impact analysis, which contains a series of questions for the agency to consider as it is drafting its rules, including questions about how the intent of the regulation justifies any adverse impact it might bring.

The agency notifies all of the stakeholders of the rule review and sets a public comment period. The CSIO evaluates the draft rules using the business impact analysis, the stakeholders' comments, the agency's response to those comments, and any other relevant criteria. The CSIO

¹ OHIO REV. CODE ANN. § 119.03 (2021).

² § 119.03(A).

³ *Id.*

⁴ § 119.03(D).

⁵ *Id.*

⁶ § 107.61.

⁷ See GOVERNOR OF OHIO, COMMON SENSE INITIATIVE (August 29, 2020), <https://governor.ohio.gov/priorities/common-sense-initiative#:~:text=Led%20by%20Lt.,and%20economic%20growth%20in%20Ohio.>

⁸ As defined in § 107.52.

⁹ § 106.031; § 121.82.

may then recommend that the draft rules be revised to eliminate or reduce any adverse impact they might have on businesses. After CSIO review is complete, the agency proceeds to the legislative review process.

Sometimes the Joint Committee on Agency Rule Review (JCARR) in the legislature also refers regulations to the CSIO. For example, if the JCARR is uncertain whether the proposed rule has an adverse impact on businesses, it may refer the rule to the CSIO.¹⁰ The CSIO then, within 30 days of receiving a proposed or existing rule, evaluates the rule to determine whether it has an adverse impact on businesses.¹¹ Similarly, if the JCARR identifies an adverse impact on businesses in a proposed or existing rule that the CSIO has not evaluated or has evaluated inadequately, the JCARR may re-refer the rule to the CSIO.¹²

In addition, the Small Business Advisory Council also exists within the governor's office. The council advises the governor, the lieutenant governor, and the CSIO on the adverse impact that draft and existing rules may have on small businesses.¹³

Legislative Review

All proposed rules are reviewed by the JCARR, which looks at both the rule and the fiscal analysis prepared for the rule, as well as any accompanying CSIO documents.¹⁴ An agency may not adopt a proposed rule or file it in final form unless the proposed rule has been filed with the JCARR and time has been allowed for the joint committee to review the proposed rule.¹⁵

If, upon reviewing a proposed rule, the JCARR determines that the rule is problematic in view of a variety of criteria,¹⁶ it may recommend to the Senate and House of Representatives the adoption of a concurrent resolution to invalidate the proposed rule or part thereof.¹⁷ The legislature has 65 days after the original version of the proposed rule is filed to pass the concurrent resolution.¹⁸ The deadline is extended if a proposed rule that has been revised is filed more than 35 days after the original version of the proposed rule was filed.

The JCARR may also authorize the agency to revise and refile the proposed rule, rule summary, and fiscal analysis instead of recommending that the Senate and the House adopt a concurrent resolution.¹⁹

The adoption of a concurrent resolution by the General Assembly invalidating a proposed rule only prohibits the agency from instituting any version of the proposed rule for the remainder of the General Assembly's term.²⁰ The General Assembly may also adopt a concurrent resolution

¹⁰ § 106.05(A).

¹¹ § 106.05(B).

¹² § 106.05(A).

¹³ § 107.63.

¹⁴ § 106.02.

¹⁵ § 106.023.

¹⁶ § 106.021(A)–(F).

¹⁷ § 106.021.

¹⁸ § 106.02.

¹⁹ § 106.022.

²⁰ § 106.042.

that authorizes the agency to begin or continue rulemaking proceedings for a proposed rule. The governor's signature is not required on concurrent resolutions.²¹

Independent Review

Ohio does not provide for any independent review of proposed rules.

Impact Analysis

In Ohio, an agency must prepare a rule summary and fiscal analysis for each proposed rule.²² The analysis is done using a form created by the JCARR. The analysis must include a reference to the legal basis for the proposed rule, an estimate of the amount by which the proposed rule would increase or decrease revenues or expenditures for the agency, a summary of the estimated cost of compliance for all directly affected persons, and the reasons for which the rule is being proposed, among other factors.²³ If a proposed rule has an adverse impact on businesses, the agency must also file a business impact analysis.²⁴

Periodic Review

The promulgating agency must assign a review date that is within 5 years of the rule's effective date.²⁵ Prior to the review date of an existing rule, the agency that adopted the rule must review the rule to determine whether it should be continued without amendment, be amended, or be rescinded, taking into consideration a variety of factors, including the purpose, scope, and intent of the statute under which the rule was adopted.²⁶

Ohio also has a regulatory cap in place, which requires the removal of two regulatory restrictions for each one added until June 30, 2023.²⁷

²¹ Personal communication with an official from the Joint Committee on Agency Rule Review (April 29, 2021).

²² § 106.024.

²³ § 106.024(B).

²⁴ § 119.03(B).

²⁵ § 119.04.

²⁶ § 106.03.

²⁷ § 121.95(F).

Oklahoma's Administrative Procedures

July 7, 2021

Rulemaking

Oklahoma has an informal notice-and-comment rulemaking process.¹ The promulgating agency must publish the proposed rule in the *Oklahoma Register* and must allow at least 30 days for public comment and hold a hearing if one is requested.² The notice must include the specific legal authority authorizing the proposed rule.³ A hearing must be held if requested by at least 25 persons, a political subdivision, an agency, the Small Business Regulatory Review Committee, or an association with at least 25 members.⁴

Executive Review

The agency must file all permanent rules with the governor's office,⁵ as well as with the relevant cabinet secretary.⁶ The governor and the cabinet secretary then have 45 days from receipt of the rule to approve or disapprove it.⁷ If the governor approves the rule, the governor notifies the agency and the legislature in writing of the approval.⁸ If the governor disapproves the adopted rule, the governor informs the agency and the legislature with reasons in writing.⁹ Rules not approved by the governor shall not become effective unless otherwise approved by the legislature.¹⁰ If the governor does not act within 45 days, the rule is disapproved by default.¹¹

The Small Business Regulatory Review Committee also provides agencies with input regarding rules expected to have an adverse effect on small businesses. The committee exists within the Department of Commerce, and it reviews rules expected to have an adverse economic impact on small businesses.¹²

Legislative Review

The Oklahoma legislature reviews all proposed rules. In addition to filing rules with the governor's office (see the previous section), copies of permanent rules are sent to the speaker of

¹ Okla. Stat. tit. 75 § 303 (2021).

² 75 § 303(A)(1)–(3).

³ 75 § 303(B)(4).

⁴ 75 § 303(C).

⁵ 75 § 303.1(A).

⁶ Okla. Exec. Order No. 2013-34 (2013).

⁷ 75 § 303.2(A); Okla. Exec. Order No. 2013-34.

⁸ 75 § 303.2(A)(1).

⁹ 75 § 303.2(A)(2).

¹⁰ 75 § 303.2(A)(3).

¹¹ 75 § 303.2(A)(2).

¹² 75 § 504.

the House of Representatives and the president pro tempore of the Senate .¹³ Upon receipt of the rule, the speaker of the House of Representatives and the president pro tempore of the Senate assign rules for review to the appropriate committees of each house of the legislature, generally the rule review committees in each chamber or the relevant standing committees with jurisdiction in the area of the rule.¹⁴

The legislature has 30 legislative days to review the rules and, by joint resolution,¹⁵ may disapprove any rule, waive the 30-legislative-day review period and approve any rule, or otherwise approve any rule that has been submitted for review. The legislature may disapprove a proposed rule by joint resolution. The resolution requires the governor’s signature unless the veto is overridden by a two-thirds majority of the legislature.¹⁶ The legislature may also issue omnibus joint resolutions approving regulations, with exceptions spelled out for disapproved regulations.¹⁷

In general, a permanent rule can go into effect if the legislature approves the rule by joint resolution, if the legislature approves the rule by failing to disapprove it by joint omnibus resolution, or if the governor vetoes a joint or omnibus joint resolution disapproving the rule. A permanent rule may also go into effect if the governor issues a governor’s declaration approving the rule after the legislature fails to pass an omnibus joint resolution before adjournment sine die, after the governor determines that the omnibus joint resolution has a technical legal defect, or after the agency petitions the governor to approve the rules after disapproval by omnibus joint resolution.¹⁸

Senate Bill 913, signed into law in April 2021, created a Joint Committee on Administrative Rules to review agencies’ rules. However, the law did not go into effect until September 2021 and therefore was not in effect when this report was concluded.¹⁹

Independent Review

If the promulgating agency determines that a rule will have an economic impact on any political subdivisions or require their cooperation in implementing or enforcing the rule, a copy of the proposed rule and rule report must be filed with the Oklahoma Advisory Committee on Intergovernmental Relations for the committee’s review. The committee may make recommendations to the legislature and the governor.²⁰

¹³ 75 § 303.1(A).

¹⁴ 75 § 307.1

¹⁵ 75 § 308(A). However, the review period can be shorter if the rule is submitted within 30 days of the legislative session ending on April 1 and if the legislature adjourns without disapproving the regulation. *See* 75 § 308(E).

¹⁶ 75 § 308(E); 75 § 250.3(5).

¹⁷ 75 § 308.3.

¹⁸ Office of Administrative Rules. Okla. Sec’y of State, Permanent Rulemaking Process—Drafting to Enactment: How a Permanent Rule Becomes Effective. March 24, 2014. (On file with authors.)

¹⁹ S.B. 913, 58th Leg. (Okla. 2021).

²⁰ OKLA. STAT. tit. 75, § 303.1(B).

Impact Analysis

The agency prepares an agency rule report when submitting a regulation for the governor's review. The agency rule report includes 15 items, such as a summary of the proposed rules, an identification of the agency's statutory authority, and a summary of comments received and changes made as a result of those comments.²¹

The promulgating agency must prepare a rule impact statement as part of the agency rule report.²² This statement includes a brief description of the purpose of the proposed rule, the classes of persons most likely to be affected, the probable economic impact of the proposed rule, and the probable costs and benefits to the agency. In the impact statement, an agency must determine whether implementation of the proposed rule will have an economic impact on any political subdivisions. It must also determine whether implementation of the proposed rule may have an adverse economic effect on small business.²³ If there may be adverse economic effects on small businesses, a small business impact statement may be required.²⁴

Periodic Review

The governor (by executive order), either or both houses of the legislature (by resolution), a small business, or the Small Business Regulatory Review Committee may request that an agency review its rules to determine whether the rules in question should be amended, repealed, or redrafted. The agency then has 90 days to respond.²⁵ An interested person may also petition an agency for the promulgation, amendment, or repeal of a rule.²⁶

By executive order in 2020, the governor required that whenever an agency proposes one new regulatory restriction through the permanent rulemaking process, two must be revoked until the total number of regulatory restrictions in the state falls by 25%.²⁷

²¹ 75 § 303.1(E).

²² 75 § 303(D)(1).

²³ 75 § 303(D)(2).

²⁴ 75 § 505.

²⁵ 75 § 250.10.

²⁶ 75 § 305.

²⁷ Okla. Exec. Order No. 2020-03 (2020).

Oregon's Administrative Procedures

July 21, 2021

Rulemaking

Oregon has an informal notice-and-comment rulemaking process.¹ For most significant rulemakings, agencies establish a rulemaking advisory committee (RAC) before filing a rulemaking notice.² The agency must make a good-faith effort to ensure that the RAC is composed of a representative group of interested parties likely to be affected by the rule.³ The agency seeks the RAC's recommendations on whether the rule will have a fiscal impact and to what the extent the rule will have adverse effects on small businesses.

At least 21 days before a rule's effective date, the promulgating agency must give notice in the government bulletin that it intends to adopt the rule.⁴ The agency must notify at least 28 days before the effective date anyone who requested to be notified,⁵ and it must notify various other interested parties with oversight in the legislature at least 49 days before the effective date.⁶ The notice must include an objective, simple, and understandable statement summarizing the subject matter and purpose of the intended action; a citation to the statutory or other legal authority for the rule; and a statement describing the need for the rule and the way the rule will meet the need. The notice must also include a list of the reports or studies prepared by or relied on by the agency when considering the need for the rule and a statement of fiscal impact that identifies state agencies, units of local government, and members of the public that may be economically affected by the rule.⁷ The RAC may provide recommendations to the agency when it prepares the statement of fiscal impact.⁸

Any agency proposing a rule must allow the public reasonable opportunity to submit data or views, and a public hearing will be held if at least 10 persons request one.⁹

Executive Review

Oregon does not have a provision requiring any form of executive review of proposed rules.

¹ Or. Rev. Stat. § 183.335 (2021).

² § 183.333.

³ OR. DEP'T OF JUST., MODEL RULES FOR RULEMAKING § 137-001-0005: "[T]he agency shall make a good faith effort to ensure that the committee's members represent the interests of persons likely to be affected by the rule."

⁴ § 183.335(1)(b).

⁵ § 183.335(1)(c).

⁶ § 183.335(1)(d); § 183.335(15).

⁷ § 183.335(2)(a)–(b).

⁸ § 183.333(4).

⁹ § 183.335(3)(a).

Legislative Review

The Oregon Office of the Legislative Counsel (LC) may review any proposed or adopted rule.¹⁰ If the LC chooses to review a rule, it must determine whether the rule appears to be within the intent and scope of the enabling legislation and determine whether the rule raises any constitutional issue.¹¹ While the LC's decision to review is in principle discretionary, in practice agencies are expected to forward most rules to the LC for a brief review.¹²

If the LC determines that a rule is not within the intent and scope of the enabling legislation or that the rule raises a constitutional issue, the LC must send that determination to the agency.¹³ If the LC finds that a proposed or adopted rule is not within the intent and scope of the enabling legislation or that the rule is not constitutional, it may request that the agency respond either in writing or in person at a meeting of the interim committee with subject-matter jurisdiction.¹⁴ Determinations are posted on a public website until (a) the rule is amended to be in line with the intent and scope of the enabling legislation, (b) a court determines that the rule is within the intent and scope of the enabling legislation or is constitutional, or (c) the Legislative Assembly modifies the enabling legislation.¹⁵

Independent Review

The Small Business Rules Advisory Committee serves as an advisory committee for agencies adopting rules. It consists of two representatives of small businesses appointed by the governor; two representatives of small businesses appointed by the president of the Senate; two representatives of small businesses appointed by the speaker of the House; a representative of small businesses appointed by the Office of Small Business Assistance; a representative of state agencies appointed by the director of the Oregon Department of Administrative Services; and a member who is an expert in the rulemaking process appointed by the state archivist.¹⁶

The committee's job is to review the effectiveness of administrative rules. Upon request by an agency, the committee can serve as the advisory committee or fiscal impact advisory committee for reviewing an agency's proposed or existing administrative rules.¹⁷ Although this form of independent review exists in statute, agencies rarely exercise it in practice.¹⁸ Rather, they typically use RACs instead for this purpose. RAC recommendations are not considered part of an independent review for the purposes of this report, since the RAC is formed by the agency itself to provide it with advice.

¹⁰ § 183.720.

¹¹ § 183.720(3).

¹² Personal communication with an official from Oregon Business and Industry (July 19, 2021).

¹³ § 183.720 (6).

¹⁴ § 183.720.

¹⁵ § 183.722.

¹⁶ § 183.407.

¹⁷ § 183.407; § 183.133; § 183.405(2).

¹⁸ Personal communication with an official from Oregon Business and Industry (July 19, 2021).

Impact Analysis

Each proposed rule must contain a statement of fiscal impact.¹⁹ This statement identifies state agencies, units of local government, and members of the public that may be economically affected by the adoption of the rule. The statement provides an estimate of the economic impact on state agencies, units of local government, and the public.

If the statement of cost of compliance, which estimates effects on small businesses, shows that a rule has a significant adverse effect on small businesses, to an extent consistent with the public health and safety purpose of the rule, the agency must reduce the economic impact of the rule on small businesses.²⁰ However, in practice, this provision is rarely exercised.²¹

Periodic Review

No later than 5 years after adopting a rule, the agency must review the rule and determine whether it has had the intended effect, whether the fiscal impact of the rule was underestimated or overestimated, whether the rule is still needed or needs to be changed, and what impacts the rule has had on small businesses.²²

The LC may review an adopted rule of a state agency upon the written request of any person affected by the rule.²³

¹⁹ § 183.335 (2)(b)(E).

²⁰ § 183.540.

²¹ Personal communication with an official from Oregon Business and Industry (July 19, 2021).

²² § 183.405.

²³ § 183.390(1); § 183.720(2).

Pennsylvania's Administrative Procedures

April 27, 2021

Rulemaking

The Commonwealth of Pennsylvania has an informal notice-and-comment rulemaking process.¹ Agencies are required to publish notices of their intention to promulgate, repeal, or amend regulations. These notices, which are published in the *Pennsylvania Bulletin*, must include the text of the proposed regulation, the agency's statutory authority to propose the regulation, and a brief explanation of the proposed regulation, among other things.² There is a 30-day minimum public comment period. If an agency does not deliver a regulation in its final form within 2 years of the close of the public comment period, the regulation is deemed withdrawn, and the rulemaking ends.³

Executive Review

The state attorney general and the general counsel perform a review of regulations for their legality. They review regulations first as proposed and again in final form. The general counsel and the attorney general both, independently of each other, perform this function.⁴ The general counsel is responsible for advising the governor and providing legal services to executive agencies. The general counsel reviews a regulation to determine whether it is clearly drafted; whether the preamble satisfactorily explains the purpose of, need for, and statutory basis of the regulation; and whether the Regulatory Analysis Form is completed correctly. There are no statutory time restrictions for the general counsel's review.

The attorney general's office is technically considered an independent agency. The attorney general reviews regulations for their constitutionality and statutory authority. Criteria under review include consistency with governing statute, other statutes, and case law; proper form and structure; and compliance with the regulatory review process.⁵

In addition to these reviews, each rule must also be reviewed by the secretary of the budget and the governor's policy director, as required by executive order.⁶ The Office of the Budget will evaluate the cost analysis prepared by the agency and prepare a fiscal note for the regulation.⁷ No agency can proceed with a rule until the general counsel, secretary of the budget, and policy director have informed the agency that the regulation is consistent with the regulatory principles and overall policies of the administration.⁸

¹ PA. INDEP. REGUL. REV. COMM'N, THE REGULATORY REVIEW PROCESS IN PENNSYLVANIA 8–22 (2019).

² *Id.* at 2.

³ *Id.* at 13.

⁴ *Id.* at 3–4.

⁵ *Id.* at 4.

⁶ PA. EXEC. ORDER NO. 1996-1 § 4(b) (1996).

⁷ 1996-1 § 4(d).

⁸ 1996-1 § 4(e)

Legislative Review

Each proposed and final rule is submitted to the appropriate standing committees of the House of Representatives and the Senate.⁹ Committees may submit comments, recommendations, and objections to the agency and the Independent Regulatory Review Commission (IRRC) at any time prior to the agency's delivery of the final regulation.¹⁰ Committees have broad discretion in how they conduct their reviews, comments, recommendations, and objections, and they may refer to any of the criteria established within the law.¹¹

If either the House committee or the Senate committee disapproves of the regulation (or if the IRRC disapproves), the committees have 14 days to introduce a concurrent resolution.¹² If either committee does not report a concurrent resolution within 14 calendar days, the agency may proceed with final promulgation.

If either committee passes a concurrent resolution disapproving the regulation, the Senate and the House of Representatives each have 30 calendar days or 10 legislative days, whichever is longer, to adopt it.¹³ Both chambers must adopt the concurrent resolution by majority vote, and it must be signed by the governor (or the governor's veto must be overridden by a supermajority vote).¹⁴

If the committees do not disapprove the rule, or if the legislature fails to pass a concurrent resolution disapproving the rule, it is forwarded to the attorney general. If the attorney general approves the rule, it can become effective.¹⁵

Independent Review

The IRRC plays an integral role in the rulemaking process in Pennsylvania. There are five IRRC commissioners, each of whom is appointed by a different appointing authority. The appointing authorities are the governor, the president pro tempore of the Senate, the minority leader of the Senate, the speaker of the House of Representatives, and the minority leader of the House of Representatives. A commissioner may not be a commonwealth employee or hold an elected or appointed position in state government.¹⁶

The IRRC's mission is to review regulations to make certain that agencies have the statutory authority to enact regulations and to determine whether regulations are consistent with legislative intent.¹⁷ The IRRC also considers other criteria, such as economic impact, public health and safety, reasonableness, impact on small businesses, and clarity. The IRRC also acts as a clearinghouse for complaints, comments, and other input from the General Assembly and the

⁹ PA. INDEP. REGUL. REV. COMM'N at 8, 14.

¹⁰ *Id.* at 11.

¹¹ *Id.*

¹² *Id.* at 20.

¹³ *Id.* at 21.

¹⁴ *Id.* at 22.

¹⁵ *Id.* at 21.

¹⁶ *Id.* at 1.

¹⁷ *Id.* at 11.

public regarding proposed and final regulations.¹⁸ The IRRC may disapprove of a regulation, which temporarily blocks the regulation. The agency must then either revise, withdraw, or move forward despite the objection. The agency has 40 days to issue a report to the IRRC, if it wishes to move forward, with or without revisions; otherwise, the rule cannot proceed. The IRRC then issues its final determination to the relevant committees.¹⁹

Impact Analysis

By executive order, agencies are required to prepare a regulatory analysis as part of their rulemakings.²⁰ This analysis is submitted to the general counsel, the secretary of budget, and the governor's policy director. It must include factors such as a compelling public need for the regulation, the statutory authority for the regulation, an estimate of the costs or savings associated with compliance and implementation, a cost-benefit analysis of the regulation, and any alternative regulatory schemes considered and the reasons for their dismissal. The costs of a regulation must not outweigh the benefits.²¹

The Office of the Budget also prepares a fiscal note for regulatory actions of administrative departments, boards, commissions, or authorities that receive money from the state treasury.²² The fiscal note must state the costs of the proposed action to programs of the commonwealth or local government, the fund or appropriation source providing the funding for the proposal, the probable cost of implementing the proposal in its first fiscal year, and a projected cost estimate for each of the next 5 fiscal years. It must also include the fiscal history of the program expenditures, the probable loss of revenue for the fiscal year of its implementation, and the projected loss of revenue for each of the next 5 fiscal years, along with the recommendations, if there are any, of the secretary of the budget.²³

Periodic Review

By executive order, regulations are reviewed according to a review schedule published annually by each agency.²⁴ The agency must determine whether regulations continue to effectively fulfill the goals that they were intended to accomplish and whether they remain consistent with the principles outlined in the executive order.

The IRRC may also review any existing regulation that has been in effect for at least 3 years. This review may be undertaken either on the IRRC's own initiative or at the request of any person or member of the General Assembly. If a committee requests the review, the IRRC must assign it high priority.²⁵

¹⁸ *Id.* at 12.

¹⁹ *Id.* at 19–20.

²⁰ PA. EXEC. ORDER No. 1996-1 § 4(b).

²¹ 1996-1 § 1(b).

²² PA. INDEP. REGUL. REV. COMM'N at 3.

²³ *Id.*

²⁴ 1996-1 § 7.

²⁵ PA. INDEP. REGUL. REV. COMM'N at 27.

Rhode Island's Administrative Procedures

April 19, 2021

Rulemaking

Rhode Island has informal notice-and-comment rulemaking.¹ An agency publishes a notice of proposed rulemaking and allows for a public comment period of at least 30 days.² The agency's notice must cite the specific legal authority authorizing the proposed rule.³ If 25 persons, a governmental agency, or an association having at least 25 members requests a hearing within 10 days of a notice posting, then a hearing must be granted.⁴ After the public comment period is closed, the agency has 180 days to file the rule. If the rule is not filed, the agency must restart the rulemaking process.⁵

Executive Review

By executive order, agencies must submit rules to the state's Office of Management and Budget (OMB). In practice, this review is conducted by the Office of Regulatory Reform, which is within the OMB and also oversees aspects of regulatory analysis requirements.⁶ The agency must provide an economic impact statement to the OMB and the Executive Office of Commerce. The Executive Office of Commerce provides input to the OMB regarding any potential adverse impacts that it believes the proposed rule may have on business activity in the state.⁷ After 30 days, if the OMB has not taken any action, the agency can take action on the proposed rule.⁸

Regulations that affect small businesses are submitted to the governor's office and to the Office of Regulatory Reform, along with an economic impact statement focusing on impacts on small businesses.⁹ An ombudsman for small business regulatory enforcement reports to the director of the Department of Business Regulation.¹⁰ The ombudsman is tasked with ensuring that regulatory analysis responsibilities relating to small businesses are fulfilled.¹¹ The ombudsman works with regulatory agencies to ensure that small business interests are represented, with a focus on the enforcement activities of regulators.

¹ R.I. GEN. LAWS § 42-35-2.7 (2021).

² § 42-35-2.8(a).

³ § 42-35-2.7(b)(2).

⁴ § 42-35-2.8(c).

⁵ § 42-35-4(c).

⁶ § 42-64.13-8(1).

⁷ R.I. EXEC. ORDER NO. 15-07 § 3(2) (2015).

⁸ 15-07 § 3.

⁹ § 42-35.1-3.

¹⁰ § 42-35.1-5.

¹¹ § 42-64.13-8(2).

Legislative Review

Rhode Island does not have any legislative review of regulations.

Independent Review

The Executive Office of Commerce is the commerce secretary's office. The commerce department is a quasi-public entity with private sector members, who are appointed by the governor, serving on its board.¹² As stated in the executive review section, the Executive Office of Commerce is able to provide input to the OMB when the OMB conducts its reviews.

Impact Analysis

An agency in Rhode Island must complete a regulatory analysis before a proposed rule is published.¹³ The analysis contains a cost-benefit analysis, and the agency must demonstrate that there is no alternative as effective, but less burdensome, than the proposed rule.¹⁴ The analysis must also include determinations of whether the benefits of the proposed rule justify its costs and whether the proposed rule will achieve the objectives of the authorizing statute in a more cost-effective manner or with greater net benefits than alternative regulatory methods.¹⁵

Economic impact statements are required when a rule may have an impact on small businesses.¹⁶ Statements must identify and estimate the number of the small businesses subject to the proposed regulation; include a statement of the effect or probable effect on affected small businesses; estimate administrative costs and other costs required for compliance with the proposed regulation; and include a description of any other less intrusive or less costly methods of achieving the purpose of the proposed regulation.¹⁷ Regulators must also produce a flexibility analysis that considers options for creating flexibility for small businesses.¹⁸

By executive order, economic impact statements must include alternatives to proposed rules, including the use of economic incentives, information disclosure requirements, and performance standards.¹⁹ Rules must not place an undue burden on persons or entities that must comply with the rule.²⁰ Moreover, rules should be based on sound, reasonable, and available information that may be technically, scientifically, economically, or otherwise relevant.²¹

¹² COMMERCE CORPORATION BY-LAWS art. II § 2.2. *See also* the Rhode Island Commerce website at <https://commerceri.com/about-us/>.

¹³ § 42-35-2.9(a).

¹⁴ § 42-35-2.9(b)(2).

¹⁵ § 42-35-2.9(b)(3)(i)-(ii).

¹⁶ § 42-35.1-3.

¹⁷ § 42-35.1-3(a)(1)-(4).

¹⁸ § 42-35.1-4.

¹⁹ R.I. Exec. Order No. 15-07 § 3(9) (2015).

²⁰ 15-07 § 2(2).

²¹ 15-07 § 2(4).

Periodic Review

Rhode Island has a periodic refiling requirement.²² All rules on file with the secretary of state had to be refiled on the first Tuesday in January 2007, and they must be refiled on the first Tuesday in January of every successive fifth year thereafter.²³ The Office of Regulatory Reform within the OMB also facilitates the review and amendment of existing rules and regulatory processes.²⁴

Also, anyone can petition an agency to promulgate a rule. The agency can then initiate rulemaking or deny the petition with reasons stated.²⁵

²² § 42-35-4.1; § 42-35-4.2.

²³ § 42-35-4.2.

²⁴ 15-07 § 4.

²⁵ § 42-35-6.

South Carolina's Administrative Procedures

February 15, 2021

Rulemaking

South Carolina has informal rulemaking,¹ but the state's hearing process also resembles the formal rulemaking process at the federal level in some aspects. When a public hearing is required, it is overseen by an administrative law judge (if the regulating agency is run by a single director) or by the board or commission (if the governing authority is a board or commission).² A hearing is required if requested by 25 persons, by a governmental subdivision or agency, or by an association having not less than 25 members.³ Individuals can present written or oral evidence at the hearing. The agency submits evidence into the record and may also submit oral statements. The presiding official must allow the questioning of agency representatives or witnesses; interested persons must also be allowed to make oral statements.⁴ Between 5 and 20 days after the hearing ends, the presiding official must issue a written report as to the need for and reasonableness of the proposed regulation.⁵

South Carolina has a preproposal notice requirement. An agency must give notice of a drafting period by publishing a notice in the *South Carolina State Register*.⁶ The preproposal notice must include where interested persons may submit written comments before the regulations are proposed, a synopsis of what the agency plans to draft, and the agency's statutory authority for promulgating the regulation. The agency must allow at least 30 days for submitting comments.⁷ The agency must also state the statutory authority for promulgating the regulation in the notice of its proposed rule.⁸

Proposed rules have an expiration date. With a few exceptions, a regulation must not be filed with the Legislative Council for submission to the General Assembly more than a year after publication of the drafting notice.⁹ A regulation is deemed withdrawn if it has not become effective after the end of the 2-year session in which the regulation was submitted to the legislature for review.¹⁰

Executive Review

South Carolina has no executive review of regulations.

¹ S.C. Code Ann. § 1-23-110 (2021).

² § 1-23-111.

³ § 1-23-110(A)(3).

⁴ § 1-23-111(A).

⁵ § 1-23-111(B).

⁶ § 1-23-110(A)(1).

⁷ § 1-23-110(A)(3)(a).

⁸ § 1-23-110(A)(3)(d).

⁹ § 1-23-120(A).

¹⁰ § 1-23-120(G).

Legislative Review

All regulations, except certain exempt rules, must be filed with the Legislative Council for submission to the General Assembly for review.¹¹ The president of the Senate and speaker of the House send the regulation for review to the standing committees of the Senate and House that are most concerned with the function of the promulgating agency.¹² The committees have 120 days to take action. The 120-day review period begins on the date the regulation is filed with the president and speaker. Periods in which the General Assembly has adjourned sine die do not count toward the period of review, and the remainder of the period begins to run again upon the next convening of the General Assembly (excluding any special sessions called by the governor).¹³ Sixty calendar days after receipt of the regulation, if no action is taken by the standing committee, the regulation is put on the agenda of the next full committee meeting scheduled. Any member of the General Assembly may introduce a joint resolution approving or disapproving the regulation.¹⁴ A regulation may go into effect upon publication in the *South Carolina State Register* if no action is taken by the General Assembly within 120 days of receipt of the regulation. A joint resolution must pass both chambers and be signed by the governor to go into effect. As stated previously, a regulation is deemed withdrawn if it has not become effective after the end of the 2-year session during which the regulation was submitted to the president and speaker for review.¹⁵

Independent Review

All rules are reviewed by the Small Business Regulatory Review Committee,¹⁶ which is a committee within the Department of Commerce composed of members of the business community.¹⁷ An agency, if directed by the Small Business Regulatory Review Committee, must prepare an economic impact statement or a regulatory flexibility statement looking at impacts on small businesses.¹⁸ The Small Business Regulatory Review Committee can also request that the Revenue and Fiscal Affairs Office provide an assessment report by the end of the public comment period.¹⁹ The Revenue and Fiscal Affairs Office is an independent agency with board members appointed by the governor, the chair of the House Ways and Means Committee, and the chair of the Senate Finance Committee.²⁰

¹¹ § 1-23-120(A).

¹² § 1-23-120(C).

¹³ § 1-23-120(E).

¹⁴ § 1-23-120(F).

¹⁵ § 1-23-120(G).

¹⁶ § 1-23-270.

¹⁷ See the committee's website at <https://www.sccommerce.com/small-business-regulatory-review-committee>.

¹⁸ § 1-23-270(C)(1).

¹⁹ § 1-23-280(A)(2)(b).

²⁰ See the office's website at <http://rfa.sc.gov/>.

If two members of the General Assembly so request, an assessment report must be provided by the promulgating agency.²¹ The agency must submit the report to the Revenue and Fiscal Affairs Office's Office of Research and Statistics if a substantial economic impact is expected.²²

Impact Analysis

As noted previously, South Carolina has a variety of impact analysis requirements. All rules require a fiscal impact statement that includes estimates of costs to be incurred by the state and its political subdivisions in complying with the proposed regulation.²³

Upon written request by two members of the General Assembly, an assessment report must be prepared for a regulation that has a substantial economic impact.²⁴ The preliminary assessment report is prepared by the agency, and the final assessment report is completed by the Revenue and Fiscal Affairs Office.²⁵ The assessment report must account for a number of factors, including a description of the regulation; the purpose of the regulation; the legal authority for the regulation; a plan for implementing the regulation; a determination of the need for and reasonableness of the regulation; a determination of the costs and benefits associated with the regulation; the effect of the regulation on competition; the effect of the regulation on the cost of living and doing business; the effect of the regulation on employment; and an explanation of why the regulation is considered the most cost-effective, efficient, and feasible means for allocating public and private resources and for achieving the stated purpose.²⁶

The Small Business Regulatory Review Committee may also request that the Revenue and Fiscal Affairs Office prepare a final assessment report.²⁷ The committee may also direct the promulgating agency to prepare a regulatory flexibility analysis,²⁸ which requires the agency to consider using other regulatory methods that accomplish the objectives of the rule while minimizing adverse impacts on small businesses.²⁹

If a rule is determined to have an adverse impact on small businesses, and if so directed by the Small Business Regulatory Review Committee, the agency prepares an economic impact statement and a regulatory flexibility analysis. The economic impact statement estimates the number of small businesses subject to the proposed regulation and the administrative costs required for compliance with the proposed regulation. It also includes a statement describing the economic impact on small businesses and less intrusive or less costly alternative methods of

²¹ § 1-23-115(A).

²² § 1-23-115(B).

²³ § 1-23-110(3)(e).

²⁴ § 1-23-115(A).

²⁵ § 1-23-115(B).

²⁶ § 1-23-115(C).

²⁷ § 1-23-280(A)(2)(b).

²⁸ § 1-23-280(A)(2)(a).

²⁹ § 1-23-270(C)(2).

achieving the purpose of the proposed regulation.³⁰ As part of the regulatory flexibility analysis, methods of reducing the impact of the proposed regulation on small businesses are considered.³¹

Periodic Review

Each state agency must conduct a formal review of all its regulations every 5 years.³² In reviewing regulations, agencies must consider impacts on small businesses.³³ The Small Business Regulatory Review Committee also has the authority to file a petition with the agency that has promulgated the concerning regulation.³⁴ Any member of the public may also petition an agency to review an existing regulation.³⁵

³⁰ § 1-23-270(C)(1).

³¹ § 1-23-270(C)(2); § 1-23-270(D)(1)–(5).

³² § 1-23-270(F).

³³ § 1-23-270(F)(3).

³⁴ § 1-23-280(A)(3); § 1-23-290.

³⁵ § 1-23-126.

South Dakota's Administrative Procedures

April 5, 2021

Rulemaking

South Dakota has an informal rulemaking process in which a notice, service, and public hearing procedure is used for adopting, amending, or repealing a permanent rule.¹ A notice of hearing must be presented 20 days before the public hearing.² If the authority promulgating the rule is a secretary, commissioner, or officer, the agency must accept written comments for a period of 10 days after the public hearing.³ No permanent rule may be filed with the secretary of state without the review of the rule by the Interim Rules Review Committee (IRRC). No permanent rule may be finalized with the secretary of state if more than 60 days have passed from the date on which the IRRC adopted a motion that the rulemaking process is complete.⁴

Executive Review

A rule requires an executive official's written approval to proceed. Thus, the departmental secretary, the bureau commissioner, the public utilities commissioner, or the constitutional officer who oversees the regulatory agency issuing the rule must sign off on it.⁵

A copy of the proposed rules is also given to the commissioner of the Bureau of Finance and Management, along with a copy of the fiscal note, the small business impact statement, and the notice of the public hearing.⁶ The Bureau of Finance and Management also prepares its own fiscal note.⁷

Legislative Review

All rules are submitted to the director of the Legislative Research Council (LRC) for review.⁸ The LRC reviews rules for form, style, clarity, and legality.⁹ Rules are also reviewed by the IRRC.¹⁰ The IRRC is composed of six members (three members of the Senate appointed by the president pro tempore and three members of the House of Representatives appointed by the speaker of the

¹ S.D. CODIFIED LAWS § 1-26-4 (2021).

² § 1-26-4(2).

³ § 1-26-4(6).

⁴ § 1-26-4.3.

⁵ § 1-26-4(1).

⁶ § 1-26-4(2).

⁷ § 1-26-4.2.

⁸ § 1-26-4(2).

⁹ § 1-26-6.5.

¹⁰ § 1-26-4.3.

House).¹¹ Meetings held by the IRRC are open to the public, and any interested person may speak and present evidence.¹²

The IRRC has some powers under the South Dakota Constitution.¹³ The IRRC may by majority vote suspend provisional rules or rules that have not become effective. The suspended rule remains suspended until July 1 of the year following the year in which it became, or would have become, effective, and it may not be enforced during that period.¹⁴

Independent Review

South Dakota has no independent agency review of regulations.

Impact Analysis

All rules require a fiscal note and a small business impact statement. The fiscal note that an agency submits to the Bureau of Finance and Management must consider impacts on revenues, expenditures, and fiscal liability of the state or its agencies and subdivisions.¹⁵ In addition, the Bureau of Finance and Management prepares its own fiscal note.¹⁶ An agency must also prepare a statement describing how the proposed rule will affect small businesses, how many small businesses are subject to the rule, what new reporting or recordkeeping requirements the rule imposes, and what less intrusive or less costly methods of achieving the purpose of the proposed rule may exist.¹⁷

Periodic Review

South Dakota has no periodic review requirement. However, an interested person can petition an agency to amend or repeal a rule.¹⁸ Within 30 days, the agency must either deny or initiate proceedings. The agency provides the IRRC and the director of the LRC a copy of petitions and denials. Upon rejection of a petition, the agency must offer a statement of reasons for the rejection.¹⁹

¹¹ § 1-26-1.1.

¹² § 1-26-1.2.

¹³ S.D. Const. art. 1 § 30.

¹⁴ § 1-26-38.

¹⁵ § 1-26-4.2.

¹⁶ *Id.*

¹⁷ § 1-26-2.1.

¹⁸ § 1-26-13.

¹⁹ § 1-26-7.1.

Tennessee's Administrative Procedures

April 5, 2021

Rulemaking

Tennessee has three different rulemaking processes based on three types of rules: (a) rulemaking hearing rules, (b) emergency rules, and (c) proposed rules.¹ A public hearing at which the public may make comments is always held for rulemaking hearing rules but is never held for emergency rules. A hearing is not held for proposed rules unless an association of 10 or more members, a municipality, or a majority vote from any standing committee of the General Assembly files a petition for a public hearing, which prevents the agency from going forward unless it holds a hearing.² Notice of a hearing must be given at least 45 days before the date set for the hearing.³ The notice includes, insofar as practicable, a reference to the statutory authority it will use to adopt the rule.⁴

Executive Review

All rules are filed with the Office of the Attorney General and Reporter. The Office of the Attorney General and Reporter reviews the legality and constitutionality of every rule.⁵

Legislative Review

Rules are reviewed by the government operations committees of the Senate and the House of Representatives, meeting jointly or separately, or by a subcommittee of the government operations committees.⁶ The committees or subcommittees must hold at least one public hearing to receive testimony from the public and from the administrative head of the agency.⁷

Independent Review

Tennessee does not have independent agency review of regulations.

Impact Analysis

Agencies, when filing a regulation with the secretary of state, must include, among other factors, information about the persons, organizations, corporations, or government entities most directly affected by the rule, and discuss whether those groups urge the adoption or rejection of the

¹ TENN. CODE ANN. § 4-5-202 (2021).

² § 4-5-202(a)(2).

³ § 4-5-203(b).

⁴ § 4-5-203(c)(3).

⁵ § 4-5-211.

⁶ § 4-5-226(c).

⁷ § 4-5-226(d)(1).

rule.⁸ The agency must also estimate the impact on state and local government revenues and expenditures. If the fiscal impact is more than 2% of the “agency’s annual budget or five hundred thousand dollars (\$500,000), whichever is less,” the agency cannot assume that the fiscal impact is minimal.⁹

A regulatory flexibility analysis is required to determine if a regulation affects small businesses.¹⁰ If it does, then an economic impact statement is required for the rule.¹¹ The statement must describe any less burdensome, less intrusive, or less costly methods of achieving the purpose and objectives of the rule.¹² The statement must also describe compliance costs for small businesses, such as the projected reporting, recordkeeping, and other administrative costs required for compliance with the proposed rule.¹³ As a part of the regulatory flexibility analysis, the agency must consider alternative compliance and reporting requirements for small businesses.¹⁴ Agencies must also consider the unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.¹⁵

Periodic Review

Emergency rules automatically expire 180 days after they are filed with the secretary of state.¹⁶ Rulemaking hearing and proposed rules expire on June 30 following the year that they are filed with the secretary of state, unless legislation is enacted to continue a rule.¹⁷ If legislation is enacted, the rule may continue indefinitely or until a specified date.¹⁸ Rules are reviewed by the government operations committees of the Senate and the House of Representatives at the discretion of the chair of both committees.¹⁹ In the review by the General Assembly, the “the agency has the burden of demonstrating, by convincing evidence,” that the agency is acting within its authority and that the rule is necessary to secure the health, safety, or welfare of the public, among other factors.²⁰

In practice, because of the short sunset date attached to regulations, this review requirement acts as a form of mandatory legislative approval of regulations less than a year old, rather than as a periodic review requirement. Thus, one could view this sunset process as a form of legislative veto, rather than a periodic review requirement.

⁸ § 4-5-226(h)(i)(1)(C).

⁹ § 4-5-226(h)(i)(1)(E).

¹⁰ § 4-5-403.

¹¹ *Id.*

¹² § 4-5-403(4).

¹³ § 4-5-403(2).

¹⁴ § 4-5-402(b)(3).

¹⁵ § 4-5-402(b)(7).

¹⁶ § 4-5-208(b).

¹⁷ § 4-5-226(b).

¹⁸ § 4-5-226(a).

¹⁹ § 4-5-226(c).

²⁰ § 4-5-226(e).

A municipality, corporation, or group of five or more persons may also petition an agency to request the adoption, amendment, or repeal of a rule, except where the right to petition for a rule is restricted by statute to a designated group or where the form of procedure for such a petition is otherwise prescribed by statute.²¹ Either the agency must respond by denying the petition and notifying the petitioner to that effect or, if it grants the petition, the agency must follow the ordinary rulemaking requirements.²²

²¹ § 4-5-201(a).

²² § 4-5-201(c).

Texas's Administrative Procedures

March 25, 2021

Rulemaking

Texas uses informal rulemaking. A state agency must give at least 30 days' notice of the proposed rule,¹ and the agency must also give those interested a reasonable opportunity to submit their views orally or in writing.² Taken together, these requirements act as a de facto 30-day minimum comment period.³ Furthermore, under certain conditions, a public hearing will be held if an agency adopts a substantive rule.⁴ An agency can also use informal conferences and advisory committees to obtain opinions and advice.⁵ In the notice for the rule, the agency must provide an explanation of the statutory or other provisions under which the rule is being proposed.⁶

A proposed rule is automatically withdrawn 6 months after the date of publication of notice of the proposed rule in the *Texas Register* if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule.⁷ With certain exceptions, the rule is effective 20 days after the state agency files the adopted rule with the *Texas Register*.⁸

Executive Review

Pursuant to an executive letter to agency heads in 2018, the governor's office requires executive branch agencies under its purview to submit proposed rules for review prior to publication.⁹ As part of this review, impact assessments are also reviewed. In addition, the governor's office has a Regulatory Compliance Division that provides independent review of certain state licensing agencies' proposed rules that affect market competition.¹⁰

Legislative Review

All rules are subject to legislative review. The proposed rule is sent to the appropriate standing committee in each house for review before the rule can be adopted.¹¹ A majority of the committee

¹ TEX. GOV'T CODE ANN. § 2001.023 (2021).

² § 2001.029 (a).

³ Personal communication with an official from the Texas Department of Licensing and Regulation (March 25, 2021).

⁴ § 2001.029(b).

⁵ § 2001.031.

⁶ § 2001.024(a)(3)(A).

⁷ § 2001.027.

⁸ § 2001.036.

⁹ Letter from Luis Saenz, chief of staff to Governor Greg Abbott, to governor's agency heads (June 22, 2018).

¹⁰ S.B. 1995, 86th Regular Legislative Session. See also Office of the Texas Governor, Regulatory Compliance Division, accessed April 7, 2021, <https://gov.texas.gov/organization/regulatory-compliance>.

¹¹ § 2001.032(a).

may vote on a statement to send to the agency either in support of or in opposition to the proposed rule.¹²

Independent Review

Texas does not have independent agency review of regulations.

Impact Analysis

Texas has a number of impact analysis requirements. As part of the notice accompanying a rule proposal, all rules require a fiscal note showing the impact of the rule on state or local government revenues or expenditures.¹³ A cost–benefit analysis must also be prepared covering a 5-year period after the rule goes into effect.¹⁴ The agency must also provide a government growth impact statement, describing whether the rule creates or eliminates a government program, adds new employees, increases or decreases fees to the agency, or adversely affects the economy.¹⁵

A regulatory analysis is required for major environmental rules adopted by a state agency.¹⁶ For these environmental rules, the agency must identify the problem the rule is intended to address; determine whether a rule is necessary to address the problem; and consider the benefits and costs of the proposed rule to state agencies, local governments, the public, the regulated community, and the environment.¹⁷ The regulatory analysis must also describe reasonable alternative methods for achieving the objectives of the rule and explain why those alternative methods were rejected.¹⁸

Agencies also prepare an economic impact statement and regulatory flexibility analysis for rules expected to have an adverse impact on small businesses or rural areas.¹⁹ To reduce adverse effects on rural areas and small businesses, agencies may establish separate compliance or reporting requirements, use performance standards in place of design standards, or exempt small businesses and rural communities from all or parts of the rule.²⁰

Finally, if a state agency determines that a proposed rule may affect a local economy, the agency must prepare a local employment impact statement for the proposed rule.²¹ The statement must describe in detail the likely effect of the rule on employment in each geographic area affected by the rule for each year of the first 5 years that the rule will be in effect.

¹² § 2001.032(c).

¹³ § 2001.024(a)(4).

¹⁴ § 2001.024(a)(5).

¹⁵ § 2001.0221.

¹⁶ § 2001.0225.

¹⁷ § 2001.0225(b)(1)–(3).

¹⁸ § 2001.0225(c)(4).

¹⁹ § 2006.002(c)(1)–(2).

²⁰ § 2006.002(b)(1)–(3).

²¹ § 2001.022(a).

Periodic Review

Agencies must review their rules 4 years after adoption, as well as every 4 years thereafter.²² The agency must readopt, readopt with amendments, or repeal the rule as part of this review.²³ The agency must also assess whether the reason for which the rule was initially adopted continues to exist.²⁴

A state agency is prohibited from adopting a proposed rule if the fiscal note in the notice states that the rule imposes a cost on regulated persons (including another state agency, a special district, or a local government). An exception exists if the state agency, on or before the effective date of the proposed rule, repeals or amends the rule to decrease the total cost imposed on regulated persons by an amount that is equal to or greater than the cost imposed on the persons by the proposed rule.²⁵ However, this regulatory cap does not apply in a variety of instances, including when the rule “is necessary to protect the health, safety, and welfare of the residents of [the] state.”²⁶

²² § 2001.039(b).

²³ § 2001.039(c).

²⁴ § 2001.039(e).

²⁵ § 2001.045.

²⁶ § 2001.045(c)(6).

Utah's Administrative Procedures

June 4, 2021

Rulemaking

Utah has an informal notice-and-comment rulemaking process.¹ Once the proposed rule is published, the public has at least 30 days to submit comments.² If a notice of effective date is not filed for the proposed rule with the Office of Administrative Rules within 120 days of publication, the proposed rule lapses.³ A rule analysis must also be conducted, containing the statutory authority or a federal requirement for the rule.⁴ The rule analysis also contains a summary of the rule or amendment, an explanation of why rulemaking is necessary, and a multipart fiscal analysis.

Executive Review

The governor's office reviews rules for legal authority and policy issues.⁵

Legislative Review

All rules are subject to legislative review. The Administrative Rules Review Committee is a bipartisan committee made up of 10 members, of which 5 are from the Senate and 5 are from the House of Representatives. The committee exercises continuous oversight of the rulemaking process.⁶ The committee considers factors such as whether rules are authorized by statute and the costs and benefits of the rule.⁷

The Administrative Rules Review Committee can request a fiscal note from the Office of the Legislative Fiscal Analyst.⁸ If the rule has an impact of \$250,000 on a single person or \$7,500,000 on a group of persons over a 3-year period, the agency must submit the rule for review to the appropriations subcommittee and interim committee with jurisdiction over the agency.⁹

Independent Review

Utah has no independent agency review.

¹ UTAH CODE § 63G-3-301 (2021).

² § 63G-3-301(11)(a).

³ § 63G-3-301(12)(e).

⁴ § 63G-3-301(5); § 63G-3-301(8)(c).

⁵ UTAH EXEC. ORDER No. 2021-12 (2021).

⁶ § 63G-3-501(1); § 63G-3-501(3).

⁷ § 63G-3-501(3).

⁸ § 63G-3-501(5).

⁹ § 63G-3-301(13)(a).

Impact Analysis

Before filing a rule with the Office of Administrative Rules, the agency must conduct an analysis considering the fiscal impact on businesses over a 5-year period.¹⁰ If the agency expects a measurable negative impact on small businesses, it must consider options to reduce that impact.¹¹ Such options could include, for example, exempting small businesses from the rule or replacing design or operational standards with performance standards.

The analysis of the rules must provide the reason for the rule or the reason for changing the rule.¹² The analysis may also include the types of industries affected by the rule, the total number of businesses affected within an industry,¹³ and the total cost over a 5-year period on all affected entities; however, the Governor's Office of Planning and Budget establishes the exact criteria.¹⁴ The rule analysis must also include a discussion of costs or savings for the state budget, small businesses, local governments, and other persons.¹⁵

Periodic Review

Every agency must review its rules within 5 years of the original effective date or 5 years since the last review.¹⁶ When an agency reviews rules, it must decide whether to continue, repeal, or amend and continue the rule. If the agency continues the rule, it must justify the continuation of a rule, providing the legal basis under which the rule is enacted and a reasoned justification for continuing the rule.¹⁷

Utah also has an annual sunset provision. Every rule that is in effect on February 28 expires on May 1 of the same year, unless the legislature reauthorizes the rule or an exception exists, such as when a federal requirement exists or when an agency has state constitutional authority to issue the regulation.¹⁸ The Administrative Rules Review Committee prepares omnibus legislation reauthorizing the continuation of rules, while carving out exemptions for rules that should expire.¹⁹ The agency may seek a declaration from the governor extending the rule beyond the expiration date.²⁰ If the governor finds that the rule is necessary and that the agency has the authority to make the rule, the governor may extend the rule.

¹⁰ § 63G-3-301(5)-(8).

¹¹ § 63G-3-301(6).

¹² § 63G-3-301(8)(b).

¹³ § 63G-3-301(5)(a).

¹⁴ § 63G-3-301(5)(d).

¹⁵ § 63G-3-301(8)(d).

¹⁶ § 63G-3-305(1).

¹⁷ § 63G-3-305(3)(a)(i).

¹⁸ § 63G-3-502(2)(a).

¹⁹ § 63G-3-502(3)(a)-(b).

²⁰ § 63G-3-502(5).

Vermont's Administrative Procedures

June 2, 2021

Rulemaking

Vermont has a statutory rulemaking process codified in the Vermont Administrative Procedures Act.¹ To be accepted, filings must be in compliance with the Office of the Vermont Secretary of State's Rule on Rulemaking.² Rules must be prefiled with the Interagency Committee on Administrative Rules 15 days before a proposed rule is filed.³ Usual steps for promulgating a rule include prefiling the rule, filing the proposed rule, publishing the proposed rule, holding a public hearing, accepting public comments, filing the final proposed rule with the secretary of state and the Legislative Committee on Administrative Rules (LCAR) for review, and, finally, filing the adopted rule with the secretary of state and the LCAR.⁴ The agency must provide its statutory authority for establishing the rule in its rulemaking notice.⁵ The agency must post on its website the proposed rule along with the dates when comments must be submitted for the rule.⁶ The comment period must last at least 7 days after the public hearing or, if no hearing is scheduled, at least 2 weeks following publication in newspapers of record.⁷ Agencies must post their adopted rules on a separate webpage that is readily accessible and searchable from their main page.⁸

An agency must schedule a hearing if requested by 25 people, an association with more than 25 people, a government agency or subdivision, or the Interagency Committee on Administrative Rules.⁹ An individual can submit written and oral submissions regarding the proposed rule, and the agency will consider all the submissions.¹⁰

Executive Review

All rules are reviewed by the Interagency Committee on Administrative Rules, members of which are appointed by the governor.¹¹ The committee reviews existing and proposed rules for style, for consistency with the law, for legislative intent, and to ensure policies are in line with the priorities of the governor.¹²

¹ VT. STAT. ANN. tit. 3, §§ 800–849 (2021).

² 04-000 VT. CODE R. § 001 (2021).

³ § 837.

⁴ § 836(a).

⁵ § 838(a)(10).

⁶ § 836(b).

⁷ § 840(c).

⁸ § 847(a).

⁹ § 840(a).

¹⁰ § 840(c); § 840(d).

¹¹ § 820(a).

¹² § 820(b).

Legislative Review

After comments are accepted, but before it is published, a final rule is filed with the LCAR.¹³ Within 45 days, the committee may, by majority vote, object to the rule and request an amendment or withdrawal of the rule.¹⁴ The objection is noted, and a burden of proof is put on the agency in the case of judicial review; however, the objection does not block rulemaking.¹⁵ The LCAR can also refer the final rule to a standing committee of the General Assembly for additional review.¹⁶ The LCAR, on its initiative, may hold public hearings on a rule and must provide a 10-day advance notice of the hearing.¹⁷

Independent Review

Vermont has no independent agency review of rules.

Impact Analysis

The agency must complete an economic impact analysis.¹⁸ The analysis must describe the costs and benefits expected from adoption of the rule.¹⁹ The analysis lists each category of people, enterprises, and government entities potentially affected and estimates the anticipated costs and benefits to each.²⁰ The agency must look at other possibilities, including having no rule or crafting separate requirements for small businesses.²¹ When a rule deals with small businesses, the agency provides ways small businesses can reduce the cost and burden of compliance, such as alternative methods of compliance.²² There is no requirement to select the most efficient or cost-effective option, but the economic impact analysis must “conclude that the rule is the most appropriate method of achieving the regulatory purpose.”²³

Agencies must also complete an environmental impact analysis that analyzes the anticipated environmental impacts of the rule, whether positive or negative.²⁴

¹³ § 841(a).

¹⁴ § 842(a)(1).

¹⁵ § 842(c)(2).

¹⁶ § 817(e).

¹⁷ § 817(c).

¹⁸ § 838(a)(2); § 838(b).

¹⁹ § 838(b)(1).

²⁰ § 838(b)(1)(A).

²¹ § 838(b)(1)(B).

²² § 838(b)(2).

²³ § 838(b)(4).

²⁴ § 838(a)(3); § 838(c).

Periodic Review

A rule that has not been adopted, readopted, or amended in the previous 6 years may be sunset by the LCAR.²⁵ The committee must make a written request to sunset the rule (or part of a rule), and then the rule will expire 1 year later. However, the agency may adopt the same rule if it wishes.²⁶

The Interagency Committee on Administrative Rules may also review existing rules at the direction of the governor.²⁷ A person may also request that an agency adopt, amend, or repeal a procedure (e.g., a guidance document) or rule. The agency has 30 days to start the rulemaking process or decline the request.²⁸ By statute, the secretary of state may also review agency forms and guidance documents for simplification and consolidation.²⁹ In response, the secretary of state has adopted a Rule on Rulemaking that requires all agencies to use its forms for all stages of the rule filing process.³⁰

²⁵ § 834(a).

²⁶ *Id.*

²⁷ § 820(b).

²⁸ § 806(a).

²⁹ § 834(b).

³⁰ 04-000 VT. CODE R. § 001.

Virginia's Administrative Procedures

April 16, 2021

Rulemaking

Virginia's rulemaking process is outlined in statute and in an executive order.¹ For a standard rulemaking, agencies provide the Registrar of Regulations with a notice of intended regulatory action and must allow at least 30 days for public comment at the notice, proposal, and final draft stages.² A one-stage, fast-track process with a 30-day comment period may also be used for noncontroversial regulations, and an emergency process is available as well.³ Agencies must adopt guidelines for public participation to ensure the identification and notification of interested parties and to ensure their input in the formation and development of regulations.⁴

Executive Review

For regulations and agencies that are not exempt from the Virginia Administrative Process Act (VAPA), governors determine the procedure for the review of regulations through executive order in conjunction with statutory requirements.⁵ As outlined in the executive order, before submitting the regulation to the Registrar of Regulations, the agency must submit it to the attorney general, who reviews rules to make sure that agencies have adequate statutory authority.⁶ Next, the Department of Planning and Budget completes an economic impact analysis within the timeframes set forth by statute.⁷ The governor reviews the rule to determine whether it is necessary to protect the public health, safety, and welfare and is easily understandable. A cabinet secretary typically reviews proposed rules prior to review by the governor.

The VAPA notes that the governor has 15 days following the completion of the public comment period to transmit their comments to the agency. The agency may adopt the regulation without changes despite the governor's recommendations for change.⁸

¹ VA. CODE ANN. § 2.2-4000 et seq. (2021), including § 2.2-4013, which requires each governor to publish an executive order on rulemaking. Agency-specific regulatory processes are often included in their governing statutes as well.

² § 2.2-4007.01. A. *See also* § 2.2-4007.03. The effect of this language is a comment period of 30 days with 30 days' advance notice, which is implemented in practice as a 60-day comment period according to personal communication with an official from the Virginia Department of Planning and Budget (April 21, 2021).

³ § 2.2-4012.1; § 2.2-4011.

⁴ § 2.2-4007.02(A).

⁵ § 2.2-4017.

⁶ § 2.2-4013(A)(i).

⁷ § 2.2-4007.04; § 2.2-4012.1.

⁸ § 2.2-4013(A)(i).

Legislative Review

For regulations and agencies that are not exempt from the VAPA, an appropriate standing committee of either house in the General Assembly or the Joint Commission on Administrative Rules may meet and file an objection to a proposed or final adopted regulation with the *Virginia Registrar of Regulations* and the promulgating agency.⁹ The standing committee or the joint commission can suspend through a statement the effective date of part of the rule or of the rule itself, provided that the governor concurs. This suspension lasts until the end of the next regular legislative session. At the legislative session, the legislature can nullify the rule in full or in part through a bill with the governor's signature. If the legislature does not act by the end of the next legislative session, then the rule becomes effective automatically unless withdrawn by the agency.¹⁰

Independent Review

Virginia does not have independent agency review of regulations.

Impact Analysis

The Department of Planning and Budget, working with the agency, prepares an economic impact analysis within 45 days of receiving the proposed regulation (or 30 days for a fast-track regulation).¹¹ The economic impact analysis must include several factors, such as a projection of the number of businesses to which the regulation would apply; any localities and types of businesses particularly affected by the regulation; the projected number of persons and employment positions to be affected; the projected costs to affected businesses, localities, or entities of implementing or complying with the regulations; and the estimated fiscal impact on localities.

If the regulation has an adverse effect on small businesses, the economic impact analysis must also include an estimate of the number of small businesses subject to the regulation; the projected reporting, recordkeeping, and other administrative costs; and a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation.¹² Agencies must also prepare a regulatory flexibility analysis and consider options for reducing burdens on small businesses if they are affected.¹³

⁹ § 2.2-4014(A).

¹⁰ § 2.2-4014(B).

¹¹ § 2.2-4007.04(A)(1).

¹² § 2.2-4007.04(A)(2).

¹³ § 2.2-4007.1(B).

Periodic Review

All regulations must be reviewed every 4 years to determine whether they should be continued, be amended, or be repealed to minimize the economic impact on small businesses.¹⁴ The review must consider whether there is a continued need for the rule.¹⁵

Any person may also petition an agency to amend an existing regulation or develop a new regulation. The petitioner must reference the legal authority of the action the petitioner would like the agency to take.¹⁶

¹⁴ § 2.2-4007.1(D).

¹⁵ § 2.2-4007.1(E).

¹⁶ § 2.2-4007(A).

Washington State’s Administrative Procedures

April 27, 2021

Rulemaking

Washington has an informal notice-and-comment rulemaking process.¹ An agency that proposes a rule must give at least 20 days’ notice before the rulemaking hearing at which it receives public comments.² The public can comment on the proposed rule through oral comments and other means, including written comments.³ The notice must describe the statutory authority for adopting the rule and the specific law that will be implemented.⁴

Executive Review

Washington has no executive review of regulations.

Legislative Review

The Joint Administrative Rules Review Committee (JARRC) is a bipartisan committee that consists of four representatives and four senators from the legislature.⁵ If a majority of the committee finds that the rule is not consistent with the intent of the legislature or in accordance with the law, the committee can give its decision to the agency to review.⁶ The review committee can recommend suspension, and if the governor approves the suspension, the rule cannot become effective until 90 days after the end of the next regular legislative session.⁷

Independent Review

Washington has no independent agency review of regulations.

Impact Analysis

All significant legislative rules must clearly state the general goals and objectives of the statute that the rule implements.⁸ A *significant legislative rule* is a rule other than a procedural or interpretive rule.⁹ All significant legislative rules require a cost–benefit analysis.¹⁰ The

¹ WASH. REV. CODE § 34.05.320 (2021).

² § 34.05.320 (1).

³ § 34.05.325(1)–(3).

⁴ § 34-05-320(1)(b).

⁵ § 34.05.610(1).

⁶ § 34.05.620.

⁷ § 34.05.640(3)(a).

⁸ § 34.05.328(1)(a).

⁹ § 34.05.328(4)(c)(ii).

¹⁰ § 34.05.328(1)(c).

analysis must determine that the probable benefits of the rule are greater than the probable costs.¹¹ After looking at various possibilities, the analysis must also find that the rule being adopted is the least burdensome possibility for those required to comply with it that will achieve the general goals and specific objectives of the statute being implemented.¹²

An agency must prepare a small business economic impact statement if the proposed rule will impose more than minor costs on businesses or if requested to do so by a majority vote of the JARRC.¹³ The statement must include the costs of compliance and compare the compliance costs for small businesses with those for the top 10% of the largest businesses.¹⁴ The agency must consider various options to reduce burdens on small businesses.¹⁵ The small business economic statement must contain information about the estimated number of jobs created or lost.¹⁶

The Washington State Board of Education must also provide a school district fiscal impact statement with its rulemakings.¹⁷

Periodic Review

If a rule has an economic impact on more than 20% of all industries or on more than 10% of businesses in one industry, the agency must have a plan to review the rules.¹⁸ As part of these reviews, the agency must consider factors such as those found in the federal Regulatory Flexibility Act.¹⁹

There is also a selective review process for rules, which is applied at the JARRC's discretion and is based on a determination of whether an existing rule is consistent with the intent of the legislature or has been adopted in accordance with all applicable provisions of the law. The JAARC may, by majority vote, direct an agency to hold hearings on a rule.²⁰ This review can include policy or interpretive statements.²¹

Any person may petition the JAARC for a review of a proposed or existing rule,²² and any person can petition the agency to adopt, amend, or repeal a rule.²³ Persons may appeal agency denials of rule petitions to the governor.²⁴

¹¹ § 34.05.328(1)(d).

¹² § 34.05.328(1)(e).

¹³ WASH. REV. CODE § 19.85.030(1)(a) (2021).

¹⁴ § 19.85.040(1)–(2).

¹⁵ § 19.85.030(2).

¹⁶ § 19.85.040(2)(d).

¹⁷ WASH. REV. CODE § 28A.305.135 (2021).

¹⁸ § 19.85.050(1).

¹⁹ § 19.85.050(2).

²⁰ WASH. REV. CODE § 34.05.630(3) (2021).

²¹ § 34.05.630(2)–(3).

²² § 34.05.655(1).

²³ § 34.05.330(1).

²⁴ § 34.05.330(3).

West Virginia's Administrative Procedures

May 20, 2021

Rulemaking

West Virginia's rulemaking process is unique in that it has an unusual amount of legislative involvement.¹ When an agency proposes to promulgate a rule, it files a notice of its action with the secretary of state.² The notice must include a fiscal note; the text of the rule; and the date, time, and place for the receipt of public comments.³ The fiscal note must include a statement of the economic impact of the rule on the state or its residents.⁴ Public notice of the hearing or comment period must be not less than 30 or more than 60 days before the hearing.⁵ Accompanying the rule must be an explanation of the statutory authority for the rule.⁶

Executive Review

By executive order, the governor must be notified about new rulemakings in West Virginia to ensure compliance with a regulatory moratorium put in place in 2018.⁷

Legislative Review

The West Virginia rulemaking process is unique in that an agency, when it proposes a legislative rule, is considered to be applying to the legislature for permission to promulgate that rule.⁸ All rules are reviewed by the Legislative Rule-Making Review Committee, which is made up of six members of the Senate and six members of the House of Delegates.⁹

The Legislative Rule-Making Review Committee can recommend five paths for the legislature:

- Authorize the promulgation of the legislative rule.
- Authorize the promulgation of part of the legislative rule.
- Authorize the promulgation of the legislative rule with certain amendments.
- Recommend that the proposed rule be withdrawn.
- Reject the proposed rule.¹⁰

¹ W. VA. CODE § 29A-3-5 (2021).

² § 29A-3-5.

³ § 29A-3-5.

⁴ § 29A-3-4(b); § 29A-3-11(a)(5).

⁵ § 29A-3-7.

⁶ § 29A-3-11 (7).

⁷ W. VA. EXEC. ORDER No. 2-18 (2018).

⁸ § 29A-3-9.

⁹ § 29A-3-10 (a).

¹⁰ § 29A-3-11 (c).

When the committee recommends that a rule be authorized, in whole or in part, the committee instructs its staff or Legislative Services to draft a bill authorizing the promulgation of all or part of the legislative rule.¹¹ Bills of authorization may be referred to the appropriate standing committee for further review.¹² If the agency does not receive authorization, or if the legislature disapproves of a rule in full or in part, the agency cannot promulgate the rule.¹³

Independent Review

West Virginia has no independent agency review of regulations.

Impact Analysis

All rules filed by an agency require a fiscal note that addresses the cost of implementing the rule to the state and to persons affected by the rule.¹⁴ When submitting the rule to the Legislative Rule-Making Review Committee, the agency must include a statement explaining the circumstances that require the rule, as well as the rule's purpose.¹⁵ West Virginia also has a Division of Regulatory and Fiscal Affairs that exists within the Joint Committee on Government and Finance.¹⁶ Along with producing fiscal notes for legislation, the Division of Regulatory and Fiscal Affairs conducts some analysis of regulations.

Periodic Review

The Legislative Rule-Making Review Committee can review any rule with the assistance of the Legislative Auditor Office, and it can make recommendations to the relevant agency concerning whether the rule is achieving its purpose.¹⁷ Any rule (except those of the Department of Environmental Protection) promulgated or amended after April 1, 2016, has a sunset date but can be renewed by the legislature.¹⁸ The Legislative Rule-Making Review Committee establishes the procedure for reviewing a legislative rule prior to its termination.¹⁹

¹¹ § 29A-3-11 (d).

¹² § 29A-3-12 (a).

¹³ § 29A-3-12 (b).

¹⁴ § 29A-3-4 (b).

¹⁵ § 29A-3-11 (a) (3)–(4).

¹⁶ See the website of the West Virginia Legislature, Joint Committee on Government and Finance—Division of Regulatory and Fiscal Affairs (<https://www.wvlegislature.gov/Joint/fiscal-regulatory.cfm>).

¹⁷ § 29A-3-16 (a)–(b).

¹⁸ § 29A-3-19 (a)–(b).

¹⁹ § 29A-3-19 (d).

Wisconsin's Administrative Procedures

March 15, 2021

Rulemaking

Wisconsin has an informal notice-and-comment rulemaking process.¹ An agency prepares a “statement of scope,” which includes a basic description of the rule, who is affected, and the statutory basis for the regulation.² The statement of scope is reviewed by the Department of Administration, which makes a determination as to whether the agency has the explicit authority to promulgate the rule.³ The agency must get explicit written approval of the statement of scope from the governor.⁴

A statement of scope expires 30 months after publication in the register. To promulgate the rule, the agency must submit a proposed rule, which is based on the statement, to the legislature before that expiration date.⁵ Within 10 days of publication of the statement of scope, a co-chairperson of the Joint Committee for Review of Administrative Rules (JCRAR) may require the agency to hold a preliminary public hearing and comment period on the statement of scope.⁶ A public hearing and comment period are generally required as well, but not always.⁷

Executive Review

As noted, an agency sends a statement of scope to the Department of Administration. The department determines whether the agency has the authority to promulgate the rule. Then the governor approves or rejects the statement of scope.⁸ The governor also reviews the final draft form of proposed rules and can approve or reject them at their discretion.⁹

Legislative Review

Once the governor approves the statement of scope, the agency sends a copy of it to the Legislative Reference Bureau to be published in the register. A copy is also sent to the secretary of the Department of Administration and to the chief clerks of each house of the legislature, who send it to the JCRAR.¹⁰ Prior to a public hearing, or prior to notification of the legislature if there

¹ WIS. STAT. § 227.14 (2021).

² § 227.135(1).

³ § 227.135(2).

⁴ *Id.*

⁵ § 221.135(5).

⁶ § 227.136(1).

⁷ § 227.16–227.18.

⁸ § 227.135(2).

⁹ § 227.185.

¹⁰ § 227.135(3).

is no hearing, an agency will submit the proposed rule to the Legislative Council for review.¹¹ Over 20 working days, the Legislative Council staff will review the rule for statutory authority, clarity, and other factors, such as style and grammar.¹²

When the rule is in final draft form, the agency notifies the chief clerk of each house of the legislature, and the draft is sent to one standing committee in each house of the legislature.¹³ After standing committee review, the rule is then referred to the JCRAR.¹⁴ The standing committee reviews the rule and may object, in part or in whole, to the rule for several reasons, including statutory authority, arbitrariness, or legislative intent.¹⁵ Once the committee's work is done, the rule is referred to the JCRAR.¹⁶

The JCRAR has a variety of options available to it to influence rulemaking, though some are relatively new and have yet to be used. The JCRAR may indefinitely object to a rule,¹⁷ which means the agency cannot promulgate the rule without passage of a bill in the legislature that authorizes the rule.¹⁸ If a rule has over \$10 million in compliance costs over a 2-year period, the agency must wait for the legislature to affirmatively introduce and pass a bill authorizing the agency to proceed.¹⁹

The JCRAR can also object to a rule and introduce bills to prevent promulgation.²⁰ The governor must sign these bills when passed by a majority of each house of the legislature, or else the legislature may override the veto by a two-thirds vote.

Independent Review

If a rule will affect small businesses adversely, it must be submitted to the Small Business Regulatory Review Board.²¹ The Small Business Regulatory Review Board is made up of seven small business owners, one senator, and one representative.²² The board may use cost-benefit analysis to determine the rule's fiscal impact on small businesses. The board may submit suggested changes to the agency to minimize the economic impact of the proposed rule, or the board may recommend the withdrawal of the proposed rule, if it determines the rule will have a significant economic impact on a substantial number of small businesses.

¹¹ § 227.15(1).

¹² § 227.15(2).

¹³ § 227.19(2).

¹⁴ § 227.19(5)(a).

¹⁵ § 227.19(4)(d)(1)–(7).

¹⁶ § 227.19(5).

¹⁷ § 227.19(5)(dm).

¹⁸ § 227.19(5)(em).

¹⁹ § 227.139.

²⁰ § 227.19(5)(d)–(e).

²¹ § 227.14(2)(g).

²² For more information about the board, see the State of Wisconsin Department of Administration's website at <https://doa.wi.gov/Pages/DoingBusiness/SBRRB.aspx>.

When an agency sends an economic impact analysis to the legislature, a JCRAR co-chairperson can request an independent economic impact analysis.²³

Impact Analysis

When preparing a statement of the scope, the agency must provide a description of the objective of the rule.²⁴ It must include a description of all of the entities that may be affected by the rule.²⁵

All proposed rules require an economic impact analysis by the agency,²⁶ which must contain an analysis and quantification of the problem the agency is trying to solve;²⁷ an analysis of alternatives to the proposed rule;²⁸ and information about the economic effect of the proposed rule on businesses, public utility ratepayers, local governmental units, and the state's economy as a whole.²⁹ Specifically, the agency must consider whether the rule will affect productivity, jobs, or the overall economic competitiveness of the state,³⁰ as well as produce an analysis of the actual and quantifiable benefits of the rule, including an assessment of how the rule will correct the policy problem that the rule is intended to address.³¹

When the agency submits the rule to the legislature, an independent economic analysis can be requested by a JCRAR co-chairperson.³² If the estimate of cost in the independent economic impact analysis varies from the agency's estimate by 15% or more, the agency that is proposing the rule must pay for the costs of completing the independent economic impact analysis.³³ If the economic impact of a rule is more than \$10 million over a 2-year period, the agency must wait for legislative approval before promulgating the rule.³⁴

The agency must also complete a fiscal estimate for each rule.³⁵

When an agency proposes or revises a rule affecting small businesses, it must consider less stringent compliance or reporting requirements for these entities.³⁶ All rules affecting small businesses must have a final regulatory flexibility analysis.³⁷

If a proposed rule affects the cost of the development, construction, financing, purchasing, sale, ownership, or availability of housing, the agency must prepare a housing impact analysis.³⁸

²³ § 227.137(4m)(a).

²⁴ § 227.135(1)(a).

²⁵ § 227.135(1)(e).

²⁶ § 227.137(2).

²⁷ § 227.137(3)(a).

²⁸ § 227.137(3)(d).

²⁹ § 227.137(3).

³⁰ § 227.137(3)(e).

³¹ § 227.137(3)(c).

³² § 227.137(4m)(a).

³³ § 227.137(4m)(b)(2)(a).

³⁴ §§ 227.139(1)–(2).

³⁵ § 227.14(4)(a).

³⁶ § 227.114(2).

³⁷ § 227.19(3)(e).

³⁸ § 227.115(2)(a).

Periodic Review

The JCRAR may direct an agency to prepare a retrospective economic impact analysis for any of the agency's rules that are published in the code.³⁹ The retrospective analysis must include an analysis and quantification of the policy problem that the rules were intended to address, an analysis of costs and benefits, an analysis of alternatives to the rules (including an alternative of repealing the rules), and a comparison of the actual economic effect of the rules with the expected economic effect of the rules when they were proposed.⁴⁰

The JCRAR can hold hearings on existing rules and temporarily suspend rules.⁴¹ The committee must then introduce bills in support of the suspension.⁴² If a bill fails to pass, the rule remains in effect.⁴³ In theory, because of legislative changes in 2018, there is no limit to the number of suspensions; however, no rule to date has been indefinitely suspended, and legislation must be introduced to support suspensions.⁴⁴

Wisconsin also has a fast-track process for repealing rules. If an agency determines that a rule is unauthorized, it can petition the JCRAR for authorization to repeal the rule.⁴⁵ If the committee approves the petition, the agency can file a certified copy of the repealed rule with the Legislative Reference Bureau, together with a copy of the committee's decision.⁴⁶

Every 2 years, agencies must submit a report to the JCRAR. The report must include duplicative rules, unauthorized rules, rules restricted by new laws, and economically burdensome rules. The report must further discuss how the agency will deal with those issues.⁴⁷

A member of the public can issue a complaint about an existing rule, in which case the JCRAR will hold a public hearing to investigate the complaint if it considers the complaint meritorious and worthy of attention.⁴⁸

³⁹ § 227.138(1).

⁴⁰ § 227.138(1)(a)–(h).

⁴¹ § 227.26(2).

⁴² *Id.*

⁴³ § 227.26(2)(i).

⁴⁴ § 227.26(2)(im); Personal communication with an official from the Wisconsin Legislative Reference Bureau (March 15, 2021).

⁴⁵ § 227.26(4).

⁴⁶ § 227.26(4)(c).

⁴⁷ § 227.29(1)–(2).

⁴⁸ § 227.26(2)(c).

Wyoming's Administrative Procedures

July 9, 2021

Rulemaking

Wyoming has informal notice-and-comment rulemaking.¹ Except in an emergency, the agency must give 45 days' written notice of its intended rulemaking action to parties that have identified themselves as interested.² The notice of intent must indicate the time, place, and manner in which interested people can present their comments.³ The notice must also include a concise statement of the principal reasons for the rule and a citation to the statute that allows for the adoption of the proposed rules.⁴ The agency must provide at least 45 days for interested parties to present data, arguments, and comments.⁵ An oral hearing about the rule must be held if requested by 25 persons, a governmental subdivision, or an association having at least 25 members.⁶

After the public comment period is closed, the agency may adopt the rule. Once the agency does so, the rule must be approved by the governor within 75 days, or it will be null and void.⁷

Executive Review

Emergency rules are reviewed by the governor immediately upon agency adoption.

Regular rules must be reviewed and approved twice by the governor or the governor's designee: once before the agency files its notice of intent to proceed with rulemaking, and again after the legislative service office and management council have had 40 days to provide their recommendation on the rule.⁸ No rules become effective until the governor has endorsed them.

For both regular and emergency rules, the governor can disapprove rules in their entirety or strike portions of rules.⁹ The governor must refuse approval for any rule that (a) is outside of the scope of the agency's legal authority, (b) is inconsistent with the legislative purpose of the agency's statutory authority, or (c) has failed to follow relevant procedures for rulemaking.¹⁰ The governor must report any disapproval to the legislative management council.¹¹

¹ WYO. STAT. § 16-3-103 (2021).

² § 16-3-103(a)(i).

³ § 16-3-103(a)(i)(A).

⁴ § 16-3-103(a)(i)(D); § 16-3-103(a)(i)(J).

⁵ § 16-3-103(a)(ii).

⁶ § 16-3-103(a)(ii)(A).

⁷ § 16-3-104.

⁸ Secretary of State, *Rules on Rules*, Ch. 3, § 1; § 16-3-103(d).

⁹ § 16-3-103(d).

¹⁰ § 16-3-103(d)(i)–(iii).

¹¹ § 16-3-103(d).

Legislative Review

All rules are submitted to the legislative service office for review within 10 days of the agency's final action adopting the rule or amendment.¹² Except during legislative session, the legislative service office reviews the rule and submits a report of its findings to the legislative management council within 15 days of receiving the rule.¹³ The governor must wait to approve any regular rules until 40 days after the agency's adoption and filing in order to provide sufficient time for council review.¹⁴ The legislative management council may refer the review report to either the relevant interim committees or the standing committees with oversight.¹⁵ The council may submit any objections or recommended changes to the agency and to the governor.¹⁶ The governor then has 15 days either to order that the rule be amended or rescinded in accordance with the council's recommendations or to file objections to the council's recommendations with the council in writing.¹⁷

If the legislative management council determines a rule is not lawful, has not followed all applicable procedural requirements, or is not constitutional,¹⁸ and if the governor nonetheless approves the rule, the council may introduce legislation in the next session to obtain a legislative order to prohibit the implementation or enforcement of the rule.¹⁹ The order is deemed approved (and therefore the regulation is prohibited) when both houses approve the order separately.²⁰ The governor's signature is required for the order to go into effect.²¹

Independent Review

Wyoming does not have any independent agency review of regulations.

Impact Analysis

Wyoming does not have any impact analysis requirements for rulemakings. However, in its notice to promulgate, rescind, or amend a rule, the agency must provide a concise statement about the reasons for adopting the rule.²²

¹² WYO. STAT. § 28-9-103(b) (2021).

¹³ § 28-9-104(a).

¹⁴ § 16-3-103(d).

¹⁵ § 28-9-105(b).

¹⁶ § 28-9-106(a).

¹⁷ § 28-9-106(b).

¹⁸ § 28-9-104(c)(i)–(iii).

¹⁹ § 28-9-107(a).

²⁰ § 28-9-107(c).

²¹ Personal communication with an official from Wyoming governor's office (July 12, 2021).

²² WYO. STAT. § 16-3-103(a)(i)(J).

Periodic Review

Wyoming law does not require periodic review of agency rules, although agencies review and update rules as needed. Any person can petition an agency to request that it promulgate, amend, or repeal any rule.²³ The action of the agency in denying a petition is final and not subject to review.

²³ § 16-3-106.