

## Rulemaking Process

### **Step 1: Public Comment Period**

The agency makes the proposed rule available to the public for a written comment period, public hearing or both by filing a Notice of Public Comment Period with the Secretary of State's office.

The comment period must be for a minimum of thirty (30) days but not more than sixty (60) days.

The entire rule must be filed with language to be deleted struck-through and new language to be added underlined.

The form filed with the rule will contain the required information including the date, time and place for the receipt of public comments and/or hearing information.

Any "adopted by reference", "supporting documents", "other" documents and any tables, charts, diagrams etc. must be filed at this time for consideration throughout the rule-making process.

### **Step 2: Final Filing**

After the close of the public comment period and after considering the comments received, the agency files the final rule.

A clean copy of the entire rule must be filed including the removal of all strike-throughs and underlines and any changes based on comments. The filing date and effective date will also be added to the General section of the rule.

A copy of all comments received and/or a hearing transcript along with the agency response to each comment, including any changes made, must be submitted. An agency may consolidate substantially similar comments and responses in the interest of efficiency.

The form filed with the rule will contain the required information including the effective date of the rule which must be at least thirty (30) days after the final filing and not later than sixty (60) days.

The agency must adopt or withdraw the rule within six (6) months after the close of the public comment period. Failure to do so constitutes withdrawal.

## **Emergency Rulemaking**

An emergency rule is any legislative rule filed by an agency finding that the rule must be effective before completing the full Legislative cycle. This is an option when it has been determined that the promulgation is necessary for the immediate preservation of the public peace, health, safety or welfare. Or it is necessary to comply with a statute or regulation, or to prevent substantial harm to the public interest.

It is not a stand-alone rule type. It is a condition of its companion legislative rule that is going through the rule-making process.

### **Emergency Rule-Making Steps and Time Frame**

An emergency rule can be in effect as soon as it is filed with the Secretary of State or up to forty-two (42) days later.

The Secretary of State has 42 days to consider if an emergency truly exists and that the agency has statutory authority to promulgate the rule.

At any point during this time, the Secretary can approve or disapprove the rule.

If no action is taken, the rule automatically goes into effect on the 42nd day.

If the emergency rule is proposed by the Secretary of State, the Attorney General reviews and either approves or disapproves it.

The rule can remain in effect for up to fifteen (15) months or until the companion legislative rule goes into effect.

**Step 1:** The agency files the emergency rule with the Secretary of State and the Legislative Rule-Making Review Committee (LRMRC) by filing a Notice of Emergency Rule with the Secretary of State's office.

The form filed with the rule will contain all of the required information including the statement of facts and circumstances constituting the emergency, the specific statutory authority and a listing of identifiable interested parties affected by the proposed rule.

The Secretary of State or LRMRC may contact the agency if additional information or clarification is needed.

**Step 2:** The agency files a Notice of Public Comment Period for the companion legislative rule within thirty (30) days of filing the rule as an emergency.

**Step 3:** The agency files a Notice of Agency Approval for the companion legislative rule within ninety (90) days of filing the rule as an emergency.

**Step 4:** If the legislative rule has substantial changes based on comments received, an amendment to the emergency rule can be filed by following the procedure described in Step 1 and using the Emergency Amendment field. This is not a required step for every emergency filing.

[Visual Aid to Rulemaking Process](#)

[West Virginia Register](#)

[West Virginia Administrative Procedure Act](#)