



“No Stricter Than Federal” EH&S Applicability

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Michigan Chamber Environmental Issues Forum

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Michigan “No Stricter Than Federal” Legislation

- Prior legislative initiatives failed as too absolute
- Amendments to 1969 law regarding State Agency rulemaking
- 2018 Public Act No. 602
- Approved by Governor Snyder on December 28, 2018
- Effective January 1, 2019

General Rulemaking Limitations

- Regulations, standards, codes adopted by federal agency or nationally recognized organization or association (*e.g.*, ASTM) may be incorporated by reference in State rulemaking, but not automatically include later amendments
- Operational memoranda, guidance, bulletins, form instructions, and so forth are not enforceable by Michigan agencies, and may not be relied upon by court rulings in support of agency action
- Rulemaking procedures including legislative service bureau, public notice, response to comments, small business impact statement, and regulatory impact statement (discussed below) are very detailed and objective

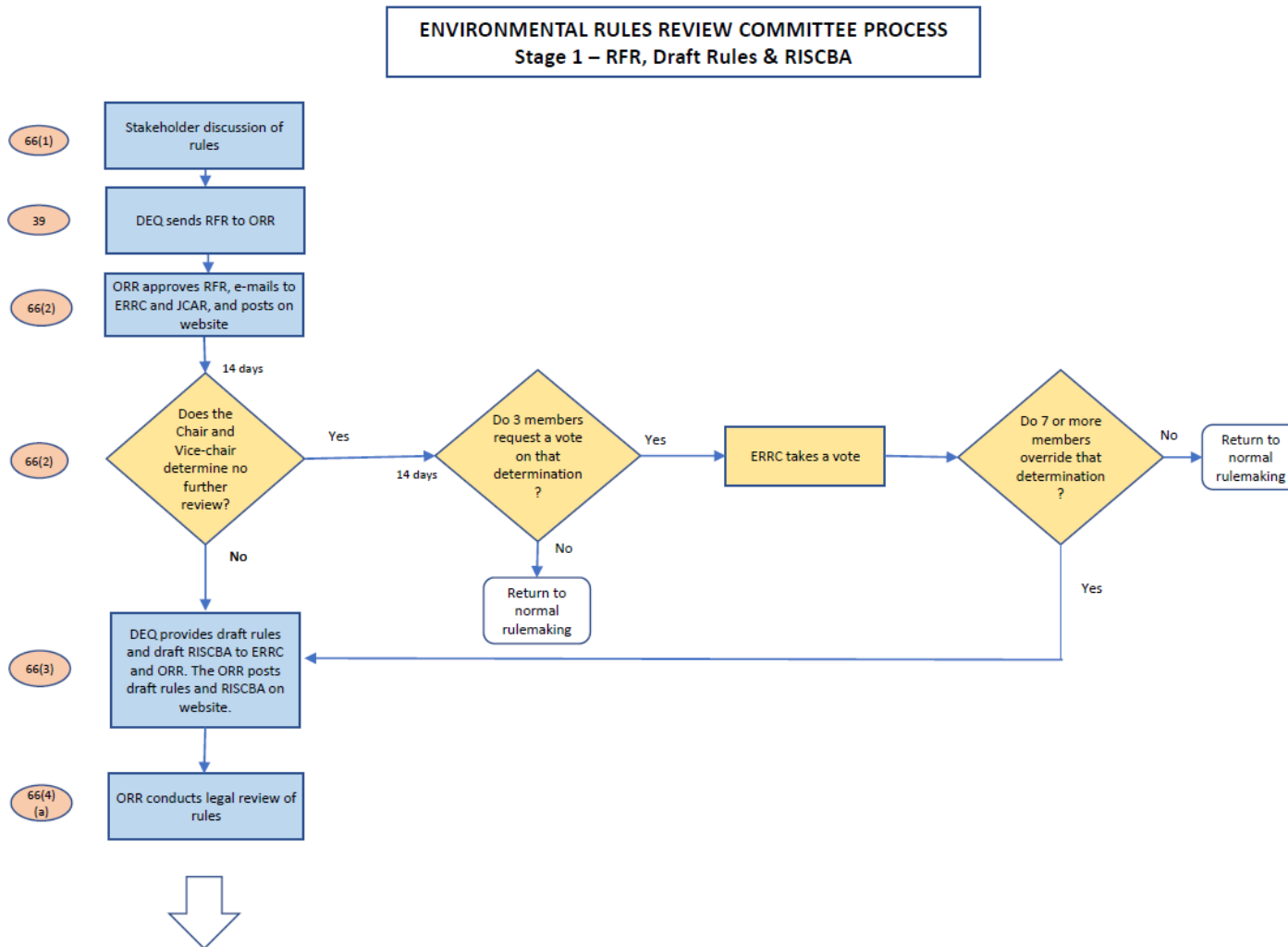
No Stricter Than Federal Limitations

- If federal law mandates State promulgation of implementing rules, the State may not adopt a rule “more stringent than the applicable federally mandated standard” unless the State agency director “determines that there is a clear and convincing need to exceed the applicable federal standard.”
- If State rulemaking is not mandated by the federal government, the State agency may not promulgate a rule “more stringent than an applicable federal standard” unless specifically authorized by a State statute or the State agency director determines that there is “clear and convincing need to exceed the applicable federal standard.”
- These limitations apply to all State agencies, not just Department of Environment, Great Lakes & Energy, except Special Education.

Regulatory Impact Statement

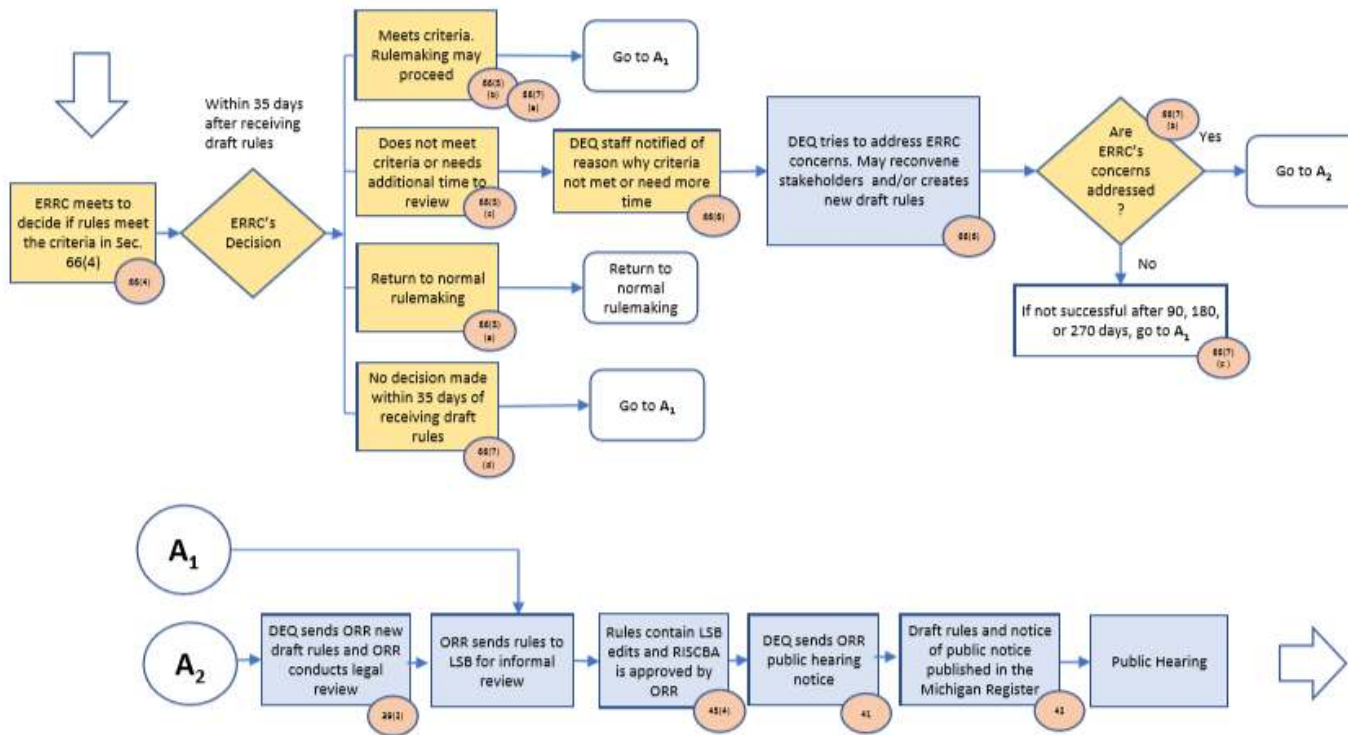
- State agencies submitting final proposed rules (after public comment) must contain regulatory impact statement explaining over two dozen criteria, including:
 - Comparison of proposed rule to “parallel federal rules or standards”
 - If stricter than federal, “specific facts that establish the clear and convincing need” for more stringent rulemaking and “explanation of the exceptional circumstances that necessitate the more stringent standard”
 - Comparison of proposed Michigan rule to standards in “similarly situated” states (interstate commerce competitive disadvantage)
 - Costs and benefits of proposed rulemaking, including reductions of burdens during public comment
 - Market-based “non-governmental” alternatives to regulation

Environmental Rule Promulgation Procedure

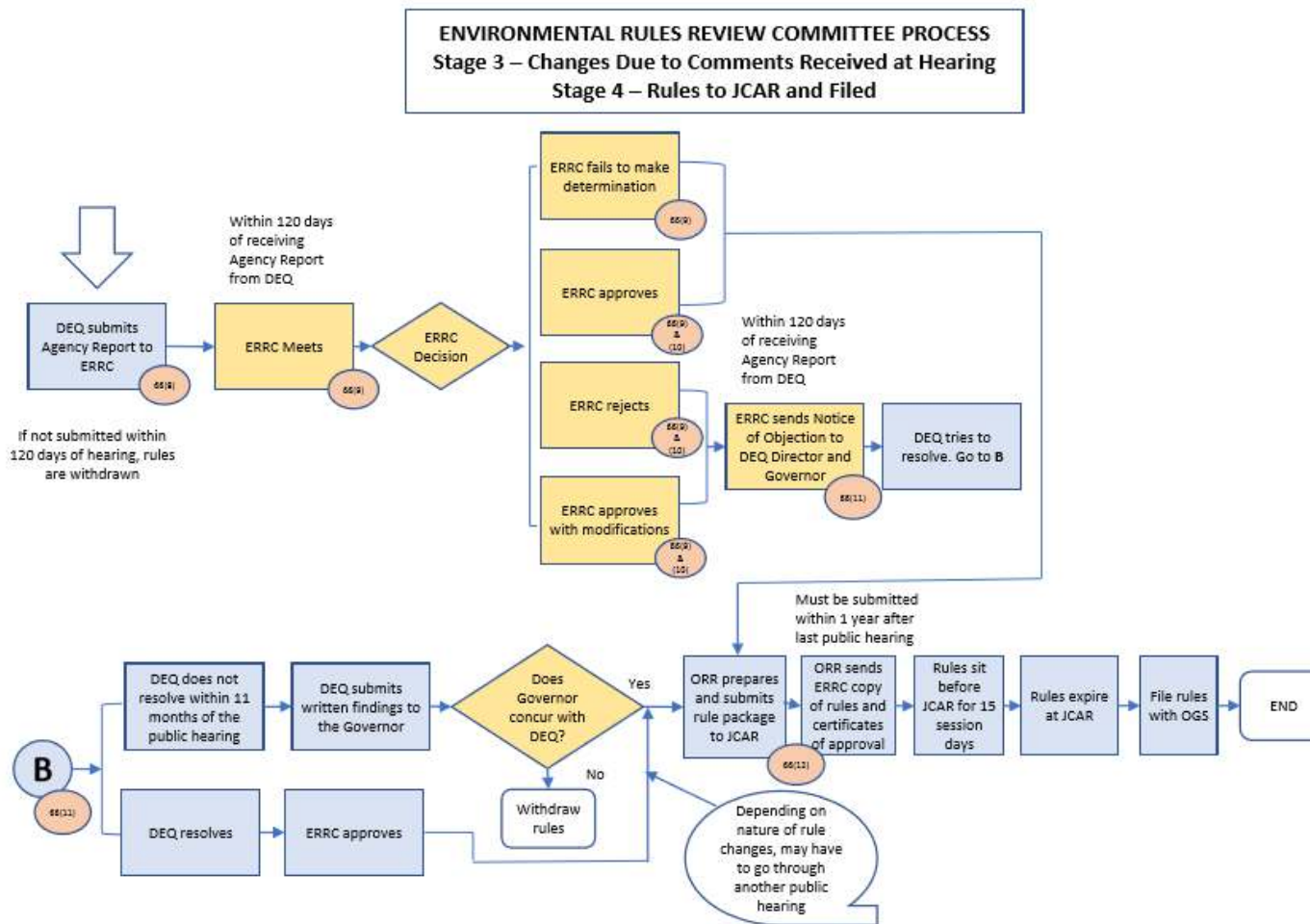


Rule Promulgation Procedure (cont'd)

ENVIRONMENTAL RULES REVIEW COMMITTEE PROCESS Stage 2 – Public Hearing



Rule Promulgation Procedure (cont'd)




Environmental Rule Promulgation Procedure

Acronyms and Symbols

DEQ	Department of Environmental Quality
ERRC	Environmental Rules Review Committee
JCAR	Joint Committee on Administrative Rules
OGS	Office of the Great Seal
ORR	Office of Regulatory Reinvention
RFR	Request for Rulemaking
RISCBA	Regulatory Impact Statement & Cost Benefit Analysis
	The number in the circle refers to the Section number of the Administrative Procedures Act, 1969 PA 306
	Blue shading indicates activities performed by the DEQ or ORR
	Orange shading indicates activities performed by ERRC

EGLE Rules Update Chart

 RECENTLY COMPLETED RULEMAKING									
Rule Set	Rule Numbers	Description	Division/ Office	Environmental ARC Recommendation	MOAHR Rule Set Number	RFR Approved	Public Hearing	JCAR Package Submitted	Effective Date
ONGOING RULEMAKING									
Rule Set	Rule Numbers	Description	Division/ Office	Comments	MOAHR Rule Set Number	RFR Approved	Public Hearing	MOAHR Submits JCAR Package	
Part 4. Sulfur Bearing Compounds	R 336.1401 - 1440	Update ASTM and federal standards adopted by reference. Remove definition of used oil. Rescind rule pertaining to CAIR SO2 trading program since it was recently addressed in Part 9 rules.	AQD	Not being reviewed the Environmental Rules Review Committee	2017-062 EG	September 1, 2017 Revision to RFR approved on August 1, 2018.			
Supplying Water to the Public	R 325.10101 - 12820	Establish enforceable drinking water standards for PFAS.	DWEHD	Is currently being reviewed by the Environmental Rules Review Committee	2019-035 EG	RFR approved on March 28, 2019			
Oil and Gas Operations	R 324.102, 403, 405, and 801.	Clarification of definitions necessary to remove ambiguity and obtain Class II Injection Wells primacy.	OGMD	The Environmental Rules Review Committee voted to return this rule set to normal rulemaking at their March 19, 2019 Meeting	2019-001 EG	January 17, 2019	June 21, 2019		
Hazardous Waste Management	R 299.9101 - 11007	The rules address federal revisions required to maintain authorization and those that authorized states have the option of incorporating into their rules for consistency purposes. The revisions address generator improvement, import/export, and electronic manifesting requirements.	MMD	Not being reviewed the Environmental Rules Review Committee	2018-012 EG	March 15, 2018			

EGLE Rules Page: Go to Michigan.gov/EGLE and in the footer under the heading "Regulations" click on "Laws & Rules."

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Environmental Rules Review Committee [webpage](#)

If you would like to receive updates on EGLE rulemaking, please subscribe to the Michigan Department of Technology, Management & Budget (DTMB) GovDelivery. Go to www.michigan.gov/MOAHR and select "Administrative Rules," "Sign Up for Administrative Rules Email Updates." Enter your email address. Check the box next to "ORR -Environmental Quality" and hit submit.

No Stricter Than Federal – Open Issues

- What if no federal criteria?
- What will be sufficient to establish “clear and convincing need” for stricter State criteria?
- Will the regulatory impact statement expanded criteria delay rulemaking?
- Will more court challenges including declaratory judgments be filed?
- Will there be challenges in regulatory areas other than environmental?

QUESTIONS?



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