



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2017 Wisconsin Act 108
[2017 Assembly Bill 317]

Review of Administrative Rules

2017 Wisconsin Act 108 makes various changes, described below, relating to administrative rules.

EXPEDITED REPEAL PROCESS

Wisconsin law generally requires a state agency to take the following steps to promulgate an administrative rule (including the modification or repeal of a rule):

- Submit a scope statement to the Governor for approval.
- Hold a preliminary hearing and open comment period, on its own initiative or if requested.
- Complete an economic impact analysis (EIA) for the proposed rule.
- Submit the rule to the Legislative Council staff for review by the Administrative Rules Clearinghouse, together with certain materials.
- If applicable, submit the rule for review by the Small Business Regulatory Review Board (SBRRB).
- Hold a public hearing on the rule, unless one of several exceptions applies.
- Submit the final draft of the rule to the Governor for approval.
- Submit the rule (with any revisions) to the Legislature, together with certain materials.

Within 10 working days after the rule is submitted to the Legislature, the presiding officer of each house must direct the referral of the rule to a standing committee for review. After standing committee review, a proposed rule must be referred to the Joint Committee for Review of Administrative Rules (JCRAR) for JCRAR review.

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature's Web site at: <http://www.legis.wisconsin.gov>.

The Act creates an expedited process for the repeal of certain administrative rules. The Act requires state agencies to petition JCRAR to repeal certain existing administrative rules using the expedited process. The process applies to an “unauthorized rule,” defined to mean a rule that an agency lacks the authority to promulgate due to the repeal or amendment of the law that previously authorized its promulgation.

The expedited process includes the following steps:

- An agency submits a petition for rule repeal to the Legislative Council staff.
- The Legislative Council staff reviews the petition and submits a written report to JCRAR as to whether the petition proposes to repeal an unauthorized rule.
- JCRAR reviews the petition and may approve, deny, or request changes to the petition.
- If JCRAR approves the petition, the agency must certify the repeal to the Legislative Reference Bureau (LRB), for publication. If JCRAR denies the petition, the agency may pursue a repeal or amendment of the rule using the general process under current law.

BIENNIAL REPORTS TO JCRAR

The Act requires each agency that has administrative rules to submit a biennial report to JCRAR. The report must list the rules for which the following circumstances apply:

- The authority to promulgate the rule has been eliminated or restricted.
- The rule is obsolete or has been rendered unnecessary.
- The rule is duplicative of, superseded by, or in conflict with another rule, a state statute, a federal statute or regulation, or a court ruling.
- The rule is economically burdensome.

The report must also describe the agency’s actions, if any, to address each of the rules listed and must include an explanation for any listed rule for which the agency has not taken any action. It must also describe the status of each rule listed in the agency’s previous report.

If an identified rule is unauthorized, and is not already in the process of repeal, the agency must submit a petition for expedited repeal as described above within 30 days after submitting the report.

In addition to the agency report, the Act requires LRB to submit a biennial report to JCRAR. The report must identify any rules that are possibly in need of revision.

REVIEW OF ENACTED LEGISLATION

The Act requires each agency to review legislative enactments to determine whether the enactment requires any change in the agency's administrative rules. Specifically, an agency must determine whether the enactment:

- Eliminates or restricts the authority to promulgate any rules administered by the agency.
- Renders any rules obsolete or unnecessary.
- Renders any rules not in conformity with or superseded by a state statute.
- Otherwise necessitates rulemaking.

If a rule change is necessary, the Act requires the agency to initiate the rule promulgation process within six months of the effective date of the enacted legislation. The Act specifies that the agency may utilize either the general rule promulgation process or, if applicable, the expedited process created under the Act, and must notify JCRAR of its action.

RETROSPECTIVE EIA

The Act allows JCRAR to request a retrospective EIA from an agency. The EIA must address the same categories of analysis and determinations as an initial EIA. It must also include a comparison between the expected economic effect of the rule when proposed and the rule's actual economic effect.

A retrospective EIA must be submitted to the Governor, the Department of Administration, both houses of the Legislature, and the cochairpersons of JCRAR. It must also be submitted to LRB for publication.

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