



State of Wisconsin
Governor Scott Walker

Department of Agriculture, Trade and Consumer Protection

DATE: September 1, 2017

TO: Board of Agriculture, Trade and Consumer Protection

FROM: Jeff Lyon, Interim Secretary

SUBJECT: Rules Process Updates

PRESENTED BY: Paul Dedinsky, Chief Legal Counsel 

RECOMMENDATION: This is for informational purposes only. No Board action is required.

SUMMARY / BACKGROUND:

Two acts, Act 39 and Act 57, have passed the legislature that impact the rulemaking process for all state agencies. The department will present these changes to the Board. A summary of the changes follows.

Act 39 changes (effective August 4, 2017)

Pursuant to § 227.135(5), Stats., Scope Statements now have expiration dates. All scopes filed after August 4, 2017 expire 30 months after the date it is published in the Administrative Register. All statements of scope published in the Register before August 4, 2017 expire on February 4, 2020. After expiration, an agency may not submit a proposed rule based upon that statement of scope to the legislature for review under § 227.19 (2), Stats. The end result is that rulemaking must go from scope statement to legislative review within 30 months. Otherwise, from the legislature's perspective, the scope will be deemed as withdrawn, meaning that no new rule may proceed based upon an expired scope statement. A process whereby an agency may initiate a request to revise a Scope Statement is included, pursuant to § 227.135(5), Stats.

Act 57 changes (effective September 1, 2017)

The act first applies to proposed rules or emergency rules whose statement of scope is presented for approval by the governor on or after September 1. Pursuant to § 227.135(1), Stats., Scope Statements are submitted to DOA, not directly to the governor. DOA reviews for "explicit authority" before forwarding the scope to the governor for approval. Pursuant to § 227.135(2), at the same time the approved scope is sent to LRB for Register publication, copies are to be sent to the clerk of each house. Pursuant to § 227.136, within 10 days after publication in the Register, either JCRAR co-chair may direct the agency to conduct a preliminary public hearing/comment period on the scope. If requested, the agency must publish a notice of hearing and comment period in the Register.

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Pursuant to § 227.137(3)(b)1., Stats., Economic Impact Analyses (EIAs) must now include “an estimate of the total implementation and compliance costs that are reasonably expected to be incurred by or passed along to businesses, local governmental units, and individuals as a result of the proposed rule, expressed as a single dollar figure.” Further, according to § 227.137(3)(b)2., Stats., EIAs must also include a determination to whether \$10,000,000 or more in implementation and compliance costs are reasonably expected to be incurred by or passed along to businesses, local governmental units, and individuals over any 2-year period as a result of the proposed rule. If any EIA indicates that this \$10,000,000 threshold is exceeded, the agency must stop all work on the proposed rule and may not continue unless the legislature passes a bill authorizing the promulgation of the rule. Note that pursuant to § 227.137(4m) and § 227.19(5)(b)3., Stats., once an agency submits a proposed rule to Leg Council and before it submits the rule for approval by the governor, either JCRAR co-chair may request an Independent EIA (IEIA) for the proposed rule prepared by a 3rd party. After referral to JCRAR under § 227.19(5), Stats., the committee may vote to request an Independent EIA.