

**DRAFT ONLY
NOT APPROVED FOR
INTRODUCTION**

HOUSE BILL NO. [BILL NUMBER]

Administrative rules-legislative review.

Sponsored by: Management Audit Committee

A BILL

for

1 AN ACT relating to administrative procedure; requiring
2 agencies to provide notice of major rules as specified;
3 clarifying the definition of major rule; requiring
4 rulemaking; and providing for an effective date.

5

6 *Be It Enacted by the Legislature of the State of Wyoming:*

7

8 **Section 1.** W.S. 16-3-103(a)(i) by creating a new
9 subparagraph (M) and (f) and 28-9-109(h) are amended to
10 read:

11

1 **16-3-103. Adoption, amendment and repeal of rules;**
2 **notice; hearing; emergency rules; proceedings to contest;**
3 **review and approval by governor.**

4
5 (a) Prior to an agency's adoption, amendment or
6 repeal of all rules other than interpretative rules or
7 statements of general policy, the agency shall:

8
9 (i) Give at least forty-five (45) days notice of
10 its intended action. Notice shall be mailed to all persons
11 making timely requests of the agency for advanced notice of
12 its rulemaking proceedings and to the attorney general, the
13 secretary of state's office as registrar of rules, and the
14 legislative service office if a state agency. The agency
15 shall submit a copy of the proposed rules, in a format
16 conforming to any requirements prescribed pursuant to
17 subsection (f) of this section, with the notice given to
18 the legislative service office. The notice shall include:

19
20 (M) If the rules are major rules as defined
21 in W.S. 28-9-109(h), a statement that the rules are major
22 rules, a statement of need for the major rule and any

1 additional information necessary for the regulatory
2 analysis required by W.S. 28-9-109.

3
4 (f) The state registrar of rules shall:

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6 (i) Prescribe a format for state agencies to
7 follow in preparing proposed amendments to existing rules
8 which shall ensure that additions to and deletions from
9 existing language are clearly indicated;

10
11 (ii) Adopt rules necessary to ensure that state
12 agencies provide information necessary for the regulatory
13 analysis required by W.S. 28-9-109 and as specified in
14 subparagraph (a) (i) (M) of this section.

15
16 **28-9-109. Agency rules; analysis and review.**

17
18 (h) "Major rule" means a rule, ~~including an emergency~~
19 ~~rule, designated by management council under W.S. 28-9-109~~
20 that will result in or is likely to result in one (1) or
21 more of the following:

STAFF COMMENT

Other states that have enacted similar legislation have excluded rules that are required to comply with federal law from the definition of "major rules". If the Committee determines to exclude those rules, the language above could be amended as follows:

"Major rule" means a rule, ~~including an emergency rule, designated by management council under W.S. 28-9-109~~ other than a rule that is required to comply with federal law, that will result in or is likely to result in one (1) or more of the following:

(i) An annual impact on the economy of Wyoming that will result in direct or indirect costs of not less than ~~one million dollars (\$1,000,000.00)~~ two hundred thousand dollars (\$200,000.00) per year;

(ii) Significant adverse effects on competition, employment, investment, productivity or innovation in the state, including significant adverse effects on individual industries or regions within Wyoming.

STAFF COMMENT

With the clarification of the annual economic impact in paragraph (i) above, the Committee may want to consider whether paragraph (ii) is necessary. Paragraph (ii) does not include any measurable benchmarks which would make it

difficult for agencies to apply in determining whether a rule is a major rule.

STAFF COMMENT

There are a couple of additional considerations for Committee discussion:

1. The Committee discussed requiring approval of the legislature before any rule (or any major rule) could become effective. One issue that would arise if that were implemented is that it may be necessary to delay the effective date of some legislation until any required rules are implemented. For example, current practice is to make the legislation effective on July 1 (roughly 4 months after the end of session) and to give the agency the authority to begin the rulemaking process immediately. If the desire is to make the rules subject to legislative approval, there are a couple of options:

- a. Delay the effective date of the legislation until the rules are approved during the following legislative session. This would have the effect of delaying the implementation of legislation that requires rulemaking by a year or more.

- b. Allow legislation to become effective earlier, immediately or on July 1 under the current practice, and increase the length of time that emergency rules can be effective. Currently emergency rules can be effective for up to two periods of 120 days each (240 days total) while permanent rules are being proposed and adopted. Those periods could be increased to allow rules to be in place on a temporary basis while the permanent rules are adopted and approved by the legislature.

2. Related to the above discussion, another alternative may be for the legislature to require a regulatory impact analysis and legislative approval of rules on a case-by-case basis based on the legislation or at the direction of a committee. If a bill requires a new

1 program and rulemaking that has the potential to
2 result in major rules, the legislation could have a
3 delayed effective date, require a regulatory impact
4 analysis and then specify that rules to implement the
5 program shall not be effective until approved by the
6 legislature. However, for programs that are unlikely
7 to result in major rules or where the rules to
8 implement the program are unlikely to be controversial
9 or differ significantly from the enabling legislation,
10 the rulemaking process could proceed under the current
11 process without an impact analysis and without
12 legislative approval of the rules. In that instance,
13 if there were rules that were outside of the scope of
14 legislation the rules could still be prohibited
15 through a legislative order or other legislation.

- 16 3. Finally, requiring legislative approval of
17 administrative rules could raise issues related to
18 separation of powers. The NCSL article below cites to
19 two state cases where state Legislatures provided for
20 a veto of administrative rules and that process was
21 challenged. In a 1990 Idaho case the Idaho supreme
22 court upheld the ability of the Idaho legislature to
23 veto administrative rules. However, in a 1997 case in
24 Missouri the Missouri Supreme Court held that rules
25 could not be suspended by the legislature other than
26 through passage of a bill for the governor's
27 signature. If the Committee determines to take this
28 approach, staff will provide additional information on
29 this issue: [https://www.ncsl.org/about-state-](https://www.ncsl.org/about-state-legislatures/separation-of-powers-legislative-oversight)
30 [legislatures/separation-of-powers-legislative-](https://www.ncsl.org/about-state-legislatures/separation-of-powers-legislative-oversight)
31 [oversight](https://www.ncsl.org/about-state-legislatures/separation-of-powers-legislative-oversight)

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36 Section 2. This act is effective July 1, 2026.

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38 (END)