



---

# Administrative Rules in Wisconsin\*

Junjie Guo  
Research Economist  
Center for Research on the Wisconsin Economy  
University of Wisconsin – Madison

Ananth Seshadri  
Mary Sue and Mike Shannon Distinguished Chair  
Co-Director, Center for Research on the Wisconsin Economy  
University of Wisconsin – Madison

February 10, 2025

---

\*The views expressed herein are those of the authors and not necessarily those of the Center for Research on the Wisconsin Economy, the Department of Economics, or the University of Wisconsin – Madison.

## Executive Summary

- A series of Acts and Executive Orders under Governor Walker limit the ability of state agencies in Wisconsin to promulgate administrative rules, including
  - Act 21 and Executive Order #50 in 2011. In particular, Act 21 limits agencies to only passing standards or regulations that are explicitly permitted or required under state law
  - Acts 39 and 57 in 2017. Known as the REINS Act, Act 57 requires state legislative authorization of administrative rules that carry compliance and implementation costs of \$10 million or more over a two-year period
- Using data from the Wisconsin Administrative Register, we find
  - a significant drop in the number of approved rules since 2011
  - no significant change around 2017 in either the number of proposed rules or the number of approved rules
- The insignificant change around 2017 could be a result of two opposite effects of the REINS Act that we will investigate in the future
  - A decrease in the number of administrative rules that cost \$10 million or more over a two-year period
  - An increase in the number of administrative rules that cost less than \$10 million over a two-year period, which could happen if state agencies split some high-cost rules into multiple low-cost rules to avoid legislative authorization

State agencies in Wisconsin have the authority to promulgate administrative rules. Chapter 227 of Wisconsin Statutes defines an administrative rule as "a regulation, standard, statement of policy, or general order of general application that has the force of law and that is issued by an agency to implement, interpret, or make specific legislation enforced or administered by the agency or to govern the organization or procedure of the agency".

The rulemaking ability of Wisconsin's state agencies is limited by a series of Acts and Executive Orders under Governor Walker. First, Act 21 enacted in May 2011 limited agencies to only passing standards or regulations that are explicitly permitted or required under state law. Second, Executive Order #50 issued by Governor Walker in November 2011 set forth requirements for agency rulemaking in addition to those specified in the statutes, as well as detailed rule promulgation instructions to agencies. Finally, Acts 39 and 57 enacted in 2017 set deadlines for developing new rules and lowered the economic threshold for rules that can be passed without legislative approval. Modeled after the federal Regulations from the Executive in Need of Scrutiny Act (REINS Act), which passed the U.S. House of Representatives several times but has yet to gain approval in the Senate, Act 57 requires state legislative authorization of administrative rules that carry compliance and implementation costs of \$10 million or more over a two-year period. Ultimately, the state's Legislature retains oversight of the rulemaking process through the review of proposed rules by the Legislative Council's Administrative Rules Clearinghouse, legislative standing committees in each house, and the Joint Committee for Review of Administrative Rules (JCRAR).

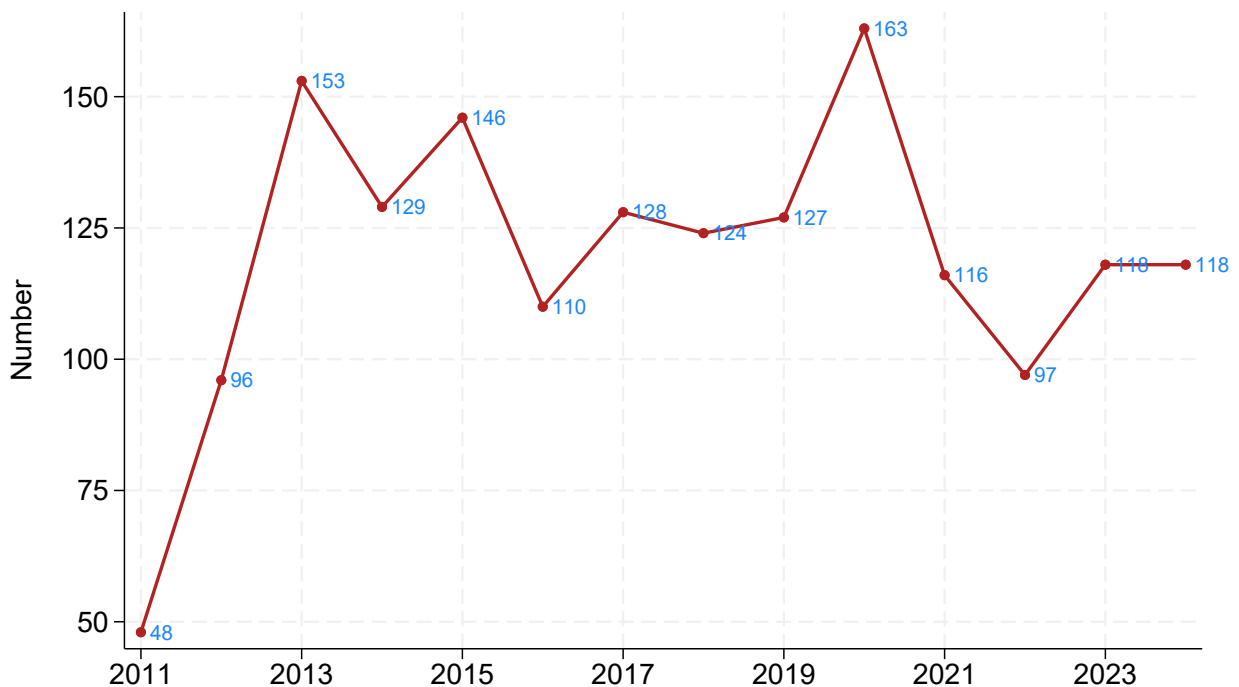
Using data from the Wisconsin Administrative Register, we find a significant drop in the number of approved rules since 2011, but no significant change around 2017 in either the number of proposed rules or the number of approved rules. The insignificant change around 2017 could be a result of two opposite effects of the REINS Act: (1) a decrease in the number of administrative rules that cost \$10 million or more over a two-year period, and (2) an increase in the number of administrative rules that cost less than \$10 million over a two-year period, which could happen if state agencies split some high-cost rules into multiple low-cost rules to avoid legislative authorization. We will investigate this in a future report.

## **Analysis**

According to Chapter 4 of the 2019-2020 Wisconsin Legislator Briefing Book, the first step in administrative rulemaking is for an agency to prepare a scope statement with information about the intended rulemaking, including the objective of the proposed rule, the statutory authority for the rule, and a description of all entities that may be affected by the rule. Before work may commence on actual rule drafting, the agency must submit

the scope statement to the Department of Administration (DOA), which reviews the rule and forwards it to the Governor for approval in writing. If the scope statement is approved by the Governor, it is then submitted to the Legislative Reference Bureau (LRB) for publication in the Wisconsin Administrative Register. Executive Order #50 provides that an agency must submit an approved scope statement to the LRB for publication within 30 days of the Governor’s approval, or the scope statement will be considered to have been withdrawn.

Figure 1 reports the number of scope statements published in each year in the Wisconsin Administrative Register. Except for 2011, the year when Act 21 was passed, Executive Order #50 was issued, and the Wisconsin Administrative Register started to collect data on scope statements, the number is generally around 125, and mostly between 100 and 150. There does not seem to be a significant change around 2017 when Wisconsin’s REINS Act was passed, although the latest numbers in 2021-24 are smaller than all but one year in 2013-2020.

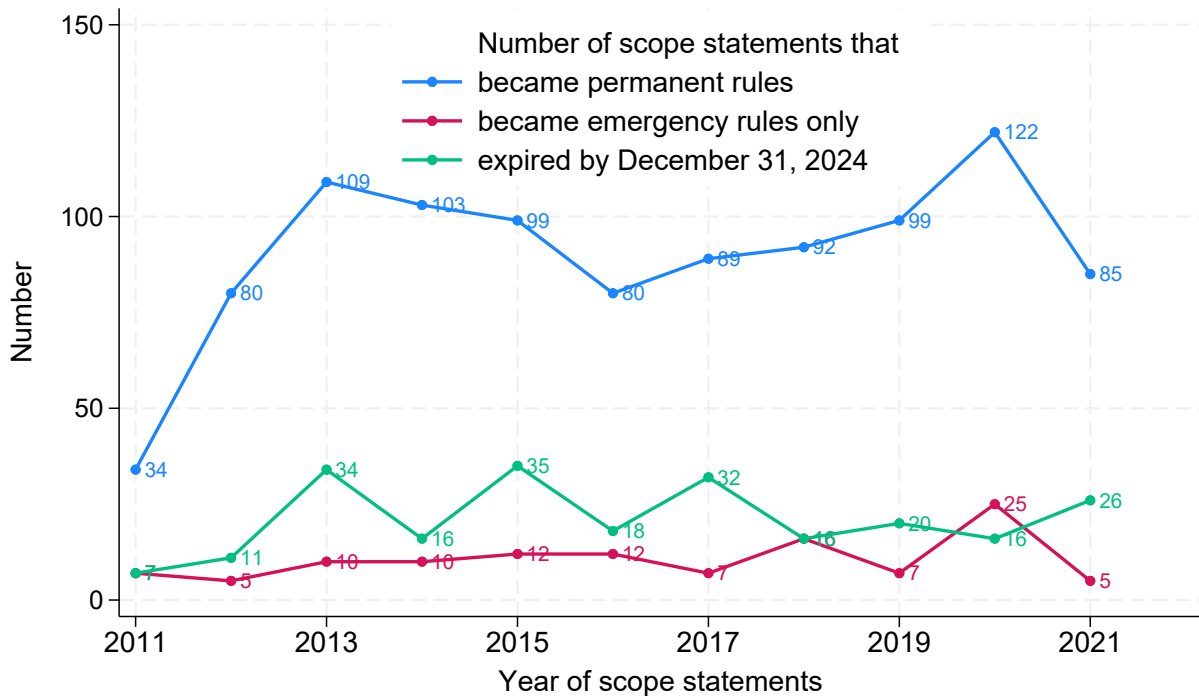


**Figure 1: Number of Scope Statements: 2011-2024**

Once a scope statement is published, an agency has 30 months to submit a proposed rule for legislative review. The proposed rule could be an emergency rule, a permanent rule, or both. Depending on the drafting and reviewing process, a scope statement could lead to one of three outcomes: (1) a permanent rule, which may or may not be associated with an emergency rule, (2) an emergency rule only, and (3) expiration of the scope statement

without a rule.

Figure 2 reports the number of scope statements associated with each of the three outcomes. Among the 48 scope statements published in 2011 (see Figure 1), 34 became permanent rules, 7 became emergency rules only, and the remaining 7 expired without a rule. Among the 125 or so scope statements published in each year between 2012 and 2021, around 95 became permanent rules, around 10 became emergency rules only, and the remaining 20 or so expired without a rule. We stop at 2021 because many scope statements published since 2022 are still active with no outcome yet.



**Figure 2: Outcomes of Scope Statements by Year of Publication**

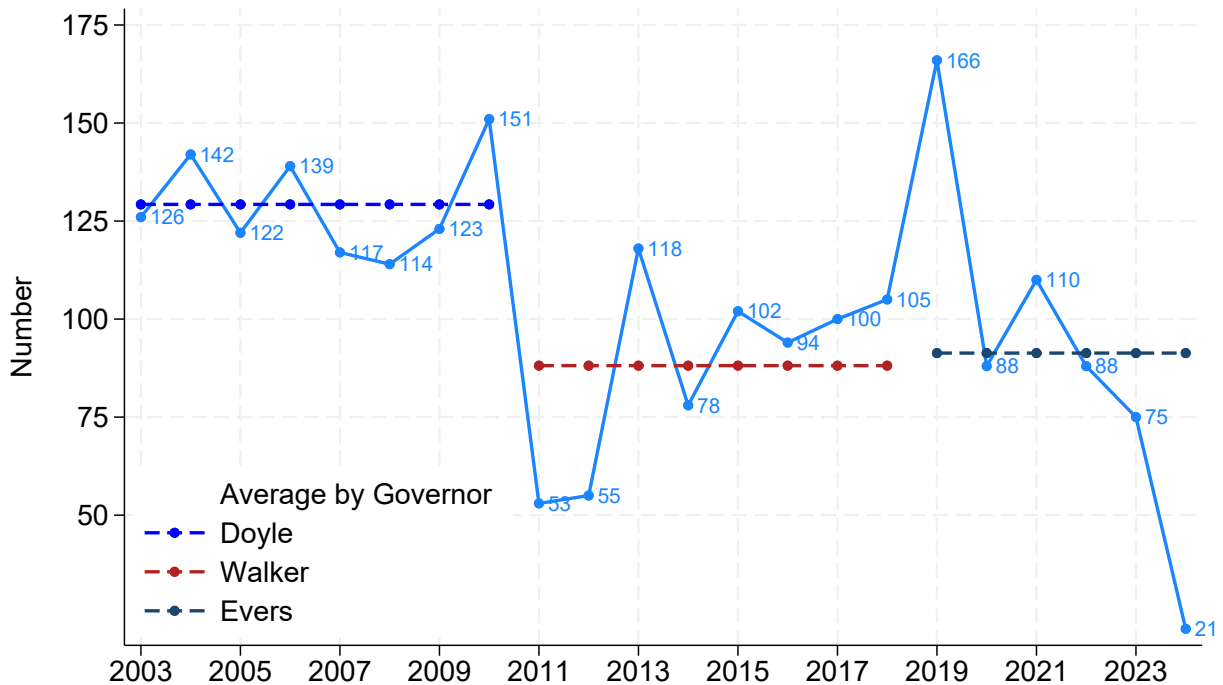
Table 1 reports the 10 agencies with the most scope statements between 2011 and 2021, and the outcomes of those scope statements. At the top is the Department of Natural Resources, which has 189 scope statements during this period. Among them, 134 became permanent rules, 30 became emergency rules only, and the remaining 25 expired without a rule. In the 3rd place is the Department of Agriculture, Trade and Consumer Protection, which has 96 scope statements during this period. Among them, 67 became permanent rules, 20 became emergency rules only, and the remaining 9 expired without a rule. The other agencies in the top 5 include the Department of Public Instruction (2nd), the Department of Safety and Professional Services (4th), and the Department of Health Services (5th).

Once a rule is approved, it must be published by LRB in the Wisconsin Administration

**Table 1: Agencies with the Most Scope Statements: 2011-2021**

Agency	Total	Outcome		
		Perm.	Emerg.	Expired
Department of Natural Resources	189	134	30	25
Department of Public Instruction	121	88	7	26
Department of Agriculture, Trade and Consumer Protection	96	67	20	9
Department of Safety and Professional Services	88	72	5	11
Department of Health Services	77	52	5	20
Controlled Substances Board	66	63	1	2
Department of Workforce Development	53	17	14	22
Department of Children and Families	51	35	4	12
Department of Revenue	49	46	1	2
Office of the Commissioner of Insurance	41	31	3	7

Register. Figure 3 reports the number of permanent rules published in the Wisconsin Administration Register in each year since 2003. The number decreased from an average of 129 in 2003-2010 under Governor Doyle to 88 in 2011-2018 under Governor Walker before increasing slightly to 91 in 2019-2024 under Governor Evers. Except for the spike in 2019, the numbers have generally been lower since 2011 than they were before, but there seems to be no significant change around 2017. The number plummeted to 21 in 2024. The average in 2019-2023 is 105, still lower than the value of 129 in 2003-2010.



**Figure 3: Number of Permanent Rules: 2003–2024**