

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

<b>1. Type of Estimate and Analysis</b> <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected	<b>2. Date</b> 10/15/2018
<b>3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable)</b> NR 154 Best Management Practices and Cost Share Conditions	
<b>4. Subject</b> Revision of NR 154, Wis. Adm. Code, relating to Best Management Practices and Cost Share Conditions for Targeted Runoff Management (TRM), Notice of Discharge (NOD) and Urban Nonpoint Source and Storm Water Grants (UNPS&SW) grants.	
<b>5. Fund Sources Affected</b> <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	<b>6. Chapter 20, Stats. Appropriations Affected</b>
<b>7. Fiscal Effect of Implementing the Rule</b> <input checked="" type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Could Absorb Within Agency's Budget	
<b>8. The Rule Will Impact the Following (Check All That Apply)</b> <input type="checkbox"/> State's Economy <input type="checkbox"/> Specific Businesses/Sectors <input checked="" type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input type="checkbox"/> Small Businesses (if checked, complete Attachment A)	
<b>9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1).</b> \$minimal [\$0]	
<b>10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<b>11. Policy Problem Addressed by the Rule</b> Chapter NR 154, Wisconsin Administrative Code, identifies the agricultural and urban best management practices (BMPs) that can be funded under the Notice of Discharge, Targeted Runoff Management, Urban Construction and Urban Planning grant programs as specified in chs. NR 153 and NR 155, Wis. Adm. Code. In addition, ch. NR 154 identifies cost share conditions for BMPs available for funding and the grant programs identified above  The primary purposes of the proposed rule change is to make the sections of ch. NR 154 regulating agricultural BMPs consistent with recent updates to ch. ATCP 50 and to identify additional cost-shareable urban BMPs and their technical standards. For agricultural BMPs, ch. NR 154 directly cross-references ch. ATCP 50, Wis. Adm. Code, which was updated in both 2014 and 2018. In order to maintain consistency with the state's nonpoint source pollution abatement programs authorized in chs. 92 and 281, Wis. Stats., these cross-references need to be updated.  The proposed rule revisions also adds references to urban BMP technical standards developed since September 2002 when ch. NR 154 became effective, so that these BMPs are identified in code as cost-shareable practices.  The proposed revisions provide additional options for demonstrating that a grantee meets the provisions for economic hardship to be consistent with 2011 revisions to NR 153. Lastly, the proposed rule changes adjusts optional per acre flat reimbursement rates for some agricultural BMPs to more be consistent with recent revisions to ATCP and more accurately reflect current data on actual BMP costs.	
<b>12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments.</b> A number of county conservation departments were invited to offer input on the proposed changes to the optional flat rates. The Wisconsin Department of Agriculture Trade and Consumer Protection (DATCP) was consulted on the	

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proposed rule as required by 281.16 periodically and invited to review and offer comments on drafts of proposed revisions.

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#### 13. Identify the Local Governmental Units that Participated in the Development of this EIA.

No local government units were involved in this draft EIA. The department is providing a comment period on this economic impact analysis which will provide an opportunity for all local governmental units will have the opportunity to participate in the development of the final EIA.

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#### 14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

The proposed revisions to Ch. NR 154, Wis. Adm. Code will have a positive fiscal impact on local governments and agricultural crop and livestock producers, while having minimal fiscal impact on the state. The only anticipated state fiscal impact is associated with the increased optional flat rates for two agricultural BMPs; this change is estimated to cost the state less than an additional \$1,000 per year in grant reimbursements. However, the anticipated outcome of the higher flat rates is that they will be more frequently utilized, thereby reducing the amount of time and paperwork required of agency staff and grantees to administer the program. Thus, the increased reimbursement costs are anticipated to be more than offset by the reduced cost of staff time associated with reviewing and processing reimbursement requests.

Revisions to ch. NR 154 may affect the following entities as it relates to participation in the department's agricultural and urban nonpoint source grant programs:

- Governmental units including, but not limited to, a county, city, village, town, metropolitan sewerage district, town sanitary district, public inland land protection and rehabilitation district, regional planning commission or drainage district. Rule revisions will provide clarity and consistency with ch. ATCP 50 and department programs for cost-sharing BMPs and eligibility conditions in accordance with applicable technical standards.
- Agricultural crop and livestock producers. Rule revisions identify additional cost-shareable agricultural BMPs and technical standards and clarify eligibility conditions with the state agricultural performance standards and prohibitions outlined in ch. NR 151.
- Urban businesses and residents. Rule revisions provide clarity and consistency with cost-shareable urban BMPs and clarify eligibility conditions with state urban performance standards outlined in ch. NR 151.
- Private consulting firms. Rule revisions provide additional clarity and consistency regarding cost-shareable best management practices for application under the department's nonpoint source program grants.

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#### 15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

NR 154 is part of the state's nonpoint source abatement program that is jointly administered by the DNR and the Department of Agriculture Trade and Consumer Protection (DATCP). Therefore, the primary benefit of updating the rule is that it will allow the state's nonpoint source abatement program to be consistently administered between state agencies. A second benefit of updating the rule is that six additional urban BMPs will be codified as eligible for cost-share funding. A third benefit is that as more grantees utilize flat rates for reimbursement of agricultural BMPs (rather than 70% of actual costs) the amount of time and paperwork required of agency staff and grantees to administer the program will be reduced.

The alternative to updating the rule, is to not update the rule, which would result in confusion among grantees and inconsistent administration of the state's nonpoint source abatement program between state agencies.

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#### 16. Long Range Implications of Implementing the Rule

The long range implication of updating the rule will be the same as its short range implications. It will allow for consistent administration of the state's nonpoint source abatement program between state agencies now and in the future, and more clearly codify the variety of types of urban BMPs that can be constructed with state cost-share funding.

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#### 17. Compare With Approaches Being Used by Federal Government

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Section 319 of the Clean Water Act (CWA) establishes the Nonpoint Source Management Program which addresses state and local nonpoint source pollution control efforts. Under Section 319, states, territories and tribes receive grant money that supports a wide variety of activities including technical assistance, financial assistance, education, training, technology transfer, demonstration projects and monitoring to assess the success of specific nonpoint source implementation projects. The objective of the federal Clean Water Act (“CWA”), 33 U.S.C § 1251 et. Seq., is to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters. As part of achieving this objective, Section 319 of the CWA (33 U.S.C. § 1329 directs states to develop a management program to for controlling pollution from nonpoint sources to navigable waterways that identifies best management practices to be undertaken to reduce pollution and financial assistance programs to achieve implementation of best management practices (See, 33 U.S.C § 1329(b)(1) and (b) (2) (A) & (B)). 33 U.S.C § 1329 (h) (1) requires the USEPA to make grants available to states for implementing such a nonpoint pollution control program. 33 U.S. Code § 1329 (h) (3) limits federal grants to states to a maximum of 60 percent of the cost incurred by the state. Federal rules do not explicitly identify BMPs or specify cost share rates which states may use for implementing their financial assistance programs. In Wisconsin, Chapter 154 establishes the BMPs which are eligible for cost-share grants.

The Federal Environmental Quality Incentives Program (“EQIP”) provides technical and financial assistance to facilitate the adoption of agricultural conservation practices that address natural resource concerns, including conservation practices that reduce the flow of pollutants from fields. 16 U.S. Code 3839aa-2 allows for payments to agricultural producers that enter into contracts to implement conservation practices for up to 75 percent of the costs associated with planning, design, materials, equipment, installation, labor, management, maintenance, or training; 100 percent of income foregone by the producer; and in such the cases where both of these apply, the sum of these two amounts.

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#### 18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Like Wisconsin, Illinois, Iowa, Michigan and Minnesota, all have state programs for implementing nonpoint Source management programs. In Wisconsin, Chapter NR 154, Wis. Admin. Code, identifies the agricultural and urban best management practices (BMPs) that are eligible for cost-share under Wisconsin’s runoff management grant programs, and identifies eligible grantees, and cost share rates and conditions for such financial assistance. Overall, rules in Illinois, Iowa, Michigan and Minnesota do not provide as much specificity as NR 154, as these states administer similar programs wholly or in part via guidance not promulgated rule or law. Iowa is the state most similar to Wisconsin in that it is the only other of the four states that identifies BMPs eligible for cost-sharing by rule. However, unlike Wisconsin, Iowa only identifies agricultural BMPs eligible for cost-sharing by rule, and identifies eligible urban BMPs in guidance. Cost share rates in these four neighboring states range from 50 to 75 percent, so at 70 percent Wisconsin is within this range. Specific details of similarities and differences between NR 154 and rules for similar grant programs in Illinois, Iowa, Michigan and Minnesota are summarized below.

**Illinois** - Illinois does not implement its Section 319 grant program (or any other financial assistance program for controlling nonpoint source pollution) by rule and so does not have rules similar to NR 154. The Illinois EPA has statutory authority to “accept, receive, and administer on behalf of the State any grants, gifts, loans, indirect cost reimbursements, or other funds made available to the State from any source for purposes of the Act or for air or water pollution control, public water supply, solid waste disposal, noise abatement, or other environmental protection activities, surveys, or programs.” 415 Ill. Comp. Stat. 5/4(k). The Illinois Nonpoint Source grant program follows USEPA’s 319 guidance documents and grant regulations (40 CFR parts 31 and 35). According to Illinois guidance (which is based on USEPA guidance) eligible applicants and grantees are broader than Wisconsin’s. In Illinois grant funds are available to any entity that has legal status to accept funds from the state of Illinois and the authority and ability to implement or subcontract the proposed project, whereas Wisconsin only awards TRM, UNPS, and NOD grants to governmental units. Illinois offers cost sharing for up to 60% of total eligible project costs, whereas Wisconsin cost shares up to 70% of total eligible BMP cost.

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In its guidance, Illinois provides a partial list of BMPs that control NPS pollution to be used as a starting point for consideration. For urban projects, Illinois recommends that BMPs follow the Illinois Urban Manual [http://www.aiswcd.org/wp-content/uploads/2013/11/IUM\\_FM\\_2013\\_WEBSITE\\_hyperlinks.pdf](http://www.aiswcd.org/wp-content/uploads/2013/11/IUM_FM_2013_WEBSITE_hyperlinks.pdf) and requires that BMPs be certified by a Professional Engineer (PE) and reviewed and approved by the Illinois EPA Project Manager.

Iowa -The Iowa Department of Agriculture and Land Stewardship (“IDALS”) administers two cost-sharing financial assistance programs – the Iowa Financial Incentive Program for Soil Erosion Control, and the Water Protection Fund. Cost share rates and eligible best management practices for these two programs are established in Iowa Admin. Code Section 27 Chapters 10 and 12, respectively.

- Iowa Financial Incentive Program for Soil Erosion Control - Whereas Wisconsin cost-shares up to 70 percent of the cost of eligible practices, Iowa Admin. Code 27-10.41(1) allows cost share up to 50 percent of the approved cost of permanent soils and water conservation practices that control erosion. Iowa Admin. Code 27-10.41(4) allows cost share up to 60 percent of the cost of such practices if they are part of special watershed project. Wisconsin allocates funds to counties, who in turn enter into cost-share agreements with land owners. In a similar manner, Iowa Admin. Code 27-10.50(161A), directs IDALS to allocate its soil erosion control program funds to soil and water conservation districts, who then subsequently enter into cost-share agreements with individual landowners to implement practices. Similar to Wisconsin’s optional flat rates for cropping practices at Wis. Admin Code NR 154.03, Iowa Admin. Code 27-10.60 (1) c., allows flat rate payments to landowners for implementing cropping practices including no-till, ridge-till, strip-till, contour farming, strip-cropping and cover crops. Like Wisconsin, Iowa agricultural best management practices eligible for cost-sharing are provided by rule; specifically, Iowa Admin. Code 27-10.82(1) identifies eligible residue and management practices; Iowa Admin. Code 27-10.82(2) identifies eligible temporary practices; and Iowa Admin. Code 27-10.82(3) identifies eligible permanent practices. Like Wisconsin, Iowa Admin. Code 27-84. (161A) references NRCS Conservation Technical Field guide for agricultural conservation practices technical standards.
- Iowa Water Protection Fund - Whereas Wisconsin allows cost-shares for up to 70 percent of the cost of eligible practices, Iowa Admin. Code 27-12.77 (1) allows cost share up to 50 of the eligible or estimated cost, whichever is less for practices cost-shared under the Iowa Water Protection fund. Similar to how Wisconsin allocates funds to counties, who in turn enter into cost-share agreements with land owners, Iowa Admin. Code 27-12.51(161C) directs IDALS to allocate funds for this program to its soil and water conservation districts who subsequently enter into cost-share agreements with individual landowners to implement practices. Iowa Admin. Code 27-15.60 (161C). Like Wisconsin, Iowa agricultural best management practices eligible for cost-sharing are specified by rule; specifically, Iowa Adm. Code 27-12.72 (161C) and Iowa Adm. Code 27.12.73 (161C), respectively, identify agricultural practices eligible for cost-sharing and define the categories of urban storm water best management practices eligible for cost-sharing. However, for urban practice technical standards, grantees are required to follow the Iowa Stormwater Management Manual.

In addition to its IDALS programs, Iowa also administers a Section 319 grant program. Like Illinois, Iowa’s 319 Program relies on federal EPA rules, guidance and grant agreement conditions to establish requirements for BMPs, technical standards and funding requirements.

Michigan – Michigan’s regulates its Section 319 program under Mich. Admin. Code r. 324.8801-8810 The Michigan rule is broader in scope than NR 154, encompassing grant program and process components found in NR 153, NR 154, and 155. In regards to cost-share rates and eligible best management practices, Michigan’s rules do not provide as much detail as NR 154. Notable similarities and differences between the two are described below.

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- MR 324.8805: Michigan’s eligible applicants and grantees are broader than Wisconsin’s. Michigan provides grants to local units of government and not-for-profit entities. Wisconsin only provides TRM, UNPS or NOD grants to governmental units.
- MR 324.8809: Michigan cost shares up to 75% of total eligible BMP cost (grantee share no less than 25%). Wisconsin cost shares up to 70% of total eligible BMP cost.
- MR 324.8809: There are no economic hardship provisions in Michigan’s rules, as there are in NR 154.03(3) for TRM grantees.
- Michigan uses Michigan Department of Environmental Quality (“MDEQ”) guidance rather than rule to establish eligible BMPs. Wisconsin establishes eligible BMPs by rule in NR 154.04. MDEQ has developed the Michigan’s Nonpoint Source Program Plan which identifies MDEQ manuals it uses for establishing eligibility of BMPs (See, [https://www.michigan.gov/documents/deq/wrd-nps-program-plan-2015\\_511849\\_7.pdf](https://www.michigan.gov/documents/deq/wrd-nps-program-plan-2015_511849_7.pdf)). This program plan is a Section 319 Grant requirement and equivalent to Wisconsin’s Nonpoint Source Program Management Plan (<https://dnr.wi.gov/topic/Nonpoint/documents/NPSProgramManagementPlan20162020.pdf>). The Michigan’s Nonpoint Source Program Plan references NRCS’s Field Office Technical Guide for agricultural BMPs and the MDEQ Best Management Practice Manual for urban BMPs.

Minnesota – Minnesota’s Section 319 grants are governed by Minn. Stat. §§ 103.F701 – 103F.755 and Minn. R. 7076. Minn. Stat. 103F.725 subdivision 1. and Minn. R. 7076.0120 subpart 1 both specify that their agency may award grants for up to 50 percent of the eligible cost for projects, whereas Wisconsin cost shares up to 70% of total eligible BMP cost. Minn Stats.103F.731 Subd. 2. and Minn. R. 7076.0130. subpart 1. state that, like Wisconsin, only local units of government in Minnesota are eligible to apply for financial assistance. Minnesota Pollution Control Agency identifies and recommends urban BMP in their storm water manual but does not identify eligible practices in their rules.

For agricultural practices, Minn R. 8400.0600 directs the state Soil and Water Resource Board allocate cost-share funds to district boards that have fully complied with Minnesota Statutes, all erosion control and water management program rules, and all program policies. Minn. R. 8400.0500 gives the state Soil and Water Resource Board the authority to establish the maximum percent or amount of the total cost of a conservation practice that may be funded using state cost-share funds. Minnesota does not identify eligible agricultural BMPs in their rules, but instead relies on credentialed Technical Assistance Providers to oversee practice selection and their Grants Administration Manual which has a chapter covering technical standards.

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**ATTACHMENT A**

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1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

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2. Summary of the data sources used to measure the Rule's impact on Small Businesses

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3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

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4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

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5. Describe the Rule's Enforcement Provisions

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6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes     No
-