

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis

Original Updated Corrected

2. Administrative Rule Chapter, Title and Number

Chapter NR 150 - Environmental Analysis and Review Procedures for Department Actions

3. Subject

Implementation of Wisconsin Environmental Policy Act, s. 1.11, Wis. Stats.

4. Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

5. Chapter 20, Stats. Appropriations Affected

No

6. Fiscal Effect of Implementing the Rule

No Fiscal Effect Increase Existing Revenues Increase Costs
 Indeterminate Decrease Existing Revenues Could Absorb Within Agency's Budget
 Decrease Cost

7. The Rule Will Impact the Following (Check All That Apply)

State's Economy Specific Businesses/Sectors
 Local Government Units Public Utility Rate Payers
 Small Businesses (if checked, complete Attachment A)

8. Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes No

9. Policy Problem Addressed by the Rule

Chapter NR 150 was revised and went into effect April 1, 2014. An emergency rule was approved in August (effective August 31) to clarify the procedures for review and analysis of new administrative rules in order to ensure that the intent of the ch. NR 150 revision is being met and potential procedural questions do not invalidate the years of work and public engagement on new rules packages, and for additional housekeeping changes to ensure that intent of the April 2014 ch. NR 150 rewrite is being met all in a manner consistent with past WEPA compliance approaches that have been upheld by courts. The August emergency rule expires on January 28, 2015. A 60-day extension was requested in December but the outcome of this request is uncertain due to the timing of the required legislative review.

This new emergency rule and subsequent new permanent rule are needed to clarify and modify the procedures for the review and analysis of new administrative rules, WEPA compliance determinations for various permits, plan approvals and other actions and policies, and other relevant changes, in order to assure that the general intent of the NR 150 revision is being met, that potential procedural questions or legal challenges do not invalidate years of work and public engagement on new rule packages or other actions and policies. A new emergency rule and following permanent rule is needed to ensure processing and enactment of rule proposals in a manner that is consistent with past WEPA compliance approaches that have been upheld by the courts, along with clarifying publication requirements, WEPA compliance determinations for various permits, plan approvals and other actions and policies.

10. 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.

Businesses that may be affected by this rule revision include mainly those that are required to apply for WDNR permits for projects that exhibit the potential to have "significant effects upon the quality of the human environment" (due to major air emissions, wastewater discharges, water withdrawals, etc.). However, ch. NR 150 is primarily an administrative process rule that applies internally to WDNR, so impacts to businesses are minimal. In addition, most environmental review data is also required by permit review requirements, so in general little to no additional cost is imposed by the EIS process.

In addition to a general public announcement soliciting review comments on economic impacts, business sectors

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participating in the ch. NR 150 External Advisory Group were contacted for comments. This group includes representatives of the housing, energy, dairy, engineering consultancy, legal, and general construction sectors of the state's economy. In addition, it includes representatives of private organizations representing individuals with varied interests in natural resources management issues. Comments received are addressed below in point 12.

11. Identify the local governmental units that participated in the development of this EIA.

Our "external advisory group" included an attorney who regularly represents municipalities on wastewater, water supply, stormwater and other environmental issues. He also represents individuals and businesses on land use and development matters, including developments in and around shorelands, wetlands, and navigable waters.

12. 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)

There may be a small savings of state tax dollars (GPR) and of utility set-asides that are designated to evaluate impacts of energy and other utility projects that may impact waterways, wetlands, air quality, water quality, and other public resources. Rule changes may also make more efficient use of resources of affected businesses by requiring fewer new impact analyses for similar projects, which would in turn mean that businesses may need to provide less data when WDNR can use applicable data from similar projects that have previously been reviewed under ch. NR 150. However, the primary savings will be those resulting from conducting analyses of broad public policy issues when the analyses point to potential future savings opportunities, such as selecting lower-cost options, before such options are foreclosed by less-informed decisions.

Response to comments on ch. NR 150 FE/EIA

Business sectors participating in the ch. NR 150 External Advisory Group were contacted for comments. We received comments from the Dairy Business Association (DBA), and from Midwest Environmental Associates (MEA). Because the comments of both parties overlap to some degree, we have addressed them on the basis of comment content and not by party of origin.

Comment:

Throughout the fiscal note, the agency asserts that the proposed rule revisions will not have any financial impact on Wisconsin businesses because the WEPA rule is implemented internally at WDNR. We believe this statement is inaccurate for many business owners and an over-simplification of the WEPA process. The way the agency implements WEPA, and specifically which agency actions require an environmental assessment (EA) or environmental impact statement (EIS) to be generated, directly affects businesses that are planning to build or expand a facility in Wisconsin.

Response:

While we agree that WEPA compliance does have fiscal impacts on affected businesses, we contend that the proposed rule revisions will, in general, result in lower fiscal impacts for permit applicants. This is because the revised rule will result in fewer permit applications requiring additional WEPA review, and because WEPA review requirements will not change for those permit applications that still require additional WEPA review. Overall, therefore, the costs associated with WEPA compliance will decline for the businesses community under the revised rule.

Comment:

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If the proposed rule revisions will create a more consistent and reliable permit process for certain industries, or if the revisions will eliminate the need for an EA or EIS for certain agency actions, the proposed rules may result in cost savings for businesses. However, if the revisions will inject further uncertainty in some permit processes or require an EA or EIS for more agency actions, the proposed rules would certainly result in increased costs for businesses.

Response:

The proposed rule revisions will result in lower WEPA compliance related costs for affected businesses for the following reasons. First, proposed rule revisions will create a more consistent and reliable permit process for many permit applicants because they will be at less risk of WEPA compliance legal challenges. Secondly, for many permit applicants the proposed rule revisions will eliminate the need for additional WEPA review.

Comment:

Uncertainty, disputes and/or litigation are more likely to arise between those seeking DNR permits or approvals for major actions and those believing that an EIS is inadequate if the rule changes result in EIS's that depart significantly from current ones, or the current close correspondence between state and federal environmental review processes is lost. These disputes could result in significant delays and costs for businesses involved in projects, facilities, or programs that require EIS's to be prepared. Additional costs to the DNR, other organizations and citizens could also result.

Response:

The proposed rule revision provides clarification of EIS content and process, but the requirements remain substantially unchanged. The risk of uncertainty, disputes and litigation over EIS adequacy will, therefore, not change with the proposed rule revision

Comment:

The Department should be interested in whether the proposed rule changes are likely to result in better or more cost effective management and protection of the state's environmental resources.

Response:

Better and more cost effective management and protection of resources is one of the important goals of the proposed rule revision. The rule revision addresses this goal by focusing the Department's time and attention on the most important environmental policies, issues, and projects while avoiding duplication of time and effort for review of routine actions.

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

The previous (pre-2014) version of the code classified the promulgation of most administrative rules as "Type 3 actions," a classification requiring some form of public notice but no additional environmental analysis as part of the formal rule-making process. The proposed rule changes would be simple changes to clarify that emergency rules are "minor actions" requiring no additional environmental analysis, and that the process for developing permanent rules is an "equivalent analysis action," similar to how emergency rules were treated under the pre-2014 ch. NR 150. The April 2014 version was not clear on this point, and the department wants to make certain that the status of current administrative rules

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development processes is clear in the new emergency rule and subsequent new permanent rule.

Procedures for WEPA compliance determinations, publication requirements and plan approvals for various actions and policies have been clarified in the new emergency rule.

The new emergency rule includes clarifying changes regarding strategic analysis requirements. Consistent with the intent of the current rule, the new emergency rule clarifies that a strategic analysis is required for review of significant policies, but for other policies or issues a strategic analysis can be used as at the discretion of the agency. Clarifying changes to key definitions help to achieve this in the new emergency rule.

The list of minor actions, not requiring additional environmental analysis, has been expanded to include actions that originally were intended to be outlined in program guidance. The April 2014 version relied on reference to “routine and small scale permits” or approvals as a catch-all category for minor actions that would be listed in guidance and reviewed by the public through the guidance review process. The revision in the new emergency rule (and in the permanent rule revision) would clarify by rule and note this list of activities that are minor actions. The proposed list is wholly consistent with the intent of the April 2014 rule.

The list of equivalent analysis actions, for which a detailed environmental analysis and public disclosure was already conducted as part of a department programmatic procedure, has been expanded and edited to provide additional clarity on actions covered under this subsection. The proposed list is wholly consistent with the intent of the April 2014 rule.

14. Long Range Implications of Implementing the Rule

In the long term, this revised rule will result in the production of fewer new environmental analysis documents. Relying in significant part on previous analyses for similar projects will reduce costs for businesses for providing data needed for analyzing impacts of proposed projects. Freeing up Wisconsin DNR staff time from multiple programs will enable staff to analyze potential impacts from emerging industries and technologies, enabling all levels of government to better respond to potential problems and opportunities.

15. Compare With Approaches Being Used by Federal Government

This revised rule is similar to the existing rule, in that it substantially follows the guidelines of the federal Council on Environmental Quality as directed by s. 1.11, Wis. Stats.

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

Neighboring states have significant differences in their related laws, so the opportunity to gain from their experience is limited. For example, Minnesota requires that counties also follow WEPA-like analysis procedures, whereas Wisconsin counties have no such requirements. Illinois' law covers only actions conducted by the state itself, whereas in Wisconsin, WEPA applies to all actions by other entities that are subject to state approvals.

17. Contact Name

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18. Contact Phone Number

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This document can be made available in alternate formats to individuals with disabilities upon request.

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ATTACHMENT A

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)

None

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

None

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:

NR 150 is largely an internal process rule, so rule changes would have no measureable impact upon small businesses.

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

Not applicable.

5. Describe the Rule's Enforcement Provisions

This rule carries no enforcement provisions. Disputes regarding the need to conduct an EIS analysis have judicial avenues of appeal.

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

- Yes No
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