

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

Over time, some WEPA process requirements have become duplicative, as a result of changes in statutory authorities and administrative practice, especially in the operations of environmental permit review programs. This revised rule emphasizes identifying and eliminating such duplication. At times, major issues have developed but decisions are made prior to a rigorous analysis of all options, and such decisions can foreclose options with greater public and private benefits. This rule proposes to shift resources to enable issue analysis earlier, before viable options are eliminated by decisions that are not fully informed. There also has been a need to better address the information/policy-driven requirements of s. 1.11(2)(e) and (h) as separate from the action/project-driven requirements of s. 1.11(2)(c), which have historically been the focus of WEPA activities. Rule changes will also make more efficient use of staff resources by reducing redundancy in staff efforts.

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 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 10.

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

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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:

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:

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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 rule change will make the Department's WEPA compliance more effective, meaningful and consistent with WEPA and s. 1.11, Wis. Stats. The revised rule will emphasize the analysis of broad issues and policies, de-emphasize document production for individual project actions, and provide meaningful public involvement. The new rule will require that the Department: 1) identify and analyze environmental issues important for their geographic, multidisciplinary, or policy scope; 2) analyze issues earlier, when alternative options have not been foreclosed, and on an ongoing basis; 3) provide that environmental analysis information be incorporated into departmental policy and decision-making; 4) define and provide meaningful public involvement; 5) address the information/policy-driven requirements of s. 1.11(2)(e) and (h) as separate from the action/project-driven requirements of s. 1.11(2)(c); 6) identify and eliminate process requirements that have become duplicative over time as a result of changes in statutory authorities and administrative practice; and 7) replace the current ch. NR 150, Wis. Adm. Code, type list with criteria for identifying, prioritizing, analyzing and seeking public input on relevant issues.

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Alternatives to the proposed rule changes would include leaving NR 150 as it currently is. This alternative was rejected as not meeting the need to more effectively and efficiently implement s. 1.11, Wis. Stats.

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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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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