

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. This rule (Board Order OE-21-14) is needed for two purposes: 1) 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 2) for additional housekeeping changes to ensure that the 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.

This new rule (Board Order OE-21-14) broadens the scope and adds additional clarification and different rule language not contained in the current permanent rule.

This new permanent rule clarifies that emergency rules are "minor actions," requiring no additional environmental analysis, and that the process for developing permanent rules is an "equivalent analysis action," as well as clarifying the various applicable definitions related to those rules and actions. The April 2014 revision of NR 150 was not perfectly clear on this point. This rule also clarifies procedures for WEPA compliance determinations and publication requirements.

The proposed new permanent rule includes changes that clarify strategic analysis requirements. Consistent with the general intent of the current rule, the new rule confirms that a strategic analysis is required for review of significant policies, but for other policies or issues the strategic analysis may be used as a discretionary tool.

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 proposed permanent rule clarifies by rule the list of activities that are minor actions.

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The list of equivalent analysis actions, for which a detailed environmental analysis and public disclosure are already conducted as part of department programmatic procedures, has been expanded and amended to provide additional clarity on actions covered under this subsection.

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 under permit review requirements, so in general little to no additional cost is imposed by the environmental impact review process.

In addition to a general public announcement on March 23, 2015 soliciting review comments on economic impacts, business sectors participating in the ch. NR 150 External Advisory Group during 2012 and 2013 were contacted on March 24 for comments as part of the process in promulgating this new permanent rule. This group included representatives of the housing, energy, dairy, engineering consultancy, legal, and general construction sectors of the state's economy. In addition, it included representatives of private organizations representing individuals with varied interests in natural resources management issues. DNR received no comments whatsoever on this EIA.

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

None. However, our External Advisory Group for the current (April 1, 2014) rule included an attorney who regularly represents municipalities on wastewater, water supply, stormwater and other environmental issues. This attorney also represents businesses and individuals on land use and development matters, including developments in and around shorelands, wetlands, and navigable waters. DNR invited this attorney to review the EIA along with the other members of the External Advisory Group.

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)

The permanent rule is substantially an internal procedure for the WDNR and will not have a significant economic impact on small businesses. 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 regarding "prior compliance" 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.

As noted in section 10, DNR received no comments on this ch. NR 150 FE/EIA for the new permanent rule.

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

DNR staff will have more clarity regarding both the implementation of ch. NR 150 and the required review process for promulgating administrative rules. DNR staff and the public will have more clarity regarding publication requirements and WEPA compliance determinations for various permits and plan approvals.

14. Long Range Implications of Implementing the Rule

The proposed amended rule is substantively similar to the existing rule that became effective in April, 2014. 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.

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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 that are permitted or regulated by the state.

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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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