

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

<p>1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected</p>	<p>2. Date 9/28/2020</p>
<p>3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) NR 350, Wetland Compensatory Mitigation, WT-02-19</p>	
<p>4. Subject Wetland Compensatory Mitigation</p>	
<p>5. Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input checked="" type="checkbox"/> PRO <input checked="" type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S</p>	<p>6. Chapter 20, Stats. Appropriations Affected 435</p>
<p>7. Fiscal Effect of Implementing the Rule <input type="checkbox"/> No Fiscal Effect <input checked="" 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</p>	
<p>8. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy <input checked="" type="checkbox"/> Specific Businesses/Sectors <input checked="" type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input checked="" type="checkbox"/> Small Businesses (if checked, complete Attachment A)</p>	
<p>9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$1,935,275 annually</p>	
<p>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)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	
<p>11. Policy Problem Addressed by the Rule The current rule has a significant amount of outdated language and some procedural steps that are no longer relevant to current federal and state statutes. This rule revision establishes an administrative framework for current mitigation requirements in s. 281.36, Wis. Stats., reflects current wetland mitigation processes, and clarifies procedures for wetland permit applicants and for wetland mitigation bank sponsors. The current rule also has no language for administering the department in-lieu fee program, which the revised rule intends to establish.</p>	
<p>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. Entities that may have an interest in the economic impacts of the proposed rule include: the Wisconsin Realtor's Association, members of the Wetland Study Council, private wetland mitigation bank sponsors, wetland permittees who regularly apply for permits, the Small Business Environmental Council, and Wisconsin Manufacturers and Commerce. The department intends to contact these entities via e-mail or phone during the economic impact analysis comment period.</p>	
<p>13. Identify the Local Governmental Units that Participated in the Development of this EIA. The department intends to notify via e-mail or phone the League of Wisconsin Municipalities, the Wisconsin Towns Association, and the Wisconsin Counties Association so that counties and other local government units will be consulted as part of the solicitation process.</p>	
<p>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 department does not anticipate that the revised ss. NR 350.02, 350.03, 350.04, 350.06, 350.09, 350.10, 350.11, 350.12, and 350.13, Wis. Admin. Code, will result in an adverse fiscal impact on the state's economy or the department.</p>	

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(A) Economic Impact on Specific Businesses, Business Sectors

The total compliance cost increase for private business due to this rule revision is estimated to be \$1,221,980.

Business sectors impacted are wetland permittees required to complete mitigation, which may include, and would be spread across, real estate and development, construction, retail, manufacturing, technology, utility providers, and health care.

Under current s. NR 350.05, Wis. Admin. Code, permittees may purchase mitigation bank credits at a 1:1 ratio unless rare wetland types are impacted. Revised s. NR 350.05, Wis. Admin. Code, establishes credit ratios of 1.2:1 or 1.45:1 for mitigation bank credit purchases to fulfill wetland permit mitigation requirements and establishes a credit ratio of 1.45:1 for in-lieu fee credit purchases to fulfill wetland permit mitigation requirements. These ratios mirror current state statute and result in the following additional costs for wetland permittees based on wetland mitigation credit purchase data over the 2018-19 calendar years.

For private businesses and utilities purchasing mitigation bank credits (annual average of 26 credit purchases at 1.0 acres of impact), costs would increase by an estimated \$23,530.00 on average per wetland permit requiring mitigation. For private businesses and utilities purchasing in-lieu fee program credits (annual average of 13.5 credit purchases at 1.4 acres of impact) costs would increase by an estimated \$45,200.00 on average per wetland permit requiring mitigation.

The compliance cost increase to private permittees for mitigation bank credit purchases is \$611,780 annually.

The compliance cost increase to private permittees for in-lieu fee credit purchases is \$610,200 annually.

Revised s. NR 350.05, Wis. Admin. Code, in establishing credit ratios of 1.2:1 or 1.45:1 for mitigation bank credit purchases to fulfill wetland permit mitigation requirements, also results in an increase in revenue for mitigation bank sponsors. Mitigation bank sponsors and their partners include private landowners, investors, real estate and development firms, and environmental services consulting firms. Using 2018-19 calendar year data, the increased revenue is an estimated \$23,530 on average on 47.5 credit purchases annually spread across private wetland banks with available credits to sell, which was 15 banks as of 8/1/2020.

The cost benefit for mitigation bank sponsor private businesses is \$1,117,675 annually.

Revised s. NR 350.07, Wis. Admin. Code, increases costs by \$800 for an average of 5 private mitigation bank sponsors annually once over the life of each mitigation bank.

The compliance cost for mitigation bank sponsor private businesses is \$4,000 annually.

(B) Economic Impacts on Local Governments, Utility Rate Payers and Public Entities

The total compliance cost increase anticipated for municipalities is \$709,295.

As stated above, changes to s. NR 350.05, Wis. Admin. Code, establish a higher credit ratio for mitigation bank purchases and for in-lieu fee program credit purchases. Over the 2018-19 calendar years, municipalities made 21.5 mitigation bank credit purchases and 4.5 in-lieu fee credit purchases annually. Due to the revised credit ratios in the new rule the average costs of these transactions will increase by \$23,530 for the average mitigation bank credit purchase and

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by \$45,200 for the average in-lieu fee credit purchase.

The compliance cost increase to municipality permittees for mitigation bank credit purchases is \$505,895 annually. The compliance cost increase to municipality permittees for in-lieu fee credit purchases is \$203,400 annually.

(C) State Economy

The department does not anticipate adverse impacts to the state's economy as a result of this rule.

(D) Fiscal Impacts

The department will be receiving an estimated \$4,000 annually from mitigation bank review fees in revised s. NR 350.08, Wis. Admin. Code. This rule will not require additional state staff to implement and there are no other fiscal impacts expected.

Total Compliance Costs:

The total compliance cost estimate for all parties is \$1,935,275 annually
\$1,931,275 for permittees annually
\$4,000 for mitigation bank sponsors annually

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

Implementation of the rule will reflect current statutes, standards, and procedures for mitigation required for wetland individual permit applicants and exemptions and for wetland mitigation bank sponsors. Revised ss. NR 350.04 and 350.05, Wis. Admin. Code, will ensure that appropriate wetland mitigation is completed resulting in no net loss of wetland function over the long-term. The revised ss. NR 350.06 to 350.10, Wis. Admin. Code, will result in environmental benefits from higher quality wetland mitigation sites. The revised rule conforms to federal regulations and statute statutes that have been changed significantly since 2007. The revised rule provides clear parameters for the department to follow when determining mitigation requirements for wetland permittees and exempt applicants that are in accordance with current state statute. The revised rule language provides an administrative structure for the in-lieu fee program to follow.

Alternatively, if the revised rule is not promulgated, wetland mitigation will be administered using a collection of guidance and state statutes, and outdated language and decision-making processes described in the current rule. This would result in an ongoing lack of administrative clarity for wetland permittees and mitigation bank sponsors, including mitigation requirements that contradict aspects of current state statute and federal regulations.

16. Long Range Implications of Implementing the Rule

The long-range implications of the rule are the same as the short-range implications. The revised rule will update and establish processes and standards for wetland permit applicants, mitigation bank sponsors, and the department in-lieu fee program, providing an administrative framework for wetland mitigation in Wisconsin.

17. Compare With Approaches Being Used by Federal Government

The USACE regulates compensatory mitigation for federal wetland discharge permits under 33 CFR Part 332. The federal mitigation requirement is similar to the state mitigation requirements in that it has similar standards for the amount, type and location of required mitigation, standards for planning and documentation for mitigation projects, ecological performance standards, monitoring and management standards, and requirements for mitigation banks and in-lieu fee programs. The department and the USACE jointly issued Guidelines for Wetland Compensatory Mitigation in Wisconsin in 2002, with an updated version in 2013, which captures the process for complying with both state and federal law. The guidelines reflect that while there are minor language differences between state and federal regulations, there are not significant conflicts between the two. The revised rule will follow the process for consistency identified in

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these guidelines.

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

In Illinois, wetland mitigation is primarily implemented by USACE under 33 CFR Part 332, and is therefore similar to Wisconsin's state mitigation requirements.

In Iowa, wetland mitigation is primarily implemented by USACE under 33 CFR Part 332, and is therefore similar to Wisconsin's state mitigation requirements.

In Michigan, wetland mitigation is jointly implemented by Michigan Department of Environment, Great Lakes, and Energy (EGLE) and USACE. EGLE implements state wetland mitigation requirements under Administrative Rule 281. Administrative Rule 281 does not allow wetland enhancement as a mitigation option, requires "onsite" mitigation where practical, requires higher mitigation ratios, sets minimum size thresholds for mitigation banks, and sets a different mitigation bank credit release schedule, but otherwise is similar to Wisconsin's mitigation regulations.

In Minnesota, wetland mitigation is jointly implemented by USACE under 33 CFR Part 332, and by administrative rule 8420. Under administrative rule 8420 wetland mitigation requirements are determined through a combination of the watershed approach and a comparison of current versus historic wetland acreages. Administrative rule 8420 also has specific wetland mitigation requirements for wetlands that are being converted to cultivated land, and requires the regulatory agencies overseeing wetland mitigation banks to charge administrative fees to wetland mitigation banks, but otherwise is similar to Wisconsin's mitigation regulations.

19. Contact Name

Tom Pearce

20. 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)

The total compliance cost estimate for small business is \$23,805 annually.

Under the revised ch. NR 350, Wis. Admin. Code, due to the updated mitigation ratios described above, the cost for mitigation bank credits would increase on average by \$23,530 per purchase and the cost for in-lieu fee credits would increase on average by \$45,200 per purchase. The department estimates that 1% of wetland permittees required to complete mitigation in a given year will be small businesses. This equates to 0.5 mitigation bank credit purchases annually and 0.2 in-lieu fee credit purchases annually.

The compliance cost increase to small business permittees for mitigation bank credit purchases is \$11,765 annually.

The compliance cost increase to small business permittees for in-lieu fee credit purchases is \$9,040 annually.

The revised rule adds a one-time mitigation bank review fee which is estimated to apply to five banks per year. Additionally, mitigation bank sponsors would see an increase in revenue via revised rule credit ratios of \$1,117,675 annually across all open banks in no regular or predictable amounts. The department estimates that 75% of mitigation bank sponsors are estimated to be small businesses.

The compliance cost increase to small business mitigation bank sponsors is \$3,000 annually. The cost benefit to small business mitigation bank sponsors is \$838,256 annually.

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

DNR wetland mitigation data including: wetland permits, mitigation bank credit affidavits of purchase, and in-lieu fee program credit affidavits of purchase.

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:

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

The revised rule does not add additional implementation costs for wetland individual permit or exempt applicants needing to fulfill their mitigation requirements. The revised rule establishes processes and standards for mitigation bank development and operation that follow current practices based on federal regulations and state statutes, which will result in prevention of project delays due to department requests for further information or additional site plan submittals.

5. Describe the Rule's Enforcement Provisions

Wetland permit violations are subject to enforcement in chs. 23, 30, 31, 281, and 283, Wis. Stats., and mitigation project sponsors shall allow reasonable access to the department for site inspections. Mitigation bank approvals can be revoked after notice and an opportunity for hearing, in accordance with ch. 227, Wis. Stats.

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

Yes No
