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USE OF IMPACT ANALYSES IN THE RULEMAKING PROCESS OF STATE ENVIRONMENTAL AGENCIES

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INTRODUCTION

As a part of the rulemaking process, state environmental agencies perform analyses of proposed state rules and regulations in order to assess which entities new state rules and regulations will affect and the ramifications of these impacts upon the affected entities. This report will examine the different types of impact analyses which are performed by state environmental agencies, common criterion required for inclusion in these analyses, and examples of unique criterion required for inclusion in analyses by some states. This report also includes a catalog of the impact analyses required according to each state's regulations. This list provides more comprehensive information about the role impact analyses play within each state environmental agency's rulemaking process.

METHODOLOGY

Report Sources

A representative from each state environmental agency was contacted to confirm the state data presented in this report. Along with other sources listed, these representatives were also an additional source of information. It should be noted that if a contact from the agency is not noted as a source of information in the appendix, then no response was received, and therefore the information could not be confirmed. The information in this report is up-to-date as of December 2012, and it is not guaranteed to be exhaustive.

One-time Impact Analyses

In addition to the types of impact analyses listed below, this report includes information on one-time impact analyses performed by states. State environmental agencies

sometimes conduct an impact analysis on one of their rules on their own accord, even though state laws do not require it. Furthermore, some state laws require the state's environmental agency to conduct analysis on a particular rule at a specific moment in time. These laws can be in addition to general provisions in the state code that outlines analysis requirements for all rules promulgated by the agency, or they can be met when no such provisions exist. Laws requiring a one-time analysis give more specific instructions for the analysis and/or request that the agency complete the analysis as part of a larger state initiative. This report includes several examples of such analyses performed by states.

FINDINGS

Types of Impact Analyses

Provisions within state codes similar to the federal "Administrative Procedures Act" require all environmental and non-environmental state agencies to perform impact analyses on proposed rules and regulations. For any new rule that is proposed, an impact analysis is required by state law. However, some states only require an impact analysis for select types of rules, such as rules with an expected fiscal impact over a certain threshold and rules that are more stringent than federal ones. There are also some state laws that require additional and separate impact analyses for rules which affect small businesses. Sometimes state laws will include additional impact analysis requirements for environmental rules.

The majority of the types of impact analyses performed by state environmental agencies in the rulemaking process fall into one of the general categories below.

- ***Cost Benefit Analysis:*** In cost benefit analysis, economists monetize costs and benefits (express them in monetary rather than qualitative terms) and examine the entire spectrum of potential impacts of a rule. Cost benefit analysis is used to determine if something is a sound investment and to compare one project or policy to another. In the case of state environmental agencies, it is used to compare a proposed rule or regulation to its alternatives, which includes the status quo alternative of taking no action.
- ***Economic Impact Analysis:*** Economic impact analysis also examines the effects of a particular project or policy and compares it to its alternatives, which includes the status quo. However, the effects of this type of analysis are limited within the economy of a given area. Due to its limitations, economic impact analysis is a narrower type of analysis compared to the cost-benefit approach. State environmental agencies that perform this type of analysis use it to see how proposed rules may impact not only their own state economy, but also the economic sectors of bordering states. Economic impact analysis is often coupled with other types of analysis in order to improve understanding of overall

environmental benefits gained or lost if a certain rule or regulation is implemented.

- **Regulatory Analysis:** The term “regulatory analysis” refers to either economic impact analyses or cost benefit analyses that are conducted by governments with the specific purpose of providing insight for policy-making decision processes. Regulatory analyses compare one rule or regulation to alternative forms of action, which include the status quo, by outlining the costs, benefits, and effects of proposed regulations. Regulatory analyses have wider applications than cost-benefit analyses and economic impact analyses.
- **Fiscal Note/Fiscal Analysis:** Fiscal analyses or fiscal notes are similar to economic analyses. Fiscal analyses consider only quantifiable and monetary impacts on specific entities or sectors within an economy, rather than the economy as a whole.

There are common criteria which are required to be included in impact analyses by virtually all states (e.g. outlining the cost of rule implementation for those being regulated). However, some states analyses require unique criteria.

Common Criteria Required by Impact Analyses

Some common criteria that states are required to include in their impact analysis are costs/benefits/impacts on the following:

- Those to be regulated by the rule
- Businesses
- Small businesses specifically
- Costs to the agency implementing the rule
- Costs to other state agencies
- State government
- Local governments / political subdivisions
- State economy
- Competition

Unique Criteria Required by Impact Analyses

While the above characteristics are considered by a number of states in their impact analyses during the rulemaking process, several states have their own unique criteria.

- Indiana and Oregon both require a second cost-benefit analysis to be completed a number of years after a rule has been implemented in order to compare the actual impacts of the rule to the projected impacts in the initial analysis.

- Wisconsin has three different tiers of economic analyses – minimal, moderate, and significant – based off of the anticipated impact of the rule.
- Washington has a special “Maximum Net Benefits” analysis required for any rules that deal with water allocation.
- Maine has a law which requires a detailed cost benefit analysis for hydropower projects.
- North Dakota considers the impact of a proposed rule on small nonprofit organizations.
- Vermont considers the effect that implementation of a rule would have on greenhouse gas emissions.
- The District of Columbia requires a cost benefit analysis before the environmental department applies for primacy (to be primary enforcer of a federal environmental law).
- In several states (California, Maryland, and New Jersey) there have been laws passed requiring the state environmental agency to perform some type of economic analysis on the state’s proposed plan to reduce greenhouse gas emissions.

APPENDIX

Alabama

Type of analysis: Fiscal Note

State law requiring analysis: Alabama State Code

Costs/benefits/impact factors considered:

At minimum, the fiscal note should include:

- Costs and benefits associated with the regulation
- Why the regulation is the most cost-effective, efficient, and feasible means for allocating resources to achieve the stated purpose
- Effect of the regulation on competition and doing business in the area in which it would be implemented
- Short and long term economic impacts upon people who will be substantially affected by the regulation
- A description of persons who will bear the costs of the regulation and persons who will directly or indirectly benefit
- Uncertainties associated with any estimations and the difficulties associated with comparing quantitatively and qualitatively dissimilar costs and benefits (a determination of the need for regulation shall consider both)
- Effects of the rule on the environment and public health (both if the rule is implemented and if it isn’t)

Sources: Alabama Department of Environmental Management contact

Alabama Department of Environmental Management Guide for Citizen Participation:

<http://adem.alabama.gov/moreInfo/pubs/citizensguide2010.pdf>

Alaska

No information was obtained regarding the role of economic and cost benefit analyses in rulemaking for Alaska.

Arizona

Type of analysis: Economic, Small Business, and Consumer Impact Statement (Cost Benefit)

State law requiring analysis: Arizona Administrative Procedure Act

Costs/benefits/impact factors considered:

The Economic, Small Business, and Consumer Impact Statement which must include:

- Identification of the persons who will be directly affected by, bear costs from or gain benefits from the proposed rulemaking
- A cost-benefit analysis of:
 - Costs and benefits to the implementing agency and other agencies directly affected, and the number of new full-time employees required to implement the rule
 - Costs and benefits to political subdivisions of the state directly affected
 - Costs and benefits to businesses directly affected, including any anticipated effects on revenue or payroll expenditures of employers subject to the proposed rulemaking
- A general description of the probable impact on public and private employment in businesses, agencies, and political subdivisions affected by the proposed rule
- A statement of the probable impact on small businesses, including:
 - Which small businesses are subject to the rulemaking
 - Costs of their compliance with the rule
 - Methods that can be used to reduce impact on small businesses
 - The probable costs/benefits to consumers affected by the rule
- A statement of the probable effect on state revenues
- A description of alternatives to the proposed rule, including monetized costs and benefits for each, and the rationale for not choosing them

Methodology: If enough data is not available, the probable impacts can be stated in qualitative terms. The costs and benefits considered should only be those that occur in the state.

Sources: Arizona Administrative Procedure Act:

http://www.azsos.gov/public_services/intro_material/APA.htm#Article_3

Arkansas

Type of analysis: Financial Impact Statement, Small Business Regulation Economic Impact Statement, Economic Impact/Environmental Benefit Analysis

State law requiring analysis: Arkansas State Code, Arkansas Water and Air Pollution Control Act

When analysis is required:

The *Small Business Regulation Economic Impact Statement* must be completed if a rule would affect small businesses (defined as a for-profit enterprise with 100 employees or less). If the proposed rule qualifies as an emergency rulemaking, is federally mandated, or substantially codifies existing state or federal law, completion of this statement is not necessary.

The *Economic Impact/Environmental Benefit Analysis* must be completed for any rule that is more stringent than federal requirements. Exceptions to this are rules which concern only administrative procedures, are emergency rulemakings, propose changes only to correct clerical error, or incorporate the language of a federal statute, regulation, or state statute.

Costs/benefits/impact factors considered:

The *Financial Impact Statement*, which must be provided to the Bureau of Legislative Research, should include at minimum:

- The estimated cost of complying with the rule
- The cost to the agency of implementing the rule

The *Small Business Regulation Economic Impact Statement* must be submitted to the Arkansas Economic Development Commission. Among other criteria, it should include:

- The top three benefits of the proposed rule
- The cost to the state government of collecting information, filing and completing paperwork, recordkeeping, auditing and inspecting if the rule is adopted
- An estimate of the number of small businesses to be affected by the rule
- A description of any barriers to entry of the rule

The *Economic Impact/Environmental Benefit Analysis* should include:

- The specific public and private entities affected by the rulemaking and whether this effect is positive or negative, in addition to the estimated number of entities affected
- The estimated increased or decreased cost for a facility to implement the rule
- The estimated total cost to implement the rule
- The cost of implementation to the agency in manpower and resources
- Impacts of rule on other state agencies
- Beneficial effects of the rule on the environment, and detrimental effects to the environment and public health/safety if the rule is not implemented
- Which risks are addressed by the proposed rule and the extent to which they will be reduced

Methodology: The analysis must be made available for a public comment period, and responses must be made to any comments demonstrating a reasoned evaluation of the relative impact and benefits.

Sources: Arkansas Department of Environmental Quality Contact
Arkansas Department of Environmental Quality Regulation Format and Drafting
Guidelines: http://www.adeg.state.ar.us/regspdfs/reg_formatting_and_drafting_guidelines.pdf
Arkansas Water and Air Pollution Control Act:
<http://law.justia.com/codes/arkansas/2010/title-8/chapter-4/subchapter-2/8-4-201/>,
Arkansas Pollution Control and Ecology Commission:
<http://www.adeg.state.ar.us/commission/>

California

Type of analysis: Economic Analysis

State law requiring analysis: California Global Warming Solutions Act (2006)

When analysis is required: This act required the Air Resources Board of the California Environmental Protection Agency to develop a scoping plan for meeting the state's 2020 greenhouse gas emission target. One task outlined was a one-time economic analysis on the scoping plan to be performed by the Air Resources Board.

Costs/benefits/impact factors considered:

The analysis assessed the comprehensive, overall impact on the state economy of implementing the scoping plan versus a business-as-usual scenario. Impacts of the plan on specific sectors such as households, low-income households, businesses, small businesses, employment, and green technology were also evaluated.

Methodology: The model used in the study was a macroeconomic model known as the Environmental Dynamic Revenue Assessment model, which characterizes the flow of production, consumption, saving, and investment throughout the state's economy with and without the plan. The economic analysis was submitted for peer review to an independent panel.

Sources:

Global Warming Solutions Act: <http://www.arb.ca.gov/cc/ab32/ab32.htm>

Notice of Updated Scoping Plan Economic Analysis:

<http://www.arb.ca.gov/cc/scopingplan/economics-sp/economics-sp.htm>

Economic Analysis of the Proposed Scoping Plan:

<http://www.arb.ca.gov/cc/scopingplan/document/appendix2.pdf>

Colorado

Type of analysis: Cost Effectiveness Analysis, Economic Impact Analysis, Business/Industry Analysis

State law requiring analysis: Colorado Air Quality Control Program

When analysis is required: An economic analysis is required for any permanent rule proposed by the Colorado Air Quality Commission. Only one of the three outlined forms of analysis is required, and the proponent of the rule can select which one they complete.

Costs/benefits/impact factors considered:

The *Cost Effectiveness Analysis* for air pollution control should identify:

- The cumulative cost including, but not limited to, the total capital, operation, and maintenance costs of any proposed controls for affected business entity or industry to comply with the provisions of the proposal
- Any direct costs to be incurred by the general public to comply with the provisions of the proposal
- Air pollution reductions caused by the proposal
- The cost per unit of air pollution reductions caused by the proposal
- The cost for the division to implement the provisions of the proposal

Industry studies examine the direct costs of the proposal on directly affected entities. These may be either in the form of a *business analysis* (the regulatory impacts on the general business climate or subsets of it) or an *industry analysis* (the regulatory impacts on specific industries), including:

- The characteristics and current economic conditions of the impacted business or industry sector
- The projected impacts on the growth of the affected industry sectors with and without implementation of the proposal
- How the proposal may affect or alter the growth of the affected industry sector
- The direct cost of the proposal on the affected industry sector

The *Economic Impact Analysis* should:

- Identify the industrial and business sectors that will be impacted by the proposal
- Quantify the direct cost to the primary affected business or industrial sector
- Incorporate an estimate of the economic impact of the proposal on the supporting business and industrial sectors associated with the primary affected business or industry sectors
- Not consist of an analysis of any nonmarket costs or external costs asserted to occur notwithstanding compliance by a source with applicable environmental regulations

Source: Air Quality Control Program:

<http://search.jurisearch.com/NLLXML/getcode.asp?datatype=&statecd=CO&sessionyr=2011&TOCID=18410&userid=PRODSG&cvfilename=&noheader=1&Interface=NLL>

Type of analysis: Economic Analysis

State law requiring analysis: Colorado Water Quality Control Act

Costs/benefits/impact factors considered:

The Act states that before any action through this program is taken, with the exception of any enforcement action, the “economic reasonableness” of the action must be considered.

Factors considered are evaluation of the benefits derived from achieving the goals of this article and the economic, environmental, public health, and energy impacts to the public and affected persons.

Sources: Colorado Water Quality Control Act:

<http://www.colorado.gov/cs/Satellite?blobcol=urldata&blobheadername1=Content-Disposition&blobheadername2=Content-Type&blobheadervalue1=inline%3B+filename%3D%22Colorado+Water+Quality+Control+Act.pdf%22&blobheadervalue2=application%2Fpdf&blobkey=id&blobtable=MungoBlobs&blobwhere=1251806965828&ssbinary=true>

Connecticut

Type of analysis: Fiscal Statement

State law requiring analysis: Connecticut Uniform Administrative Procedures Act

Costs/benefits/impact factors considered:

Pursuant to the Connecticut Uniform Administrative Procedures Act, agencies planning on adopting new regulations must create fiscal statements which consider:

- An estimate of cost/revenue impact on the state or any municipality in the state
- An estimate of cost/revenue impact on small businesses, including:
 - An estimate of the number affected
 - Costs associated with compliance, including but not limited to reporting, recordkeeping, and administrative costs

Methodology: If requested, impact can be presented at a hearing. Impacts are reviewed by the Regulation Review Committee, and if rejected can be resubmitted to them alongside the Office of Fiscal Analysis.

Sources: Connecticut Uniform Administrative Procedures Act:

<http://www.cga.ct.gov/current/pub/Chap054.htm#Sec4-168.htm>

District of Columbia

Type of analysis: Cost-Benefit

State law requiring analysis: District Department of the Environment Establishment Act of 2005

When analysis is required: This analysis is only required when the DDOE is considering applying for primacy regarding an environmental law. Primacy is defined in the Act as “the grant or delegation of authority under certain federal environmental laws that allows states and the District of Columbia to assume primary authority to enforce and implement the environmental laws and promulgate regulations pursuant to those laws.”

Costs/benefits/impact factors considered:

A cost benefit analysis must be conducted and include an economic impact analysis, performance analysis, and fiscal impact analysis, as well as identification of a revenue stream to effectively assume primacy. The performance analysis is meant to assess the

ability of the District to effectively enforce primacy in terms what would be needed and what is available. Areas to be assessed include the number of employees (and any additional employees or equipment needed), the level of expertise, and the impact of assigning existing employees to enforcement of the law for which primacy is being pursued.

Methodology: The analysis must be conducted by the District Mayor, the Director of DDOE and CFO of the District of Columbia. The Council of the District ultimately approves or disapproves the application for primacy before it is conducted, but the Mayor cannot recommend applying for primacy unless the analysis establishes that costs will be commensurate with benefits.

Sources: District Department of the Environment Establishment Act of 2005:
http://newsroom.dc.gov/file.aspx/release/14291/12-16-05_2.pdf

Delaware

Type of analysis: Cost Benefit Analysis

State law requiring analysis: Energy Efficiency Financial Incentives Act of 2006

When analysis is required: The Act grants the Delaware Department of Natural Resources and Environmental Control \$8 million to implement an energy efficiency program in the state. The law requires the department to submit a cost benefit analysis regarding the program.

Costs/benefits/impact factors considered: The Act does not specify details of the analysis, only that it should be a “cost-benefit analysis estimating energy savings realized as a result of initiatives funded under this Act.”

Sources: Energy Efficiency Financial Incentives Act:
<http://delcode.delaware.gov/sessionlaws/ga143/chp257.shtml>

Florida

Type of analysis: Statement of Estimated Regulatory Cost

State law requiring analysis: Florida Administrative Procedure Act

When analysis is required: The Statement is required if the rule will have an adverse impact on small businesses, or if regulatory costs will directly or indirectly increase more than \$200,000 as a result of the proposed rule.

Costs/benefits/impact factors considered:

This Statement only considers regulatory costs; no assessment of benefits is required by the statutory language. Components of the Statement are:

- An economic impact analysis showing whether the rule is likely to directly or indirectly have an adverse impact on any of the following in excess of an aggregate sum of \$1 million in the first 5 years after implementation:

- economic growth, private sector job creation or employment, or private sector investment
- business competitiveness
- regulatory and transactional costs (if the rule would increase them)
- Estimates of:
 - The likely number of individuals required to comply and the likely number affected by the rule
 - The cost to the agency and any other state/local government entities of enforcing the proposed rule, and any anticipated effects on state revenues
 - Transactional costs likely to be incurred by individuals and entities, including local government entities, required for compliance
 - An analysis on the impact of small businesses and an analysis on the impact on small counties and cities.
- A description of regulatory alternatives and reasons for rejecting them

Sources: Florida Department of Environmental Protection contact

Florida Statutes:

http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0100-0199/0120/Sections/0120.541.html

Georgia

Type of analysis: Impact on small businesses

Costs/benefits/impact factors considered: Costs are considered for all rules that are not federally mandated.

Methodology: Costs must be justified to the Board before the rule is adopted.

Sources: Georgia Department of Natural Resources contact

Hawaii

Type of analysis: Small business impact statement

State law requiring analysis: Hawaii Small Business Regulatory Flexibility Act

Costs/benefits/impact factors considered:

Methodology: All rules must be reviewed by Small Business Regulatory Review Board before they are presented at a public hearing.

Sources: Hawaii Department of Health contact

Small Business Regulatory Review Board: http://hawaii.gov/dbedt/business/start_grow/small-business-info/sbrrb

Idaho

Type of analysis: Economic Impact Statement

State law requiring analysis: Idaho Administrative Procedures Act

When analysis is required: The statement is only required if a Germane Joint Subcommittee files a request for one with the agency, or (as of 2010) if the proposed rule imposes or increases a charge or fee.

Special notes: The Idaho Department of Environmental Quality has not needed to complete an Economic Impact Statement yet.

Sources: Idaho Department of Environmental Quality contact

Idaho DEQ Rulemaking Policy: http://www.deq.idaho.gov/media/72061-pm96_2.pdf

Illinois

Type of analysis: Economic Impact Study

State law requiring analysis: Illinois Environmental Protection Act

When analysis is required:

A study pursuant to the *Environmental Protection Act* is required for any proposed rules that are not simply relating to administrative procedures within the agency.

Costs/benefits/impact factors considered:

The study of the economic impact of proposed rules should at minimum address:

- Economic, environmental, and public health benefits
- The effect of the proposed rule on employment levels, commercial productivity, economic growth of small businesses, and the state's overall economy
- The cost per unit of pollution reduced
- The variability in cost based on the size of facilities which will need to implement it and the percentage of their revenues expected to be dedicated to implementation

Methodology:

The agency must request that the Department of Commerce and Economic Opportunity perform the study. At least one public hearing on the economic impact study must be held, or the department must provide an explanation for why one was not held.

Sources: Illinois Environmental Protection Act:

<http://www.ilga.gov/legislation/ilcs/ilcs4.asp?DocName=041500050HTit%2E+VII&ActID=1585&ChapterID=36&SeqStart=39400000&SeqEnd=40500000>

Type of Analysis: Cost-Benefit Analysis

State law requiring analysis: Weights and Measures Act amendments

When analysis is required:

Amendments to the Illinois Weights and Measures Act require the Illinois Environmental Protection Agency to perform a one-time cost benefit analysis on data collected about the effect of temperatures on fuel deliveries.

Costs/benefits/impact factors considered:

The cost benefit analysis was required to compare different options relative to temperature-corrected gallonage temperature – namely either retaining the current reference temperature, establishing a statewide reference temperature, establishing different regional reference temperatures, or requiring the installation of temperature correction/compensation equipment at the pump. The analysis was also required to evaluate how these different options apply to alternative fuels and low-carbon fuel standards.

Methodology: The law required the agency to convene a group (of equipment manufacturers, consumer groups, fuel industry reps, agricultural commissioners, appropriate government agencies, and other interested parties) to provide guidance on the study and analysis. The Agency was also required to conduct public hearings on the cost benefit analysis.

Sources: Weights and Measures Act Amendments:

<http://www.ilga.gov/legislation/fulltext.asp?DocName=09500HB5689lv&SessionID=76&GA=95&DocTypeID=HB&DocNum=5689&print=true>

Indiana

Type of analysis: Cost-Benefit Analysis, Fiscal Impact, Small Business Economic Impact Statement

State law requiring analysis: Indiana State Code, Financial Management Circular developed by Indiana State Budget Agency

Costs/benefits/impact factors considered:

The following factors must be included in the cost benefit analysis:

- An explanation of whether the rule is intended to address a federal or state statutory requirement, an alleged market failure, and/or to serve a public need
- An estimate of the number of individuals and businesses affected by the rule
- The policy rationale or goal behind the rule
- The conduct the rule is meant to change and the harm that may result without this change
- A discussion of the outreach to regulated entities during the rulemaking process
- Methodology used in developing the analysis
- An estimate of the primary and direct benefits of the rule, including the impact on consumer protection, worker safety, the environment and business competitiveness
- An estimate of the secondary or indirect benefits of the rule, such as reduced health care costs
- An estimate of the costs of compliance with the rule, including new administrative costs, such as increased reporting requirements

An estimate of *fiscal impact* on state and local government must be included, containing:

- Costs necessary for enforcement of the rule and sources of revenue affected by it
- Administrative impact of the rule on state and local governments
- The extent to which the rule would create an unfunded mandate on a state agency of political subdivision

The following must be included in the *Small Business Economic Impact Statement*:

- Estimate of the number of small businesses subject to the rule
- Estimate of administrative costs to comply with the rule, including average annual reporting and record keeping
- Estimate of the total economic impact on small businesses
- Justification of expenses imposed on small businesses
- Any requirements of the rule not required by state or federal statute
- A regulatory flexibility analysis that considers any less intrusive or costly methods of achieving the purpose of the rule
- Any exemptions of the rule for small businesses

When examining alternatives, the agency must include the following:

- Statutorily-defined alternatives
- Discussion of the following as alternatives to a regulatory approach:
 - The feasibility of market-oriented approaches
 - Measures to improve the availability of information
 - Enforcement of existing regulations instead of a new or updated rule
- Whether the rule provides different requirements for different-sized regulated entities, including differing compliance dates

The agency must also determine whether the proposed rule will have a total estimated impact greater than \$500,000 on all regulated persons; if it does, the agency must provide a description of the data used and assumptions made when determining this estimate. Sources relied upon when calculating all of the aforementioned costs and benefits must be provided.

Methodology: The analysis is completed by the person within the agency responsible for drafting the rules. In the process of completing the analysis, state agencies are encouraged to consult economic theory, academic or internal agency research, and information provided by regulated entities and other interested parties. The agency must provide studies or independent verification to support the policy rationale behind the proposed rule as well as types and quantifications of costs/benefits. When completed, the fiscal analysis is reviewed by the State Budget association.

Special notes: A recently-enacted state law requires agencies to conduct a new fiscal impact analysis three years after the promulgation of a rule. The contents and format are the same as the original analysis, and the original analysis must be included. This allows for comparison of initial estimates of the rule's impacts to its actual impacts after implementation.

Sources: Indiana Department of Environmental Management Contact

Indiana State Code: <http://www.in.gov/legislative/ic/code/title13/ar14/ch9.html>,
<http://www.in.gov/legislative/ic/code/title4/ar22/ch2.html>

Indiana Senate Bill 311: <http://www.in.gov/legislative/bills/2012/SB/SB0311.1.html>

Iowa

Type of analysis: Fiscal Analysis, Regulatory Analysis / Cost-Benefit Analysis

State law requiring analysis: Legislative Services Agency Consolidation Act, Iowa State Code, Executive Order 71

When analysis is required: A Fiscal Analysis must be completed pursuant to the Legislative Services Agency Consolidation Act if the proposed rule would have an impact over \$100,000, or \$500,000 over 5 years.

Costs/benefits/impact factors considered:

Several definitions to be used in the *Cost Benefit Analysis* are provided in Executive Order 71:

Benefit “means the reasonably identifiable and quantifiable positive effect or outcome that is expected to result from implementation of a rule.”

Cost “means reasonably identifiable, significant, direct or indirect, economic impact that is expected to result from implementation of and compliance with a rule.”

Cost-Benefit Analysis “means regulatory analysis to provide the public with transparency regarding the cost-effectiveness of a rule, including the economic costs and the effectiveness weighed by the agency in adopting the rule. Cost-Benefit Analysis includes a comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of less intrusive or expensive methods that exist for achieving the purpose of the proposed rule.”

The *Regulatory Analysis* pursuant to the Iowa State Code must contain:

- Description of the classes of persons who will be affected by, bear the costs of, and benefit from the proposed rule
- Quantitative and qualitative impacts, economic or otherwise, on persons affected
- Probable costs to the agency and to any other agency of the implementation and enforcement of proposed rule
- Any anticipated effects on state revenue
- Comparison of costs/benefits of proposed rule to costs/benefits of inaction
- A determination of whether less costly or less intrusive methods exist for achieving the purpose of the proposed rule
- Description of any alternative methods seriously considered and why they were rejected in favor of the proposed rule
- Additional criteria if impact on small businesses

All data within the regulatory analysis must be quantified if practicable and must consider short- and long-term consequences.

The *Jobs Impact Statement* is defined within Executive Order 71 as a statement that must:

- Identify the objective of the proposed rule and the applicable section of the Code of Iowa that provides specific legal authority for the agency to adopt the rule; and

- Identify and describe the cost that the Department or Agency anticipates state agencies, local governments, the public, and the regulated entities, including regulated businesses and self-employed individuals, will incur from implementing and complying with the rule; and
- Show whether a proposed rule would have a positive or negative impact on private sector jobs and employment opportunities in Iowa; and
- Describe and quantify the nature of the impact the proposed rule will have on private sector jobs and employment opportunities including the
- Categories of jobs and employment opportunities that are affected by the proposed rule, the number of jobs or potential job opportunities and the regions of the state affected; and
- Identify, where possible, the additional costs to the employer per employee for the proposed regulation; and
- Include other relevant analysis requested by the Administrative Rules Coordinator.

The purpose of the Fiscal Analysis is to provide a succinct analysis of the estimated impact of the rule; it is not meant to match the level of detail required by the Regulatory Analysis. Thus, the fiscal impact of the rule is defined as including an increase or decrease in expenditures/revenues, but not intangible costs/benefits unless they result in a measurable impact on expenditures.

Methodology: The cost-benefit analysis is performed by the Program Rule Coordinator within the agency. The Fiscal Analysis must be analyzed by the Legislative Services Agency and a summary of the impacts must be provided to the Administrative Rules Review Committee. The Jobs Impact Statement will be published and there will be a chance for public comment.

Sources: Iowa Department of Natural Resources Contact
 Legislative Services Agency Consolidation Act:
<https://www.legis.iowa.gov/IowaLaw/AdminCode/fiscalAnalysisProposedRules.aspx>
http://staffweb.legis.state.ia.us/lfb/docs/Admin_Rules/Forms/fiscal%20instructions%208%201%2003.pdf
 Iowa State Code: <http://coolice.legis.iowa.gov/Cool-ICE/default.asp?category=billinfo&service=IowaCode&input=17A#17A.4>
 Executive Order 71: <https://governor.iowa.gov/wp-content/uploads/2011/03/Jobs-Impact-Exec-Order2.pdf>

Kansas

Type of analysis: Economic Impact, Environmental Benefit

State law requiring analysis: Kansas Administrative Procedure Act

When analysis is required: An Economic Impact Statement must be completed on any rule, but requires additional criteria for proposed environmental rules. When a proposed rule is environmental, an assessment of environmental benefits must also be completed.

Costs/benefits/impact factors considered:

The agency must consider the economic impact of any proposed rule on all governmental agencies/units, persons subject to it, and the general public.

The *Economic Impact Statement* must include, along with a description of the rule:

- A description of the costs of the rule, who will bear them, and who will be affected (including government agencies or units, private citizens, and consumers)
- A description of any less costly or intrusive methods and why they were rejected in favor of proposed rule

For *environmental rules*, the Economic Impact Statement must also include:

- The capital and annual costs of compliance and who will bear them
- Initial and annual costs to state agencies, government, or other persons or entities (including in paperwork) of implementing and enforcing the rule
- The costs that would accrue if the rule was not adopted and people who would bear these costs and be affected
- Detailed statement of the data and methodology used for estimating the costs

Additionally, if the rule is an environmental rule, an *Environmental Benefits Statement* must also be completed, containing:

- A description of the need for the environmental benefits that would accrue from proposed rule
- If applicable, a summary of research indicating the level of risk to public health or the environment being removed by the proposed rule
- If specific contaminants are to be controlled, it must include the level at which current research shows them to be harmful

If the proposed rule affects revenues of cities, counties or school districts, or imposes functions/responsibilities on them that increase their expenditures or fiscal liability, the agency must consult with League of Kansas municipalities, Kansas association of counties, and Kansas association of school boards.

Sources: Kansas Department of Health and Environment Contact, Kansas Administrative Procedure Act:

http://www.kslegislature.org/li/b2011_12/statute/077_000_0000_chapter/077_004_0000_article/077_004_0016_section/077_004_0016_k/

Kentucky

Type of analysis: Regulatory Impact Analysis, Fiscal Note

State law requiring analysis: Kentucky Revised Statutes

Costs/benefits/impact factors considered:

The Regulatory Impact Statements are required to address:

- The type and amount of individuals, businesses, organizations, or state and local governments affected by the regulation

- An analysis of how the entities referenced in the regulation will be impacted by its implementation
- The actions entities will be required to take in order to comply with the regulation
- An estimate of the costs for entities to comply with the regulation and the benefits that may accrue to them as a result of compliance
- An estimate of how much it will cost the agency to implement the regulation, both initially and on a continuing basis
- The source of the funding to be used for the implementation and enforcement of the regulation
- An assessment of whether an increase in fees or funding will be necessary to implement the regulation
- Any fees directly established or indirectly increased by the regulation

The Revised Statutes also require a fiscal note to address any costs to state or local governments from the proposed regulation.

Methodology: The Regulatory Analysis must be submitted to the Legislative Research Commission. In the Kentucky Department for Environmental Protection, usually the program staff, regulations coordinators, and budget staff complete the fiscal note and regulatory impact analysis.

Sources: Kentucky Department for Environmental Protection contact

Louisiana

Type of analysis: Economic Impact Statement, Fiscal Impact Statement, Small Business Economic Impact Statement

State law requiring analysis: Louisiana Administrative Procedures Act

Costs/benefits/impact factors considered:

The *Fiscal Impact Statement* should include a statement of the receipt, expenditure, or allocation of state funds or funds of any political subdivision by the state.

The *Economic Impact Statement* should include:

- Estimated cost of implementation to the agency, including amount of paperwork
- Estimated costs or economic benefits to all persons directly affected by the proposed action
- Estimated impact of the proposed action on competition and the open market for employment
- A detailed statement of the data, assumptions, and methods used to make the above estimates

The *Small Business Economic Impact Statement* should include:

- Identification and estimate of the number of small businesses subject to the rule

- Projected administrative costs, such as reporting and recordkeeping, required for compliance with the proposed rule, including professional skills necessary for reporting
- Probable effects on small businesses
- Any less intrusive or less costly alternative methods of achieving the rule's purpose

Methodology: Both statements must be approved by the Legislative Fiscal Office.

Sources: Administrative Procedures Act: <http://www.doa.louisiana.gov/osr/apa.pdf>

Maine

Type of analysis: Fiscal Note, Small Business Economic Impact Statement

State law requiring analysis: Maine Administrative Procedure Act

When analysis is required: The Fiscal Impact Note is required for all proposed rules. The Small Business Economic Impact Statement is required when a rule will have an impact on small businesses. A Cost-Benefit Analysis may be completed if an agency has sufficient staff expertise and budgeting resources, but it is not required.

Costs/benefits/impact factors considered:

The *Fiscal Impact Note* must describe the estimated cost to municipalities for implementation and compliance.

The *Small Business Economic Impact Statement* must include:

- The types and number of small businesses subject to the proposed rule
- Projected administrative costs, including reporting and recordkeeping, required for compliance with the rule, including professional skills needed for reporting
- The probable impacts on affected small businesses
- Any less intrusive or less costly alternative methods for achieving the rule's purpose

The Cost Benefit Analysis, if completed, should address the distribution of costs and benefits on specific groups affected by the rule, as well as the overall economic welfare of the state.

Special notes: A special analysis is required for hydropower projects, as outlined below.

Sources: various sections of Maine Administrative Procedure Act:

<http://www.mainelegislature.org/legis/statutes/5/title5sec8063.html>

<http://www.mainelegislature.org/legis/statutes/5/title5sec8052.html>

<http://www.mainelegislature.org/legis/statutes/5/title5sec8063-A.html>

Type of analysis: Cost-Benefit Analysis

State law requiring analysis: Amendment to Chapter 11 (Administrative Regulations for Hydropower Projects) of the Maine Revised Statutes

When analysis is required: This law requires a detailed cost-benefit analysis with regard to hydropower projects.

Costs/benefits/impact factors considered:

For new dams, a Cost-Benefit Analysis must also include:

- Increases in income or purchasing power to citizens of the state
- Changes in energy security from reducing greenhouse gas emissions
- Economic impacts on the subjected community and recreation opportunities
- Erosion and water quality impacts in the short and long term

The analysis must quantify any economic benefits the public will receive.

In considering environmental/energy effects, it must be determined that the advantages of a project are greater than the direct cumulative adverse impacts over the life of the project – clearly defined with supporting data and analysis.

Sources: http://www.mainelegislature.org/legis/bills/bills_124th/billpdfs/SP027201.pdf

Maryland

Type of analysis: Cost-Benefit Analysis

State law requiring analysis: Greenhouse Gas Reduction Act of 2009

Stipulations of the Act: The Act requires the Maryland Department of the Environment to submit by 2016 a report to the General Assembly and Governor including, among other things, an analysis of overall costs and benefits of the plan to reduce emissions.

Costs/benefits/impact factors considered:

The costs and benefits considered should be with regard to the state’s economy, public health, and the environment.

The Act stated that Maryland’s Plan to reduce greenhouse gas emissions must ensure:

- No loss of existing jobs in the manufacturing sector
- A net increase in state jobs and a net economic benefit to the state economy
- opportunities for new “green” jobs in energy and low carbon technology fields
- No negative impacts on the reliability and affordability of electricity service and fuel supplies

Methodology: Towson University conducted an economic impact assessment of the 2012 plan for the Department of the Environment. It is a preliminary assessment estimating job creation, economic activity, and wage effects of the strategies and their subprograms in development or already enacted.

Sources:

The analysis can be found here:

http://www.mde.maryland.gov/programs/air/climatechange/documents/2011%20draft%20plan/economic_impact.pdf

Greenhouse Gas Reduction Act of 2009:

http://www.mde.state.md.us/assets/document/Air/ClimateChange/GreenHouse_Gas_Reduction_Act_Bill_2009_Summary.pdf.

One-time Cost Benefit Analysis: *Maryland Clean Cars Program*

Maryland adopted California's vehicle emissions standards, which are higher than federal levels. MD Department of the Environment had an independent consultant conduct a cost benefit analysis on California's program before they adopted it. The analysis considered economic impact on consumers, the state, the agency itself, Maryland Motor Vehicle Association, and small businesses, in the short and long run.

The analysis can be found here:

http://www.mde.maryland.gov/programs/air/mobilesources/cleancars/documents/calev_fact_sheet.pdf.

Massachusetts

Type of analysis: Small Business Impact Assessment

State law requiring analysis: Massachusetts Economic Development Act, Executive Order 485

Costs/benefits/impact factors considered:

The *Small Business Impact Statement*, required by the Economic Development Act, must include, but is not limited to, the following:

- An estimate of the number of small businesses subject to the proposed regulation
- Estimated reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation
- The appropriateness of performance standards versus design standards
- Identification of any regulations which may duplicate or conflict with the proposed regulation
- An analysis of whether the proposed regulation is likely to deter or encourage the formation of new businesses in Massachusetts

Executive Order 485 mandates that all rules proposed by agencies be "consistent with the fiscal needs and administrative abilities of the Commonwealth, as determined by the Secretary of Administration and Finance."

Sources: Massachusetts Department of Environmental Protection contact

Massachusetts Economic Development Act:

<http://www.malegislature.gov/Laws/SessionLaws/Acts/2010/Chapter240>

Massachusetts Executive Order 485: <http://www.mass.gov/governor/docs/executive-orders/executive-order-485.pdf>

Michigan

Type of analysis: Cost-Benefit Analysis

State law requiring analysis: Michigan Executive Order 2011-5

Costs/benefits/impact factors considered:

The analysis must include costs and benefits of the proposed rule as well as an assessment of any disproportionate impact of the rules based on industrial sector,

segment of public, business size, geographic location, environmental resource, or other factors. If new agency rules/regulations exceed federal standards and/or standards held by states that are in a “similar situation” (geographically, topographically, economically, or natural resources-wise), must provide an explanation for why the proposed rules exceed them and specify the costs and benefits of this specific deviation, too. The analysis must specify the methodologies used in determining the existence and extent of the costs and benefits.

Methodology: The Cost Benefit Analysis should be posted before a public hearing.

Sources: Executive Order 2011-5: http://www.michigan.gov/documents/snyder/2011-5_346312_7.pdf

Minnesota

Type of analysis: Statement of Need and Reasonableness

State law requiring analysis: Minnesota Administrative Procedure Act

Costs/benefits/impact factors considered:

Within the Statement, also referred to as a fiscal note, the agency must discuss:

- The classes of persons who will probably be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule
- The probable costs to the agency and other agencies of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues
- Whether there are less costly or intrusive methods for achieving the purpose of the proposed rule, and any alternative methods considered by the agency and why they were rejected
- The probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals
- The probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals

Methodology: The agency must consult with the Commissioner of Management and Budget to help evaluate the fiscal impact and fiscal benefits of the proposed rule on units of local government.

Sources: Minnesota Pollution Control Agency contact

Minnesota Administrative Procedure Act: <https://www.revisor.mn.gov/statutes/?id=14>

Mississippi

Type of analysis: Economic Impact Statement

State law requiring analysis: Mississippi Administrative Procedures Law

When the analysis is required:

An Economic Impact Statement must be completed when an agency proposes adoption of a new rule or a significant amendment of one (“significant” means the aggregate cost to comply would be over \$100,000) which would impose a requirement on any person. An Economic Impact Statement does not have to be done if the rule is required by state or federal law.

Costs/benefits/impact factors considered:

The Economic Impact Statement must include:

- A description of the need for the rule and benefits which will likely accrue
- Estimated cost to the agency and other state or local government entities for implementing/enforcing, and anticipated effect on state/local revenues
- Estimate of the cost or economic benefit to all persons to be directly affected
- Analysis of impact on small businesses
- Comparison of costs/benefits of proposed rule to costs/benefits or not adopting it
- Determination whether less costly or intrusive methods exist for achieving the proposed purpose
- A description of reasonable alternatives and why they were rejected in favor of proposed rule
- A statement of data and methodology used in making estimates required for this

Sources: Mississippi Department of Environmental Quality contact

Mississippi Administrative Procedures Law:

http://msdh.ms.gov/msdhsite/_static/resources/1509.pdf

Missouri

Type of analysis: Regulatory Impact Report, Fiscal Note, Small Business Impact Statement

State law requiring analysis: Missouri Revised Statutes

When the analysis is required: The Regulatory Impact Report applies only to the Missouri Department of Natural Resources when prescribing environmental standards or conditions.

Costs/benefits/impact factors considered:

The *Regulatory Impact Report* should include:

- Descriptions of persons who will be affected by the proposed rule, who will bear costs, and who will bear benefits
- A description of the environmental and economic costs and benefits of the proposed rule
- Probable costs to the agency and any other state agency for the implementation and enforcement of the proposed rule
- Any effects on state revenue

- Comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction (including both economic and environmental costs and benefits)
- A determination of whether there are less costly or intrusive alternatives and description of why any alternatives considered were rejected
- Analysis of both short and long term effects of the proposed rule
- An explanation of the risks (to public health, public welfare, or the environment) addressed by the proposed rule and the sources of scientific information used to evaluate the risk, along with a description of any countervailing risks that may be caused by the proposed rule
- A description and impact statement of any uncertainties/assumptions made in conducting the analysis on the risk estimate

The *Fiscal Note* should include:

- An estimate of the number of persons, firms, corporations, associations, partnerships, proprietorships or business entities by class which would likely be affected by proposed rule
- An aggregate estimate of the cost to comply with the rule for those affected

Special notes: “In all rulemakings, regardless of significance, the Department of Natural Resources will provide information on the need for the rule, the benefits and costs of the rulemaking and the alternatives considered.” – Excerpt from Missouri DNR Statement on Rulemaking

Sources: Missouri Department of Natural Resources contact

Missouri Revised Statutes: <http://www.moga.mo.gov/statutes/C500-599/5360000016.HTM>

Missouri DNR Regulatory Impact Report: <http://dnr.mo.gov/env/apcp/docs/6-372-374-rir.pdf>

Missouri DNR Statement on Rulemaking: <http://www.dnr.mo.gov/regs/about.htm>

Montana

Type of analysis: Environmental Impact Statement

State law requiring analysis: Montana Environmental Protection Act

When analysis is required:

An Environmental Impact Statement is only required if deemed necessary after writing the Environmental Assessment, which is a written analysis of a proposed action to determine whether an Environmental Impact Statement is required. It will be required if proposed action is “a major action of state government significantly affecting the quality of the human environment.”

Costs/benefits/impact factors considered:

Economic and social impacts by themselves do not require an environmental impact statement, but whenever one is required, economic and social impacts and their relationship to biological, physical, cultural, and aesthetic impacts must be discussed. These are all included in the term “human environment.”

An Environmental Assessment can be in a checklist format if the rule has minimum environmental impact, but must be more substantial if the action might require an EIS. It must include:

- A description of the benefits and purpose of the proposed action
- If the agency prepares a cost benefit analysis before its completion, it must contain the cost benefit analysis or a reference to it
- Impacts, including cumulative and secondary impacts, on the physical environment and on the human population (including, where appropriate, social structures and mores; cultural uniqueness and diversity; access to and quality of recreational and wilderness activities; local and state tax base and tax revenues; agricultural or industrial production; human health; quantity and distribution of employment; distribution and density of population and housing; demands for government services; industrial and commercial activity; locally adopted environmental plans and goals; and other appropriate social and economic circumstances)

If required, the Environmental Impact Statement should include:

- The purpose and benefits of the proposed action;
- A listing of any state, local, or federal agencies that have overlapping or additional jurisdiction and a description of their responsibility for the proposed action;
- A concise description of the environmental conditions in the area affected by the proposed action
- Impacts on the quality of the human environment with regard to the action, including:
 - Economic and environmental benefits and costs of the proposed action
 - Primary, secondary, and cumulative impacts
 - Potential growth-inducing or growth-inhibiting impacts
 - Irreversible and irretrievable commitments of environmental resources, including land, air, water, and energy
 - The relationship between local short-term uses of the environment and the effect on maintenance/enhancement of its long-term productivity
- Analysis of any alternatives and tradeoffs among them, and the agency's preferred alternative
- A discussion of any compensation related to impacts stemming from the proposed action

Sources: Montana Environmental Protection Act:
<http://www.deq.mt.gov/dir/legal/Chapters/Ch04-toc.mcp>

Nebraska

Type of analysis: Fiscal Impact

State law requiring analysis: Nebraska Administrative Procedures Act

Costs/benefits/impact factors considered:

The assessment of fiscal impact must include a description and estimated quantification of the fiscal impact of a proposed rule on state agencies, political subdivisions, and persons being regulated.

Sources: Nebraska Department of Environmental Quality contact

Nevada

Type of analysis: Small Business Impact Statement, statement of effects on regulated entities

State law requiring analysis: Nevada Administrative Procedures Act

Costs/benefits/impact factors considered:

The statement of the economic effect of a regulation on the businesses it proposes to regulate and on the public must include:

- Adverse and beneficial effects
- Immediate and long-term effects
- *Small Business Impact Statement* must include:
- A description of the manner in which comment on the rule was solicited from affected small businesses, and their response
- The estimated economic effect of the proposed rule on the small businesses which it is to regulate, including:
 - Adverse and beneficial effects
 - Direct and indirect effects
- A statement of the methods considered to reduce impact on small businesses, and whether any were used
- The estimated cost to the agency for enforcement of the regulation
- If the regulation proposes a fee, the total annual amount the agency will collect and what it will be used for

Additionally, the agency must complete a statement identifying the methods used by the agency in determining the impact on small businesses.

Sources: Nevada Administrative Procedures Act:

<http://www.leg.state.nv.us/NRS/NRS-233B.html>

New Hampshire

Type of analysis: Fiscal Impact Statement

State law requiring analysis: New Hampshire Administrative Procedures Act

Costs/benefits/impact factors considered:

The Fiscal Impact Statement must give consideration of both short- and long-term fiscal consequences. It should not be limited to dollar amounts, but should contain methodology used to reach any stated amounts.

Additionally, it should include:

- Costs/benefits to citizens of the state and political subdivisions
- Cost/benefit to state general fund or any state funds
- Comparison of cost of proposed rule with cost of existing rule, if there is one
- Impact on small businesses

Methodology: The statement is prepared by the Legislative Budget Assistant, using data supplied by the rulemaking agency.

Sources: NH Administrative Procedures Act:
<http://www.gencourt.state.nh.us/rsa/html/lv/541-a/541-a-mrg.htm>

New Jersey

Type of analysis: Cost-Benefit Analysis

State law requiring analysis: New Jersey Global Warming Response Act

When analysis is required: The law requires the state to set greenhouse gas emission targets for 2020 and 2050, and it requires the NJ Department of Environmental Protection to consider the economic costs/benefits to the state and to emitters of any measures proposed to reduce greenhouse emissions and meet targets.

Sources: Global Warming Response Act:
http://www.nj.gov/globalwarming/home/documents/pdf/nj_global_warming_response_act.pdf

New York

Type of analysis: Regulatory Impact Statement

State law requiring analysis: New York Administrative Procedure Act

Costs/benefits/impact factors considered:

An agency must issue a regulatory impact statement regarding each proposed rule. The statement must include the following:

- The need for the rule and the benefits from adopting it, along with summaries of any studies, reports, or analyses and how they were used in determining necessity for or benefits of the rule
- Projected costs of the rule, including:
 - Costs for regulated persons to implement and comply with the rule
 - Costs for the state and its local governments to implement and enforce it
 - Information and methodology on which this cost analysis (or cost estimate) is based

Sources: NY Administrative Procedure Act: <http://law.justia.com/codes/new-york/2010/sap/article-2/202-a/>

North Carolina

Type of analysis: Fiscal Note

State law requiring analysis: North Carolina Administrative Procedures Act

When analysis is required: A supplement to the Fiscal Note is required if a proposed rule has a “substantial economic impact,” or an aggregate impact of \$500,000 or more in a 12-month period.

Costs/benefits/impact factors considered:

The Fiscal Note must include:

- A description of the persons affected by the proposed rule
- A description of the types of expenditures that persons affected by the proposed rule would have to make to comply with it, an estimate of these expenditures, and an explanation of how this estimate was computed
- A description of the purpose and benefits of the proposed change
- A description of at least two alternatives to the proposed rule that were considered and why they were rejected

For the rules with a substantial economic impact, the following must be provided:

- A description of the persons subject to the proposed rule and the types of expenditures they will need to make
- Estimates of any additional costs that would be created by the implementation of the proposed rule - direct costs as well as opportunity costs. Costs must be monetized if possible, but where they cannot be, they must be listed and described.

Sources: NC Administrative Procedures Act:

http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/ByChapter/Chapter_150B.html

North Dakota

Type of analysis: Regulatory Analysis, Small Entity Regulatory Analysis and Small Entity Economic Impact Statement, Cost Benefit Analysis

State law requiring analysis: Administrative Agencies Practice Act, Air Pollution Control Laws

When analysis is required:

The *Regulatory Analysis* is required when a proposed rule would have a financial impact of over \$50,000 on the regulated community, or the governor or legislature may request one. The *small entity regulatory analysis and small entity economic impact statement* are required for all rules which are not federally mandated.

The Air Pollution Control Laws state that North Dakota may not adopt air quality rules more stringent than federal ones affecting coal conversion and associated facilities, petroleum refineries, or rules/regulations affecting such facilities where there are no corresponding federal regulations, *unless* the proposed rules are supported by a cost-benefit analysis in which benefits of new/more stringent state rules outweigh costs, a risk

assessment that shows significant impacts to public health or property, and independent peer reviews.

Costs/benefits/impact factors considered:

The Regulatory Analysis must include the following:

- A description of the classes of persons who will likely be affected by, bear the costs of, and benefit from the proposed rule
- A description of the probable impact, including economic impact, of the rule
- The likely costs to the agency of implementing and enforcing the rule
- Any anticipated effect of the rule on state revenues
- A description of any alternative methods for achieving the purpose of the rule that were considered and why they were rejected

The data used in the analysis must be quantified whenever practicable.

The Small Entity analysis focuses on the rule’s impact on small businesses, organizations, and political subdivisions. The agency must consider whether there should be less stringent requirements for small entities and whether there are any less costly alternatives to the proposed rule.

The analysis must include:

- The small entities subject to the rule
- Administrative and other costs required for compliance with the proposed rule
- The probable cost and benefit to private persons and consumers who will be affected

Cost benefit analyses pursuant to the Air Pollution Control Laws must include:

- A description and comparison of costs/benefits of the rule and of reasonable alternatives to the rule
- Costs must include social, environmental, and economic that would result from the proposed rule either directly or indirectly

All costs must be quantified.

Methodology: The risk assessment and cost-benefit analysis must be presented at a hearing and peer-reviewed by qualified experts selected by the Air Pollution Control Advisory Council.

Special notes: The Small Entities analyses in North Dakota are unique. Many states require a special examination of the economic impacts on small businesses and small political subdivisions (though the latter is often part of the general analysis rather than coupled with small business), but North Dakota also includes impact on small organizations (defined in the state code as “any not-for-profit enterprise that is independently owned and operated and is not dominant in its field”).

Sources: North Dakota Department of Health Contact

North Dakota Air Pollution Control Laws: <http://www.legis.nd.gov/cencode/t23c25.pdf>

North Dakota State Code: <http://www.legis.nd.gov/cencode/t28c32.pdf>

New Mexico

No information was obtained regarding the role of economic and cost-benefit analyses in rulemaking for the state of New Mexico.

Ohio

Type of analysis: Business Impact Analysis, Fiscal Analysis

State law requiring analysis: Ohio Senate Bill 2, Ohio Revised Code

When analysis is required: Pursuant to the Ohio Revised Code, a Fiscal Analysis is required for all proposed rules. Pursuant to Senate Bill 2 and the Common Sense Initiative, a Business Impact Analysis is required for all rules which will have an adverse impact on business.

Costs/benefits/impact factors considered:

For the Fiscal Analysis, the following is required:

- A dollar estimate of the amount by which the proposed rule would increase or decrease revenues or expenditures
- Estimated cost of compliance with the rule to all affected persons
- If the rule affects school districts, counties, townships, or municipal corporations:
 - A dollar estimate of the cost of compliance with the rule, or, if dollar amounts cannot be determined, a written explanation of why it was not possible to ascertain dollar amounts
 - And exceeds the minimum necessary federal requirement, a justification of the excess cost, and an estimate of the costs, including those costs for local governments, of exceeding the federal requirement
 - A comprehensive cost estimate that includes the procedure and method of calculating the costs of compliance and identifies major cost categories including personnel costs, new equipment or other capital costs, operating costs, and indirect central service costs related to the rule
 - A written explanation of the agency's and the affected local government's ability to pay for the new requirements and a statement of any impact the rule will have on economic development

Among other criteria, the Business Impact Analysis must include:

- Any alternatives to the regulation and why they were rejected
- Any scientific data used to develop the rule
- The estimated cost of compliance for businesses, specifically:
 - The scope of the impacted business community
 - The nature of any adverse impacts (e.g. fees, fines, time)
 - Quantification of the adverse impact (in terms of dollars, hours, or other factors)

Methodology: The Business Impact Analysis is submitted to the Common Sense Initiative Office for review and to the public for comment when it is completed.

Oklahoma

Type of analysis: Economic Impact and Environmental Benefit Statement

State law requiring analysis: Oklahoma Environmental Quality Act

When statement is required: The statement is required for any proposed rule which would be more stringent than federal standards, unless a state statute specifically authorizes such stringency.

Costs/benefits/impact factors considered: The statute requiring the rule does not explicitly outline which economics impacts and environmental benefits should be considered in the analysis. According to the agency, the costs considered in the statement are limited to the cost of implementation by the agency.

Methodology: The statement must be submitted to the Governor and legislature upon completion, along with any public comments regarding it and the agency's response to the comments. The statement may be revised after public hearings.

Sources: Ohio Environmental Protection Agency Contact

Ohio Common Sense Initiative: www.governor.ohio.gov/CSI

Ohio Revised Code: <http://codes.ohio.gov/orc/127.18>

Oregon

Type of analysis: Statement of Fiscal Impact

State law requiring analysis: Oregon Administrative Procedures Act

Costs/benefits/impact factors considered: The statement must include an estimate of the economic impact on state agencies, units of local government, and the public. The agency must also estimate the economic effect of the rule on businesses, including a cost of compliance effect on small businesses affected.

Specifically, the following regarding effects on small businesses must be considered:

- The number and types of small businesses subject to the proposed rule
- Projected costs of reporting, recordkeeping, professional services, and other administrative activities required for compliance
- Identification of equipment, supplies, labor and increased administration required for compliance with the proposed rule

Special notes: No later than five years after adopting a rule, the agency must review it to determine, among other things, if the anticipated fiscal impact was overestimated or underestimated.

Sources: Oregon Department of Environmental Quality Contact

Oregon Administrative Procedures Act: <http://landru.leg.state.or.us/ors/183.html>

<http://www.deq.state.or.us/aq/committees/docs/administrativeProceduresAct.pdf>

One-time Economic Analysis of Low-Carbon Fuel Standards:

Costs/benefits/impact factors considered: One of the goals of the analysis was to determine the costs/benefits of other fuel rules (Federal Renewable Fuel Standard, Oregon Renewable Fuel Standard, Portland Renewable Fuel Standard) so that they can be differentiated from and not attributed to the proposed Low Carbon Fuel Standards.

Methodology: The Oregon DEQ sought input from an advisory committee on methodology and desired outputs of analysis. Two computer models that are often used by state and federal agencies as tools to help with such analyses were used here – IMPLAN and REMI.

Sources:

A synopsis of proposed methodologies for the economic analysis, that the Oregon Department of Environmental Quality plans to have a contractor complete, can be found here: <http://www.deq.state.or.us/aq/committees/docs/decemberLCF/itemC.pdf>

An update on the analysis can be found here:

<http://www.deq.state.or.us/aq/committees/docs/lcfs/juneEconAnalysisPresent.pdf>

The finished analysis can be found here:

<http://www.deq.state.or.us/aq/committees/docs/lcfs/appendixDeconimpact.pdf>

Pennsylvania

Type of analysis: Regulatory Cost-Benefit Analysis

State law requiring analysis: Executive Order 1996-1, Regulatory Review Act and Act 76 (2012 amendments to the Regulatory Review Act)

Costs/benefits/impact factors considered:

Guidelines for developing regulations that are considered by the Pennsylvania Department of Environmental Protection during the rulemaking process are as follows: costs must not outweigh the benefits, regulations must not diminish Pennsylvania's competitive economic advantage, and they should minimize impact on individuals, businesses, and local government. Additionally, regulations should maximize monetary benefits, but nonmonetary benefits should also be presented and explained; quantitative factors should not dominate important qualitative factors.

The law provides for an analysis in which costs and benefits should include the following:

Benefits:

- A description of the intended regulatory result and why there is a need for the proposed action
- Who will benefit from the regulation and a value estimate of the benefits they will receive (including public health benefits, revenue generated, cost savings, etc.)

- Explanation of how each benefit is produced by the regulation
- Additional benefits that cannot be quantified (such as endangered species, goodwill, etc.)
- A description of alternative approaches and why this regulatory action was chosen

Costs:

- A description of any individuals, groups, or entities that will be required to comply with the regulation
- A cost/benefit analysis which provides specific estimates of all direct costs and indirect costs, and who shall bear them
- A description of the certainty of these estimates and a cost range where major uncertainty exists
- An explanation of any direct or indirect cost savings

Act 76 requires the agency to determine the effect of a regulation on small businesses as well as an estimate of the number that will be affected. It also added small business concerns to the Regulatory Analysis Form which also includes the cost benefit analysis.

Methodology: The Regulatory Analysis Form is made public and shared with the Standing Environmental Resources and Energy Committees in the PA General Assembly and the Independent Regulatory Review Commission, who will evaluate the information.

Special Notes:

Sources: Pennsylvania Department of Environmental Protection Contact Executive Order 1996-1:

http://www.portal.state.pa.us/portal/server.pt/gateway/PTARGS_0_2_785_708_0_43/http://pubcontent.state.pa.us/publishedcontent/publish/global/files/executive_orders/1990_1999/1996_1.pdf

Department of Environmental Protection Policy for Development, Approval, and Distribution of Regulations: <http://www.elibrary.dep.state.pa.us/dsweb/Get/Document-48647/012-0820-001.pdf>

Puerto Rico

No information was obtained regarding the role of economic and cost-benefit analyses in rulemaking for Puerto Rico.

Rhode Island

Type of analysis: Economic Impact Statement, Regulatory Flexibility Analysis

State law requiring analysis: Bill H8024

When analysis is required: Analysis pursuant to this bill is required for all regulations governing small businesses.

Costs/benefits/impact factors considered:

The *Economic Impact Statement* should include:

- Identification and number of small businesses subject to the rule
- Projected reporting, recordkeeping, and other administrative costs, including professional skills needed to prepare reports, required for compliance
- The probable effect on impacted small businesses;
- Any less intrusive or less costly methods of achieving the rule's purpose

The *Regulatory Flexibility Analysis* would need to consider alternative criteria for small business implementation of the rule, and also would require a cost benefit analysis to determine if the benefit conferred by the regulation outweighs the cost.

Methodology: The analysis must be done in coordination with the Office of Regulatory Reform within the Office of Management and Budget.

Special notes: This law also requires rules enacted after its adoption to be reviewed in the same manner every five years to ensure that they minimize economic impact on small businesses.

Sources:

RI Department of Environmental Management publication of 2012 Environmental Laws: <http://www.dem.ri.gov/pubs/bill12p.pdf>

Bill H8024: <http://legiscan.com/gaits/text/622882>

South Carolina

Type of analysis: Fiscal Impact Statement, Economic Impact Statement, Assessment Report

State law requiring analysis: South Carolina Administrative Procedures Act

When analysis is required: An Economic Impact Statement is required if the regulation will impact small businesses. An Assessment Report is required for regulations with a substantial economic impact. Regulations exempt from the Assessment Report are emergency regulations, regulations which control the hunting or taking of wildlife, or regulations made to maintain compliance with federal law.

Costs/benefits/impact factors considered:

If requested, the *Assessment Report* must state the effects of the regulation on the public health and environmental welfare of state and how the regulation affects economic activities. Suggested for inclusion in the report are:

- The costs and benefits of the regulation
- Short-term and long-term economic impacts on all persons substantially affected
- An analysis describing persons who will bear the cost of the regulation and who will directly or indirectly benefit
- Effect of the regulation on competition, the cost of living, and doing business within the regulated area
- The uncertainties associated with estimating particular costs/benefits and difficulties involved with comparing quantitative and qualitative costs/benefits

(though both should be considered and if part cannot be quantified, it may be expressed in qualitative terms)

The Assessment Report must not consider costs/benefits on out-of-state political bodies or businesses.

The *Fiscal Impact Statement* must estimate costs to the state and to political subdivisions in order to comply with the proposed regulation.

The *Economic Impact Statement* is with regard to small businesses, and should include:

- The number of small businesses subject to the proposed regulation;
- Estimated reporting, recordkeeping, and other administrative costs required for compliance with the rule, including professional skills
- A statement of the economic impact on small businesses
- Less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation

Sources: South Carolina Department of Health and Environmental Control Contact
South Carolina Administrative Procedures Act:
<http://www.scstatehouse.gov/code/t01c023.php>

South Dakota

Type of analysis: Fiscal Note, Small Business Impact Statement

State law requiring analysis: South Dakota Administrative Procedures Act

Costs/benefits/impact factors considered:

The *Fiscal Note* must include state agencies or local government subdivisions affected by the rule and any cost/revenue increases or decreases.

The *Small Business Impact Statement* must include types and number of small businesses subject to the rule, direct and indirect impacts, and any costs incurred in the form of reporting, or recordkeeping, including professional skills necessary.

Sources: South Dakota Department of Environment and Natural Resources Contact
Rules Manual: <http://legis.state.sd.us/rules/RulesManual.aspx>

Tennessee

Type of analysis: Cost-Benefit Analysis

State law requiring analysis: none, one-time analysis

Proposed rule being analyzed: Municipal Waste Reduction Goal Rule

Costs/benefits/impact factors considered:

The analysis considered the costs and benefits of the proposed rule as it affected municipalities. It was determined that the economic benefits of the rule outweigh the costs of waste disposal.

Methodology: The analysis was conducted by TN Department of Environment and Conservation's Division of Solid Waste Management in 2010.

Sources: <http://www.tn.gov/environment/swm/prwr/pdf/costanalysis2010.pdf>

Texas

Type of analysis: Regulatory Analysis

State law requiring analysis: Texas Administrative Procedure Act

When analysis is required: An analysis must be performed when any state agency is adopting a major environmental rule that would exceed federal requirements (unless required by state law), exceed state requirements (unless required by federal law), or be adopted under agency powers rather than through state law.

Costs/benefits/impact factors considered:

The analysis must address, among other criteria, the benefits and costs of the proposed requirement with regard to state agencies, local governments, the public, the regulated community, and the environment.

Some minimum requirements of the impact analysis include:

- Anticipated benefits, including reduced risks to human health, safety, and environment
- Anticipated costs for state agencies, local government, the public, the regulated community
- Why alternatives to the rule are not preferred
- Why a single method of compliance is preferable to a performance-oriented, voluntary, or market-based flexible regulatory approach
- Data and methodology used in the analysis

Benefits and costs must be described as quantitatively as possible, but can be listed qualitatively necessary.

Methodology: The public has an opportunity to comment on the analysis.

Sources: Texas Commission on Environmental Quality Contact

Texas Administrative Procedure Act:

<http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2001.htm>

Utah

Type of analysis: Rule Analysis

State law requiring analysis: Utah Administrative Rulemaking Act

Costs/benefits/impact factors considered:

The rule analysis should contain the following information about cost, along with other information:

- The anticipated cost or savings to:
 - the state budget
 - local governments
 - small businesses
 - persons other than small businesses, businesses, or local governmental entities
- The compliance cost for affected persons
- Comments by the department head on the fiscal impact the rule may have on businesses

Sources: Utah Administrative Rulemaking Act: http://www.lawserver.com/law/state/utah/ut-code/utah_code_63g-3-301

Vermont

Type of analysis: Economic Impact Statement

State law requiring analysis: Vermont Administrative Procedures Act: Rule on Rulemaking, Vermont Natural Resources Board Rules of Procedure

Costs/benefits/impact factors considered:

For any rule which is new, an amendment, or a repeal of an existing rule for any agency in state government, an Economic Impact Statement pursuant to the criteria in the Administrative Procedures Act must be completed. The criteria include:

- The anticipated economic impact of the rule
- The impact the rule will have on greenhouse gases

The Vermont Natural Resources Board Rules of Procedure require that all petitions for rulemaking must include, among other things, a list of the categories of peoples, enterprises, and governmental entities potentially affected by the proposed rule and the estimated costs and benefits for each.

Methodology:

Sources:

Rule on Rulemaking: <http://vermont-archives.org/aparules/rulemaking.htm>

Natural Resources Board Rules of Procedure: <http://www.nrb.state.vt.us/publications/rules/rop.pdf>

One-time Cost Analysis:

The Vermont Agency of Natural Resources was asked by the 2006 Vermont Legislature to complete a cost analysis of the Vermont Bottle Bill, and they contracted it out. The analysis consisted of:

- Costs and revenues associated with handling returned beverage containers in compliance with the law (costs to small and large retailers, redemption centers associated with a retail operation and not)

- Costs to beverage distributors of complying with law
- Un-reclaimed bottle deposits retained by distributors and the scrap-value of marketed recyclables

The Cost Analysis can be found here:

http://www.anr.state.vt.us/dec/wastediv/solid/Bottle_Bill/DSMReportJune2007.pdf

Virginia

Type of analysis: Economic Impact Analysis

State law requiring analysis: Virginia Administrative Process Act

Costs/benefits/impact factors considered:

The Act requires an Economic Impact Analysis that, as well as determination of public benefit, must include but need not be limited to impacts on the businesses or entities to which the regulation would apply. Impacts that should be discussed include impacts of the regulation on use and value of private property, costs related to development of real estate, projected costs to affected businesses/localities/entities of implementing/complying.

If the rule affects small businesses, the following must also be included within the Economic Impact Analysis:

- Identification and estimate of the number of small businesses subject to the rule
- Projected reporting, recordkeeping, and other administrative costs, including professional skills needed for reporting, required for small businesses to comply with the regulation
- Statement of the probable effect of the regulation on affected small businesses
- Any less intrusive or less costly alternative methods that would achieve the purpose of the regulation

Methodology: The analysis must be completed in coordination between the agency and the Department of Planning and Budget.

Sources: Virginia Department of Environmental Quality Contact

VA Administrative Process Act: http://townhall.virginia.gov/um/dpb_apa.htm

Washington

Type of analysis: Cost-Benefit Analysis, potential Maximum Net Benefits Analysis

State law requiring analysis: Washington Administrative Procedures Act

When analysis is required: A Cost Benefit Analysis is required for most rules – exceptions are rules that only govern internal governmental procedures.

Costs/benefits/impact factors considered:

The Administrative Procedures Act requires state departments to conduct a Cost Benefit Analysis to see if benefits of a rule outweigh the cost. The analysis must include both quantitative and qualitative costs and benefits; this inclusion of qualitative factors has allowed the agency to take into account factors such as tribal cultural values. There is no precise template for the Cost Benefit Analysis, but factors are generally considered over a twenty-year timeframe and include impacts on the public, the environment, private business, and public entities.

Agencies also must consider the proposed rule relative to existing rules. The eventual version of the rule adopted must be the “least burdensome alternative,” or the least burdensome option for those required to comply with the rule while still achieving its goals and objectives. This least burdensome alternative analysis is included in the same publication as the Cost Benefit Analysis.

Special Notes:

For rules that deal with water allocation between potential users/uses, a Maximum Net Benefits Analysis is required. The purpose of this analysis is to ensure that water is being allocated to the highest valued beneficial uses. This analysis must address costs and benefits to the people of Washington. Costs must include opportunities lost.

Methodology: Both analyses must be completed by an economist. The public has the opportunity to comment on analyses, and the analyses may be adjusted after to incorporate any new information brought up in the public comment period.

Type of analysis: Small Business Economic Impact Statement, Economic Impact Analysis

State law requiring analysis: Washington Regulatory Fairness Act, Washington Administrative Code – Waste Discharge and General Permit Program guidelines

When analysis is required:

The Regulatory Fairness Act requires a *Small Business Economic Impact Statement* for any rule that will have more than a minor impact on small businesses.

Pursuant to the guidelines for the General Permit Program, when a new or revised general permit is issued (permit cycles are five years long), an *Economic Impact Analysis* is required.

Costs/benefits/impact factors considered:

The Small Business Economic Impact Statement should include:

- A list of industries required to comply with the rule
- Any costs required for businesses to comply with the rule, including costs of equipment, supplies, labor, professional services, and increased administrative costs
- The estimated number of jobs that would be created or lost in order to comply with the rule

The Economic Impact Analysis is similar to the Small Business analysis outlined above in that it is mainly concerned with the costs of compliance. It also follows the same methodology outlined below.

Methodology: In order to determine if the proposed rule would have a disproportionate cost impact on small businesses, the impact statement must compare the following:

- The cost of compliance for small business
- The cost of compliance for the ten percent of businesses that are the largest businesses required to comply with the rule

At least one of the following must be used as a basis for comparing costs:

- Cost per employee
- Cost per hour of labor
- Cost per one hundred dollars of sales

The Small Business Economic Impact Statement is completed by an economist.

Sources: Washington Department of Ecology Contact

WA Department of Ecology, Rulemaking and Economics page:

<http://www.ecy.wa.gov/laws-rules/economics.html>

Regulatory Fairness Act: <http://apps.leg.wa.gov/rcw/default.aspx?cite=19.85.040>

Administrative Procedures Act: <http://apps.leg.wa.gov/rcw/default.aspx?cite=34.05&full=true>

Waste Discharge General Permit Program:

<http://apps.leg.wa.gov/wac/default.aspx?cite=173-226-120>

West Virginia

Type of analysis: Fiscal Note

Costs/benefits/impact factors considered:

The Fiscal Note must address the impact on costs and revenues of state government, including in long-range effects.

One-time Economic Analysis:

The WV Department of Environmental Protection's Carbon Dioxide Sequestration Working Group conducted an assessment of costs, benefits, risks, and rewards of carbon sequestration options. The analysis included economic and environmental feasibility of large-scale, long-term options for the state.

Sources:

Fiscal note form: <http://www.sos.wv.gov/administrative-law/formsandformats/Documents/alfn.pdf>

Carbon Dioxide Sequestration Analysis:

<http://www.dep.wv.gov/executive/Documents/WVCCS%20Working%20Group%20Final%20Report%20-%20June%2030,%202011.pdf>

Wisconsin

Type of analysis: Economic Impact Analysis

State law requiring analysis: Wisconsin Act 21 (2011)

Costs/benefits/impact factors considered:

This new law for all state agencies requires an economic impact analysis (EIA) for any proposed rule. The analysis must consider effects on specific businesses, business sectors, public utility ratepayers, local government units, competitiveness, jobs, productivity, and the state's economy as a whole. An analysis of quantifiable benefits of the proposed rule must also be completed, as well as an assessment of how effective the rule will be in addressing the policy problem it was designed to address. Additionally, alternatives to the proposed rule must be analyzed.

A Small Business Regulatory Review cost benefit analysis is also required by Wisconsin Statutes for all rules, but this is to be conducted by the Small Business Regulatory Review Board, and not the Wisconsin Department of Natural Resources. The Department does, however, consider costs to small businesses during the rulemaking process.

Methodology: All analyses are performed by the program staff that developed the proposed rule. The Economic Impact Analysis is then formally approved by a department economist. When preparing the statement, the department must solicit information and advice from businesses, associations representing businesses, local government units, and individuals that may be affected by the rule. There is an opportunity for comment, and longer periods for comment solicitation are required for rules with larger economic impacts.

Special notes: There are three potential tiers of Economic Impact Analyses – “minimal,” “moderate,” and “significant” – based off of how large the anticipated impact will be. The vast majority of the rules that the Wisconsin Department of Natural Resources promulgates have been of low to moderate economic impact.

Sources: Wisconsin Department of Natural Resources Contact

Wisconsin Act 21: <https://docs.legis.wisconsin.gov/2011/related/acts/21>

Wisconsin Executive Order 50:

<http://www.doa.state.wi.us/docview.asp?docid=9032&locid=166>

Memorandum on Act 21: <http://dnr.wi.gov/about/nrb/2012/january/01-12-3b6.pdf>

Wyoming

No information was obtained regarding the role of economic and cost benefit analyses in rulemaking for Wyoming.