

Report From Agency

REPORT TO LEGISLATURE

NR 190, 191, 192, 193, 195 and 198, Wis. Adm. Code

Board Order No. WY-18-15
Clearinghouse Rule No. 19-078

Basis and Purpose of the Proposed Rule

The Surface Water Grant Program provides financial assistance to eligible recipients to improve and protect water quality and the quality of lake and river ecosystems, and to prevent and control aquatic invasive species. The grant program has evolved incrementally over 26 years and is currently governed by 5 separate but related administrative rules and 2 state statutes. Annually, the Surface Water Grant Program provides over \$6 million dollars to lake and river groups, other nonprofit organizations, and local units of government. Funding comes from the Water Resources Account of the Conservation Fund (motor boat gas tax revenues). The Bureaus of Water Quality and Community Financial Assistance propose to repeal the 5 related rules that govern the Surface Water Grant Program and recreate one consolidated rule chapter.

The proposed ch. NR 193 will unite the program under a consistent set of procedures and policies, improving customer service and satisfaction and administrative consistency and efficiency. The rule will update citations, references, and notes to appropriate statutes and administrative codes and include other housekeeping changes. Some of the proposed changes will implement recommendations from 3 Lean Six Sigma projects the department completed to streamline the application process and create administrative efficiencies. The proposed rule will also update the program to employ contemporary management practices, enhance project performance and grantee accountability, and ultimately support better and more cost-effective environmental outcomes that serve local needs and advance department management objectives for state surface water.

Grants and contracts under existing administrative codes provide state cost-sharing assistance to nonprofit organizations and governmental units for 2 primary activities: (1) Planning projects to help communities understand the condition of aquatic ecosystems and watersheds, collect data, conduct studies, and develop management plans, and (2) Management projects to protect and improve water quality and aquatic habitat and prevent and control aquatic invasive species. Project funding caps vary by program and the scale of the project, ranging from \$3,000 for the smallest-scale planning grant up to \$200,000 for a management plan implementation or aquatic invasive species control project.

Annually, around 40% of the available funding is allocated to planning activities on lakes, rivers and for aquatic invasive species, while around 60% is dedicated to management. Under the current planning program, awards for aquatic invasive species range to \$150,000 per project, lake planning projects may be awarded up to \$25,000 per project (\$100,000 per lake), river planning projects are capped at \$10,000, and county lake classification projects are awarded up to \$50,000. Under the current program for management, aquatic invasive species control projects and lake management plan implementation projects are eligible to request up to \$200,000. Shoreline and wetland restoration projects are eligible for up to \$100,000. River management projects may be awarded up to \$50,000. The Healthy Lakes Program awards \$1,000 per best management practice installed, not to exceed \$25,000 per project. Land acquisition grants may be requested for up to \$50,000 for rivers and \$200,000 for lakes.

Summary of Public Comments

We received 25 comments on the rule language. Commenters included county conservationists, lake association members and representatives, county AIS coordinators, professional planning and management consultants, and non-profit conservation organizations. Eleven people attended the public hearings,

representing county governments, consulting firms, non-profit organizations, and natural resource educators. In general, commenters and public hearing attendees expressed support for the consolidation effort but included several additional suggestions that the department considered during revision. Comments submitted are summarized below.

1. One commenter suggested that lost revenue for power generation should be included as an eligible expense for drawdowns.

Response: Lost revenue for power generation may be an eligible cost under NR 193.06 (1) (b) 18, provided the requirements under s. NR 193.06 (1) are satisfied. No revisions to the proposed rule language were made to address this comment.

2. One commenter suggested that economic loss from water quality degradation should be considered when determining funding priorities.

Response: While economic valuation of ecosystem services and their loss is an area of emerging and active research, we lack the estimates necessary to accurately quantify economic loss statewide and across ecosystem types such as would support funding prioritization. In addition, protection and anti-degradation are important activities that can reduce future economic loss. Any model for this program should consider both loss, risk, and the potential for future offsets of both, but a suitable model has not yet been developed. No revisions to the proposed rule language were made to address this comment.

3. One comment requested including verbiage in NR 193 to ensure Wisconsin contractors would be given preference for grant-funded projects and bids.

Response: One of the standard provisions in all department grant agreements states the department exercises no control over the selection and dismissal of the Grantee's employees or agents." While we can understand the motivation for this proposed change, we believe the direction for establishing this policy should come from the legislature and apply consistently to all the department's financial assistance programs. No revisions to the proposed rule language were made to address this comment.

4. Two comments recommended moving the watercraft inspection grant subprogram to a 75% DNR cost share instead of the proposed 67% cost share, noting the increased financial burden on local organizations as well as the limited volunteer pool available. One commenter suggested this could be accomplished by moving the grant watercraft inspection subprogram under the management grant category to maintain consistent cost share rates between grant categories.

Response: The department has revised the proposed rule language to address this comment by moving the watercraft inspection program from the Education and Planning Grant Program to the AIS Control Grant Program. The program will be cost-shared at a rate of 75%, with a 25% grant advance available, with one partial payment per year allowed.

5. 10 comments were received on Subchapter VI - Lake Monitoring and Protection Network Contracts. Five commenters noted that the subchapter was vague, seven comments criticized the lack of inclusion of the allocation factors in code, two commenters were concerned with a possibility of uniform allocations across the state, and one comment asked if there would be a match requirement for the network. All 10 comments suggested variables either to include or remove from use in the network allocation model. This reflected disagreement on what variables to use in the model along with what weight they should carry. In addition, commenters raised general implementation questions, (e.g. what level of services are expected to be performed).

Response: The department has revised the proposed rule language to address these comments. Specific information on how a grantee can comply with the administrative code will be included in guidance, which will undergo public review with a public comment period. However, additional clarity now appears in subchapter IV, including the amount of the authorized funding appropriation that may be used to support the network. We now clarify that the network funding will be cost-shared at 100% in Table 1 Regarding funding allocation variables, a detailed allocation plan will be outlined in program guidance. We have also clarified in the draft rule language that the department's allocation plan will consider factors related to the need for lake protection and monitoring services, including the quantity and types of surface water resources, socio-

economic factors, or invasive species population distribution or status. The specific formula of the draft allocation plan may change over time. Publication using the public guidance development and certification process provides both transparency and flexibility.

6. Since needs and funding levels will differ regionally, we clarified that the specifics related to level of service provided will be defined in an agreement or contract that is awarded under subch. 6. Two commenters worried that the new program would not adequately fund AIS prevention efforts.

Response: The intended benefit of this subchapter is to provide a predictable amount of non-cost-shared, non-competitive renewable funding for basic and uniform prevention activities. Organizations are allowed to seek competitive grant funding under other subchapters to support work conducted outside of the protection and monitoring network. However, to address this comment, we added a new grant project type to the AIS control chapter. Titled "AIS Prevention", eligible projects include watercraft inspection and other prevention activities as approved by the department.

7. One comment requested that the grant cycle timeline be aligned with the Lake District and County budget cycles, which are typically adopted from May – September for the following year.

Response: The State's fiscal year begins on July 1 but sometimes a budget is not approved until August or later. Establishing a grant cycle that awards grants before District and county budgets are approved in summer and early fall would be impractical. A fall application deadline best suits the department's budget and work cycle and we believe is workable by the majority of all our applicants. In addition, project design often benefits from incorporating the previous year's findings and data, preparing a project two seasons in advance may compromise the soundness of the plan and the quality of the project. No revisions to the proposed rule language were made to address this comment.

8. One comment requested that the applicant be consulted when making budget adjustments to the project in the case of being offered partial funding of their grant request.

Response: Because public funds are limited, the department has a fiduciary responsibility to ensure all grant applications are prioritized and eligible. Ineligible activities and items cannot be funded and are non-negotiable. An application's priority is based on its full proposed scope of work. If an application's priority places it on the priority list where available funding runs out and the grant account balance is not enough to fully fund it, the project still needs to be completed as proposed or its priority may change. In all cases the applicant will be asked if they can complete the remainder of the project as proposed with a partial award. If they cannot, the applicant should decline the partial award and the department will proceed to the next priority project. The department's ability to offer partial project funding provides an option for important projects to proceed, while ensuring the highest priority projects are funded. No revisions to the proposed rule language were made to address this comment.

9. One comment suggested a single cost share rate of 75% with a 25% match across all grant categories and to reduce the advanced payment to 25% of the grant award. They also suggested increasing the cost share rate of lake planning grants to 75%.

Response: Cost-share rates for lake management planning grants are set in s. 281.68 (2) (a), Stats., at 67%, while s. 281.69 (2) (a) and 23.22(2)c, Stats. states that lake and river management grants and aquatic invasive species grants may have a cost-share rate of up to 75%. Constrained by statute the department chose to unify all cost-share rates for planning activities at the lower cost share rate of 67% for clarity and consistency in the consolidated code. No revisions to the proposed rule language were made to address this comment.

10. One comment recommended continuing the four partial payments per year limit or allowing two partial payments per year instead of the one partial payment per year listed in NR 193.

Response: In recognition of grantee's financial outlay required for projects, the department chose to provide a grant advance of 75% at the beginning of an education or planning project. This provision also intends to reduce the number of partial reimbursements that must be processed by department staff addressing an internal work load concern. For management grants, the proposed rule provides a 25% grant advance. Because the advance is smaller than that provided under planning, the department will

provide one annual partial payment during the life of the project while holding at least 10% for the final payment at the project's close. No revisions to the proposed rule language were made to address this comment.

11. Two commenters were concerned with the burden of the professional service agreement requirements for local units of government who already have policies and procedures in place for contracting. One commenter stated that the \$1,000 threshold was too low.

Response: We revised the proposed rule language to specify that professional service agreements are not required of counties, cities, towns, villages and Wisconsin Tribes. We increased the threshold for requiring a grantee who subcontracts or hires an agent to enter into a professional services agreement from \$1,000 to \$5,000.

12. One comment requested that the hourly donated time rate be increased from the current \$12/hour rate.

Response: The proposed ch. NR 193 gives the department the flexibility to determine the value of volunteer labor each year, rather than list it in a rule (which can only be modified through a lengthy rule revision process), the department will set the maximum volunteer value each year and post this information on the DNR's Surface Water webpage with grant application forms and instructions. No revisions to the proposed rule language were made to address this comment.

13. One comment suggested that the DNR should add language to the code to prevent the purchase of lakeshore property that is determined to be undevelopable because of the presence of wetlands on the property.

Response: Presence of wetlands does not render an entire parcel undevelopable. There are several allowable legal uses that may be incompatible with conservation goals and permits may be issued for modifications to facilitate development. Fee simple or a conservation easement are a reasonable means to protect ecosystem benefits of wetlands. No revisions to the proposed rule language were made to address this comment.

14. Two comments requested a definition of direct administrative costs. Three comments noted that the 10% cap on administrative costs may be too low or could be unrealistic.

Response: The department has revised the proposed rule language to address this comment. Section NR193.06(2) defines 'direct administrative costs'. Administrative costs do not include project staff that are involved in the day-to-day implementation of the project. Direct administrative costs, including actual salary or hourly wages and fringe benefits incurred by immediate supervisors and support staff that can be tracked, charged directly to and accounted for by the project. Supervisors and support staff are understood not to be involved in the day to day implementation of the project. The department considered the comments regarding the 10% cap and made the decision not to increase it.

15. One comment suggested changing the language about application submittal to say that an application should be sent by an applicant to the department's email inbox before midnight on the deadline instead of the department receiving the application by midnight on the deadline.

Response: The department has revised the proposed rule language of s. NR 193.09 (1) to consider that the eligibility of submission is the time sent by the applicant.

16. One comment asked for clarification on how to determine if a bidder is qualified.

Response: Local governments must abide by bidding requirements in Wisconsin s. 66.0901 which does provide guidance on confirming a bidder's proof of responsibility. Each city, town, village, county, and WI Tribe has its own procedures for determining if a bidder is qualified. Per 193.08 (b) it is the responsibility of the grantee to identify criteria for determining acceptable qualifications and publish these with the bid notice. No revisions to the proposed rule language were made to address this comment.

17. Three comments were received regarding cost containment measures. One comment stated that the cost containment procedures at \$1,000 is a low threshold, placing a burden on organizations and suggested the language in code should follow state statutes requiring bids for projects over \$2,500 for lake districts or \$5,000 for counties. One comment stated that requiring any form of cost containment would place an

unnecessary burden for their operators. A third comment asked for clarification on the definition of cost containment and what procedures will be required.

Response: The department has revised the proposed rule language to increase the threshold that requires cost containment measures to \$2,500. Cost containment is defined in s. NR 193.03 (8). The department believes cost containment measures are necessary to prevent overspending and control expense levels. It is used in other financial assistance programs it administers. The rule provides 4 alternative measures of cost containment so applicants can select the method that least burdens them. Details and specific procedures a grantee may follow to implement a cost-containment measure will be included in program guidance.

18. One comment asked for a clarification on the definition of equipment and suggested that it include the word “supplies.” The commenter suggested equipment have an acquisition cost of less than \$5,000 but more than either \$1,000 or \$500.

Response: No revisions to the proposed rule language were made to address this comment. The department has defined three levels of items that could be purchased under a grant. “Capital assets” means a long-term item having a useful life of more than one year and an acquisition cost of \$5,000 or greater and includes customized equipment where the sum of the components is equal to or in exceed \$5,000. “Equipment” means long-term items having a useful life of more than one year and an acquisition cost of less than \$5,000. “Supplies” means short-term items that are consumed during the project, typically within the course of one year. A shovel costing \$30 would qualify under this taxonomy as “equipment”.

19. One comment opposed the process of determining the value of donated equipment by requesting bids from local vendors. They stated that this is an undue burden on the vendor to prepare an estimate for equipment that will not be used and suggested that the department create a list of common equipment used in the surface water grant program to post on the website.

Response: The department does not have the capacity to develop a list of fair-market rental costs and to maintain such lists. If an applicant is seeking grant funding for an item but that item does not appear on the WisDOT Highway Maintenance list, the applicant has the option of choosing the closest equipment equivalent from WisDOT’s Classified Equipment Rates Standard and Special Rated Units for highway equipment. No revisions to the proposed rule language were made to address this comment.

20. Three questions were received on eligible costs including the limits to facility rental, how much can be claimed for costs related to participation in trainings, and if herbicide barriers are an eligible expense.

Response: The department has revised the proposed rule language to address this comment by clarifying that rental or lease of equipment and facilities are eligible as long as they are necessary for the completion of the project. The same provision applies to herbicide barriers or any other piece of equipment not listed of as ineligible under ch. NR 193.

21. One comment suggested the inclusion of language allowing grantees the right to cure before termination of a grant agreement.

Response: The proposed rule was revised to address this comment by changing s. NR 193.04 (3) to read: “The department will notify any grantee not in compliance with their grant agreement, in writing, and allow 30 days for the grantee to pursue corrective action. If corrective action does not address department concerns, the department will issue a final termination letter to the grantee, including the reason for termination.”

22. Two commenters opposed the requirement for a separate grant checking account to hold grant funds stating that it is an undue administrative burden on grantees.

Response: The department has revised the proposed rule to address this comment by removing the stipulation under NR 193.04 (1) (b) that funds be maintained in a separate account.

23. One comment requested adding the ability to ask questions regarding project eligibility prior to the deadline to avoid unnecessary application completion.

Response: The department has revised the proposed rule to address this comment, stating that a pre-application may be requested at any time, and that the department may also require pre-proposals or pre-application meetings, see changes made to s. NR 193.09 (1)) (d)

24. One commenter suggested adding an equivalent experience option for consultant training requirements to prevent limiting the number of consultants available to do work.

Response: The department has revised the proposed rule language to address this comment. S. NR 193.17 (1) now includes the phrase: "... or demonstrate proficiency for grant-funded activities where established by the department prior to the start of the project. A grantee shall contact department staff for information on training requirements or alternate proficiency standards and any department-sponsored training opportunities." Regarding whether qualifications be reviewed at all, quality assurance is an important part of any project. Requiring minimum training standards by activity is reasonable and designed to improve project outcomes and data validity. However, we agree that the ability to demonstrate proficiency in lieu of training is a reasonable cost- and time-saving provision. In addition, the stipulation that the training requirements be established by grant subprogram were removed. Instead, training requirements will apply by activity (e.g., training for aquatic plant surveys) and will not be required for eligibility for a particular subprogram.

25. One commenter submitted sections or sentences where clarification was needed on watercraft inspection performance standards, the required use of forms for which the content is not included in rule, the use of the term "recommendations", and AIS control scale.

Response: The department has revised the proposed rule language where the commenter suggested except where indicated below. In particular, the sentence on watercraft inspections and launches in s. NR 193.63 (1) now reads: "...Hours may be spent at one waterbody access point or spent across 2 access points." Second, regarding the need for forms to comment on certain areas of the program, the public will have a chance to review forms and instructions before those are integrated into the application process. No revisions to the proposed rule language were made to address this comment. Third, regarding the use of the term 'recommendations' in a management plan, the term 'recommendations' is employed in ss. 281.68(4) and 281.69 (3) (b) 4., Stats. Drafting procedures recommend consistency in language between statute and code. No revisions to the proposed rule language were made to address this comment. Finally, regarding the inclusion of small-and large-scale approaches in a single management plan, it is reasonable for a single plan to lay out a strategy to move from large-scale to small-scale projects employing appropriate management techniques as the population status changes over time. Management decisions should include consideration of population scale and result in the selection of scale-appropriate techniques. The draft rule language does not state that separate management plans are required for the different project types under subch. V. No revisions to the proposed rule language were made to address this comment.

26. One comment suggested adding an explanation about dividing grants within the same subprogram and how they are ranked within those divisions.

Response: The department has revised the proposed rule to address this comment. It now includes a Lake, River, and AIS Planning category capped at \$10K, and changed the name of the former lake planning category to "Comprehensive planning for Lakes and Watersheds" Corresponding edits made to Table 1, under s. NR 193.05. Other than this 'intermediate scale' planning subtype, no further divisions in programs or ranking are planned.

27. One comment suggested including a minimum acreage of 5 to the definition of a lake.

Response: Ch. 281, Stats., does not include a definition for "Lake". In general, when enabling legislation does not include a specific definition, the reader may rely upon the word's generally accepted definition. The department does not consider establishing a minimum size for lakes necessary. No revisions to the proposed rule language were made to address this comment.

28. One comment requested to add to the definitions the difference between acceptance of a management plan versus approval of a management plan. They suggested including that acceptance of a management plan could include the plan as a final deliverable of a grant, while approval would need to be defined to be able to use the plan to implement a management grant.

Response: The department has revised the proposed rule language to address this comment. Definitions may not contain substantive material. Instead, edits were made to clarify this two-step process outlined in NR 193.33 to improve readability.

29. One comment requested the definition of “routine” with respect to chemical treatments or mechanical harvesting of aquatic plants.

Response: The department has revised the proposed rule language to address this comment by removing use of the word ‘routine’ in the proposed rule, in addition, aquatic plant and AIS control activities were moved to the AIS control chapter.

30. One comment asked for explanation of the general versus specific nature of management plan recommendations.

Response: The department has revised the proposed rule to address this comment with the edit made to s. NR 193.32 (1)(f) describing comprehensive management planning for lakes and watersheds.

31. One comment requested that the definition of a pioneering population include best professional judgement.

Response: The department has revised the proposed rule to address this comment with edits to subchapter V. We removed the area and acreage from the definition, and instead offer a 3 acre or 3% threshold as an example of a pioneering state. We explicitly allow for best professional judgment considering factors related to population extent, abundance, and spatial distribution.

32. Two commenters requested the addition of a definition for organizational capacity building due to struggles over multiple interpretations of the term and suggested the use of examples

Response: The department has revised the proposed rule to address this comment by defining “Organization development” in NR 193.31(4). “While we like the addition of the examples of ‘how’ to build capacity (e.g. ‘through advocacy’) they were not included out concern they might function as limitations rather than illustrations.

33. We received one comment that suggested an increase of the cap on the AIS Small-scale Population Management Grant grants to \$75,000.

Response: The award cap remains at \$50,000 per project to support cost-effective control for a 1 to 3 year project. No revisions to the proposed rule language were made to address this comment.

34. One commenter suggested the inclusion of mileage expenses, clothing, and beverage items as eligible expenses under the watercraft inspection program.

Response: To effectively spend limited funding as a streamlined, noncompetitive subprogram, CBCW grants are limited to activities directly related to watercraft inspection. No revisions to the proposed rule language were made to address this comment.

35. Two commenters voiced concerns over the increase in workload needed to apply for and administer projects under separate grant subprograms. For example, they described the need to apply for an education grant and a watercraft inspection grant instead of combining their needs into the current AIS Education, Prevention, and Planning grant.

Response: The rule consolidates 10 previous subprograms (small-scale lake planning, large-scale lake planning, river planning, lake classification, lake protection & monitoring, lake management, river management, AIS control and land acquisition), into 7 subprograms (education, planning, county lake grants, lake protection & monitoring, surface water management, AIS control and land acquisition). The separation of education and planning for AIS grants may require a grantee to submit one application for each subprogram, but we expect the demarcation of education and planning projects will make project goals, progress, and outcomes easier to account for and measure for each very different initiative. For Watercraft inspection, grantees looking to carry out a different education initiative in addition will need to submit two applications. There are several benefits to submitting separate CBCW applications: the program is streamlined with a short grant application that historically has been awarded on a non-competitive basis.

We don't anticipate that this will be burdensome for applicants. No revisions to the proposed rule language were made to address this comment.

36. We received one comment that there are too many forms required of volunteers in CLMN and CBCW and a suggestion that they could be streamlined. There was no opinion offered on the rule language.

Response: The department will consider this comment in drafting the forms necessary for NR 193. The department is currently working to adapt an on-line grant administration system for all grant programs with the goal of eliminating paper forms and making it easier to document grantee time in the field and reimbursement requests. No revisions to the proposed rule language were made to address this comment.

37. Two commenters stated that it is not reasonable to prioritize applications on waterbodies that meet minimum public boating access by using the number of parking spaces available. There was some confusion between an application meeting the requirements under NR 1.91 and use the use of parking spots to measure public access in the AIS network allocation model.

Response: Regarding overall eligibility for grant funding, s. NR 1.91 (4) specifies that minimum public boating standards, which includes consideration of parking availability, must be met for a lake to be eligible for natural resource enhancement services like habitat improvement or other in-water management actions. Parking spots thus must be considered when determining project eligibility. However, s. NR 1.91 (4) (b) states that the department may continue to provide services where facilities are sufficient to meet existing public demand for access. Wilderness lakes with little traffic may meet demand even if they lack parking. Natural resource protection services (which include planning) may be provided for lakes that do not meet minimum access standards. No revisions to the proposed rule language were made to address this comment.

38. One comment requested that the program-approved protocols be subject to public comment.

Response: Program-approved protocols will be available for public review and input. No revisions to the proposed rule language were made to address this comment.

39. One comment requested that the cap of river planning be increased to \$20,000 and the cap of river management be increased to \$100,000.

Response: Changes in the grant funding caps must be made in statute. Administrative code does not have the authority to change river planning and river management caps. No revisions to the proposed rule language were made to address this comment.

40. One comment asked where projects focusing on AIS monitoring would be placed.

Response: These projects would fit under the education and planning subchapter. No revisions to the proposed rule language were made to address this comment.

41. One comment suggested the inclusion of restoration lakes in the County Lake Grants.

Response: The intent is to establish a program that complements already-existing programs with a protection-oriented funding program. Activities for restoration that focuses on impaired waters are targeted under other DNR and federal programs. No revisions to the proposed rule language were made to address this comment.

42. One comment encouraged counties to administer the Healthy Lakes program, but no opinion was offered on the rule language.

Response: This would be an appropriate activity under a County Lake Grant. No revisions to the proposed rule language were made to address this comment.

43. One comment suggested allowing a 10-year renewal cycle with updates provided every 2 years rather than a five-year renewal cycle.

Response: The proposed grant program only requires APM or AIS plan updates at least once every 5 years. An update will effectively "re-set" the plan approval date. The grantee need not write a new plan every 5 years, rather we agree that plans are a living document and should constantly be revisited and

updated. We encourage more frequent updates to support better decisions in an adaptive management framework if they are determined to be necessary. Due to the large amount of interannual variability in aquatic plant populations, the department will continue to require that aquatic plant management plans be updated every 5 years. Current data and periodic assessment of management progress is an important part of adaptive management, hopefully leading to more effective management, sound science-based decision-making and management cost savings over the long term. No revisions to the proposed rule language were made to address this comment.

44. We received one comment concerned with the cost of the shoreland condition mapping protocol.

Response: The department has carefully considered the effort this survey requires and believes that the resulting data on shoreline condition is worth the invested time. No revisions to the proposed rule language were made to address this comment.

45. One comment was received on the native planting best practice as mentioned in the department's Healthy Lakes and Rivers Plan. The commenter was concerned about the 350 square foot requirement for the practice as they believe it is too large. The commenter suggested a smaller grant for less money and square footage which also includes a smaller time commitment.

Response: The proposed rule language implements the Healthy Lakes Management Plan which is not in consideration for revision at this time. We forwarded this comment onto the plan's managing team to consider. No revisions to the proposed rule language were made to address this comment.

46. One comment asked if there was scientific evidence that reducing nutrients would also reduce AIS.

Response: As stated in s. NR 193.65, integrated pest management focuses on long-term suppression of pests or their damage. In some situations, aquatic invasive plant species can have a beneficial effect on water quality (e.g., via altered hydrodynamic flow and increased sedimentation), while others can have an adverse effect (e.g., increasing internal phosphorus loading). Other species, like carp, can increase internal loading through sediment resuspension. Nutrient management is suggested as an IPM strategy that may work to mitigate the impacts of certain aquatic invasive species. While nutrient management is not likely to have immediate effects on water quality or the density of AIS populations that are facilitated by high nutrient levels, over the long-term, this approach can lead to improvements in the condition and quality of aquatic ecosystems, which may indeed prove to the benefit of AIS control. No revisions to the proposed rule language were made to address this comment.

47. One comment asked if the evidence of non-target impacts would mean an herbicide application would not be eligible.

Response: The department will continue to consider the risk of non-target impacts when permitting aquatic plant management activities. All management techniques will have some degree of effect on non-target systems or organisms. The evidence of non-target impacts alone would not exclude herbicides as a management tool, and the language in NR 193 is consistent on this point. If the management goal is to remove only the target species, the action would be permissible if the balance between positive and adverse effects is reasonable. No revisions to the proposed rule language were made to address this comment.

48. One commenter recommended removing the development of a management plan from the eligible activities listed under the AIS Early Detection and Response grants.

Response: EDR grants are intended to support early management, and early planning and prevention may be the most appropriate response in some situations. No revisions to the proposed rule language were made to address this comment.

49. One comment suggested including a cap on grant funds used for the contract program in the code in order to continually provide funding for the other AIS grants available.

Response: The cap on grant funds that can be used for contracts is set in statute at 25%. The department revised the rule to include this information under s. NR 193.73 (3) (a) and (b).

50. Two commenters provided feedback on the AIS network activities. One commenter stated that the development or implementation of lake management plans should not be an eligible activity. The other

commenter stated the inclusion of “other” AIS prevention campaigns as part of NR 193.76 (6) is not specific enough as a network activity.

Response: Providing technical assistance toward the development of AIS management plans in an eligible protection activity and some management plans may include eligible monitoring or protection network activities. “Other” AIS prevention campaigns is included to maintain a flexible and evolving program and allow for the development of new statewide campaigns, should they arise. No revisions to the proposed rule language were made to address this comment.

51. One comment requested the timeline of determining allocations for the AIS network align with the budgeting deadlines of county departments.

Response: Deadlines will balance the constraints of partners' budgeting schedules and the need for the department to meet internal financial encumbrance deadlines. Deadlines will be determined and published on the DNR Surface Water grant program web page. No revisions to the proposed rule language were made to address this comment.

52. One comment was received on statewide standards regarding AIS prevention strategies at public and private boat launches, but no opinion was offered on the rule language.

Response: No revisions to the proposed rule language were made to address this comment.

53. One comment dealt with the difficulty of lake management and competing stakeholder opinions and values, but no opinion was offered on the rule language.

Response: No revisions to the proposed rule language were made to address this comment.

54. We received one comment on the board order analysis concerning the effect on small business. The analysis stated that consultants and companies involved with the grant program should benefit from a streamlined and consolidated program. The commenter disagreed with that statement by saying that a streamlined and consolidated program could allow for increased effort needed by local WDNR staff.

Response: The proposed consolidated program will still require reporting and oversight on the quality of deliverables and the data collected as part of a management planning process. The draft code has enhanced accountability, QA, and reporting requirements to ensure transparency in the quality of grant-funded products. Added: "...should benefit from a consolidated and streamlined program that is easier to understand and navigate."

55. 14 commenters supported either specific aspects or changes to the code in a written comment. An additional seven people noted their position in support of the rule when attending the public hearing but did not leave any additional commentary. Six comments supported the move to consolidate the grant programs into one administrative code. Four comments stated the AIS network activities were important. Two comments supported the development of the AIS network to provide stability in funding for county AIS coordinators. One commenter supported the removal of the \$100,000 lifetime planning grant cap for each lake. One comment commended the inclusion of partners in the development of the rule. One commenter noted that the second draft was well written and organized as well as supported several specific wording choices and explanations in the rule. One commenter noted the importance of watershed work as funded by the grant program.

Modifications Made

We made modifications to the proposed rule language in response to a number of public comments received. The modifications are highlighted in the “Summary of Public Comments” section under items 4-6, 11, 14, 15, 17, 20-26, 28-32, and 49.

A modification to the rule language was made in response to comments received during the public comment period on the Economic Impact Analysis:

1. Fifteen commenters opposed the inclusion of the purchase and installation of remote watercraft surveillance devices as an ineligible cost under s. NR 193.06 (2). Commenters discussed the difficulty in staffing remote

or sparsely-populated lakes under the department-approved Clean Boats, Clean Waters program. Commenters included arguments related to indirect economic impacts under the assumption that surveillance cameras would prevent the introduction of aquatic invasive species and therefore decrease their associated economic impact. One commenter related direct economic impacts to their business if eligible grantees were unable to purchase with grant funds the equipment they manufacture and sell.

Response: As a result of comments received, the department has removed remote surveillance equipment as an ineligible cost in the proposed ch. NR 193. If implemented strategically, and if they are causally linked to behavioral change, remote surveillance devices may provide a benefit consistent with smart allocation of limited statewide grant funds.

Appearances at the Public Hearing

Name	Affiliation	Position
Dave Blumer	Lake Education and Planning Service, LLC (owner)	Support
Stephanie Boismenu	Oneida County Land and Water Conservation Department	Support
Todd Chwala	City of Eau Claire Community Services Department, Community Services Manager	Support
Lia Landowsla		Support
Greg Leonard	Eau Claire County Land Conservation	As Interest May Appear
AJ Lerden	Beaver Creek Reserve	Support
Eric Olson	UW-Extension	Support
Michelle Scarpace	UW-Extension	Not provided
Carolyn Scholl	Vilas County Conservation, Director	Support
Heather Wood		Support
Daniel Zerr	Natural Resource Educator, UW-Extension	As Interest May Appear

Changes to Rule Analysis and Fiscal Estimate

We made one change to the Board Order Analysis in response to a public comment. The modification is highlighted in the “Summary of Public Comments” section under item 54.

The economic impact analysis was modified in response to public comments received.

1. One comment requested additional detail and clarity about the funding provided by the state of Minnesota for AIS prevention.

Response: We have edited the EIA to include that the State of Minnesota provides \$10 million in grant funding to Minnesota counties for AIS prevention activities.

2. One commenter suggested edits to address consistency in terminology and increase clarity and accuracy in several sections of the draft EIA.

Response: We have made the suggested edits. We included a discussion of the tiered structure of the current AIS education and planning grant program. We revised the cap for the AIS established population control grants to \$150,000 – a decrease of \$50,000 over current funding maximum -- and added a new small-scale AIS control program subprogram with grants capped at \$50,000. Finally, we included figures for

the statutorily-granted funding allowance to establish and fund a lake monitoring and prevention network (25% of the total Lake and AIS allocation, or approximately \$1 million).

Response to Legislative Council Rules Clearinghouse Report

The Legislative Council Rules Clearinghouse submitted comments on statutory authority; form, style and placement in administrative code; and clarity, grammar, punctuation and the use of plain language.

Changes to the proposed rule were made to address all recommendations by the Legislative Council Rules Clearinghouse, except for those discussed below.

1. Statutory Authority

The rule was carefully reviewed to ensure that the department has not inadvertently modified or removed purposes, conditions or eligibility criteria established by statute. For example, in subchapter II, the purpose statement under NR 193.30 (2) repeats the purpose statement in s. 281.68 (1m) using identical wording with the additional incorporation of information from 281.68 (1r) related to the nature of activities eligible for support (i.e. preventing pollution and protecting or improving water and natural lake ecosystem quality). The planning subprograms all fit directly into that taxonomy by supporting projects that do one or more of the following: improve water quality assessment, improve water quality planning, and improve the ability to select activities that prevent pollution or protect or improve water quality or the quality of natural lake ecosystems. The education chapter is supported by s. 281.68 (3) (a) 2. As all subprograms may be classified as supporting “Informational or educational programs and materials.” The one exception under education is river management organization formation (s. NR 193.31 (5)), which is authorized only by s. 281.70, but that grant type is clearly demarcated as applying to only rivers.

Each of the eligible activities listed for river planning grants under s. 281.70 (5), is covered by one or more project types outlined under subchapter II. For example, s. 281.70 (5) (a) outlines the activities 1. “Data Collection” and 2. “Assessment of water quality and of fish and aquatic life and their habitat.” Both of these activities align clearly with s. NR 193.32 (c) “Water quality assessment” which states: “Eligible projects shall collect new or assemble existing water quality data and shall include an assessment of waterbody condition following the Wisconsin Consolidated Assessment and Listing Method...”

2. Form, Style and Placement in Administrative Code

e. The reference in former NR 193.51 (6) (a) to subs NR.193.51 (2) (3) and (4) was an internal reference; there is no statute numbered 193.51, therefore we did not insert “Stats.” to the citation. The citation, which is now in s. NR 193.51 (3) (a), now reads “sub. (1)” following re-organization of Draft #3.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. We uniformly capitalized the titles of various grant programs and projects. Grant *subprograms* are written in Title Case. Grant project types are printed in sentence case, except in Table 1 and Table 2, which employs Title Case throughout. (Subprograms include. County Lake Grants, Education and Planning, Surface Water Management, as well as certain “sub-sub-programs” that have separate branding and which are marketed and managed distinctly, e.g. Healthy Lakes & Rivers, Clean Boats, Clean Waters; grant project types include: Surface water education, watershed assessment, river management organization formation, and others.

c. We reviewed the definitions to include those that are necessary. Because the term “aquatic life” appears in statute but is not defined, we thought it important to specify that ‘aquatic life’ includes invertebrates, even plants and algae, and other organisms

e. Elaborated on the purposes of referenced statutes within s. NR 193.03 (3)(Note).

- j.** We clarified the requirements of the grantee in s. NR 193.04 (1), the phrase "copy of the" was revised to "copy of each", for greater clarity. The consequence of not submitting the copy of the permit is that the Department will not issue a payment until it is submitted. This does not limit or alter other consequences or discretionary decisions found outside of this provision. In addition we added clarifying text about the ability to withhold or require repayment in the other provisions in this section.
- i.** We clarified that an audit may be conducted during the project period or within the required document retention period in s. NR 193.04 (2)
- m.** We clarified eligible labor costs shall be based on the salary, hourly wages, fringe benefits and other items determined to be appropriate by the department previously established by the grantee and paid to the employee at the time the expense was incurred for staff time. in s. NR 193.06 (1)(a)1.
- ee.** We clarified the stage at which public input on a plan is required in s. NR 193.32 (1) (f): The public shall be given an opportunity to review the plan before it is adopted and provide comment.
- hh.** The locational criteria in s. NR 193.52 (1), in conjunction with the definition of wetland in s. NR 193.03 (59), could be interpreted in some cases to disallow a project to restore a former wetland, for example through drain tile removal. This is the intent. To wit, eligible activities under s. NR 193.51 (1) (d) include drainage tile disablement.
- nn.** We clarified eligibility restrictions in s. NR 193.72 (intro) with the following text: Eligible participants under this subchapter are limited to state or federal agencies, county governments, or a county's designated agent.

Final Regulatory Flexibility Analysis

Small business is not directly affected by the rule because grants are issued only to governmental units, educational institutions, and non-profit surface water management organizations. Environmental consultants and companies involved in surface water planning, surface water management, and aquatic invasive species control should benefit from a consolidated and streamlined program. Changes in the funding caps for grant programs and changes in the timing of the grant cycle may affect the timing and activity cycles of their work. The addition of quality assurance requirements in s. NR 193.17, Wis. Adm. Code, will mean that, for some projects, a grantee must adhere to minimum training and qualifications. Consultants or grantees may incur costs for staff time to attend required trainings but registration costs will be minimal or free.

Response to Small Business Regulatory Review Board Report

The Small Business Regulatory Review Board did not prepare a report on this rule proposal.