

Report From Agency
REPORT TO LEGISLATURE
NR 300 Wis. Adm. Code

Board Order No. WT-22-19
Clearinghouse Rule No. CR 22-013

Basis and Purpose of the Proposed Rule

The purpose of this rule is to reduce the administrative code redundancy through consolidation of chs. NR 300, 301, 305, and 310, related to navigable waterways and wetlands permitting. This rulemaking also seeks to update administrative procedures for waterway and wetland regulations to align with statutory requirements specified in chs. 30, 31, 227, and ss. 281.36, 23.32, and 23.321, Wis. Stats. The purpose of ss. NR 300.01 to 300.03 is to specify this purpose and to create consistent definitions for use.

The purpose of subchapter I is to articulate regulatory processes for requesting waterway and wetland exemption reviews, general permits, and individual permits. This subchapter outlines application requirements, process for review, and general standards for which the department will make decisions. This subchapter also articulates the fee structure for waterway, wetland, and dam regulatory decisions.

The purpose of subchapter II is to clarify that the water quality certification process must align with applicable 401 Clean Water Act requirements. Additionally, this subchapter clarifies that the department shall waive water quality certification that are eligible for an exemption under subchapter I.

Subchapter III articulates the process for stakeholders that request the department to complete an ordinary high water mark, navigability determination or wetland determination on their property. These services are options for property owners that want this information for planning purposes. This subchapter includes a description of the service, the process for a service request, service fees, and timelines.

Subchapter IV clarifies the process and timeline for projects that require multiple permits under Subchapter I. This subchapter also outlines the process for after-the-fact permit process, general enforcement process and inspection authority.

Summary of Public Comments

The public comment period for the draft rule occurred from January 26, 2022 to March 7, 2022, during which the Department received written comments from five individuals and organizations. Comments were submitted relating to permit and exemption process requirements, statutory authority for the proposed rules, and the proposed fee structure. See the next section for details.

Modifications Made

Comment 1: There are concerns that requests from the private sector for navigability and ordinary high water mark (OHWM) confirmations will outpace the capacity of Department staff to meaningfully review and confirm preliminary third party determinations.

Response: The Department has added exclusions in s. NR 300.17(8) to clarify situations where the navigability and OHWM service would not be appropriate to address this concern.

Comment 2: The Department must institute robust quality assurance measures to ensure the integrity of navigability and OHWM confirmations.

Response: The Department agrees that quality assurance measures are critical to ensure program integrity of navigability and OHWM confirmations. While training, auditing and oversight systems are necessary, they are not appropriate to include in this rule but rather guidance to help implement this rule should it become effective. No changes were made based on this comment.

Comment 3: DNR should remove “who owns or leases land” from NR 300.17(1) and otherwise make these regulatory services available to the general public.

Response: Section NR 300.17 was updated to clarify that agents on behalf of property owners may also request the navigability and OHWM services. Other changes were not made to this section to ensure that Department staff do not trespass on private property.

Comment 4: DNR should amend NR 300.17(9) to provide itself with the discretion to revisit navigability and OHWM determinations when new information indicates that the information upon which the original determination was made may not be credible or is otherwise suspect in some way.

Response: Since the Department is the responsible party to make final navigability and OHWM determinations and confirmations, it has the responsibility to ensure data accuracy before making these final decisions. If data accuracy is in question, the service request may be dismissed pursuant to s. NR 300.17(4). The Department seeks to provide the regulated public with confidence that the Department decision is not subject to change unless site conditions change as articulated in s. NR 300.17(9). The Department believes this confidence is needed for program integrity of these services and no changes were made based on this comment.

Comment 5: DNR should amend NR 300.17(9)(a) to provide itself the discretion to revisit navigability determinations when there are significant changes in fluvial geomorphology instead of hydrology.

Response: The Department agrees that changes to fluvial geomorphology can impact navigability and OHWM determinations in streams and rivers and amended s. NR 300.17(9)(a) to include both fluvial geomorphology and hydrology.

Comment 6: DNR should amend NR 300.17(2) and (3) to require photographs, which show scale, and require the “[e]xact location of the preliminary determination” to be expressed in terms of latitude and longitude, and 1/4, 1/4, Section, Township, Range.

Response: The Department finds that s. NR 300.17(2) and (3) already states that the applicant must provide an exact location of the preliminary determination and it is not necessary to specify a single format to gather this exact location in this rule. No change was made based on this comment.

Comment 7: Comments were provided that NR 300.04 limits eligibility of waterway exemptions specified in statute and contained vague regulatory language.

Response: The intention of the s. NR 300.04 was to bring together some common technical elements of exemptions specified elsewhere in the NR 300 Administrative Code series but not to unlawfully limit waterway exemption applicability specified in statute. The Department appreciates that these exemptions cover a range of statutory provisions which each have important detail and nuance. The Department agrees that it is appropriate for this rulemaking to continue to focus on the administrative process for exemptions reviews and when permits in lieu of exemptions are appropriate. Other rulemaking efforts will seek to align the technical elements

of other administrative codes effectuating exemptions with applicable statutory authority. Section NR 300.04 has been updated to align with this intention.

Comment 8: The proposed rule is more restrictive than the wetland exemptions specified in statute.

Response: The Department updated s. NR 300.05(1) to ensure that it appropriately aligns with statutory exemptions specified in s. 281.36, Wis. Stats. Specifically, the Department reformatted and updated s. NR 300.05(1) to ensure that the provisions in s. 281.36(5), Wis. Stats., only apply to the exemptions specified in s. 281.36(4), Wis. Stats. Section NR 300.05(1) was also updated to more closely reflect federal requirements specified in 33 CFR § 323.4 as the Department has the authority to promulgate rules to incorporate any applicable federal law or interpretations into rule pursuant to s. 281.36(6), Wis. Stats.

Comment 9: The definition of “rare or high quality wetland” must be revised to “rare and high quality wetland” [see the proposed NR 300.05(1)].

Response: This term has been removed from this rule.

Comment 10: NR 300.05(6)(e) authorizing the DNR to seek “other technical information specified by the Department” is vague and should be updated or removed.

Response: Section NR 300.05(6)(f) requires the submittal of technical information that is necessary to ensure that the statutory requirements of the requested exemption are satisfied. The Department has authority under s. 227.11(2)(a), Wis. Stats., to promulgate a rule requiring information to implement the exemptions recognized in s. 281.36, Stats. If the Department does not have sufficient information to make an exemption decision, it is not feasible for it to determine if a project is eligible for an exemption or not. This may result in the Department recommending a general permit or individual permit for the project or place a stakeholder at a higher risk for regulatory noncompliance. Having a reasonable opportunity to request additional information helps protect both the Department and stakeholder from inappropriate decision-making due to a lack of information. Absent this authority, an increased number of exemptions may be dismissed given a lack of completeness. This puts an administrative burden on applicants as they would need to resubmit the exemption once this additional information is available. No changes were made based on this comment.

Comment 11: The proposed fee increases exceed what was explicitly authorized by the scope statement to go beyond inflation.

Response: The objective of the proposed rule as stated in the approved scoping statement is provided for convenience below (*emphasis added*):

The waterway and wetland program plans to revise chs. NR 300, 301, 305 and 310, Wis. Adm. Code related to the administration, procedures and enforcement of their permit program. The purpose of these codes is to 1.) *establish procedures, timelines and fees for permitting, exemption and other regulatory determinations within the waterway and wetland program*; 2.) update administrative procedures to align with statutory requirements; 3) clarify the wetland identification and confirmation process and fee system; and 4) other administrative updates. Legislative and programmatic changes have occurred since the original code language was drafted necessitating the need to update these rules.

The proposed rule changes may include procedural revisions and updates, removal of obsolete language, updates to ensure rule language is consistent with the statutes, *updates to permit fees and approval processes*, and language related to jurisdictional determinations. Additional rule changes may be considered to effectuate the goals describe in this scope statement.

The scope statement does include reference to updating fees authorized under ch. 30, ss. 23.321 and 281.36, Wis. Stats. There is also no mention within the scoping statement to limit the fee increases to solely reflect inflation. Pursuant to ss. 30.28(1) and 281.36(12)(c)3., Wis. Stats., the Department may increase any fee if the increase is necessary to meet the costs incurred by the Department in performing permitting decisions. The statute also states that the fee includes reviewing, investigating, and making decisions on determinations and on whether to issue or grant permits, contracts, authorizations, or other approvals (ss. 30.28(2m)(d) and 281.36(12)(a), Wis. Stats.) For these reasons the Department finds that the scope statement has not changed in any meaningful or measurable way and a revised scope statement is not required.

Comment 12: The Department should better identify the increased services that will be offered to the regulated community as a result of the increase.

Response: *The proposed fee structure would cover only 60% of program costs.* Pursuant to ss. 30.28(1) and 281.36(12)(c)3., Wis. Stats., the Department may increase any fee if the increase is necessary to meet the costs incurred by the Department in performing permitting decisions. The statute also stated that the fee includes reviewing, investigating, and making decisions on determinations and on whether to issue or grant permits, contracts, authorizations, or other approvals (ss. 30.28(2m)(d) and 281.36(12)(a), Wis. Stats.) The current fee schedule has not been updated since 2011. On average, fee revenue currently provides approximately 44% (\$890,260 annually) of costs incurred by the Department to perform the regulatory tasks in ch. 30 and s. 281.36, Wis. Stats. This means that 56% of the regulatory program is subsidized by General Purpose Revenue (GPR) from taxpayers. The proposed fee structure does not recommend a true cost accounting model which would ensure that fees fully offset costs incurred by the Department to perform these regulatory tasks. Rather, this rule recommends increasing fees for specific permit types where costs are incurred at a higher rate than other permit types. This permit type driven model helps ensure that the subsidized rate is commensurate across all permit types. If this proposed rule were to become effective, permit revenue would cover approximated 60% of the costs for ch. 30 and s. 281.36, Wis. Stats. regulated activities. This rulemaking did not pursue a true cost accounting model to compensate for all program costs because the permit fees would need to be significantly higher and would likely have a burdensome impact on businesses and private property owners.

Costs incurred by the Department for wetland permitting are statutorily driven. Wetland individual permits have higher costs than other individual permits because the Department must adhere to the Department review requirements specified in s. 281.36(3n)(b), Wis. Stats. This review includes considering practicable alternatives to avoid the wetland impacts; all practicable measures to minimize the adverse impacts to wetland functional values; and a review to ensure that significant adverse impact to wetland functional values, water quality, or other significant adverse environmental consequences do not occur. To complete this analysis, site investigation, detailed documentation and review of avoidance and minimization measures is required.

Nonfunded mandates for exempt activities requires the reallocation of GPR funding. Act 183 created the artificial and nonfederal wetland exemption and required the Department to review exemption requests within 15 working days of receiving an exemption determination request (s. 281.36(4n)(e), Wis. Stats.) There is no mechanism to offset costs incurred for these exemption reviews so it is critical that permit revenue is generated so GPR funding can be reallocation to these nonfunded mandates. The exemption service has been a significant benefit to businesses, developers, and private property owners. Without this fee increase, these stakeholder groups may be adversely impacted as the service timelines may not be met.

Costs incurred by the Department for complex waterway projects are statutorily driven. Complex determinations for regulatory decisions authorized under ss. 30.11, 30.1335, 30.18, 30.195, and 30.20, Wis. Stats., have higher costs than other ch. 30, Wis. Stats., permits because they require more intensive

resource manager review, increased travel expense for site reviews, and increased coordination requirements with applicant. Specific statutory requirements where costs are incurred include:

- Public interest findings (ss. 30.11(5), 30.18(5)(a), 30.195(2)(c)4., 30.20(1m)(a), Wis. Stats.)
- Review of in-water BMPs to ensure that environmental damage is minimized outside of the project footprint (ss. 30.195(2)(c)4., 30.20(1k)(a)1., 30.20(1m)(b), Wis. Stats.)
- Establish a public rights stage to specify surplus water amounts (s. 30.18(5)(a), Wis. Stats.)
- Review of economic or aesthetic information provided by the applicant (ss. 30.1335(3)(b), 30.195(2)(c)2., Wis. Stats.)
- Flood flow capacity review (s. 30.195(2)(c)3., Wis. Stats.)
- Ensuring the lease or sale of any material from the bed of any navigable lake or of any outlying waters is consistent with public rights (s. 30.20(2)(a), Wis. Stats.)
- Pre-application meeting to comply with ch. NR 347, Wis. Adm. Code, sediment testing requirements to ensure hazardous materials are not released into the environment (ss. 30.20(1k)(a)1., 30.20(1m)(b), Wis. Stats.)
- Site investigation to ensure no environmental caps are present (s. 30.20(1m)(b), Wis. Stats.)
- Review of dredge disposal plan to ensure no other waterways or wetlands are impacted and water quality is adequately protected in alignment with ch. NR 151, Wis. Adm. Code (s. 30.20(1k)(a)2., Wis. Stats.)
- Reviewing information regarding property title and history, rental information, and other related property information (ss. 30.1335(3)(b), 30.18(6), 30.195(2)(c)1., Wis. Stats.)
- Performing all necessary water quality certification actions under §401 of the federal Clean Water Act

Increasing fees will allow the program to provide a more consistent level of service to permit applicants.

Currently, the program relies heavily on GPR to fund its activities which is problematic when state funds are lapsed or cut. Shifting to a more fee-based financial structure will allow the program to be more stable and maintain a level of service commensurate with the demand for waterway and wetland permitting. This fee revenue is also critically important to ensure that statutorily driven timelines pursuant to s. 281.36 and ch. 30, Wis. Stats., are satisfied. Compliance with these statutory timelines not only is a mandate of the state regulatory process but it also has a direct benefit on federal permitting timelines and processes as well. Wetland mitigation is a regulatory tool to offset wetland losses associated with certain types of permitted and exempt activities and is a requirement pursuant to s. 281.36(3n)(d), Wis. Stats. Mitigation is required by state and federal law and is jointly implemented by the Department and the United States Army Corps of Engineers (ACOE). Because the Department implements wetland permitting on a more aggressive timeline, Department staff often work with the ACOE in advance of their process deadlines to ensure that consistent mitigation decisions are made. This ensures that permittees satisfy both state and federal mitigation requirements through the same mechanism and helps streamline and expedite the federal regulatory process.

Inflation rates will continue to increase costs. The Department considered inflation from 2011 to 2021 for the basis for estimating permit fees for this rulemaking. These fees will be fixed in administrative code and not variable to account for future inflation. If inflation rates were to remain constant at 2.13%, the fee increases proposed in this rule would be offset by inflation within 10 years. It is noted that recent inflation rates have actually been much higher so this timeframe is projected to be shorter if current inflation rate and trends persist. The standard rulemaking process takes approximately 3 years to complete. The Department does not have adequate staffing to pursue fee increasing on a triennial basis to maintain fees based on inflation.

Fees are a small portion of overall project costs. Wetland mitigation is required by both state and federal wetland regulations (s. 281.36(3n)(d), Wis. Stats.) In conformance with s. 281.36(3r), Wis. Stats., wetland mitigation banking is the preferred mechanism to resolve mitigation requirements. Currently the average market price for wetland mitigation ranges from approximately \$75,000-\$110,000 per credit. This means that

the proposed wetland fees would be approximately 2% of the regulatory costs necessary to impact an acre of wetlands. When considering the project costs in addition to mitigation, the percent of wetland permit fees is minimal compared to overall project budgets.

Comment 13: Under the fiscal estimate and economic impact analysis provided by the division of executive budget and finance, the estimated cost of implementation would be 239,050 dollars annually, is very reasonable compared to the social and economic values associated with wetlands and waterways, and it is reasonable to reflect the cost to the Wisconsin DNR associated with the permitting review process. For context, according to the Wisconsin DNR, fishing related economic activity alone accounts for almost 2.3 billion dollars annually.

Response: Thank you for your comment. No changes made

Comment 14: The proposed rule requires the applicant to submit electronic applications for an individual or general permit. Use of electronic applications should be optional, not mandatory, under the rule.

Response: The rule state that applicants must use the Department electronic permitting system or through other Department-approved systems (emphasis added). The Department finds that this language does not create a mandate to use the e-permitting system. The rule was updated to remove reference to electronic forms in addition to electronic permitting systems to avoid confusion in response to this comment.

Comment 15: NR 300.06 should be updated to also include s. 30.2065 (General Permits for Certain Wetland Restoration Activities).

Response: This change has been made.

Appearances at the Public Hearing

The following people attended the public hearing on March 7, 2022: Abby McDowell, Hannah Renee Stuart, Jacob Lee Henden, Nate Walker, Emma Esch, and Jennifer Western Hauser. Jennifer Western Hauser of the Wisconsin Wetlands Association provided neutral testimony at the hearing.

Changes to Rule Analysis and Fiscal Estimate

A public comment period on the EIA was held from October 17 to November 16, 2021, during which the Department received written comments from two individuals or organizations. No changes were made to the plain language rule analysis.

Response to Legislative Council Rules Clearinghouse Report

The Legislative Council Rules Clearinghouse submitted comments on form, style and placement in administrative code; adequacy of reference; and clarity, grammar, punctuation and use of plain language. Changes to the proposed rule were made to address these comments. Additionally, the Legislative Council Rules Clearinghouse provided several specific comments that were incorporated into the draft rule.

Comment 1: Section NR 300.04 (2) establishes eligibility criteria for exemptions provided under subch. II of ch. 30, Stats. This rule should ensure that NR 300.04 appropriately limits Department review based on statutory eligibility criteria for exemptions.

Response: Chapter 30, Wis. Stats., exemptions are specified in ss. 30.12, 30.123, 30.19 and 30.20, Wis. Stats. The intention of the s. NR 300.04 was to bring together some common technical elements of exemptions specified elsewhere in the NR 300 Administrative Code series. However, the Department appreciates that these exemptions cover a range of statutory provisions which each have important detail and nuance. The Department agrees that it is appropriate for this rulemaking to continue to focus on the administrative process

for exemptions and focusing on the process for exemption reviews and when permits in lieu of exemptions is appropriate. Other rulemaking efforts will seek to align the technical elements of other administrative codes effectuating exemptions with applicable statutory authority. Section NR 300.04 has been updated to align with this intention.

Comment 2: It is not clear that the statutes authorize the Department to require a person to affirmatively confirm that an activity satisfies eligibility criteria before undertaking an exempt activity in ch. 30, Wis. Stats. The Department should explain its authority for the above provisions in greater detail.

Response: The Department agrees that stakeholders are not required to seek confirmation prior to completing eligible waterway exempt projects. For this reason, s. NR 300.04(4) states that a person **may** submit an exemption determination request form (emphasis added). To avoid confusion, the title of s. NR 300.04(4) has been updated to “voluntary review request” and additional clarifying language has been added that this is an optional service that a stakeholder can pursue if they would like to ensure that a proposed activity is edibility for a ch. 30, Wis. Stats., eligible waterway exemption.

Comment 3: The Department should clarify its statutory authority to require “other technical information” in s. NR 300.04(4).

Response: The Department has clarified that other technical information will only be requested if it is necessary to ensure compliance with applicable statutory requirements. The Department is authorized under s. 227.11(2)(a), Wis. Stats., to promulgate a rule which requests information to make exemption decisions pursuant to ss. 30.12 (2r), 30.123 (6r), and 30.20 (1r), Wis. Stats. This information is necessary to properly effectuate the purpose of the statutes. If the Department does not have sufficient information, it may determine a general permit or individual permit is necessary based on a lack of understanding of the project. Having an appropriate level of detail will ensure that stakeholders have an appropriate review and determination for exemption eligibility when they request this service.

Comment 4: Section NR 300.04 (6) provides an exception to the 15-day window provided in the statutes for Department review of a proposed activity, if the Department determines that information a person has provided is inaccurate or insufficient. It is not clear that ss. 30.12 (2r), 30.123 (6r), and 30.20 (1r), Wis. Stats., authorize such an exception.

Response: If the Department does not have sufficient information to make an exemption decision, it is not feasible for it to determine if a project is eligible for an exemption or not. This may result in the Department requiring a general permit or individual permit for the project or place a stakeholder at a higher risk for regulatory noncompliance for a project that may have been determined to be exempt if the appropriate information was supplied. Having a reasonable opportunity to request additional information helps protect both the Department and stakeholder from burdensome regulatory process due to a lack of information. If the Department does not have the opportunity to obtain appropriate information to determine a project is exempt, it must deny the request and stakeholders would need to submit a new request at their own expense once additional information is available. This puts additional administrative burden on the project proponent. Modifications were made to this section to clarify that the department will make an exemption determination within the 15-day window, but will allow a project proponent the opportunity to provide the necessary additional information to support the exemption request.

Comment 5: Proposed s. NR 300.04 (7) instead appears to authorize the Department to require a permit in lieu of any exemption in subch. II of ch. 30, Wis. Stats., on the basis that a proposed activity does not meet an “eligibility standard prescribed in statute or rule”, and states that, in doing so, the Department “may rely” on an inspection. Because it allows the Department to require a permit in lieu of exemption for all rather than only

some exemptions, on a broader basis than the statutes allow, and with a voluntary rather than mandatory inspection, that provision appears to exceed the Department statutory authority. The Department should explain its authority for the provision in greater detail.

Response: The department is authorized to require permits in lieu of the exemptions under ss. 30.12(1g), 30.123(6)(d) and (f), and 30.20(1g), Wis. Stats. The department must have visited the site and made specific determinations in order to require a permit for an otherwise exempt activity. The proposed rule does not alter this requirement, but instead allows the department to rely on past site visits to meet this requirement. This section and s. NR 300.04(2) have been amended to clarify the scope of otherwise exempt activities for which the department may require a permit in lieu of an exemption. The department is not required to visit a site to determine that an activity is not eligible for exemption on the basis that eligibility standards prescribed in statute or rule are not met. Sections 30.12(1), 30.123(2) and 30.20(1), Wis. Stats., require a permit to conduct an activity that is not exempt; the department is not altering this requirement.

Comment 6: The Department should review the proposed provisions relating to wetland exemptions to ensure they are authorized.

Response: The Department updated s. NR 300.05(1) to ensure that it appropriate aligned with statutory exemptions specified in s. 281.36, Wis. Stats. Specifically, the Department reformatted and updated s. NR 300.05(1) to ensure that the provisions in s. 281.36(5), Wis. Stats., only apply to the exemptions specified in s. 281.36(4), Wis. Stats. Pursuant to s. 281.36(6), Wis. Stats., the Department also has the authority to promulgate rules to incorporate any applicable federal law or interpretations into rule. Federal regulation 33 CFR § 323.4 is applicable to wetland exemptions specified in s. 281.36(4), Wis. Stats. Pursuant to 33 CFR § 323.4(c):

[A] discharge of dredged or fill material must have a permit if it is part of an activity whose purpose is to convert an area of the waters of the United States into a use to which it was not previously subject, where the flow or circulation of waters of the United States may be impaired or the reach of such waters reduced. Where the proposed discharge will result in significant discernible alterations to flow or circulation, the presumption is that flow or circulation may be impaired by such alteration. For example, a permit will be required for the conversion of a cypress swamp to some other use or the conversion of a wetland from silvicultural to agricultural use when there is a discharge of dredged or fill material into waters of the United States in conjunction with construction of dikes, drainage ditches or other works or structures used to effect such conversion. A conversion of a section 404 wetland to a non-wetland is a change in use of an area of waters of the United States. A discharge which elevates the bottom of waters of the United States without converting it to dry land does not thereby reduce the reach of, but may alter the flow or circulation of, waters of the United States.

Section NR 300.05(1) was updated to more specifically align with this and other federal rule language specified in 33 CFR § 323.4. The Department did not make additional changes to s. NR 300.05 after confirming that the requirements in this section are authorized under ss. 227.11(2)(a) and 281.36, Wis. Stats.

Comment 7: In s. NR 300.06, it appears that the Department may have applied certain procedures applicable to wetland general permits to general permits issued under ch. 30, Wis. Stats. For example, the statutes allow the Department to temporarily toll the 30-day review period for wetland general permits based on adverse weather, but ch. 30, Stats., does not appear to provide analogous authority to do so.

Response: The Department is authorized under s. 30.206(3)(a), Wis. Stats., to request additional information to determine whether a proposed activity is authorized by a general permit. If the department makes a request for additional information, the 30-day period is tolled until the date the department receives the information. The

Department has modified s. NR 300.06(4)(e) to clarify that the Department may request site-specific information as part of its request for additional information.

Comment 8: The Department should more specifically explain its authority to provide for the dismissal of a person's request after 30 days under s. 300.06 (4) (e) 3. or after 45 days under s. NR 300.07 (4) (a) (6).

Response: Sections NR 300.06(4)(e)3. and 300.07(4)(a)6. state that the Department may dismiss the application after 30 or 45 days, respectively. This is not a prescriptive requirement. In addition, the Department has authority under ss. 227.11(2)(a) and 281.36, Wis. Stats., to promulgate rules facilitating efficient application processing, including the ability to dismiss permit applications for failure to provide information necessary to evaluate the application. Under s. 281.36(3)(h)1., 3., and (3m)(d), Wis. Stats., the Department may request additional information regarding an application, and application review will not proceed until the applicant has provided all requested information. Having a general timeframe in administrative code helps set expectations for both applicants and the Department. While many applicants seek to provide information in a timely fashion, some applicants have changes in funding, project scope, or timelines which can drastically extend the permitting process. The risk of removing this general timeline is that stakeholders may feel that their application was arbitrarily or capriciously dismissed. Having a general expectation helps provide transparency in the process, while also giving flexibility for project-specific timelines and needs. No changes were made based on this comment.

Final Regulatory Flexibility Analysis

The proposed rule results in fee increases for small businesses that wish to pursue a project in waterways or wetland that require a permit or approval. The proposed rule may also impact small businesses that request department staff to complete or confirm an ordinary high water mark or navigability determination. These costs are anticipated to have a minimal impact on small businesses of \$24,000 annually. Implementation of the proposed rule will reflect current statutes, standards, and procedures for administration of waterway and wetland permits and exemptions requests, waterway services requests, wetland identification and mapping requests, and program enforcement. The proposed rule implements statutory standards that apply to all applicants. In addition, the deadlines in the rule are either driven by statute or provide the opportunity for applicants to determine an alternative deadline with the department. Small businesses will have the opportunity to seek alternative deadlines where the department has discretion to provide flexibility.

Response to Small Business Regulatory Review Board Report

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