

STATEMENT OF SCOPE

Department of Natural Resources

Rule No.: WY-18-15

Relating to: Repeal and recreate Wis. Adm. Code chapters:
NR 190 Lake Management Planning Grants, NR 191 Lake Protection and
Classification Grants, NR 192 Lake Monitoring Contracts and Citizen Lake
Monitoring Network, NR 195 River Protection Grants, & NR 198 Aquatic Invasive
Species Prevention and Control Grants

Rule Type: Permanent

1. Finding/nature of emergency (Emergency Rule only):

This action will result in a permanent rule.

2. Detailed description of the objective of the proposed rule:

The Bureaus of Water Quality and Community Financial Assistance propose to repeal 5 related administrative code chapters that govern 3 cost-sharing grant programs and recreate one consolidated code chapter. The existing grant programs: Lake Protection, River Protection, and Aquatic Invasive Species (AIS) - are authorized by ss. 281.68, 281.69, 281.70, 281.71, 281.72, and 23.22 (2) (c), Wis. Stats., and administered under chs. NR 190, 191, 192, 195, and 198, Wis. Admin. Codes.

The resulting code chapter will govern a comprehensive surface water grant program. It will establish and clarify policies to improve customer service and satisfaction, improve administrative consistency and efficiency, and create better and more cost-effective environmental outcomes that serve local needs and advance Department management objectives for state surface waters. Some of the proposed changes will implement recommendations from three Lean Six Sigma projects the Department completed to streamline the application process and create administrative efficiencies.

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, conduct studies, and develop management plans, and (2) Management projects to protect and improve water quality and aquatic habitat and prevent and control AIS.

The statutes and current administrative codes for these grant programs have evolved incrementally over 26 years and currently provide over \$6 million a year for locally-led surface water planning and management. Appropriations for all 3 grant programs come from the Water Resources Account of the Conservation Fund (funded by motor boat gas tax revenues). The Department historically has tried to be consistent when creating and revising these rules, but the proposed consolidated rule will be the first fully comprehensive review and update.

The recreated rule also will update citations, references, and notes to appropriate statutes and administrative codes and include other housekeeping changes. Additional rule changes reasonably related to those discussed here also may be pursued.

3. Description of existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

In consolidating 5 codes, common elements will be merged and revised to establish consistent policies for all grants within statutory limits, allow greater flexibility for use of grant funds, and streamline administrative processes. Affected code provisions will include: purpose, applicability, sponsor eligibility, application requirements, and sponsor accountability policies regarding reporting, reimbursement, recordkeeping, purchasing, and audit requirements. The consolidated code will include new application deadlines for some grant types. The Bureaus intend to thoroughly engage their customers in the drafting process to ensure the final product codifies sound, workable policy.

Proposed specific provisions to ensure better and more cost-effective environmental outcomes include:

A. Grant payment provisions include cost-share rates and eligible and ineligible costs, and establishes the value of in-kind donated labor, supplies, services, and equipment that grantees may use as matching value. The different programs have varied maximum state cost-share rates (67% to 75%) and maximum awards (\$3,000 to \$200,000), and Lake Planning grants have a 'lifetime' cap of \$100,000 per lake. The consolidated code will adjust and establish consistent cost share rates and maximum grant awards across programs to the extent possible. The consolidated code will use past program experience to set reasonable maximum costs for common activities, require bidding for some services, and propose varied cost-share rates for lower priority or routine activities to assure efficient use of state grant funds.

B. Grant product or deliverable provisions vary, but all programs require a final report describing project results. Existing codes do not specify the format or content of reports and other associated deliverables, which can result in inconsistent and less useful products. The consolidated code will clarify required grant deliverables and specify the format and content for studies, plans and final reports. These clarifications will facilitate efficient project completion and grant close-out and improve accountability and grant product utility.

C. Eligible and ineligible activity provisions generally describe the types of activities a project may include, with considerable overlap among the grant types. For some activities, the methods to be used are not clearly identified. The consolidated code will include required protocols and standard methods for the collection and assessment of data to assure consistent and comparable information is generated. Protocols developed in recent years will be codified.

D. Minimum training requirements will include performance expectations for volunteers, contractors, and service providers that conduct grant work. These provisions do not exist in current codes. Codifying minimum requirements will assure that grant participants possess the skills to successfully plan and manage projects consistent with state and federal water management policy.

E. Priorities and criteria for project selection provisions apply statewide and result in one prioritized list of applications for each grant type. The consolidated code will update, clarify, and integrate priorities and selection criteria across all grant types and consistently apply public access requirements for project eligibility as well as for priority setting. Management activities that address prohibited species identified in ch. NR 40, Wis. Adm. Code, will be designated as higher priorities.

F. Management Planning is a component of all 3 grant programs and recommendations in Department-approved plans are eligible for Management grants. Existing Lakes and AIS grant codes list the elements that must be included in a management plan and describe the approval process, but the River grant code does not. The consolidated code will create an integrated planning program with basic streamlined requirements for all management plans to assure consistency,

comparability, and compliance with state and federal guidelines. The plan approval processes will be streamlined and policies will be created to accommodate project phasing. These changes will make the programs more efficient and make sponsors eligible for a wider range of funding.

G. Management grants implement projects to protect and restore water quality and aquatic habitat and control AIS. Management grants allow a sponsor to implement recommendations in an approved management plan. The consolidated code should allow sponsors to use a single approved plan to access funds from Lake, River, and AIS programs, as appropriate. The consolidated code will establish policies that describe best management practices and cost-control measures for common management activities.

H. AIS Maintenance and Containment provisions provide limited after-the-fact financial reimbursement to lake organizations managing an AIS population, usually Eurasian watermilfoil, under a Department–approved plan. Current code limits reimbursement to only the costs of an aquatic plant management permit issued under ch. NR 107 or NR 109, Wis. Adm. Code. The consolidated code will expand eligible activities to include reimbursement for some control, monitoring, planning and prevention expenses. Proposed requirements for this subprogram will distinguish between managing to maintain and contain AIS versus implementing large-scale control projects to try to substantially reduce or eliminate large AIS populations.

I. Lake Monitoring Contracts and Citizen Lake Monitoring Network provisions allow the Department to award contracts to support a network of citizen volunteers who monitor lakes. The current ch. NR 192 establishes and describes the network and how contracts can be used. The consolidated code will implement the enabling legislation enacted in 2009 (s. 281.68(3)(bg), Wis. Stats.) that allow contracts to provide support for technical assistance to sponsors of AIS grants.

Analysis of Policy Alternatives:

The updates and changes described above are needed to make surface water grants and contracts consistent with current Wis. Stats. and recently developed streamlining practices. Requests for variances may increase to allow current practice that varies from existing code. Failure to add streamlining policies into the consolidated code would increase customer dissatisfaction and result in the program continuing to operate in a way that does not reflect contemporary surface water management needs and Department priorities.

4. Detailed explanation of statutory authority for the rule :

Section 281.68 (3), Wis. Stats., directs the Department to develop rules to administer a lake management planning grant and contract program to provide information and education on the use of lakes and lake ecosystems and water and ecosystem quality, improve water quality assessment, and develop plans to prevent pollution and protect and improve lakes.

Section 281.69 (3), Wis. Stats., directs the Department to develop rules for a lake management grant program that will improve or protect lakes and lake ecosystems quality, classify lakes by use, and implement protection activities for the lakes based on their classification.

Section 281.70 (2), Wis. Stats., directs the Department to develop rules for a river protection grant program to provide grants for planning and management projects to protect or improve the ways rivers are used, the quality of water in rivers and riverine ecosystems, and/or the fish populations, aquatic life or fish habitat in rivers.

Section 23.22 (2) (c), Wis. Stats., directs the Department to develop rules for a grant program to control invasive species that specifically includes education and inspection activities at boat landings.

Proposed changes are to a voluntary program so no federal act/regulation or judicial decision authority is affected.

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule :

2800 hours for developing rule content
1200 hours for rulemaking

6. List with description of all entities that may be affected by the proposed rule :

Grant applicants: Units of local government, Wisconsin tribes, lake and river organizations, and nonprofit organizations will benefit from improved rule clarity and streamlining of grant processes.

Business/Industry: Environmental consultants and service providers that work on lake, river and AIS projects will benefit from improved rule clarity on roles and expectations.

State Government: The proposed consolidated code will enable Department staff to gain efficiencies in several internal processes, allowing state funds to be used more economically.

Public: Lake/river property owners and users, including boaters and sportsmen, benefit from grant funded projects that improve the water quality and aquatic habitats of the surface waters of Wisconsin.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule :

There is no direct comparison with federal regulation. These are non-regulatory programs. Proposed changes are intended to assist the Department in implementing the goals of the federal Clean Water Act and US Fish and Wildlife Service (USFWS) aquatic invasive species regulations. Under plans filed with the US Environmental Protection Agency (USEPA) and USFWS, federal funding received by the Department may be awarded through these grants and state funds awarded through these programs may count as state match to federal funds the Department receives.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

The Department believes the economic impact of the consolidated rule is at level 3 – little to no economic impact is expected. The impact of the consolidated code will be positive for local organizations that protect or improve surface waters of Wisconsin. Small businesses will be benefited by the proposed changes as grant awards provide consulting opportunities for lake, river, and AIS service providers. Local economies will benefit because improved water quality and decreased aquatic invasive species could result in increased visitors and visitor spending for lodging, meals, fuel, rental of recreational vehicles, and other expenditures. If the grant funds were not available, many of the proposed protection and restoration activities would not be completed due to lack of local funding for implementation.

The lake monitoring contracts and Citizen Lake Monitoring Network are voluntary programs that provide contracts to coordinate citizen-led monitoring. Small business is not directly affected by the proposed consolidated code, though businesses may be benefited by increased opportunities to conduct work and sell goods and services in support of the programs. Therefore, the initial regulatory flexibility analysis will not address rule revisions related to lake monitoring contracts.

9. Anticipated number, month and locations of public hearings:

The Department anticipates holding up to 5 public hearings in summer 2017, most likely in Madison, Stevens Point, Rhinelander, Spooner, and Waukesha. Hearings may be held using teleconference technology. The Department will hold hearings to provide an overview of the consolidated code that will

replace chs. NR 190, 191, 192, 195, and 198, Wis. Adm. Code, and receive input from affected parties around the state.

Contact Person:

Shelly Thomsen

Lakes & Rivers Team Leader

Bureau of Water Quality

Wisconsin Department of Natural Resources

(608) 266-0502

shelly.thomsen@wisconsin.gov