

STATEMENT OF SCOPE

Department of Natural Resources

Rule No.: CF 12-19

Relating to: Clean Water Fund Program, Ch. NR 162, Wis. Adm. Code

Rule Type: Permanent

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

The rule will be proposed as a permanent rule.

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

Objective 1: To update areas of ch. NR 162 that are either: (a) no longer in line with federal regulations, or (b) need efficiency, accuracy, or clarity changes.

Objective 2: To update the code to reflect statutory changes. Revisions to Wis. Stats. as part of the 2015-17 Biennial Budget (2015 Wis. Act 55) took effect on the same day that previous revisions to ch. NR 162 became effective, causing some parts of the code to be obsolete on the day it was published.

Objective 3: To codify new policies and procedures related to streamlining the Clean Water Fund Program (CWFP) loan processes.

Objective 4: To lay the groundwork for implementing more innovative funding mechanisms to assist municipalities in financing non-traditional projects and some of DNR's high priorities, such as reducing phosphorus in watersheds.

Additional improvements to ch. NR 162 may be identified by the Advisory Committees that will be convened to assist in the rule revision process.

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

A. Existing policies relevant to the rule

Revisions to ch. NR 162 must maintain compliance with the following existing federal requirements, but the revised rule may include minor changes related to these requirements:

- Comply with all federal crosscutting authorities and require loan recipients to comply with crosscutters. Crosscutting authorities include laws and Executive Orders such as the Davis-Bacon Act, Archaeological and Historic Preservation Act, Safe Drinking Water Act, Endangered Species Act, and the National Historic Preservation Act.
- Require borrowers to meet requirements regarding fiscal sustainability plans, the use of American iron and steel, federal wage rates, and the solicitation of disadvantaged business enterprises (DBEs) for participation in CWFPP projects.
- Provide a specified amount of financial assistance for projects meeting the federal Green Project Reserve requirement.

B. New Policies Proposed to be Included in the Revised Rule

Through discussions with the CWFPP's partners, customers, and Advisory Committees, new policies will be identified for inclusion into ch NR 162, including some policies related to financing projects that are non-traditional. DNR may propose new funding mechanisms for adaptive management and water quality trading, and possibly other types of non-traditional wastewater and storm water projects.

Many of the existing policies in ch. NR 162 are based on federal requirements that continue to evolve. For example, the federal government expanded the maximum loan term for projects funded through the CWFPP. As a result, s. 281.59(9)(ag), Wis. Stats., was created to allow the CWFPP to establish a longer loan term and the current 20-year maximum term. The new rule may include details regarding the implementation of a 30-year term.

C. Analysis of Policy Alternatives

One alternative to handling federal and state law changes through code revision is to use the CWFPP's annual Intended Use Plan for our federal capitalization grant to propose new policies. This alternative leaves customers wondering what changes are coming for the next financing year and is less vetted than a code revision.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

Section 281.58(2), Wis. Stats., contains the statutory authority for the Department of Natural Resources to promulgate rules for administration of the CWFPP.

The Environmental Improvement Fund, which includes the CWFPP is administered cooperatively by the Wisconsin DNR and Department of Administration (DOA). Revisions to ch. NR 162 must also be coordinated with both ss. 281.58 and 281.59, Wis. Stats., to avoid conflict with these statutes and DOA policies and procedures.

Clean Water State Revolving Funds, which is what Wisconsin's CWFPP is, are authorized by and administered under the Federal Water Pollution Control Act, 33 U.S. Code §§1250 et seq., as amended.

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

The program estimates that approximately 750 hours of existing staff time will be needed to complete the rule revision process. This time includes drafting rule language, holding the public hearing, and providing information to the Natural Resources Board and the legislature.

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

- Applicants for CWFPP funding – Wisconsin local governmental units (cities, towns, villages, sanitary districts, lake rehab & protection districts, metropolitan sewerage districts, counties, any federally recognized American Indian tribe or band in this state).
- Bond counsels – Private attorneys hired by applicants to prepare municipal bond documents for CWFPP loan closings.
- Construction contractors & subcontractors – Awarded bids by applicants to construct necessary infrastructure projects; must follow certain program requirements, such as paying Davis-Bacon wage rates and soliciting and reporting utilization of disadvantaged business enterprises.
- Consulting engineers – Hired by applicants to plan, design, and conduct bidding processes for construction projects, oversee construction, and coordinate various players in the projects, including financial assistance agencies.
- Financial advisors – Hired by applicants to advise them on best financial options for interim financing and permanent project financing.
- Municipal attorneys – Applicant staff that prepare statements required by the CWFPP for proof of land ownership and provide legal advice related to other loan related documents and issues.
- Wisconsin DOT Regional Offices and Division of Transportation System Development – Provides bidding and contract documentation to the CWFPP for projects let by DOT, and works cooperatively with the CWFPP to monitor Davis-Bacon compliance without agency duplication of effort.
- US Department of Agriculture, Rural Development (Wisconsin) – Works cooperatively with the CWFPP to provide special funding packages for municipalities that need assistance from more than one funding agency on a project.

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:

Clean water state revolving loan programs in each state must comply with the Federal Water Pollution Control Act, as amended (33 U.S. Code §§1250 et seq.), EPA Guidelines, and EPA grant conditions specific to each annual capitalization grant the state receives. Our current statutes already include the major requirements for the state revolving fund. Chapter NR 162 codifies the implementation of the federal regulations and state statutes.

We would like to have language in ch. NR 162 that generally reflects the federal requirements with which applicants must comply but leave room for shifting requirements. While the CWFPP is not heavily regulated, guidelines are prescribed by the US EPA. The guidelines usually allow flexibility for each state to establish how they will implement the laws governing the State Revolving Fund programs in their own state.

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

Revisions to ch. NR 162 would likely have a minor positive impact on small businesses. Some revisions will help streamline processes and enhance the efficiency of funding municipal infrastructure projects, which will allow engineering firms to spend less time preparing documents for project funding.

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

The Department anticipates holding one public hearing via webcast in the month of July 2021. The hearing would be available to anyone with access to the Internet.

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Preston D. Cole, Secretary

Date Submitted