

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

<p>1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected</p>	<p>2. Date 10/5/2021</p>
<p>3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) NR 300, Administration, Procedures and Enforcement of the Wetland and Waterway Permit Program, WT-22-19</p>	
<p>4. Subject Administration, Procedures and Enforcement of the Wetland and Waterway Permit Program</p>	
<p>5. Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input checked="" type="checkbox"/> SEG <input type="checkbox"/> SEG-S</p>	<p>6. Chapter 20, Stats. Appropriations Affected</p>
<p>7. Fiscal Effect of Implementing the Rule <input type="checkbox"/> No Fiscal Effect <input checked="" type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Could Absorb Within Agency's Budget</p>	
<p>8. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy <input checked="" type="checkbox"/> Specific Businesses/Sectors <input checked="" type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input checked="" type="checkbox"/> Small Businesses (if checked, complete Attachment A)</p>	
<p>9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$239,050 annually</p>	
<p>10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	
<p>11. Policy Problem Addressed by the Rule Current chs. NR 300, 301, 305, and 310 have outdated language and are missing administrative and procedural steps for Waterways Program activities. This rule would establish procedures, timelines, and fees for permitting, exemptions, and other regulatory determinations in the Program. The department would align administrative procedures with current statutes and process language redundant with statute would be repealed. This rule also proposes to adjust fees to reflect costs incurred by the Wisconsin Department of Natural Resources to conduct permit reviews consistent with ch. 30 and s. 281.36, Wis. Stat. Adjustments for general permit and some individual permit costs are based solely on inflation. Individual permit applications and approvals for bulkhead line/lakebed lease, marinas, water withdrawals, and dredging projects are the most complex and time consuming waterway reviews which is reflected in the proposed adjustment from \$600 to \$900 fee for these activities. Costs for wetland individual permits in s. 281.36, are adjusted from \$800 to \$1700 to reflect mitigation review and approval decisions and travel time for mitigation and permit decisions. This rule also proposes the creation of new fees for stakeholders that request the department to complete a navigability determination or an ordinary high water mark determination outside of the permit or compliance process.</p>	
<p>12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments. Entities that may have an interest in the economic impacts of the proposed rule include the Wisconsin Realtor's Association, members of the Wetland Study Council, the Small Business Environmental Council, and Wisconsin Manufacturers and Commerce. The department intends to contact all of these entities during the economic impact analysis comment period via email or phone.</p>	
<p>13. Identify the Local Governmental Units that Participated in the Development of this EIA. The department intends to notify the League of Wisconsin Municipalities, the Wisconsin Towns Association, and the Wisconsin Counties Association so that counties and other local government units will be consulted as part of the solicitation process via email or phone.</p>	
<p>14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local</p>	

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Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

The expenses incurred by the department to process waterway and wetland permits and approvals have significantly increased since they were enacted in 2011 Act 118. Fee increases are necessary to account for inflation, travel costs, and application mitigation review and approval decisions in order to provide program funding to implement statutory requirements in ch. 30, and s. 281.36, Wis. Stats., and Clean Water Act Section 401.

2011 Act 118 specified the fee structure for waterway and wetland permits and approvals in statute. This Act also provided the department the ability to adjust the fees through rulemaking based on costs. This rulemaking will update waterway and wetland fees for inflation for the following permit and approval types: wetland general permits; waterway structure general and individual permits; waterway enlargement general and individual permits; dredging general permits and water quality certification decisions. This rule also will update the fee structure for the following waterway and wetland permit and approval types to reflect inflation, travel costs and applicable mitigation processing costs: wetland individual permits; bulkhead line/lakebed lease approvals; marina individual permits; water withdrawal permits; stream realignment permits; and dredging individual permits.

The proposed rule also recommends fees be created for navigability determinations and ordinary high water mark determinations for private entities that want this information and are not pursuing a permit or engaged in a compliance issue with WDNR. This is a voluntary service only and is not a requirement of the permit process.

(A) Economic Impact on Specific Businesses, Business Sectors

This rulemaking will only impact entities that wish to pursue a project that requires a waterway or wetland permit or approval. Private businesses and municipalities currently pay an annual estimate of \$137,000 on 274 of wetland general permits (GPs); \$187,500 on 625 waterway GPs; \$85,600 on 107 of wetland individual permits (IPs), and \$247,200 on 412 waterway IPs. The proposed rule and new fee structure (see table) would result in an additional \$27,400 for wetland GPs, \$31,250 for waterway GPs, \$96,300 for wetland IPs, \$73,050 for waterway IPs, and \$1,050 for water quality certification decisions. It is also estimated that specific business will request approximately 50 ordinary high water mark and navigability confirmations a year and 25 ordinary high watery mark and navigability determinations a year. This would result in an estimated \$10,000 in additional costs to the business sector.

(B) Economic Impacts on Local Governments, Utility Rate Payers and Public Entities

The proposed rule and new fee structure would not result in a change to the fee exemption structure for waterway projects that have state or federal funding or for wetland projects that are conducted by a state or federal agency. For projects that require a fee (see table) this rulemaking is estimated to result in an additional estimated \$4,000 for wetland GPs, \$3,000 for waterway GPs, \$9,000 for wetland IPs and \$12,600 for waterway IPs. This estimate is based on the estimated number of local government projects that require a fee: 40 wetland GPs, 60 waterway GPs, and 60 waterway IPs. Because local governments can complete their own navigability and ordinary high water mark determinations, there is no estimated fiscal impact for the new fee for these services.

(C) State Economy

The department does not anticipate negative impacts to the state's economy.

(D) Fiscal Impacts:

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Under the proposed changes to fee structure for permits, exemptions, and services provided, the DNR Waterways Program would receive an additional \$239,050 annually for program operations cost.

Total Compliance Costs:

\$229,050 for all waterway and wetland approvals annually

\$10,000 for users of all ordinary high water mark and navigability services annually

Stats	Fee Type	Current Fee	Proposed	Current Fee, Adjusted for Inflation	Average Number of Entities per Year	Average Annual Compliance Cost	Proposed Annual Compliance Cost	Change In Annual Compliance Cost
281.36	Wetland GP	500	600	619.83	274	137,000	164,400	27,400
281.36	Wetland IP	800	1,700	991.73	107	85,600	181,900	96,300
30.11	Bulkhead line/lakebed lease	600	900	743.8	1	600	900	300
30.12	Structures GP	300	350	371.9	200	60,000	70,000	10,000
30.12	Structures IP	600	750	743.8	255	153,000	191,250	38,250
30.1335	Marina IP	600	900	743.8	1	600	900	300
30.18	Withdrawal IP	600	900	743.8	1	600	900	300
30.19	Enlargement GP	300	350	371.9	103	30,900	36,050	5,150
30.19	Enlargement IP	600	750	743.8	37	22,200	27,750	5,550
30.195	Realignment IP	600	900	743.8	11	6,600	9,900	3,300
30.2	Dredging GP excluding GP20	300	350	371.9	101	30,300	35,350	5,050
30.2	Dredging IP	600	900	743.8	61	36,600	54,900	18,300
30.206	Other Waterway GPs	300	350	371.9	221	66,300	77,350	11,050
30.208	Other Waterway IPs	600	750	743.8	45	27,000	33,750	6,750
	WQC	600	750	743.8	7	4,200	5,250	1,050
	Declaratory ruling	800	800	991.73	0	0	0	0
						<i>Total Predicted Change for permits and approvals:</i>		229,050

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Proposed Serves	Proposed Fee	Estimated Service requests	Costs
OHWM determination	\$200	15	\$3,000
Navigability determination	\$200	10	\$2,000
OHWM confirmation	\$100	30	\$3,000
Navigability confirmation	\$100	20	\$2,000
		<i>Total Predicted Costs for OHWM and Navigability Services:</i>	\$10,000

15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

Implementation of the proposed rule will reflect current statutes, standards, and procedures for administration of waterway and wetland permits and exemptions requests, waterways services requests, wetland identification and mapping requests, and program enforcement.

Alternatively, if the revised rule is not promulgated, insufficient program revenue may be available to meet the requirements of ch. 30 and s. 281.36, Wis. Stats.

16. Long Range Implications of Implementing the Rule

The long range implications of the rule are the same as the short range implications.

17. Compare With Approaches Being Used by Federal Government

The USACE - St. Paul District regulates waterway and wetland impacts under the Clean Water Act s. 404. This rule proposal is intended to bring Waterways Program administrative procedures in line with the permitting program as much as is practicable given statutory requirements. The EPA regulates water quality certification under the Clean Water Act s. 401. This rule update aims to provide consistency with recent changes to the federal water quality certification process.

18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Illinois Administrative Code 17, 1090 regulates exemption and permitting for state wetlands; Admin Code 3704 regulates public waters permitting and fees are tied annually to Consumer Price Index inflation rates. Ill. Admin Code 3702 provides the process for dam regulations.

Iowa relies on the federal water quality certification program for wetland regulations for Outstanding State Waters. Iowa does not have similar administrative code for a waterways and wetland program.

Michigan Rule 281.1300 regulates dam permits and fees, while 281.10 regulates permitting for inland lakes and streams, and 281.900 provides the administrative framework for wetland permitting and identification services.

Minnesota Chapter 8420 provides comprehensive regulations for wetland permitting, including local government roles and responsibilities, mitigation requirements, and enforcement procedures. MN Chapter 6115 regulates public waterways permitting and exemptions, including dam projects.

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19. Contact Name

Amanda Minks

20. Contact Phone Number

608-220-0368

This document can be made available in alternate formats to individuals with disabilities upon request.

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ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

The proposed rule results in fee increases for small business 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 want department staff to complete or confirm an ordinary high water mark or navigability determination.

Based on permit data collected from 2017-2020, it is estimated that approximately 10% of fee revenue is generated from small business based on the number of applications that needed to pay a fee and that were associated with an organization. This means that the total compliance cost increase to small business permittees would be approximately \$24,000.

2. Summary of the data sources used to measure the Rule's impact on Small Businesses
DNR Waterways Program database permit data over 2017-2020

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

The revised rule clarifies the administrative processes for waterways and wetland permit review, providing clear expectations for permittees with regard to application requirements, timelines, public notice, and decisions. The rule also outlines how to request and use department wetland identification, confirmation, and mapping services so that stakeholders can conveniently use these services.

5. Describe the Rule's Enforcement Provisions

Wetland and waterways permit violations are subject to enforcement in chs. 23, 30, 31, 281, and 283, Wis. Stats., and permittees and exempt applicants shall allow reasonable access to the department for site inspections.

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes No
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