

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
REPEALING, RENUMBERING, AMENDING, AND CREATING RULES

The Wisconsin Natural Resources Board proposes an order to repeal NR 192, to renumber and amend NR 190.15(2) to (4), to amend NR 190.002 (intro.), 190.003(2) and (4), 190.004(1) to (3), (5), (8), (10) and (11), 190.005(1)(e)2 and (2)(b), 190.006 (intro.), 190.02 (intro.), 190.03 (intro.), 190.04(1), 190.05(3), 190.07(1) and (4)(c) and (d), 190.08(5), 190.13(intro.), 190.15(1)(note)4., 190.16(1), 190.17(1), and create NR 190.003(9), 190.15(2) and 190.19(intro.) relating to lake management planning grants.

FH-16-03

Analysis Prepared by the Department of Natural Resources

Statutory authority: ss. 281.68(3) and (3m)(b), 281.69(6) and 227.11(2)(a), Stats.

Statutes interpreted: s. 281.68 and 281.69(6), Stats.

This order repeals NR 192 Lake Classification Technical Assistance Grants and makes minor changes in the eligibility and requirements for receiving applications and awarding grants under NR 190 Lake Management Planning Grants. Changes in s. 281.69(6) Stats., converted the grant making authority of NR 192 to a contract making authority. The Department believes it is unnecessary to implement a rule for this since only one contract is issued annually. Therefore, NR 192 is proposed for repeal.

NR 190 Lake Management Planning Grants provide financial assistance, 75% state cost share up to \$10,000 per grant, to lake organizations, local government and nonprofit conservation organizations for providing education, collecting and disseminating information and conducting studies used to develop lake management plans. The proposed revisions implement changes in the enabling statute, s. 281.68, Stats., that allow qualified school districts to be eligible sponsors and allows the department to set the range of dues the qualified lake associations may charge and be eligible sponsors. In addition the opportunity was taken to improve clarity through the use of consistent language and make housekeeping changes. Other amendments include:

- Changing the value of donated labor that can be used as match from the federal minimum wage to a flat rate of \$8 per hour.
- Require that new applications for participation in the department's expanded self help citizen lake monitoring program can only be made in August.
- Specify the requirements for a complete application for large scale planning grants.
- Clarify the process for approving a recommendation in a plan as eligible for a ch. NR 191 Lake Protection Grant.

These rules effect potential sponsors of lake management activities which include lake organizations, local government, tribes, school districts and nonprofit conservation organizations. The effects are believed to be minor yet positive, by providing a broader range of eligible sponsors, making it easier for sponsors to raise their local match and improving the clarity of the rules.

The proposed rule is a type III action under NR 150, Wis. Adm. Code, and will not require an environmental assessment. Small business is not affected by the rule because grants are issued only to governmental units or nonprofit organizations. Therefore, under s. 227.114, Stats., an initial regulatory flexibility analysis is not required.

SECTION 1. NR 190.002 is amended to read:

NR 190.002 Applicability. This chapter applies to all counties, cities, towns, villages, tribes, qualified lake associations as defined in s. 281.68(1)(b), Stats., that charge an annual membership fee of not less than \$5 and not more than \$50, public inland lake protection and rehabilitation districts, and town sanitary districts and other local

governmental units as defined in ~~s. 66.299(1)(a), Stats., and s. 66.299(1)(a), Stats., s. 66.0131(1)(a), Stats., and~~ qualified nonprofit conservation organizations as defined in s. 23.0955(1), Stats., and qualified school districts as defined in s. 281.68 (3m)(c), Stats., applying for financial assistance under s. 281.68, Stats., for a planning project for a public inland lake or lakes.

Note: Under s. 281.68 (3m), Stats., to be a qualified lake association, an association shall do all of the following:

1. Demonstrate that it is incorporated under ch. 181.
2. Specify in its articles of incorporation or bylaws that a substantial purpose of its being incorporated is to support the protection or improvement of one or more inland lakes for the benefit of the general public.
3. Demonstrate that the substantial purpose of its past actions was to support the protection or improvement of one or more inland lakes for the benefit of the general public.
4. Allow to be a member any individual who for at least one month of the year resides on or within one mile of an inland lake for which the association was incorporated.
5. Allow to be a member any individual who owns real estate on or within one mile of an inland lake for which the association was incorporated.
6. Not have articles of incorporation or bylaws which limit or deny the right of any member or any class of members to vote as permitted under s. 181.072.
7. Demonstrate that it has been in existence for at least one year.
8. Demonstrate that it has at least 25 members.
9. Require payment of an annual membership fee as set by the department by rule under par. (b).

(b) For the purposes of par. (a) 9., the department shall set by rule the maximum amount and the minimum amount that may be charged as an annual membership fee.

Note: Under s. 281.68 (3m), Stats., to be a qualified school district, the board of the school district shall adopt a resolution to conduct a lake management planning project that will do all of the following:

1. Provide information or education on the use of lakes or natural lake ecosystems, on the quality of water in lakes, or on the quality of natural lake ecosystems.
2. Allow another eligible recipient of grants under this section to cooperate with the school district in the project.

SECTION 2. NR 190.003 (2) and (4) are amended to read:

NR 190.003(2) "Grant period" means the time period stated in the grant agreement during which the ~~grant recipient~~ grant recipient sponsor is eligible to expend program grant funds for a project.

(4) "Management unit" means a county, town, village, city, federally recognized Indian tribe, public inland lake protection and rehabilitation district, nonprofit conservation organizations, ~~or~~ ~~or~~ qualified lake association, as defined in s. 281.68(1)(b), Stats., or a qualified school district as defined in s. 281.68(3m)(c), Stats.

SECTION 3. NR 190.003(9) is created to read:

NR 190.003 (9) "Sponsor" means the management unit that is applying for and receiving a grant under s. 281.68, Stats., and this chapter.

SECTION 4. NR 190.004 (1) to (3), (5), (8), (10) and (11) are amended to read:

NR 190.004 (title) ~~Grantee~~ Sponsor accountability. (1) Accounting for all planning project funds shall conform to generally accepted accounting principles and practices, and shall be recorded by the ~~grant recipient~~ sponsor in a separate account. Supporting records of grant expenditures shall be maintained in sufficient detail to show that grant funds are used for the purpose for which the grant is made. All financial records, including invoices and canceled checks or bank statements, that support all planning project costs claimed by the ~~grant recipient~~ sponsor shall be maintained and available for inspection for 3 years after final payment.

(2) The ~~grant recipient~~ sponsor shall submit to the department a claim for payment on forms provided by the department within 6 months after the planning project ending date. All costs claimed for payment shall be documented and shall be consistent with the grant agreement relative to expenditures made within the grant period, within the scope of work, and within estimated costs. The ~~grant recipient~~ sponsor may request, for good cause, a grant agreement amendment for expenditures in excess of those identified as estimated costs in the grant agreement.

(3) All of the ~~grant recipient's~~ sponsor's records pertaining to the planning project are subject to post audit. ~~Claims made for payment may be adjusted by audit. Claims made for payment may be adjusted by audit.~~ Post audit occurs after the final payment and payments made for reimbursement may be adjusted by the results of post audit.

(5) Any grant provided for funding of a planning project that includes acquisition of physical or chemical data may be conditioned upon the ~~grant recipient~~ sponsor being required to implement a quality control and quality assurance plan approved by the department.

(8) No ~~applicant may receive~~ applicant may receive more than 2 planning grants per funding cycle will be awarded per lake.

(10) A grant awarded under this chapter may be terminated by the department for nonperformance of any term or condition of the grant agreement and the department may seek reimbursement of the state share previously distributed to the ~~grant recipient~~ sponsor.

(11) If the department finds that the planning project has not been satisfactorily completed by the end of the grant period, the department may seek reimbursement of the state share previously distributed to the ~~grant recipient~~ sponsor.

SECTION 5. NR 190.005(1)(e)2., and (2)(b) are amended to read:

NR 190.005(1)(e)2. The maximum value of donated labor ~~shall be equal to the prevailing federal minimum wage requirements~~ shall be equal to the prevailing federal minimum wage requirements is \$8 per hour.

(2)(b) Ordinary operating expenses of local government ~~applicants~~ sponsors, such as salaries and expenses of public officials, that are not directly related to the project.

SECTION 6. NR 190.006 is amended to read:

NR 190.006 Variances. The department may approve in writing a variance from a requirement of this chapter upon the written request of ~~an applicant~~~~an applicant~~ a sponsor if the department determines that a variance is essential to effect necessary grant actions or program objectives and where special circumstances make a variance in the best interest of the program. Before approving a variance, the department shall take into account factors such as good cause and circumstance beyond the control of the ~~applicant~~~~applicant~~ sponsor. The department may not grant variances from statutory requirements.

SECTION 7. NR 190.02 is amended to read:

NR 190.02 Applicability. This subchapter applies to all ~~applicants~~~~applicants~~ sponsors for and recipients of small-scale planning grants.

SECTION 8. NR 190.03 is amended to read:

NR 190.03 (title) Eligible ~~applicants~~~~applicants~~ sponsors. All management units are eligible ~~applicants~~~~applicants~~ sponsors for small-scale projects.

SECTION 9. NR 190.04(1) is amended to read:

NR 190.04(1) LAKE TREND MONITORING PROJECTS. Projects that collect and report chemical, biological and physical data about lake ecosystems to provide long term base line information and monitor trends in lake ecosystem health. Projects may include participation in the department's expanded self-help citizen lake monitoring program.

SECTION 10. NR 190.05(3) is amended to read:

NR 190.05 (3) The department shall receive planning project applications by February 1 and by August 1 of each year for a project to be eligible for grant awards in the subsequent 6-month period. New applications for lake trend monitoring under the department's expanded self help citizen lake monitoring program shall be received by August 1 only.

SECTION 11. NR 190.07 (1) and (4) (c) and (d) are amended to read:

NR 190.07(1) The department shall prepare or update a planning project priority list by ~~March~~~~March~~ April 1 and ~~September~~~~September~~ October 1 of each year. The planning project priority list shall include new applications received and accepted by the department under s. NR 190.05.

(4)(c) The degree to which the project will ~~assist~~~~assist~~ provide information for local decision-making and ~~provide~~~~provide~~ for the formation of goals or a strategy to protect a lake or lakes and lake ecosystems.

(d) The degree to which the project will ~~likely result in significant~~~~likely result in significant~~ contribute to the improvement in the management of a lake or lakes and lake ecosystems.

SECTION 12. NR 190.08(5) is amended to read:

NR 190.08 (5) The department may distribute up to 100% of the state share of the small-scale planning project costs based upon the estimated cost to the ~~grant recipient~~grant recipient sponsor following acceptance of the grant agreement by the ~~applicant~~applicant sponsor.

SECTION 13. NR 190.13 is amended to read:

NR 190.13 Eligible ~~applicants~~sponsors. All management units are eligible ~~applicants~~sponsors for large-scale projects.

SECTION 14. NR 190.15 (1) (note) 4., is amended to read:

NR 190.15 (1) (note) 4. Northern/Rhineland -- 107 Sutliff Ave., ~~Box 818, Box 818,~~ Rhineland 54501

SECTION 15. NR 190.15(2) to (4) are renumbered NR 190.15 (3) to (5) and NR 190.15 (3), as renumbered, is amended to read:

NR 190.15(3) If the project is proposed as a phase in the development of a multiple element plan, or when more than one grant is being proposed, the ~~applicant~~applicant sponsor shall provide a description of and schedule for all past and future phases.

SECTION 16. NR 190.15(2) is created to read:

NR 190.15(2) A complete application shall contain all of the following information:

(a) A clear description of the project's goals and objectives including a description of how the results of the project will lead to the development of a plan to protect or improve lake water quality or a lake's natural ecosystem and how they will be disseminated and made available to the public.

(b) A complete description of the project methods.

(c) An estimated itemized budget for the full costs of the project including a statement of the sponsor's capacity for financing its completion.

(d) A general time line for project completion.

(e) A signed and dated resolution from the sponsor authorizing the application and identifying a representative to act on its behalf.

(f) Identification of any other groups or management units that will be involved, their roles and their level of support for the project.

(g) A description of the existing and proposed availability of public access to, and public use of, the lake or lakes.

(h) A description of how the proposed project complements other lake management efforts and plans including local government comprehensive plans developed pursuant to s. 66.1001, Stats.

(i) Other information as may be required by the department to evaluate the project.

SECTION 17. NR 190.16(1) is amended to read:

NR 190.16 (1) Following receipt of the application, the department shall make a determination of planning project eligibility. The department may accept the application and include the project in the priority list developed under s. NR 190.17, or deny the request for funding based on consideration of ~~the factors identified in s. 281.68 (1), (1r), or (3), Stats.~~ the factors identified in s. 281.68(1), (1r), or (3), Stats. eligibility.

SECTION 18. NR 190.17(1) is amended to read:

NR 190.17(1) The department shall prepare or update a planning project priority list by ~~March~~ March-April 1 and ~~September~~ September-October 1 of each year. The planning project priority list shall include new applications received and accepted by the department under s. NR 190.05.

SECTION 19. NR 190.19 is created to read:

NR 190.19 Eligibility for lake protection grants. Upon completion of a lake planning project, the sponsor may request the department to approve recommendations made as a result of the project as eligible activities for a lake protection grant under ch. NR 191. Approval of plans for payment under this chapter does not constitute approval as a department-approved plan or approval of recommendations for project funding under ch. NR 191. The requirements and conditions for plan recommendation approval are described in s. NR 191.45(2).

SECTION 20. Chapter NR 192 is repealed.

SECTION 21. EFFECTIVE DATE. This rule shall take effect the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

SECTION 22. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on May 28, 2003.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Scott Hassett, Secretary

(SEAL)