

Report From Agency

REPORT TO LEGISLATURE NR 166 Wis. Adm. Code

Board Order No. CF-13-19
Clearinghouse Rule No. CR 22-068

Basis and Purpose of the Proposed Rule

Section 281.61 (12) (a) and (b), Wis. Stats., authorizes the department to promulgate rules necessary for the execution of its responsibilities under the Safe Drinking Water Loan Program. This program provides financial assistance to municipalities for water infrastructure projects including wells, water treatment plants, distribution systems, and storage tanks.

Chapter NR 166, Wis. Adm. Code, implements s. 281.61 (12) (a) and (b), Wis. Stats., which requires the department to promulgate rules that are necessary for the proper execution of its responsibilities under s. 281.61, Wis. Stats. This order provides the rules for municipalities and the department for all of the following:

- determining eligibility of an applicant and of a project for Safe Drinking Water Loan Program financial assistance,
- preparing and submitting a complete financial assistance application,
- processing a financial assistance application,
- documenting the costs of a project,
- preparing financial assistance agreements,
- including specific provisions in financial assistance agreements,
- following procurement laws,
- scoring and ranking projects,
- allocating available funds,
- developing and publishing project priority and funding lists,
- amending a financial assistance agreement,
- determining the amount of subsidy to be provided to a municipality for their project, and
- requesting and processing disbursement of financial assistance.

Summary of Public Comments

Economic Impact Analysis (EIA): A 14-day public comment period for the EIA was held from August 29, 2022, through September 12, 2022. The EIA states that the proposed rule “will have no economic impacts on businesses or municipalities.” No public comments were received regarding the EIA.

Public Hearings and Comments: The public comment period for the draft rule began with the posting in the administrative rules register on October 10, 2022, and ended on November 9, 2022. Public comments were received during the public comment period. One entity requested that DNR delete two requirements that are included in the proposed ch. NR 166— (1) the requirements for submission of a legal opinion regarding ownership of and/or easements for land on which the project is taking place and (2) submission of an executed intermunicipal agreement, or agreements, when two or more municipalities utilize shared or interconnected water systems and the project will serve two or more of the municipalities. Thirteen additional entities

submitted comments to support the first entity's request to delete the two requirements. No comments were received during the virtual public hearing on November 9, 2022.

Modifications Made

Rather than requiring a legal opinion for all projects, DNR will for most Safe Drinking Water Loan Program projects require the applicant to sign a certification to state that they did their due diligence in making sure they have all of the land access they need to construct and maintain for the term of the loan the project for which they receive financing. For some projects, including those projects where an applicant is purchasing land for the project or extending facilities onto land that did not previously have municipal facilities on it, the revised proposed code states that DNR may require a legal opinion. DNR removed the details of what a legal opinion must include to allow flexibility in how the applicant's attorney determines that all proper land access has been obtained for the project. Additionally, the revised proposed code states that the land ownership certification or legal opinion will not be required for portions of projects that include removal of lead service lines or galvanized pipe on private property.

Based on communication with Public Service Commission staff, DNR removed from the proposed rule the requirement that municipalities sharing drinking water facilities must submit intermunicipal agreements. DNR did retain a portion of the requirement to capture some of the important information that an intermunicipal agreement included. The applicant will have to provide a list that identifies ownership and maintenance responsibility for all major pieces of drinking water infrastructure related to its source of water and the project. If the applicant municipality is supplying water to other municipalities through a water system for which it owns the wells and/or treatment facilities, the applicant will have to include all of the infrastructure in its list that is involved in serving other municipalities.

Appearances at the Public Hearing

No appearances were made at the public hearing.

Changes to Rule Analysis and Fiscal Estimate

No changes were required after the public hearing.

Response to Legislative Council Rules Clearinghouse Report

All comments received from the Wisconsin Legislative Council Rules Clearinghouse (in the Clearinghouse Rule 22-068 Report) were in either the "Form, Style and Placement in Administrative Code" or the "Clarity, Grammar, Punctuation and Use of Plain Language" sections of the Clearinghouse Report. Multiple comments in the report are framed as a question regarding a specific part of the loan program followed by a particular option that the DNR might consider for clarity. DNR considered all questions raised and suggestions made by Clearinghouse staff and modified the proposed rule in multiple locations in response to those questions and suggestions, and DNR made all changes that were specifically requested by the Clearinghouse staff.

Final Regulatory Flexibility Analysis

The department has determined the rule will have no fiscal impact on small businesses.

Response to Small Business Regulatory Review Board Report

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