

2022-2024 Wetland Conservation Act Rulemaking

The Minnesota Board of Water and Soil Resources (BWSR) is responsible for promulgation of the Wetland Conservation Act (WCA) rules (MN Rules Chapter 8420). The current WCA rule was adopted in 2019. The 2022-2023 WCA rulemaking is a continuation of the process initiated on October 9, 2015, when a request for comments was published in the State Register. A new notice was published on January 18, 2022 that serves as the renewal of the rulemaking process. All comments received as a result of the 2015 notice are part of the rulemaking record and will be considered along with comments received in response to the 2022 notice. This document summarizes the agency's plans to update the WCA rules, including the rule development process and an approximate timeline of events.

Scope

- 1) Reconcile the rule with most statute changes from 2011, 2012, 2015, and 2017.
- 2) Improve outcomes relating to wetland replacement.
- 3) Changes identified by staff during the rulemaking process that will improve the efficiency, effectiveness, and/or outcomes of the rule.

Note that not all statute changes 2011-2017 will be addressed in this rulemaking. Some of the statute changes require additional program development work to occur prior to incorporation into rule and will be addressed in a future rulemaking effort. For the current WCA rule and a complete list of 2011-2017 WCA-related statute changes, see the WCA Rulemaking page on the BWSR website at: <https://bwsr.state.mn.us/current-wca-rulemaking>

Rulemaking Goals

To the extent possible, proposed changes should be consistent with the following general principles and goals of rulemaking:

- Consistency with statutory intent and the purpose of WCA
- Simplification
- Implementable
- Clarification
- Have a tangible result or outcome
- Improve accountability
- Minimize negative impacts to LGU workload
- Limit unintended consequences
- Balance public costs and benefits
- Seek stakeholder support
- Fairness/treat landowners consistently

Process for Rule Development

BWSR Wetlands Staff

BWSR wetlands staff will develop and propose specific rule requirements, processes, and language to implement rulemaking priorities. Staff will also be responsible for presenting and interacting with the WCA Rule Advisory Committee and technical staff, including the consideration and vetting of comments/recommendations and the development of appropriate modifications and responses.

Stakeholder Input and WCA Rule Advisory Committee

The rulemaking process will provide a forum for stakeholders to provide input and advice on proposed rule changes by establishing a WCA Rule Advisory Committee. Invited stakeholders will generally include representatives from statewide groups and organizations with an interest in the WCA rules, and will largely follow the organizations invited to participate in the 2022 Clean Water Act Section 404 Assumption report development. State and federal government staff may also be invited to participate and/or assist in presenting specific topics at select Committee meetings.

Implementation and Technical Review

In 2017, BWSR organized a group of local government staff and wetland consultants who work directly with WCA implementation and compliance to seek their input on rule topics. The results of these discussions will be presented during the WCA Rule Advisory Committee meetings. A primary focus of this effort was to vet ideas and recommendations originating from BWSR Wetlands staff and coordination with the U.S. Army Corps of Engineers. BWSR will continue to seek technical advice from local government staff and wetland consultants during this rulemaking process.

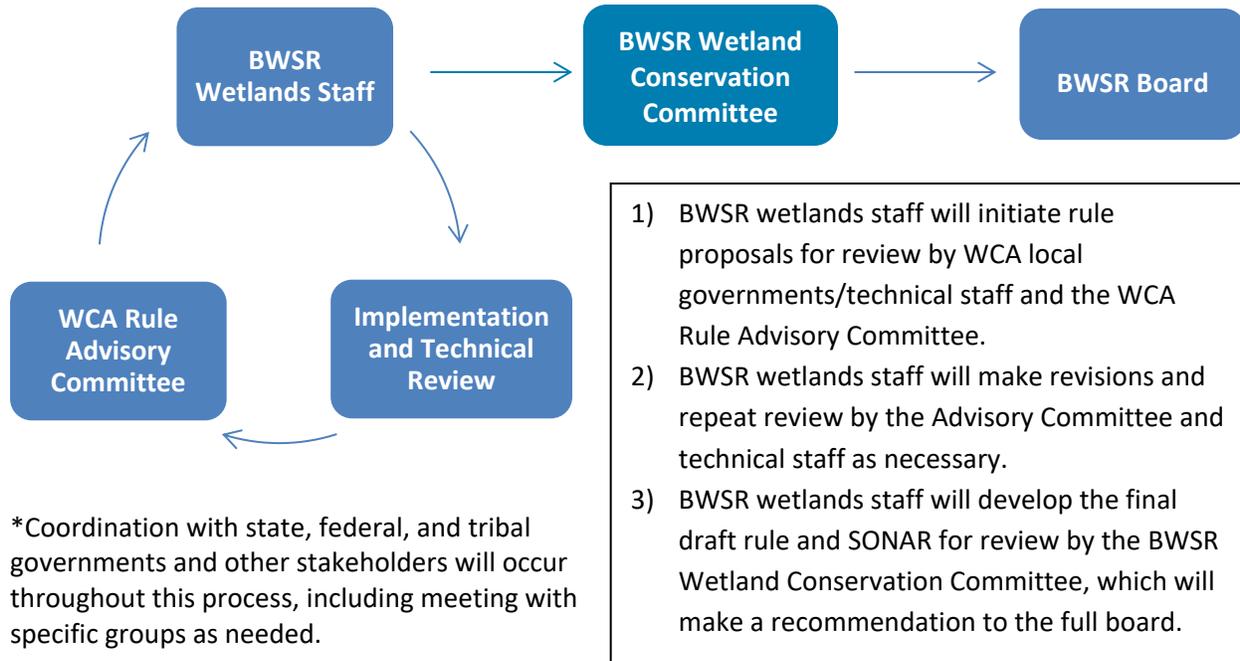
Other Stakeholders and Governments

Coordination with state, federal, and tribal governments will primarily occur outside of Stakeholder Advisory Committee meetings both through formal meetings and ad hoc discussions. In addition, a larger e-mail list of interested stakeholders will be used to share all relevant rulemaking information and provide separate opportunities to ask questions and provide input. Finally, BWSR staff will meet directly with individuals or groups with interest in the WCA rules or a specific rulemaking topic as needed throughout the rulemaking process.

BWSR Wetland Conservation Committee

The Wetland Conservation Committee of the BWSR Board will meet periodically to receive updates, review rulemaking progress, advise on specific issues, and make a recommendation to the full Board regarding adoption of the final draft rule.

Summary of Rule Development Process



General Timeline

Timeframe	Task
2015 - 2021	Program development work and interagency coordination related to rulemaking and statute changes.
Jan.-March 2022	Second official comment period (January 18, 2022 to March 19, 2022).
Summer/Fall 2022	Outreach to stakeholders, WCA Rule Advisory Committee meetings, and interagency coordination. Develop draft rule amendments and SONAR.
Winter 2023	WCA Advisory Committee Meetings to review final draft rule and SONAR.
Winter 2023	Finalize draft rule and SONAR.
April 2023	Seek Board authorization to adopt draft rule & SONAR, and to issue Dual Notice of Intent to Adopt Rules.
June 2023	Publish notice and draft rules in the State Register.
July/Aug. 2023	Hearings held if 25 or more requests are received.
Sept. 2023	If no hearing , schedule Wetland Conservation Committee and Board consideration of final rule and SONAR. Submit Governor's Final Form. If hearing , post hearing comment period, agency response, and report to Administrative Law Judge (ALJ).
Oct. 2023	If no hearing , sign Order Adopting Rules (executive director) and submit to OAH. OAH files rules with Secretary of State. Publish Notice of Adoption in St. Register. If hearing , ALJ report completed within 30 days unless extended by Chief ALJ.
Dec. 2023	If hearing , BWSR Wetland Committee review and Board authorization to adopt rules. Submit Governor's Final Form.

Jan. 2024	If hearing , sign Order Adopting Rules (executive director) and submit to OAH. OAH files rules with Secretary of State. Publish Notice of Adoption in State Register.
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Note: The above timeline is approximate and is not a comprehensive list of rulemaking requirements or related meetings. It can and will be amended to address or accommodate issues and needs identified during the rulemaking process. It does, however, roughly identify the timeframe and order of activities as currently expected.