

## 2016 ISF Rules outline

*[Sections in brackets with italicized and bold font describe legislative requirements.]*

Sections containing new legislative requirements have been expanded with rule language addressing these new regulations. Some sections have been expanded with text to reflect rule changes. Sections that are new because of these reasons are marked as (new). The remaining sections are displayed with only headings as placeholders where more details will be added later. To highlight the outline structure, main headings are numbered (1901) and sub-headings are highlighted gray.

### 1901 PURPOSE AND APPLICABILITY

Purpose.

Applicability.

### 1902 DEFINITIONS

Section Env-Wq 1902.01 7Q10

Section Env-Wq 1902.02 Affected Dam Owner

Section Env-Wq 1902.03 Affected Water User

Section Env-W q 1902.04 Aggregate Water Use

Section Env-W q 1902.05 Commissioner

Section Env-Wq 1902.07 De Minimis Amount

Section Env-W q 1902.08 Department

Section Env-Wq 1902.09 Designated River

Section Env-Wq 1902.11 Governing Body

Section Env-Wq 1902.12 Lakes Management Advisory Committee (LMAC)

Section Env-Wq 1902.13 Local River Management Advisory Committee (LRMAC)

(new) Section Env-Wq 1902.xx Protected instream flow

Section Env-Wq 1902.14 Rivers Management Advisory Committee (RMAC)

Section Env-Wq 1902.15 Segment

Section Env-Wq 1902.16 Water Management Planning Area (WMPA)

### 1903 SEQUENCE

(new) Public hearing. – The department shall hold a public hearing, in accordance with Env-C 205, no less than 60 days prior to commencing a protected instream flow study on any designated river. ***III. No less than 60 days prior to commencing a protected instream flow study on any designated river, the department shall hold a public hearing jointly with the senate committee with jurisdiction over river management issues and the house committee with jurisdiction over river management issues and provide a public comment period of 30 days. The department shall consider the public comments received before commencing the study.***

(new) The public hearing shall be held jointly with the senate committee with jurisdiction over river management issues and the house committee with jurisdiction over river management issues.

(new) The public hearing shall be held in a municipality along the designated river or segment to receive public comment.

(new) Prior to the hearing, the department shall send written notice of the hearing to, and solicit comment from, the following: (List)

(new) Prior to the hearing, the department shall issue a notice of hearing on the department's website.

(new) At the public hearing, the department shall specify a comment period which shall close at least 30 days after the hearing date, during which time the department shall accept written comments on the factors pertaining to the proposed protected instream flow study.

(new) The department shall consider the public comments received before commencing the study.

Notification to Affected Water Users and Affected Dam Owners.

(new) Creation of a stakeholder subcommittee.

Sequence. The department shall establish scientifically-supported protected instream flows prior to adoption of the water management plan for a WMPA.

#### 1904 PROCEDURE FOR ESTABLISHMENT OF PROTECTED INSTREAM FLOWS

Elements to establish protected instream flows. To establish protected instream flows:

The department shall:

- (x) Conduct a protected in stream flow study and propose protected in stream flows based on scientifically-accepted ecological methods as provided in Env-Wq 190x.xx;
- (x) Make the study available for public review; and
- (x) Hold a public hearing and receive comments on the study and the recommended protected instream flows as provided in Env-W q 190x.xx;

The commissioner shall issue a decision establishing protected instream flows for the designated river, as provided in Env-Wq 190x.xx.

Protected Instream Flow Study. The protected instream flow study shall:

(new) For each river segment designated under RSA 483: 15, identify and catalog the flow-dependent instream public uses. [*The department shall determine the protected instream flow criteria based on the requirement of flow-dependent instream public uses.*]

(new) Include an on-the-water stream survey of all flow-dependent instream public uses.

(new) Identify and document methods that are consistent with applicable designated uses and water quality standards, for establishing a protected in stream flow that conserve and protect the flow-dependent instream public uses.

Publication, Hearing, and Opportunity for Public Comment on Protected Instream Flows.

Establishment of Protected Instream Flows.

Establishment procedure

Petition for Change of an Established Protected Instream Flow.

#### 1905 PROCEDURE FOR ADOPTION OF WATER MANAGEMENT PLANS

Elements of a Water Management Plan.

Conservation Plan. – (new) Each affected water user in a WMPA that is undergoing an instream flow study per Env-Wq 1904.xx shall have a conservation plan prepared, which shall follow the water conservation rules in Env-Wq 2101.03 through Env-Wq 2101.27

Water Use Plan. - Each affected water user in a WMPA that is undergoing an instream flow study per Env-Wq 1904.xx shall have a water use plan.

(new) Use and application of the de minimis amount.

Dam Management Plan. - Each affected dam owner in a WMPA that is undergoing an instream flow study per Env-Wq 1904.xx shall have a dam management plan.

Water Management Plan Document.

The department shall prepare a water management plan document specifying the actions that will be implemented by each affected water user and affected dam operator in the WMPA to meet the protected instream flow requirements.

The department shall make the draft water management plan available for public review.

Hearing and Opportunity for Public Comment on Water Management Plans.

Adoption of Water Management Plans.

Petition for Changes to an Adopted Water Management Plan.

(new) Process for routine updates of Water Management Plans.

Changes to the Water Management Plan as a result of changes in the watershed.

## 1906 ADMINISTRATION OF WATER MANAGEMENT PLANS

Protected Instream Flows and Water Quality Criteria.

Compliance with Water Quality Standards.

(new) The established PISFs shall represent numerical translators of the narrative standards for water quality for stream flow.

Affected water users and affected dam owners who are not political subdivisions shall comply with the provisions of an adopted water management plan.

Any political subdivision that is an affected water user or affected dam owner that complies with the provisions of an adopted water management plan shall be deemed to be in compliance with the water quality standards established in RSA 485-A and Env-Wq 1700.

(new) Enforcement of Water Management Plans. Water management plans implementing instream flow protections shall be effective and enforceable upon adoption. ***[VI. Water management plans implementing instream flow protections shall be effective and enforceable upon adoption. The department shall allow a period of up to 5 years for any party subject to the instream flow program to implement the provisions of their water management plan. The department shall adopt rules, pursuant to RSA 541-A, to allow for one 5-year extension for any party who files ongoing progress reports for and is working in good faith on their water management plan but is unable to implement the provisions of their water management plan due to financial or other hardship.]***

(new) Implementation of water management plans.

Each conservation plan, water use plan and dam management plan shall have a schedule for implementation.

The department shall allow a period of up to five years to implement a conservation plan, water use plan and dam management plan. ***[The department shall allow a period of up to five years for any party subject to the instream flow program to implement the provisions of their water management plan.]***

(new) For a conservation plan, water use plan or dam management plan scheduled to be completed more than three years from the date of the adoption of the water management plan, the affected party shall submit annual progress reports to the department.

(new) Progress reports shall: (submittal deadlines, report contents)

(new) Criteria for an additional extension. The department shall allow a period of up to five years to implement a conservation plan, water use plan and dam management plan if: ***[add provisions for an additional five-year extension]***

## 1907 WAIVERS

Waivers.

The rules contained in this part are intended to apply to a variety of conditions and circumstances. It is recognized that strict compliance with all rules prescribed herein might not fit every conceivable situation. Affected persons may request a waiver of specific rules outlined in this part in accordance with paragraph (x) below.

All requests for waivers shall:

- (1) Be submitted in writing to the department; and
- (2) Include the following information:

(List)

(new) The department shall grant a waiver to the water management plan in part or in whole if:

The department finds that the alternatives proposed are at least equivalent to the requirements contained in this chapter, meet water quality standards, and are adequate to ensure that the provisions of RSA 483 :9-c are met

(new) The department finds that an affected party has demonstrated that implementing their water conservation plan, water use plan or dam management plan would have negative impacts to public health or safety or an undue financial hardship. ***[VII. The department shall adopt rules, pursuant to RSA 541-A, to allow for waivers from the provisions of a water management plan. Such rules shall specify the waiver criteria based on negative impacts to public health or safety or an undue financial hardship on a party subject to a water management plan. Should a party meet the criteria for a waiver, and notwithstanding RSA 483:9-c, VI, the department shall waive, in whole or in part, the enforceability of those components of the party's water management plan until the department amends such plan to alleviate the negative impacts to public health or safety or undue financial hardship.***

The department shall not grant any waiver that contravenes the intent of any rule, or conflicts with any statute.

The department shall issue a written response to a request for a waiver.

If the waiver is denied, the department shall specifically set forth the reason(s) for the denial.

The department shall grant a waiver for a specific time period not to exceed 10 years.

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