

**7050.0285 PROCEDURES FOR SECTION 401 CERTIFICATIONS OF INDIVIDUAL FEDERAL LICENSES AND PERMITS.**

Subpart 1. **Antidegradation procedures required.** Except as provided in part 7050.0275, the antidegradation procedures in this part apply to section 401 certifications of new, reissued, or modified individual federal licenses and permits that the commissioner anticipates will result in net increases in loading or other causes of degradation to surface waters.

Subp. 2. **Applicant's antidegradation assessment.** The applicant must provide information specified in part 7050.0280, subpart 2, to the commissioner, unless the applicant is notified that the commissioner is waiving the agency's authority to certify the federal license or permit under part 7001.1460. In addition, the applicant may propose compensatory mitigation to the extent allowed by the Clean Water Act to preserve existing uses and the level of water quality necessary to protect the existing uses when there is a physical alteration. In such cases, the applicant must provide a proposed compensatory mitigation plan that includes:

A. a description of existing uses and the level of water quality necessary to protect existing uses of the surface waters that will be physically altered;

B. a description of existing uses and the level of water quality necessary to protect existing uses of the surface waters in which mitigation will occur;

C. a description of how compensatory mitigation will establish sufficient quality and quantity of uses to preserve existing uses and the level of water quality necessary to protect existing uses;

D. a proposal for monitoring and reporting the changes in existing uses and the level of water quality necessary to protect existing uses of the surface waters in which mitigation will occur; and

E. a description of how the compensatory mitigation will be maintained.

Subp. 3. **Antidegradation review.** The commissioner shall conduct an antidegradation review based on the information provided under subpart 2 and other reliable information available to the commissioner concerning the proposed activity and other activities that cause cumulative changes in existing water quality in the surface waters. The purpose of the antidegradation review is to evaluate whether issuing the section 401 certification for the proposed activity will satisfy the antidegradation standards in part 7050.0265.

Subp. 4. **Preliminary antidegradation determination.** Based upon the review described in subpart 3, the commissioner shall prepare a written preliminary antidegradation determination as to whether the antidegradation standards described in part 7050.0265 are satisfied or can be satisfied by issuing a section 401 certification with conditions.

The preliminary antidegradation determination must be included with the commissioner's preliminary determination to issue or deny the section 401 certification according to part 7001.0100 and, if applicable, include the conditions necessary to satisfy antidegradation standards. If, in the commissioner's judgment, the antidegradation standards are not satisfied, reasons why they are not satisfied must be included in the preliminary antidegradation determination.

Subp. 5. **Opportunity for comment.** The commissioner shall prepare and distribute a public notice of the preliminary antidegradation determination with the preliminary determination to issue or deny the section 401 certification through the procedures described in part 7001.1440, except that part 7001.1440, subpart 2, does not apply.

Subp. 6. **Final antidegradation determination.** The commissioner shall consider comments received under subpart 5 before preparing a written final antidegradation determination. The final antidegradation determination must include a statement of whether the proposed activity achieves or fails to achieve the antidegradation standards specified in part 7050.0265. The final antidegradation determination must be included with the commissioner's final determination according to part 7001.1450.

**Statutory Authority:** *MS s 115.03; 115.44*

**History:** *41 SR 545*

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