

## WSR 24-11-106

## PROPOSED RULES

## DEPARTMENT OF HEALTH

[Filed May 17, 2024, 1:56 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-11-003.

Title of Rule and Other Identifying Information: Drinking water state revolving fund (DWSRF) loan program, chapter 246-296 WAC. The department of health (department) is proposing rule amendments to incorporate the federal requirements of the Bipartisan Infrastructure Law (BIL), P.L. 117-58 - Bipartisan Infrastructure Investment and Jobs Act. The proposed rules redefine the definition of a disadvantaged community and change the state revolving fund priority point system for project rating and ranking proportionate with need.

Hearing Location(s): On June 25, 2024, at 1:00 p.m., at the Department of Health, Town Center 2, Rooms 166 and 167, 111 Israel Road S.E., Tumwater, WA, 98501; or virtual. Register in advance for this webinar [https://us02web.zoom.us/webinar/register/WN\\_QVlqwFK5SmuFLe6RrJPIxQ](https://us02web.zoom.us/webinar/register/WN_QVlqwFK5SmuFLe6RrJPIxQ). After registering, you will receive a confirmation email containing information about joining the webinar. Individuals may attend either virtually or in person.

Date of Intended Adoption: July 31, 2024.

Submit Written Comments to: Nina Helpling, P.O. Box 47820, Olympia, WA 98504-7820, email [drinkingwaterrule@doh.wa.gov](mailto:drinkingwaterrule@doh.wa.gov), <https://fortress.wa.gov/doh/policyreview>, by June 25, 2024.

Assistance for Persons with Disabilities: Contact Nina Helpling, phone 360-236-3065, TTY 711, email [nina.helpling@doh.wa.gov](mailto:nina.helpling@doh.wa.gov), by June 11, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to amend chapter 246-296 WAC to conform to federal requirements stipulated in BIL. Specifically, the proposed are intended to allow more projects to qualify for disadvantaged community benefits. The proposed rules revise the definition of a disadvantaged community and furthermore, revise the state revolving fund priority point system for project rating and ranking proportionate with need.

Under WAC 246-296-020, the department is proposing amendments to the definition of disadvantaged community to remove strict qualifying calculation criteria and include a variety of indicators including population served, social vulnerability, environmental health disparities, and economic hardships. Additionally, public water systems that are owned and operated by a federally recognized tribe are automatically considered a disadvantaged community.

Under WAC 246-296-050, the department is proposing amendments that will allow the department to forgive a portion or all of the loan amount to both disadvantaged and nondisadvantaged communities.

Under WAC 246-296-100, the department is proposing to remove the requirement for a water system to include an updated water system plan or small water system management program when applying for a loan that identifies lead service lines or lead service line replacement.

Under WAC 246-296-130, the department is proposing to update or remove obsolete requirements for the priority rating and ranking of new DWSRF loan applications.

Reasons Supporting Proposal: BIL dedicated billions nationwide in funding to the DWSRF for lead service line identification and replacement and general supplemental funding. Forty-nine percent of this

funding must be provided as forgivable loans to qualifying disadvantaged communities. BIL also requires that states provide loan subsidization, up to 100 percent principal forgiveness, to qualifying disadvantaged and nondisadvantaged communities. In order to award funding in accordance with BIL requirements, the Environmental Protection Agency (EPA) recommended that each state evaluate and revise their definition of a disadvantaged community and furthermore, revise the state revolving fund priority point system for project rating and ranking commensurate with need. These proposed amendments will allow more projects to qualify for disadvantaged community benefits in conformance with EPA's direction to states to implement BIL requirements.

Statutory Authority for Adoption: RCW 70A.125.160, Federal Safe Drinking Water Act.

Statute Being Implemented: RCW 70A.125.160, Federal Safe Drinking Water Act.

Rule is necessary because of federal law, P.L. 117-58 - Bipartisan Infrastructure Investment and Jobs Act.

Name of Proponent: Washington state department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Nina Helpling, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-3065; Implementation and Enforcement: Christopher Pettit, 111 Israel Road S.E., Tumwater, WA 98501, 564-233-1408.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Nina Helpling, phone 360-236-3065, TTY 711, email nina.helpling@doh.wa.gov.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: BIL, P.L. 117-58 - Bipartisan Infrastructure Investment and Jobs Act. BIL requires 49 percent of all funding be allocated to disadvantaged communities and that all funding to disadvantaged communities for lead service line replacement be offered as grants and forgivable loans. BIL also requires that 25 percent of funds provided for emerging contaminants be provided as forgivable loans to disadvantaged communities and those communities service fewer than 25,000 people. If the department did not make the proposed amendments, then the department would be out of compliance with BIL and water systems would not qualify for additional DWSRF allocations, weakening the infrastructure of public water systems in the state of Washington.

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Explanation of exemptions: WAC 246-296-130 (1)(d) and (2) are exempt under RCW 34.05.310 (4)(b) because it is additional internal criteria used by the department to make a determination.

The following portions of the proposed rule are considered clarifying and are exempt under RCW 34.05.310 (4) (d): WAC 246-296-020 and 246-296-050 (1) (b) and (2) (b).

Scope of exemption for rule proposal:

Is partially exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. There are no probable costs associated with the proposed rule. The proposed changes to the rule are to conform with the stipulation of BIL and will add additional funding sources to the DWSRF loan program for water systems to apply for. The DWSRF loan program is a voluntary program for water systems to apply for needed water system loans at low or no principal interest with the possibility of partial or full loan forgiveness. The proposed changes to the rule only allow for more loan possibilities for water systems.

The following sections of the proposed rule are not exempt from analysis and do not impose costs.

**WAC 246-296-050 (1) (a), (2) (a) and (c):** The proposed changes allow the department to consider loans for up to full principal loan forgiveness for water systems that serve both disadvantaged and nondisadvantaged communities per BIL specifications. To access certain additional funding made available through BIL, the department must offer up to full principal loan forgiveness to not only water systems that serve disadvantaged communities, but nondisadvantaged communities as well. There are no probable costs associated with the proposed changes. The proposed rule will allow for additional applicants to apply for DWRSF loans.

**WAC 246-296-100(2):** The proposed changes exclude the requirement for a water system plan (WSP) or a small water systems management program (SWSMP) when a water system applies for an LSL identification or an LSL replacement loan. A WSP or SWSMP is only required for a loan on a project that is for capital improvements on water system owned equipment. Since the LSL identification and LSL replacement requires the identification and replacement of not only water company-owned infrastructure, like service mains and fittings, but also customer-owned service lines that run from the meter or connection to a customer's building, then LSL loans would not be considered a capital improvement and should not require a WSP or SWSMP. There are no probable costs associated with the proposed changes. The proposed rule reduces barriers and potential costs up to \$100,000 for applicants applying for DWSRF loans because they will no longer need to have a water system plan or small water system management program to qualify.

May 16, 2024  
Kristen Peterson, JD  
Chief of Policy  
for Umair A. Shah, MD, MPH  
Secretary

OTS-5304.2

AMENDATORY SECTION (Amending WSR 22-07-025, filed 3/9/22, effective 4/9/22)

**WAC 246-296-020 Definitions, abbreviations, and acronyms.** The definitions, abbreviations, and acronyms in this section apply throughout this chapter unless the context clearly indicates otherwise.

~~((1))~~ ~~("Affordability" means a community's ability, on a per household basis, to pay for rate increases that result from a DWSRF loan project.~~

~~((2))~~ **"Application"** means the DWSRF loan request form provided by the department.

~~((3))~~ **(2) "Application package"** means the DWSRF loan application form(s), requirements, terms of assistance, and related information created by the department.

~~((4))~~ **(3) "Borrower"** means the person that has legal and financial responsibility for the DWSRF loan.

~~((5))~~ **(4) "Capitalization grant"** means an award by EPA of funds to a state for the DWSRF and other purposes as authorized in Section 1452 of the SDWA.

~~((6))~~ **(5) "Construction completion report"** means a form provided by the department and completed for each specific construction project to document:

(a) Project construction in accordance with chapter 246-290 WAC and general standards of engineering practice;

(b) Physical capacity changes;

(c) Satisfactory test results; and

(d) The completed form is stamped with an engineer's seal, and signed and dated by a professional engineer.

~~((7))~~ **(6) "Default"** means failure to meet a financial obligation such as a DWSRF loan payment.

~~((8))~~ **(7) "Department"** means the Washington state department of health.

~~((9))~~ **(8) "Disadvantaged community"** means ~~((the))~~ a qualifying service area of a ((proposed)) project serving residential connections within a public water system ((where the project will result in:

~~((a) Water rates that are more than one and one-half percent of the MHI of the service area; or~~

~~((b) Restructuring, when one or more public water systems are having financial difficulties))~~ that is disproportionately impacted by economic, health, and environmental burdens. Potential qualifying areas will be assessed by indicators established in state guidance including population served, social vulnerability, environmental health disparities, and economic hardship. A service area of a project serving residential connections within a public water system owned and operated by a federally recognized tribe is considered a disadvantaged community.

~~((10))~~ **(9) "DWSRF (drinking water state revolving fund)"** means the program that meets the requirements of RCW 70A.125.160 to administer federal funds and other funds deposited in a dedicated account used to finance public water system infrastructure improvements and drinking water program activities.

~~((11))~~ **(10) "DWSRF loan"** means an agreement between the department and the borrower in which the DWSRF provides funds for eligible assistance and the borrower agrees to repay the principal sum, applicable interest, and DWSRF loan fee to the DWSRF.

~~((12))~~ (11) "**DWSRF loan fee**" means a nonrefundable fee that is charged on all DWSRF loans, including DWSRF loans for which all or part of the principal is forgiven.

~~((13))~~ (12) "**Ecology**" means the Washington state department of ecology.

~~((14))~~ (13) "**Eligible public water system**" means a Group A community public water system, either privately or publicly owned, or a nonprofit Group A noncommunity public water system.

~~((15))~~ (14) "**Emergency**" means an event such as a natural disaster or other unforeseen or unavoidable circumstances that causes damage or disrupts normal public water system operations and requires immediate action to protect public health and safety. A failure to maintain, replace, reconstruct, upgrade, or make necessary infrastructure improvements does not constitute an emergency.

~~((16))~~ (15) "**EPA**" means the United States Environmental Protection Agency.

~~((17))~~ (16) "**Green project**" means a public water system infrastructure improvement project that includes water efficiency, energy efficiency, or environmental innovations as follows:

(a) Water efficiency projects use improved technologies and practices to deliver equal or better service with less water, including preventing water loss and reducing customer demand to protect water resources;

(b) Energy efficiency projects use improved technologies and practices to reduce energy consumption or produce cleaner energy for use in water treatment;

(c) Environmentally innovative projects use new or innovative approaches to manage water resources in a more environmentally sustainable way. Projects that are considered environmentally innovative include those that:

(i) Prevent or remove pollution;

(ii) Help a community adapt to climate change through water resource protection programs; or

(iii) Result in other proven, sustainable environmental benefits.

~~((18))~~ (17) "**Group A public water system**" is defined and referenced under WAC 246-290-020.

~~((19))~~ (18) "**Group B public water system**" means a public water system that is not a Group A public water system and is defined and referenced under WAC 246-291-005.

~~((20))~~ (19) "**Individual water supply system**" means any water system that is not subject to chapter 246-290 or 246-291 WAC; and provides water to either one single-family residence, or to a system with four or fewer connections, all of which serve residences on the same farm.

~~((21))~~ (20) "**IUP (intended use plan)**" means the federally required document prepared each year by the department identifying the intended uses of the DWSRF funds and describing how those uses support the DWSRF goals.

~~((22))~~ (21) "**Loan closeout**" means a loan agreement is complete when the loan is repaid in full.

~~((23) "**MHI (median household income)**" means the midpoint or the average of two midpoints in the range of household incomes in the project's service area. The median divides the list of households in a service area into two parts; half of the households exceed the median, and half of the households are below the median.~~

~~(24))~~ (22) "**Multiple benefit**" means projects that address more than one type of health risk.

~~((25))~~ (23) "**Municipality**" means a city, town, special purpose district, or municipal corporation established according to the applicable laws of this state.

~~((26))~~ (24) "**NEPA**" means the National Environmental Policy Act of 1969, 42 United States Code 4321 et seq., PL-91-190.

~~((27))~~ (25) "**Nonprofit organization**" means an entity that has a federal tax exempt status identification number.

~~((28))~~ (26) "**Owner**" means any agency, subdivision of the state, municipal corporation, firm, company, mutual or cooperative association, institution, partnership, person, or any other entity that holds as property a public water system.

~~((29))~~ (27) "**Person**" means any individual, corporation, company, association, society, firm, partnership, joint stock company, or any governmental agency, or the authorized agents of these entities.

~~((30))~~ (28) "**Principal forgiveness**" means that a reduction of a percentage of the total loan amount is not required to be paid back by the borrower. Principal forgiveness is applied when the project is complete.

~~((31))~~ (29) "**Project report**" means a department-approved document the borrower or borrower's agency develops under WAC 246-290-110.

~~((32))~~ (30) "**Public water system**" is defined and referenced under WAC 246-290-020.

~~((33))~~ (31) "**Receivership**" means the voluntary or involuntary transfer of ownership and operation of a public water system according to chapter 7.60 RCW and RCW 43.70.195.

~~((34))~~ (32) "**Regional benefit**" means project improvements that affect more than one public water system.

~~((35))~~ (33) "**Restructuring**" means changing public water system ownership including, but not limited to:

- (a) Consolidation of two or more existing public water systems into a single public water system;
- (b) Transfer of ownership; or
- (c) Receivership.

~~((36))~~ (34) "**SDWA (Safe Drinking Water Act)**" means Public Law 93-523, including all amendments.

~~((37))~~ (35) "**SEPA**" means the State Environmental Policy Act under chapter 43.21C RCW.

~~((38))~~ (36) "**Set-aside**" means the use of a portion of DWSRF funds allotted to the state for a range of specific SDWA-related activities under Section 1452 of the SDWA, to fund new programs, and for other drinking water program activities.

~~((39))~~ (37) "**SERP (state environmental review process)**" means the NEPA-like environmental review process adopted by Washington state to comply with the requirements of 40 C.F.R. 35.3140. SERP combines the SEPA review with additional elements to comply with federal requirements.

~~((40))~~ (38) "**Surface water**" means a body of water open to the atmosphere and subject to surface runoff.

~~((41))~~ (39) "**Sustainable**" means able to continue a benefit into the future as a result of appropriate public water system design, processes, operations, governance, and maintenance.

~~((42))~~ (40) "**SWSMP (small water system management program)**" means a document for a small nonexpanding Group A public water system developed and approved under WAC 246-290-105.

~~((43))~~ (41) "**System capacity**" means a public water system's operational, technical, managerial, and financial capability to achieve

and maintain ongoing compliance with all relevant local, state, and federal plans and regulations.

~~((44))~~ (42) "**Transfer of ownership**" means to change legal ownership of a public water system from one person to another.

~~((45))~~ (43) "**Water right**" means a legal authorization, such as a permit, claim, or other authorization, on record with or accepted by the department of ecology, authorizing the beneficial use of water in accordance with all applicable state laws.

~~((46))~~ (44) "**WFI (water facilities inventory)**" means a department form summarizing a public water system's characteristics.

~~((47))~~ (45) "**WSP (water system plan)**" means a document that a Group A community public water system submits to the department as required under WAC 246-290-100. The plan addresses a public water system's capacity to comply with relevant local, state, and federal plans and regulations, describes the public water system's present and future needs, and establishes eligibility for funding under this chapter.

AMENDATORY SECTION (Amending WSR 16-14-086, filed 7/5/16, effective 8/5/16)

**WAC 246-296-050 DWSRF loan terms.** (1) The department may approve a DWSRF loan for a project that will not serve a disadvantaged community:

(a) That partially or fully forgives the principal amount of the loan; or

(b) At an interest rate at or below market interest rates for a maximum of ~~((twenty))~~ 20 years from project completion.

(2) The department may approve a DWSRF loan for a project ~~((s))~~ that will serve a disadvantaged ~~((communities))~~ community:

(a) That partially or fully forgives the principal amount of the loan; or

(b) At an interest rate set at or below market interest rates for up to ~~((thirty))~~ 30 years, as long as the DWSRF loan does not exceed the useful life of the project ~~((+~~

~~((b) That qualifies for principal forgiveness for up to fifty percent of the principal DWSRF loan amount; or~~

~~((c) That qualifies for principal forgiveness for up to seventy-five percent of the principal DWSRF loan amount for an emergency loan)).~~

(3) A project is considered complete when the department approves the construction completion report.

(4) The borrower shall begin repaying the principal and interest no later than one year after the project is complete.

(5) The department shall:

(a) Set terms that secure repayment of the debt and maintain a financially sound DWSRF program in perpetuity; and

(b) Publish specific rates and contract terms in the annual application package.

AMENDATORY SECTION (Amending WSR 12-01-077, filed 12/19/11, effective 2/1/12)

- WAC 246-296-100 DWSRF loan eligibility and application requirements.** To be eligible for a DWSRF loan, an applicant shall:
- (1) Document that the public water system has the system capacity to stay in compliance with applicable federal, state, and local drinking water requirements, unless:
    - (a) The funding will bring the public water system into compliance; and
    - (b) The owner of the public water system agrees to reasonable and appropriate changes to stay in compliance.
  - (2) ~~((Before))~~ Except when applying for a DWSRF loan((7)) that addresses lead service line identification or lead service line replacements, that applicant shall have a current department-approved WSP or SWSMP that:
    - (a) Includes the proposed project; and
    - (b) Addresses any difficulties with system capacity;
  - (3) Comply with federal, state, and local drinking water requirements or a variance under WAC 246-290-060, unless the DWSRF loan will fund projects that result in public water system compliance;
  - (4) Comply with any department or EPA orders;
  - (5) Install a source meter on each source if meters are not already installed;
  - (6) Install service meters on all service connections if meters are not already installed within the project area, unless:
    - (a) The project is for a transient noncommunity public water system;
    - (b) The project is for a mobile home park with a source or master meter;
    - (c) The project is for an apartment building or complex with a source or master meter; or
    - (d) The department determines that installing meters is:
      - (i) Prohibitive for the DWSRF project as a whole; and
      - (ii) Waiving the meter requirement is necessary to award a DWSRF loan for a project to resolve high priority public health problems.
  - (7) Have no outstanding fees or penalties owed to the department.
  - (8) Provide documentation that the project has sufficient water rights as determined by ecology.
  - (9) Comply with the requirements of WAC 246-296-120(1).

AMENDATORY SECTION (Amending WSR 16-14-086, filed 7/5/16, effective 8/5/16)

- WAC 246-296-130 Project priority rating and ranking criteria.** The department shall, at a minimum, consider the following to assign points, and rate and rank proposed projects:
- (1) Criteria for risk categories and points based on:
    - (a) Type and significance of public health problems the project will resolve;
    - (b) If the project is needed to bring the public water system into compliance with federal, state, and local drinking water requirements; and
    - (c) Current compliance status(~~(; and~~



~~(d) Affordability on a per household basis, determined by comparing the community's average water rate to the MHI in the community's service area, for a community public water system).~~

(2) Additional points based on the type of project being proposed(~~(r)~~) if the project:

(a) Is ready to proceed to construction;

(b) Completes projects previously funded by DWSRF grants or loans;

(c) Is to consolidate or restructure ((a)) multiple public water systems;

~~((b))~~ (d) Creates a sustainable regional public health benefit;

~~((c) Has multiple benefits that are sustainable;~~

~~(d) Is consistent with the Growth Management Act;~~

~~(e) Is financially sustainable;~~) (e) Is a water main replacement project that coincides with other infrastructure projects;

(f) Qualifies as a green project; or

(g) Serves a disadvantaged community(~~(r) or~~

~~(h) Results in service meters on existing services not currently metered).~~