



PROPOSED RULE MAKING

CR-102 (June 2004)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

Agency: Department of Health

- Preproposal Statement of Inquiry was filed as WSR 11-03-021 ; or
- Expedited Rule Making--Proposed notice was filed as WSR _ ; or
- Proposal is exempt under RCW 34.05.310(4).

- Original Notice
- Supplemental Notice to WSR
- Continuance of WSR

Title of rule and other identifying information: (Describe Subject)
Chapter 246-296 WAC, Drinking Water State Revolving Fund Loan Program

Hearing location(s): Department of Health
Point Plaza East Room 152/153
310 Israel Road SE
Tumwater, Washington 98504

Date: October 25, 2011 Time: 9:00 a.m.

Submit written comments to:

Name: Theresa Phillips
Address: Department of Health
P O Box 47822
Olympia Washington 98504-7822
Website: <http://www3.doh.wa.gov/policyreview/>
fax (360) 236-2253 by (date) 10/25/2011

Assistance for persons with disabilities: Contact

Theresa Phillips by 10/11/2011

TTY (800) 833-6388 or () 711

Date of intended adoption: 11/01/2011

(Note: This is NOT the effective date)

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

The purpose of the proposed rules is to include new federal requirements for water systems to obtain a Drinking Water State Revolving Fund (DWSRF) loan. The changes are necessary to establish eligibility requirements for public water systems to receive a loan for funding infrastructure improvements. The changes include establishing criteria for principal forgiveness; green projects; and restructuring, which may include ownership and management changes, and consolidation of water systems. In addition, the proposed rules improve clarity and simplify language.

Reasons supporting proposal:

The federal appropriations bill under section 1452 of the Safe Drinking Water Act includes new criteria for water systems to obtain a DWSRF loan. These changes are necessary to comply with the new federal requirements, continue the DWSRF loan program, and maintain primacy with the Environmental Protection Agency.

Statutory authority for adoption:

RCW 70.119A.170

Statute being implemented:

RCW 70.119A.170

Is rule necessary because of a:

- Federal Law? Yes No
 - Federal Court Decision? Yes No
 - State Court Decision? Yes No
- If yes, CITATION:
Federal Safe Drinking Water Act, H.R. 1452

DATE 09/20/11

NAME (type or print)

Mary C. Selecky

SIGNATURE

TITLE

Secretary

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: September 20, 2011

TIME: 11:19 AM

WSR 11-19-094

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

None.

Name of proponent: (person or organization) Department of Health

- Private
- Public
- Governmental

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting..... Theresa Phillips	243 Israel Rd SE, Tumwater WA 98501	(360) 236-3147
Implementation.... Kristin Bettridge	243 Israel Rd SE, Tumwater WA 98501	(360) 236-3166
Enforcement..... Kristin Bettridge	243 Israel Rd SE, Tumwater WA 98501	(360) 236-3166

Has a small business economic impact statement been prepared under chapter 19.85 RCW?

Yes. Attach copy of small business economic impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

phone

fax

e-mail

No. Explain why no statement was prepared.

A small business economic impact statement was not prepared. The proposed rule would not impose more than minor costs on businesses in an industry.

Is a cost-benefit analysis required under RCW 34.05.328?

Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name: Theresa Phillips

Address: Department of Health

P O Box 47822

Olympia Washington 98504-7822

phone (360) 236-3147

fax (360) 236-2252

e-mail theresa.phillips@doh.wa.gov

No: Please explain:

AMENDATORY SECTION (Amending WSR 01-21-137, filed 10/24/01, effective 11/24/01)

WAC 246-296-010 Purpose and scope. The purpose of this chapter is to:

~~(1) ((Define regulatory requirements for the provision of financial assistance to public))~~ Establish a funding program for public water system infrastructure improvements that increase a public water ((systems provided by the drinking water state revolving fund (DWSRF));

~~(2) Ensure the state's public drinking water supplies are)~~ system's ability to provide safe and reliable drinking water and improve public health protection;

~~((3) Ensure funding is available to eligible))~~ (2) Establish eligibility criteria for public water systems to ((finance infrastructure costs associated with providing safe and reliable drinking water)) receive funding including, but not limited to, proper operation, management, and maintenance consistent with federal DWSRF capacity requirements;

~~((4) Ensure the department of health utilizes))~~ (3) Provide additional financial assistance to eligible disadvantaged communities;

(4) Use a portion of the EPA capitalization grant for set-aside activities ((in accordance with the)) according to federal ((rule)) law;

~~(5) ((Ensure public water systems receiving funding are properly operated, managed, and maintained consistent with DWSRF capacity requirements;~~

~~(6) Ensure permanent institutions exist))~~ Establish that sound financial practices and ongoing oversight are in place to manage ((funds for public water system needs)) the DWSRF in perpetuity; ((and

~~(7) Define))~~ (6) Establish requirements for public water systems to receive a DWSRF loan including, but not limited to, planning requirements; being resource efficient, sustainable, and environmentally sound; and

(7) Establish the responsibilities of the department ((of health (DOH);), the ((public works)) board ((board);), and ((the board's agent, the department of community, trade and economic development (CTED)) commerce, for administering the DWSRF loan program.

AMENDATORY SECTION (Amending WSR 01-21-137, filed 10/24/01, effective 11/24/01)

WAC 246-296-020 Definitions, abbreviations, and acronyms.

~~((**"Act"** means the Federal Safe Drinking Water Act (SDWA).))~~ 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 to pay for rate increases that result from a DWSRF loan project.

(2) **"Application"** means ~~((a DWSRF loan application submitted to DOH for DWSRF assistance))~~ the DWSRF loan request form provided by the department.

(3) **"Application package"** means the DWSRF loan application form(s), requirements, terms of assistance, and related information ~~((jointly developed and published))~~ created by ~~((DOH))~~ the department, the board, and ~~((the board's agent, CTED))~~ commerce.

~~((**"Binding commitment"** means a legal obligation by the state to an assistance recipient that defines the terms and the timing for assistance under this chapter.))~~ (4) **"Board"** means the ~~((state of))~~ Washington state public works board.

(5) **"Borrower"** means the ~~((entity or individual))~~ person that has ~~((the))~~ legal and financial responsibility for the DWSRF loan.

~~((**"Certification/certify"** means documentation signed by the loan recipient that specific requirements or standards have been or will be met.~~

~~**"Change orders"** means a formal document that alters specific conditions of the original construction contract document including a change in the scope of work, contract price, construction methods, construction schedule, change in location, size, capacity, or quality of major equipment.~~

~~**"Community water system"** means any Group A public water system that regularly serves fifteen or more year-round residential connections, or twenty-five or more year-round residents for one hundred eighty or more days per year.~~

~~**"Construction documents"** means construction documents developed and approved under WAC 246-290-120.)~~ (6) **"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.

(7) **"Commerce"** means the Washington state department of commerce.

(8) **"Construction completion report"** means a form provided by ~~((DOH to the applicant required to be))~~ 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 ~~((must be))~~ is stamped with an engineer's seal, and signed~~((=))~~ and dated by a professional engineer.

~~(("Cross-cutting authorities" means federal or state laws and authorities that apply to projects or activities receiving federal or state assistance.~~

~~"CTED" means the department of community, trade and economic development.~~

~~"Debt obligation" means a legal obligation or liability to pay something to someone else.)~~

(9) "Default" means failure to meet a financial obligation such as a DWSRF loan payment.

(10) "Department" means the Washington state department of health.

(11) "Disadvantaged community" means the service area of a proposed project within a public water system where ((at least fifty-one)) the project will result in:

(a) Water rates that are more than one and one-half percent of the ((customers are at or below eighty percent of the county median household income as defined annually by the Federal Department of Housing and Urban Development.

~~"Distressed county" means a county that is designated by the Washington state employment security department as distressed.~~

~~"DOH" means the department of health.)~~ MHI of the service area; or

(b) Restructuring, when one or more public water systems are having financial difficulties.

(12) "DWSRF (drinking water state revolving fund ((-DWSRF)))" means the program ((established to)) that meets the requirements of RCW 70.119A.170 to administer ((the)) federal funds and other funds deposited in ((the)) a dedicated account ((authorized)) used to finance public water system infrastructure((7)) improvements and drinking water program activities((, and to meet the applicable requirements of RCW 70.119A.170)).

(13) "DWSRF loan" means an agreement between commerce 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.

(14) "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.

(15) "Ecology" means the Washington state department of ecology.

(16) "Eligible public water system" means a Group A community public water ((systems, both)) system, either privately ((and)) or publicly owned, ((and)) or a nonprofit Group A noncommunity public water system((s)).

(17) "EPA" means the United States Environmental Protection Agency.

(18) "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.

(19) "Group A public water system" means a public water system ((that)) providing service such that it meets the definition of a public water system provided in the 1996 amendments to the federal Safe Drinking Water Act, P.L. 104-182, Section 101(b).

A Group A public water system is further defined as a community or noncommunity public water system.

(a) "Community public water system" means any Group A public water system providing service to fifteen or more service connections used by year-round residents for one hundred eighty or more days within a calendar year, regardless of the number of people, or regularly serving at least twenty-five people year-round more than one hundred eighty days per year, as defined in chapter 246-290 WAC.

(b) "Noncommunity public water system" means a Group A public water system that is not a community public water system. Noncommunity public water systems are further defined as:

(i) "Nontransient noncommunity public water system" means a public water system that serves ((fifteen)) twenty-five or more ((residential connections, or)) of the same nonresidential people for one hundred eighty or more days within a calendar year.

(ii) "Transient noncommunity public water system" means a public water system that serves:

(A) Twenty-five or more different people ((per)) each day for sixty or more days ((per)) within a calendar year((-));

(B) Twenty-five or more of the same people each day for sixty or more days, but less than one hundred eighty days within a calendar year; or

(C) One thousand or more people for two or more consecutive days within a calendar year.

(20) "Group B public water system" means a public water system that ((serves less)) is not a Group A public water system. A public water system is classified as a Group B public water system if it serves fewer than fifteen ((residential)) service connections, and ((less)):

(a) Fewer than twenty-five people ((per day,)) ; or ((serves))

(b) Twenty-five or more people per day for less than sixty ((or fewer)) days per year provided the public water system does not serve one thousand or more people for two or more consecutive days.

(21) "Individual water supply system" means any water system that is not subject to ~~((the state board of health drinking water regulations,))~~ chapter 246-290 ~~((WAC,))~~ or ~~((chapter))~~ 246-291 WAC ~~((, providing))~~; 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.

(22) "IUP (intended use plan ((-IUP)))" means the federally required document prepared each year by the ~~((state which identifies))~~ department identifying the intended uses of the DWSRF funds ~~((in the DWSRF))~~ and ~~((describes))~~ describing how those uses support the DWSRF goals ~~((of the DWSRF))~~.

~~(("HUD" means the United States Department of Housing and Urban Development.~~

~~"Loan" means an agreement between the DWSRF and the assistance recipient through which the DWSRF provides funds for eligible assistance and the recipient agrees to repay the principle sum to the DWSRF.)~~ (23) "MHI (median household income)" means the midpoint in the range of household incomes in the project's service area. Half of the households in a service area have higher incomes than the MHI, and half have lower incomes.

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

~~(("Noncommunity water system" means a Group A public water system that is not a community water system.))~~ (25) "Municipality" means a city, town, special purpose district, or municipal corporation established according to the applicable laws of this state.

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

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

~~(("Nontransient noncommunity system" means a Group A noncommunity water system that serves twenty-five or more of the same people per day for one hundred eighty or more days per year.))~~

(28) "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) "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) "Principal forgiveness" means that a reduction of up to fifty percent 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) "Project report" means a ~~((project report developed and approved))~~ department-approved document the borrower or borrower's agency develops under ~~((chapter 246-290))~~ WAC 246-290-110.

(32) "Public water system" means any public water system ~~((7))~~ providing water for human consumption through pipes or other constructed conveyances, excluding water systems serving only one

single-family residence and water systems with four or fewer connections, all of which serve residences on the same farm(~~-~~

~~"Purveyor" means an agency, subdivision of the state, municipal corporation, firm, company, mutual or cooperative association, institution, partnership, or person, or other entity owning or operating a public water system. Purveyor also means the authorized agents of such entities). This includes:~~

~~(a) Collection, treatment, storage, and distribution facilities under control of the owner, or owner's authorized agent, primarily used in connection with the public water system; and~~

~~(b) Collection or pretreatment storage facilities not under the control of the owner, or owner's authorized agent, but primarily used in connection with the public water system.~~

~~(33) "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) "Regional benefit" means project improvements that affect more than one public water system.~~

~~(35) "Restructuring" means changing public water system ((operation, management and/or)) ownership, including, but not limited to:~~

~~((1) Mergers)) (a) Consolidation of two or more existing public water systems into a single public water system;~~

~~((2) Voluntary transfer of) (b) Transfer of ownership; or~~

~~((3)) (c) Receivership ((involuntary transfer of operation and/or ownership)).~~

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

~~(("Satellite management agency (SMA)" means a person or entity that is approved by the department of health to own or operate public water systems on a regional or countywide basis, without the necessity for a physical connection between such systems. SMA's are regulated under chapter 246-295 WAC.)) (37) "SEPA" means the~~

~~State Environmental Policy Act under chapter 43.21C RCW.~~

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

~~(("Significant noncomplier (SNC)" means a water system that is violating or has violated department rules and the violations may create or have created an imminent or a significant risk to human health.~~

~~"Small water system management program (SWSMP)" means a small water system management program developed and approved under WAC 246-290-105.) (39) "SERP (state environmental review process~~

~~((SERP))" means the NEPA-like environmental review process ((conducted on all DWSRF projects that ensures compliance)) adopted by Washington state to comply with ((state and federal environmental)) the requirements of 40 CFR 35.3140. SERP combines the SEPA review ((through a National Environmental Policy Act (NEPA)-like process)) with additional elements to comply with~~

federal requirements.

~~((**"State match"** means funds equaling at least twenty percent of the amount of the federal capitalization grants the state must deposit into the DWSRF loan fund including the necessary match for set-asides.))~~ (40) **"Surface water"** means a body of water open to the atmosphere and subject to surface runoff.

(41) **"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) **"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) **"System capacity"** means ~~((the))~~ 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) **"Transfer of ownership"** means to ~~((convey))~~ change legal ownership of a public water system from one person ((or entity)) to another.

~~((**"Transient noncommunity system"** means a Group A noncommunity water system that serves:~~

~~(1) Twenty-five or more different people per day during sixty or more days per year;~~

~~(2) Twenty-five or more of the same people per day for less than one hundred eighty days per year and during more than fifty-nine days per year; or~~

~~(3) One thousand or more people for two or more consecutive days.~~

~~**"Water facilities inventory form (WFI)"** means the DOH form summarizing each public water system's characteristics.))~~ (45)

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

(47) **"WSP (water system plan ((-WSP)))"** means a ((water system plan developed)) 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 ((approved under WAC 246-290-100)) 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 01-21-137, filed 10/24/01, effective 11/24/01)

WAC 246-296-030 Administration. (1) ~~((DOH))~~ The department, the board, and ((CTED)) commerce shall jointly administer the DWSRF program.

(2) ~~((DOH is responsible for))~~ The department shall:

(a) ~~((Administering))~~ Apply for and receive the ((federal)) DWSRF grant from EPA;

(b) ~~((Determining and managing))~~ Manage the use of DWSRF set-aside funds for ((drinking water program)) regulatory purposes and technical assistance ((purposes)) to public water systems as authorized under the SDWA; ((and))

(c) ~~((Developing prioritized))~~ Annually develop ranking values for the criteria under WAC 246-296-130 by assigning the highest value to proposed projects that resolve the most significant public health problems;

(d) Provide guidance to public water systems before the yearly application cycle begins;

(e) Publish the ranking values in the funding application package;

(f) Determine public water system and project eligibility for DWSRF loans;

(g) Develop lists of proposed projects for DWSRF ((financial assistance)) loans in priority order;

(h) Present lists of proposed projects to the board; and

(i) Submit the IUP to EPA.

(3) The department shall include the following information in the IUP:

(a) The DWSRF loan fee account;

(b) The current fee; and

(c) The account balance.

(4) ~~The board ((is responsible for the final selection of)) shall select projects to receive DWSRF ((financial assistance)) funding.~~

~~((4) CTED, the board's administrative agent, is responsible for managing DWSRF project loans))~~ (5) Commerce shall:

(a) Act as the board's administrative agent;

(b) Require borrowers to comply with the terms of their DWSRF loan agreements;

(c) Manage DWSRF loan finances, including fiscal tracking and billing; and

(d) Verify that accounting, audit, and fiscal procedures conform to applicable federal government regulations.

AMENDATORY SECTION (Amending WSR 01-21-137, filed 10/24/01, effective 11/24/01)

WAC 246-296-040 Use of funds by the state. (1) The ~~((DWSRF))~~ department may ~~((be used for))~~ use the following funds to carry out the purposes of the DWSRF:

~~((1) To accept and retain funds from))~~ (a) Capitalization grants provided by the federal government~~((7))~~; i

~~((in accordance with))~~ (b) State matching funds appropriated ~~((under RCW 70.119A.170((7 payments of)))~~; i

~~((fees,))~~ (c) Principal and interest~~((7))~~; payments;

(d) DWSRF loan fees; and

~~((7))~~. (e) Any other funds earned and deposited~~((7))~~.

(2) ~~((To))~~ The department may use these funds to:

(a) Finance DWSRF loans for ~~((the))~~ planning, design, and~~((for))~~ construction ~~((costs))~~ of public water system infrastructure ~~((needed to facilitate compliance with the))~~ projects that will address or prevent violations of applicable federal, state, and local drinking water ((standards)) requirements;

~~((3) To))~~ (b) Finance ~~((the))~~ reasonable costs ~~((incurred by DOH))~~ for the department, the board, and ((ETED in the administration of)) commerce to administer the DWSRF program; ~~((or (4) To))~~ and

(c) Fund set-aside activities authorized in categories (b) through (e) of Section 35.3535 of the SDWA, including ~~((b))~~; i

~~((and technical assistance, (c) small systems))~~; (i) DWSRF program administration ~~((and technical assistance, (c) small systems))~~; i

(ii) Technical assistance~~((7-(d)))~~ specific to small public water systems;

(iii) State drinking water program management~~((7))~~; i and ~~((e))~~

(iv) Local assistance and other state programs.

AMENDATORY SECTION (Amending WSR 01-21-137, filed 10/24/01, effective 11/24/01)

WAC 246-296-050 ((Establishing)) DWSRF loan terms ((of assistance)). ~~((DWSRF loans shall be provided at or below market rate interest levels. Loans may be made for the useful life of the improvement or for a maximum of twenty years. The assistance recipient shall begin repayment of the principal and interest no later than one year after project completion. A project is complete when operations are initiated or are capable of being initiated. Disadvantaged communities may receive a loan for up to thirty years at an interest rate established at or below market interest rates as long as the loan does not exceed the useful life of the project. The board is responsible for establishing terms~~

~~that secure the debt and maintain a financially sound revolving loan fund in perpetuity. Specific rates and contract terms shall be published in the annual application package.))~~ (1) The board may approve a DWSRF loan for a project that will not serve a disadvantaged community at or below market interest rates for a maximum of twenty years from project completion.

(2) The board may approve a DWSRF loan for projects that will serve disadvantaged communities:

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

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

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

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

(5) The department and the board 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 01-21-137, filed 10/24/01, effective 11/24/01)

WAC 246-296-060 Establishing a DWSRF loan fee, loan fee account, and loan fee uses. ~~((The board shall establish the terms of a loan fee and assess the fee to each project loan. The loan fee amount is to be established on an annual basis to ensure adequate funding is available to maintain administration of the DWSRF in perpetuity. The loan fee is eligible to be covered by the loan. The amount of the loan fee shall be published in the annual application package. Loan fees shall be deposited into and retained in a dedicated loan fee account and shall only be used for program administration activities unless the board and DOH jointly determine that the loan fee account balance exceeds program administration needs, then a portion of or all of the funds may be transferred to the project loan account to be used for project loans. Information on the loan fee account, including the current fee and account balance, shall be included in the intended use plan. The board and DOH are responsible for jointly determining the amount of the loan fee account funds to be used for current and future program administration.))~~ (1) The department and board shall:

(a) Establish the terms of a DWSRF loan fee; and

(b) Annually set the DWSRF loan fee amount.

(2) The board shall set the DWSRF loan fee for each project.

(3) The DWSRF loan amount may include the DWSRF loan fee.

(4) The department and board shall determine the amount of DWSRF loan fee account funds to be used for program administration.

(5) The department and commerce shall use DWSRF loan fees only for program administration activities.

(6) Commerce shall deposit and retain DWSRF fees in a dedicated DWSRF loan fee account.

AMENDATORY SECTION (Amending WSR 01-21-137, filed 10/24/01, effective 11/24/01)

WAC 246-296-070 Eligible projects and project-related costs
((eligible for assistance from the fund)). (1) Projects ((and project-related costs)) eligible for ((assistance from the DWSRF program)) a DWSRF loan include those that:

(a) Address ((violation of applicable federal, state, and local drinking water standards;

(b) Prevent future)) or prevent violations of applicable federal, state, and local drinking water ((standards)) requirements; ((or

(c)) (b) Replace aging infrastructure ((if needed)) to ((maintain compliance or further)) help a public water system comply with applicable federal, state, and local drinking water requirements to improve public health protection ((goals of applicable federal, state, and local));

(c) Improve system capacity of a public water system to help assure sustainable drinking water ((standards)); or

(d) Promote increased water or energy efficiency, green projects, or innovation that will improve environmental sustainability and protect public health.

(2) Specific ((projects and)) project-related costs eligible for ((assistance)) a DWSRF loan include those that:

(a) ((Are)) Improve a public water system's treatment, transmission, distribution, source, or storage ((projects));

(b) ((Consolidate)) Restructure water supplies or public water systems that have system capacity difficulties;

(c) Retroactively finance municipal projects that:

(i) Are for ((treatment of)) surface water((, GWI-)) treatment;

(ii) Address groundwater under the direct influence of surface water((,));

(iii) Address volatile organic or inorganic chemicals((, inorganic chemicals, or are projects that)); or

(iv) Are required by department or EPA order;

(d) Acquire real property if ((it is integral to a project)) needed to meet or maintain compliance ((or further)) with regulations or increase public health protection ((and the property is being acquired from a willing seller));

(e) ~~((Finance))~~ Pay for planning or design ~~((costs))~~ that is directly related to a DWSRF eligible project~~((s))~~;

(f) Finance the costs ~~((incurred by))~~ of restructuring for a publicly owned public water system~~((s associated with restructuring of systems))~~;

(g) Acquire, build, or ~~((rehabilitate))~~ repair reservoirs, including clear wells, that are part of the treatment process and located on the same property ~~((where))~~ as the treatment facility ~~((is located))~~; ~~((or))~~

(h) Acquire, build, or ~~((rehabilitate))~~ repair distribution reservoirs; or

(i) Are associated with a department-approved green project.

AMENDATORY SECTION (Amending WSR 01-21-137, filed 10/24/01, effective 11/24/01)

WAC 246-296-080 Ineligible projects and project-related costs ~~((not eligible for assistance from the fund))~~. Projects and project-related costs that are not eligible for assistance from the DWSRF program include:

(1) ~~((Acquisition, construction, or rehabilitation of))~~ Acquiring, building, or repairing dams or raw water reservoirs;

(2) ~~((Acquisition of))~~ Acquiring water rights, except if the water rights are owned by a public water system that is being acquired ~~((through consolidation))~~ by restructuring;

(3) Laboratory ~~((fees))~~ costs for monitoring;

(4) Operation and maintenance ~~((expenses))~~ costs;

(5) Projects needed primarily for fire protection;

(6) Projects needed primarily to serve future population growth;

(7) ~~((Costs incurred by privately owned systems associated with restructuring systems;~~

~~((8)))~~ Projects that have received assistance from the national set-aside for Indian tribes and Alaska native villages under Section 1452(i) of the SDWA;

~~((9)))~~ (8) Projects for an individual water supply system or a Group B public water system unless the public water system is being ~~((consolidated))~~ restructured into a Group A public water system~~((— Consolidation may be accomplished by extending a water line from an existing Group A system or by creating a new Group A system under WAC 246-296-120; or))~~ under WAC 246-296-110; and

~~((10)))~~ (9) Projects that are solely for the purpose of installing service meters.

AMENDATORY SECTION (Amending WSR 01-21-137, filed 10/24/01, effective 11/24/01)

WAC 246-296-090 Public water system eligibility requirements.

(1) Public water systems eligible for ~~((assistance from the fund))~~ a DWSRF loan include:

(a) Publicly and privately owned community public water systems, ~~((excluding))~~ except those public water systems not eligible for ~~((assistance from the fund))~~ a DWSRF loan under WAC 246-296-100; and

(b) Noncommunity public water systems owned by a nonprofit organization.

(2) Public water systems not eligible for ~~((assistance from the fund))~~ a DWSRF loan include:

(a) Noncommunity public water systems owned by a for-profit organization;

(b) State-owned public water systems;

(c) Federally owned or regulated public water systems; ~~((or))~~

(d) Group B public water systems, unless restructuring; and

~~((e))~~ Public water systems lacking the ~~((technical, financial, and managerial capability))~~ system capacity to ~~((ensure compliance))~~ comply with all applicable federal, state, and local drinking water ~~((standards))~~ requirements, unless:

(i) The ((assistance)) project will ((ensure)) bring the public water system into compliance; and

(ii) The owner((s and operators)) of the public water system((s)) agrees to ((undertake feasible)) reasonable and appropriate changes in operation and management to ((ensure)) stay in compliance ((in the future)).

AMENDATORY SECTION (Amending WSR 01-21-137, filed 10/24/01, effective 11/24/01)

WAC 246-296-100 ~~((Minimum)) DWSRF loan eligibility and application requirements ((to be eligible for assistance from the fund))~~. To be eligible for ~~((assistance from the fund))~~ a DWSRF loan, an applicant ~~((s are responsible for))~~ shall:

(1) ~~((Demonstrating))~~ Document that the public water system has the ~~((technical, financial, and managerial capability))~~ system capacity to ~~((ensure))~~ stay in compliance with applicable federal, state, and local drinking water ~~((standards))~~ requirements, unless ~~((the assistance will ensure compliance and the owners, managers, and operators of the systems agree to undertake feasible changes to ensure compliance over the long term;))~~:

(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) ~~((Having))~~ Before applying for a DWSRF loan, have a
~~((DOH))~~ current department-approved WSP or SWSMP ~~((containing))~~
that:

(a) Includes the proposed project; and ~~((addressing))~~

(b) Addresses any ~~((capacity-related deficiencies prior to execution of a loan contract))~~ difficulties with system capacity;

(3) ~~((Being in compliance))~~ Comply with ~~((applicable))~~
federal, state, and local drinking water ~~((standards))~~ requirements
or a variance under WAC 246-290-060, unless the ~~((use of the DWSRF assistance))~~ DWSRF loan will ~~((ensure))~~ fund projects that result
in public water system compliance;

(4) ~~((Being in compliance))~~ Comply with ~~((DOH))~~ any department
or EPA orders;

(5) ~~((Having))~~ Install a source meter on each source ~~((or installing source))~~ if meters ~~((as a part of the project))~~ are not
already installed;

(6) ~~((Having))~~ Install service meters on all service ~~((s or installing))~~ connections if meters ~~((on all services as part of))~~ are not already installed within the project area, unless ~~((one of the following exceptions apply))~~:

(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 ~~((the cost of the meters is prohibitive for the DWSRF project as a whole and waiving the meter requirement is necessary to move the project forward and promote priority public health issues;))~~ 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) ~~((Ensuring))~~ Have no outstanding fees or penalties ~~((are))~~ owed to ~~((DOH unless an appeal of the imposition of those penalties is pending;))~~ the department.

(8) ~~((Demonstrating))~~ Provide documentation that the project ~~((conforms to state))~~ has sufficient water rights ~~((laws; and~~

(9) Assuring that the project is consistent with local land use plans and policies)) as determined by ecology.

(9) Comply with the requirements of WAC 246-296-120(1).

AMENDATORY SECTION (Amending WSR 01-21-137, filed 10/24/01, effective 11/24/01)

WAC 246-296-110 Requirements for using DWSRF to create a new Group A public water system. ~~((Projects that))~~ (1) The department

may award a DWSRF loan to create a new Group A public water system ((are eligible for assistance from the fund)) that will meet the requirements under chapter 246-290 WAC when the project is complete if:

~~((1) Upon completion of the project, the system conforms to the rules regarding Group A community water systems promulgated under chapter 246-290 WAC;~~

~~(2)) (a) The project ((addresses existing)) resolves high priority public health problems ((with serious risks)) caused by unsafe drinking water((~~

~~(3) The project is limited in scope to the specific geographic area affected by contamination and the project is for the purpose of resolving existing public health problems associated with individual wells or surface water sources, or the project is limited in scope to the service area of the systems being consolidated and the project is for the purpose of creating a new regional system by consolidating existing water systems;~~

~~(4) The applicant gives)) provided by an individual well or surface water source. The project is limited in scope to the geographic area directly affected by contamination; or~~

~~(b) The project creates a new regional community public water system by restructuring existing systems that have system capacity difficulties. The project is limited in scope to the service area of the public water systems being restructured.~~

~~(2) The applicant shall submit documentation with the application required in WAC 246-296-120(1) to show that:~~

~~(a) The applicant gave the public and potentially affected parties at least sixty days notice ((to the public and potentially affected parties)) prior to submitting the DWSRF loan application to the department. At a minimum, ((notice must include posting of)) the applicant shall post a legal notice of the intent to create a new public water system in the local newspaper;~~

~~((5)) (b) The applicant ((has)) considered alternative solutions to address the problems;~~

~~((6)) (c) The project is a cost-effective solution to the public health problems being addressed; and~~

~~((7)) (d) The project is intended to protect public health, and not ((solely)) primarily to accommodate future population growth.~~

AMENDATORY SECTION (Amending WSR 01-21-137, filed 10/24/01, effective 11/24/01)

WAC 246-296-120 Annual DWSRF loan application responsibilities. Annual DWSRF loan application responsibilities are established as follows:

(1) Applicants shall ~~((develop and))~~ submit a ~~((DWSRF assistance))~~ completed application package to ~~((DOH))~~ the

department on or before the due date (~~((defined))~~) in the application package.

(2) (~~((DOH responsibilities are to))~~) The department shall:

(a) Determine the eligibility of the project;

(b) Rank the project using the ranking criteria established under WAC 246-296-130;

(c) (~~((Develop))~~) Create a prioritized list of eligible projects (~~((eligible for assistance))~~) in order of public health significance;

(d) Develop an (~~((intended use plan))~~) IUP by:

(i) Publishing a draft (~~((intended use plan))~~) IUP for public review and comment (~~((for a period of thirty days))~~); and

(ii) Amending the (~~((plan))~~) IUP, if necessary, after considering (~~((the))~~) public comments (~~((received;))~~).

(e) Submit a capitalization grant application, including the final (~~((intended use plan))~~) IUP, to EPA for review and approval;

(f) Revise the (~~((intended use plan))~~) IUP if EPA (~~((requests))~~) requires changes; and

(g) (~~((If necessary,))~~) Provide for administrative review and dispute resolution (~~((in accordance with))~~) under WAC 246-296-160.

(3) The (~~((board's responsibilities are to))~~) board shall:

(a) Determine (~~((the financial capability and readiness to proceed of))~~) if each applicant with a project on the prioritized (~~((list))~~) IUP is financially capable and ready to proceed, using the (~~((risk assessment))~~) criteria (~~((established))~~) under WAC 246-296-140;

(b) (~~((Make the final selection of))~~) Select projects on the IUP to receive assistance from the fund (~~((in accordance with))~~) using the criteria (~~((established))~~) under WAC 246-296-140; and

(c) (~~((If necessary,))~~) Provide for administrative review and dispute resolution (~~((in accordance with))~~) of departmental or board decisions under WAC 246-296-160.

AMENDATORY SECTION (Amending WSR 01-21-137, filed 10/24/01, effective 11/24/01)

WAC 246-296-130 Project priority rating and ranking criteria.

~~((+))~~ The department shall, at a minimum, consider the following (~~((criteria are considered when prioritizing))~~) to assign points, and rate and rank proposed projects (~~((for DWSRF financial assistance))~~):

~~((a))~~ Priority criteria:

~~((i))~~ (1) Criteria for risk categories and points based on:

(a) Type and significance of public health (~~((risk to be addressed))~~) problems the project will resolve;

~~((ii))~~ Compliance status and need) (b) If the project is needed to bring the public water system into compliance with federal, state, and local drinking water (~~((standards))~~) requirements; (~~((and~~

~~((iii))~~) (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(~~(s)~~).
~~((b) Supporting criteria:~~
~~(i) Type of project;~~
~~(ii) Restructuring;~~
~~(iii))~~ (2) Additional points based on the type of project being proposed, if the project:
(a) Is to restructure a public water system;
(b) Creates a sustainable regional public health benefit;
~~((iv) Multiple benefit;~~
~~(v) Consistency)~~ (c) Has multiple benefits that are sustainable;
(d) Is consistent with the Growth Management Act as determined by commerce;
~~((vi) Installation of)~~ (e) Is financially sustainable;
(f) Qualifies as a green project;
(g) Serves a disadvantaged community; or
(h) Results in service meters on existing services not currently metered(~~;~~ and
~~(vii) Size of population affected by the project.~~
~~(2) Values for these criteria shall be developed annually by DOH to ensure projects that resolve the most significant health risks receive the highest values. The values shall be made available to the public in advance of the application cycle and shall be published in the DWSRF application package).~~

AMENDATORY SECTION (Amending WSR 01-21-137, filed 10/24/01, effective 11/24/01)

WAC 246-296-140 Final project selection criteria. When awarding a DWSRF loan to a public water system, the board shall consider, at a minimum, ((consider the following in assessing the risk associated with the application)) the applicant's ability to:
(1) ((Ability to)) Repay the DWSRF loan;
(2) ((Ability to)) Provide adequate security in case of DWSRF loan default; and
(3) ((Readiness to proceed or the ability of the applicant to)) Promptly ((commence)) begin the project.

AMENDATORY SECTION (Amending WSR 01-21-137, filed 10/24/01, effective 11/24/01)

WAC 246-296-150 DWSRF loan conditions. (1) A borrower(~~(s must)) shall comply with all applicable laws, regulations, and requirements.~~

~~(2) A DWSRF loan~~ (s shall include conditions to ensure compliance with the following:

~~(a) All)) agreement must address applicable federal, state, and local laws, orders, regulations, and permits; including, but not limited to~~ (, procurement, discrimination, labor, job safety, and drug-free environments, state and federal and women-owned business regulations. A current list of cross-cutting authorities shall be contained in the application package;

~~(b) Maintenance of)):~~

(a) Procurement;

(b) Nondiscrimination;

(c) Labor;

(d) Job safety;

(e) National Historic Preservation Act;

(f) Drug-free environments; and

(g) State and federal disadvantaged business regulations, such as those designed to help minority and women-owned businesses.

~~(3) A borrower shall maintain accounting records~~ ((in accordance with "))) that conform to generally accepted government accounting standards ~~((." These standards are defined as, but not limited to, those contained in the))~~ issued by the Comptroller General of the United States ~~((General Accounting Office (GAO) publication "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions"))~~, available at <http://www.gao.gov/yellowbook>;

~~((c) Demonstration of applicant's))~~ (4) A borrower shall document its legal ability to:

(a) Provide a dedicated source of revenue; and

(b) Guarantee the repayment of ~~((their obligations to))~~ the ~~((fund))~~ DWSRF loan from that dedicated source. Dedicated sources of revenue ~~((could be special assessments, general taxes, or general obligation bonds, revenue bonds, user charges, rates, fees, or other sources; and~~

~~(d) Submission of))~~ may include:

(i) Special assessments;

(ii) General taxes;

(iii) General obligation bonds;

(iv) Revenue bonds;

(v) User charges;

(vi) Rates;

(vii) Fees; and

(viii) Other sources.

(5) A borrower shall submit a construction completion report ~~((s))~~ for all project components and other documentation as required under chapter 246-290 WAC.

~~((3) Amendments to the loan agreement must be approved by DOH))~~ (6) A borrower shall comply with any EPA or department orders and compliance schedules during the term of the DWSRF loan agreement.

(7) The department, the board, and the ~~((loan recipient))~~ borrower shall approve amendments to the DWSRF loan agreement as needed.

(a) ((Amendments to)) The DWSRF loan agreement ~~((are required~~

~~when there is a~~) must be amended:

(i) For significant changes to the project's original ranked application and project scope of work; or

(ii) ~~((Need for a))~~ If additional time ~~((extension beyond the time cited in the original loan agreement))~~ is needed to complete project activities.

(b) Amendments to the DWSRF loan agreement are not required when adjustments are made at project closeout to reconcile minor differences between the contract and the ~~((final))~~ completed project ~~((for project close out))~~.

~~((4) CTED))~~ (8) Commerce, or ~~((another))~~ its authorized auditor ~~((at CTED's discretion,))~~ shall audit the ~~((financial assistance agreement and))~~ borrower's records.

~~((5))~~ (9) Commerce may terminate the DWSRF loan agreement in whole or in part at any time if the borrower:

(a) Fails to comply with the terms of the DWSRF loan agreement under ~~((WAC 246-296-150,))~~ this chapter; or ~~((fails to use))~~

(b) Uses the DWSRF loan proceeds ~~((only))~~ for ~~((those))~~ activities other than those identified in the DWSRF loan ~~((, CTED may terminate the))~~ agreement ~~((in whole or in part at any time. CTED))~~.

(10) Commerce shall, upon termination of a DWSRF loan agreement:

(a) Promptly notify the borrower in writing of its ~~((determination))~~:

(i) Decision to terminate ~~((7))~~ the loan agreement;

(ii) Reason for ~~((such termination, and the))~~ terminating the loan agreement;

(iii) Effective date of ~~((the termination. Upon))~~ termination; and

(b) Require immediate payment of the ~~((loan agreement, CTED shall request that the))~~ entire remaining balance of the DWSRF loan ~~((together with))~~ and any interest accrued ~~((, be paid immediately))~~.

AMENDATORY SECTION (Amending WSR 01-21-137, filed 10/24/01, effective 11/24/01)

WAC 246-296-160 Administrative review and dispute resolution.

(1) ~~((If))~~ An applicant ~~((does not agree with the DOH decision regarding application eligibility, the applicant))~~ may ~~((request reconsideration of))~~ request that the department reconsider a decision of ineligibility under WAC 246-296-070, 246-296-080, and 246-296-090. The request must be:

(a) Sent in writing to the ~~((director of the DOH division of drinking water. Requests for reconsideration must be in writing))~~ department at: P.O. Box 47822, Olympia, Washington, 98504-7822; and

(b) Received within ten working days of the date ~~((DOH))~~ the

department notifies the applicant of the decision.

(2) ~~((If))~~ An applicant ~~((does not agree))~~ that disagrees with the ~~((DOH))~~ department's decision ~~((regarding priority))~~ about rating and ranking ~~((of the))~~ its application~~((, the applicant))~~ under WAC 246-296-130 may submit comments to ~~((DOH as part of))~~ the department during public review of the draft ~~((intended use plan))~~ IUP.

(3) ~~((If an applicant does not agree with board staff recommendations regarding the loan application section submitted, the))~~ An applicant may request a review of the decision by the board~~((Requests))~~ about its DWSRF loan application. A request for review must be ~~((in writing and))~~ received by the board in writing at least fourteen calendar days ~~((in advance of the))~~ before a scheduled board meeting.

AMENDATORY SECTION (Amending WSR 01-21-137, filed 10/24/01, effective 11/24/01)

WAC 246-296-170 State environmental review process. (1) Federal law requires that Washington state follow a ~~((state environmental review process ()))~~ SERP~~((+))~~ for projects receiving DWSRF ~~((assistance))~~ loans. The purpose of the SERP is to identify any significant impact to the environment that may be caused by ~~((the implementation of))~~ a DWSRF project. This review must be done in compliance with ~~((the National Environmental Policy Act ()))~~ NEPA~~((+))~~ or ~~((the State Environmental Policy Act ()))~~ SEPA~~((+))~~ and any other applicable environmental ~~((statutes))~~ laws and regulations.

(2) ~~((ETED))~~ The department is designated as the lead agency for SERP. ~~((ETED))~~ The department shall provide basic guidance to the ~~((loan recipient))~~ borrower to meet the requirements of ~~((this process))~~ SERP. Details ~~((regarding))~~ about SERP shall be included in the application package.

AMENDATORY SECTION (Amending WSR 01-21-137, filed 10/24/01, effective 11/24/01)

WAC 246-296-180 Obligation for a public water system~~((s))~~ to comply if ~~((assistance))~~ a DWSRF loan is not obtained. The inability or failure of any public water system to receive ~~((assistance from the))~~ a DWSRF ~~((program))~~ loan, or any delay in obtaining ~~((assistance))~~ a DWSRF loan, does not ~~((alter))~~ change the ~~((obligation of the))~~ public water ~~((system))~~ system's duty to comply in a timely manner with all applicable federal, state, and

local drinking water (~~standards~~) regulations.