PROPOSED RULE MAKING

CR-102 (June 2012)
(Implements RCW 34.05.320)
Do **NOT** use for expedited rule making

Agency: Department of Health

☒ **Preproposal Statement of Inquiry was filed as WSR** 15-09-026 **; or**
☐ **Expedited Rule Making--Proposed notice was filed as WSR _ ; or**
☐ **Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).**

☒ **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 (DWSRF), requirements for emergency funding.

Hearing location(s): Department of Health
Town Center 2, Room 158
111 Israel Road SE
Tumwater, Washington 98501

Date: February 23, 2015 Time: 9:30 a.m.

Date of intended adoption: 02/26/2016
(Note: This is **NOT** the **effective** date)

Submit written comments to:
Name: Theresa Phillips
Address: Department of Health
PO Box 47820
Olympia, Washington 98504-7820
e-mail: https://fortress.wa.gov/doh/policyreview/
fax (360) 236-2250 by (date) 02/23/2016

Assistance for persons with disabilities: Contact
Theresa Phillips by 02/16/2016
TTY (800) 833-6388 or () 711

Purpose of the proposal and its anticipated effects, including any changes in existing rules:
This proposal sets specific requirements for awarding infrastructure loans to eligible water systems due to an emergency event. The proposed requirements allow the department to reduce the standard timeframe to review and approve emergency loans so water systems can quickly recover from an emergency event and restore safe and reliable drinking water service to its customers.

Reasons supporting proposal:
The existing requirements establish eligibility, priority, and selection criteria but do not identify specific criteria or waiver requirements for awarding emergency loans. Establishing specific criteria and waiver requirements will expedite loans approvals and result in better public health protection.

Statutory authority for adoption:
RCW 70.119A.170

Statute being implemented:
RCW 70.119A.080

Is rule necessary because of a:

Federal Law?	☐ Yes	☒ No
Federal Court Decision?	☐ Yes	☒ No
State Court Decision?	☐ Yes	☒ No

If yes, CITATION:

DATE 01/19/2016

NAME (type or print)
John Wiesman, DrPH, MPH

SIGNATURE

John Wiesman
, DrPH, MPH

TITLE
Secretary of Health

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: January 19, 2016
TIME: 10:18 AM

WSR 16-03-057

(COMPLETE REVERSE SIDE)

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

None.

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

☐ Private
☐ Public
☒ Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting.....	Theresa Phillips	243 Israel Road SE, Tumwater, WA 98501	(360) 236-3147
Implementation....	Clark Halvorson	243 Israel Road SE, Tumwater, WA 98501	(360) 236-3100
Enforcement.....	Clark Halvorson	243 Israel Road SE, Tumwater, WA 98501	(360) 236-3100

Has a small business economic impact statement been prepared under chapter 19.85 RCW or has a school district fiscal impact statement been prepared under section 1, chapter 210, Laws of 2012?

☐ 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
PO Box 47820
Olympia, Washington 98504-7820

phone (360) 236-3147
fax (360) 236-2250
e-mail theresa.phillips@doh.wa.gov

☐ No: Please explain:

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

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

(1) Establish a funding program for public water system infrastructure improvements that increase a public water system's ability to provide safe and reliable drinking water and improve public health protection;

(2) Establish eligibility criteria for public water systems to receive funding including, but not limited to, proper operation, management, and maintenance consistent with federal DWSRF capacity requirements;

(3) Provide additional financial assistance to eligible disadvantaged communities;

(4) Provide DWSRF loans in response to an emergency;

(5) Use a portion of the EPA capitalization grant for set-aside activities according to federal law;

((~~(5)~~)) (6) Establish that sound financial practices and ongoing oversight are in place to manage the DWSRF in perpetuity;

((~~(6)~~)) (7) 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)~~)) (8) Establish requirements for public water systems to receive a DWSRF loan in response to an emergency; and

(9) Establish the responsibilities of the department, the board, and commerce, for administering the DWSRF loan program.

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

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

(4) **"Board"** means the Washington state public works board.

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

(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 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.

(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 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.

(12) **"DWSRF (drinking water state revolving fund)"** means the program that meets the requirements of RCW 70.119A.170 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.

(13) **"DWSRF loan"** means an agreement between the board 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 system, either privately or publicly owned, or a nonprofit Group A noncommunity public water system.

(17) **"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.

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

((~~(18)~~)) (19) **"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 sustaina-

ble 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)~~)) (20) **"Group A public water system"** means a public water system 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 twenty-five or more 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 each day for sixty or more days 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)~~)) (21) **"Group B public water system"** means a public water system that 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 service connections, and:

(a) Fewer than twenty-five people; or

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

((~~(21)~~)) (22) **"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.

((~~(22)~~)) (23) **"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.

((~~(23)~~)) (24) **"Loan closeout"** means a loan agreement is complete when the loan is repaid in full.

((~~(24)~~)) (25) **"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.

((~~(25)~~)) (26) **"Multiple benefit"** means projects that address more than one type of health risk.

((~~(26)~~)) (27) **"Municipality"** means a city, town, special purpose district, or municipal corporation established according to the applicable laws of this state.

((~~(27)~~)) (28) **"NEPA"** means the National Environmental Policy Act of 1969, 42 United States Code 4321 et seq., PL-91-190.

((~~(28)~~)) (29) **"Nonprofit organization"** means an entity that has a federal tax exempt status identification number.

((~~(29)~~)) (30) **"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.

((~~(30)~~)) (31) **"Person"** means any individual, corporation, company, association, society, firm, partnership, joint stock company, or any governmental agency, or the authorized agents of these entities.

((~~(31)~~)) (32) **"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. For a DWSRF emergency loan, principal forgiveness is a reduction of up to seventy-five percent of the total loan amount. Principal forgiveness is applied when the project is complete.

((~~(32)~~)) (33) **"Project report"** means a department-approved document the borrower or borrower's agency develops under WAC 246-290-110.

((~~(33)~~)) (34) **"Public water system"** means any public water system 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. 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.

((~~(34)~~)) (35) **"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.

((~~(35)~~)) (36) **"Regional benefit"** means project improvements that affect more than one public water system.

((~~(36)~~)) (37) **"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.

((~~(37)~~)) (38) **"SDWA (Safe Drinking Water Act)"** means Public Law 93-523, including all amendments.

((~~(38)~~)) (39) **"SEPA"** means the State Environmental Policy Act under chapter 43.21C RCW.

((~~(39)~~)) (40) **"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.

((~~(40)~~)) (41) **"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.

((~~(41)~~)) (42) **"Surface water"** means a body of water open to the atmosphere and subject to surface runoff.

((~~(42)~~)) (43) **"Sustainable"** means able to continue a benefit into the future as a result of appropriate public water system design, processes, operations, governance, and maintenance.

((~~(43)~~)) (44) **"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.

((~~(44)~~)) (45) **"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.

((~~(45)~~)) (46) **"Transfer of ownership"** means to change legal ownership of a public water system from one person to another.

((~~(46)~~)) (47) **"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.

((~~(47)~~)) (48) **"WFI (water facilities inventory)"** means a department form summarizing a public water system's characteristics.

((~~(48)~~)) (49) **"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 12-01-077, filed 12/19/11, effective 2/1/12)

WAC 246-296-050 DWSRF loan terms. (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; 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 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 12-01-077, filed 12/19/11, effective 2/1/12)

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

(a) Address or prevent violations of applicable federal, state, and local drinking water requirements;

(b) Replace aging infrastructure to help a public water system comply with applicable federal, state, and local drinking water requirements to improve public health protection;

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

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

(e) Respond to an emergency.

(2) Specific project-related costs eligible for a DWSRF loan include, but are not limited to, those that:

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

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

(c) Retroactively finance municipal projects that:

(i) Are for surface water treatment;

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

(iii) Address volatile organic or inorganic chemicals; or

(iv) Are required by department or EPA order;

(d) Acquire real property if needed to meet or maintain compliance with regulations or increase public health protection;

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

(f) Finance the costs of restructuring for a publicly owned public water system;

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

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

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

NEW SECTION

WAC 246-296-105 DWSRF emergency loans. (1) When the department determines an emergency exists and emergency funding is available, the department may award a DWSRF emergency loan to an eligible public water system that meets the requirements of this chapter, except that

the department may waive one or more of the DWSRF loan requirements under WAC 246-296-100, 246-296-120, 246-296-130, 246-296-140, and 246-296-150.

(2) An applicant must submit a completed emergency application package to the department to be considered for a DWSRF emergency loan.