Final
Significant Analysis

Chapter 246-296 WAC
Drinking Water State Revolving Fund
Loan Program

February 2016

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Section 1: Describe the proposed rule, including a brief history of the issue, and explain why the proposed rule is needed.

Background

Congress created the Drinking Water State Revolving Fund Loan Program (DWSRF) in 1996 when it reauthorized the federal Safe Drinking Water Act. 42 U.S.C. §§ 300j-12. The DWSRF loan program is designed to provide low interest loans to eligible public water systems so they may repair existing and build new infrastructure. These federal loan funds enable public water systems to make improvements such as:

- Replacing aging or broken pipes and other infrastructure;
- Treating vulnerable water sources to prevent disease;
- Eliminating bacterial contamination;
- Purchasing and installing equipment that will prevent contamination or remove harmful contaminants such as arsenic or nitrates;
- Restructuring at-risk and failing water systems; and
- Improving overall drinking water quality so they are able to deliver safe, reliable drinking water to their customers and increase public health protection.

The DWSRF reserves a percentage of the total capitalization grant for emergency projects annually. The percentage reserved for a given year fluctuates based on several factors. The corresponding funds available for emergency loans therefore change annually. If these projects are not funded, the reserved emergency funds are returned to the funding account. The program benefits public water systems by providing direction on what type of projects are eligible for emergency funds and what terms are potentially available for emergency projects.

The Washington state legislature then created a DWSRF loan program under RCW 70.119A.170 to be consistent with federal law, and assigned responsibilities to state agencies to carry out the program. The Department of Health (department) then adopted rules to implement this statute.

The federal Safe Drinking Water Act allows states to offer funds to address emergencies. Currently, chapter 246-296 WAC makes no distinction between eligibility requirements for planned infrastructure improvements projects and projects needed to address an emergency. All projects must address a safe drinking water requirement deficiency and systems must be financially viable so they can repay the loan. The rules do not include specific requirements for awarding loans due to an emergency event.

To address the barriers that exist in the current chapter and to facilitate a more immediate response to emergencies, the department has adopted emergency rules that allow water systems to apply for funds to make improvements to address emergencies.

Department Use of Emergency rules and emergency projects funded to date

The department adopted its first emergency rule governing the use of funds for emergency projects on July 8, 2015, WSR 15-15-037. This rule expired on November 4, 2015. The department adopted a second emergency rule for the same purpose on November 4, 2015. The second emergency rule will expire on March 1, 2016.

As of November 2015, one water system expressed interest in obtaining a loan. The water system is in the process of finalizing the application. The anticipated emergency loan request is for $80,000 dollars with no funds earmarked for principal forgiveness.

The amendments to the chapter create a funding option for water systems to respond to emergencies and restore safe and reliable service to customers.

The amendments:

- Allow the department to award DWSRF emergency loans to public water systems if it deems an event meets the definition of "emergency";
- Changed the definition of "principal forgiveness" for emergency projects so that public water systems designated as a "disadvantaged community" are eligible to have up to 75% of their loan forgiven;
- Allow the department to waive one or more specific requirements of chapter 246-296 WAC for public water systems requesting emergency loans; and
- Require public water systems requesting emergency loans to file a completed emergency loan application package.

Section 2: Is a Significant Analysis required for this rule?

Yes, as defined in RCW 34.05.328, portions of the rule require a significant analysis. The department has determined that no significant analysis is required for the following portions of the rule.

Non-Significant Rule Identification Table

WAC Section	Section Title	Reason
WAC 246-296-010	Purpose and scope	This section is an interpretive rule that does not subject a person to a penalty or sanction, that sets forth the agency's interpretation of statutory provisions it administers.
WAC 246-296-020	Definitions, abbreviations, and acronyms	The effects of definitions associated with a significant change upon implementation are identified and analyzed in context as part of the section-by-section analysis in Section 5. All other definitions clarify the language of the rule without changing its effect.

Section 3: Clearly state in detail the general goals and specific objectives of the statute that the rule implements.

RCW 70.119A.170 authorizes the department to use federal funding to meet the objectives of the federal Safe Drinking Water Act.

The statute:

- Creates accounts in the state treasury that allow the state to use federal money and other revenue to fund a DWSRF loan program and for related purposes;
- Establishes that federally-appropriated DWSRF funds may be used to help public water systems provide safe drinking water through a loan program including projects needed to address an emergency event; and
- Directs the department to provide loans to public water systems for projects that are needed to comply with the federal Safe Drinking Water Act.

Section 4: Explain how the department determined that the rule is needed to achieve these general goals and specific objectives. Analyze alternatives to rulemaking and the consequences of not adopting the rule.

DWSRF loans are provided through a federal program that provides grants to states to address high-priority public health problems for projects that improve drinking water infrastructure, including projects needed to address an emergency event. This amendment allows the department to offer loan funds for emergencies and enable public water systems to make needed repairs (e.g., replace a damaged or destroyed booster station) that the water system would otherwise be unable to finance in a timely manner. The overall effect of the amendments results in improved public health protection. In addition, the loan program offers principal forgiveness of up to 75% of the total project costs for water systems that meet the definition of a "disadvantaged community", which makes certain loans affordable, that would otherwise be unable to afford a loan.

There are no alternatives to rulemaking. Providing emergency funding requires changes to the DWSRF rules. The department emergency rules expire on March 1, 2016. The amendment must be effective before the department can continue to accept applications and award DWSRF funds for emergency projects.

Section 5: Explain how the department determined that the probable benefits of the rule are greater than the probable costs, taking into account both the qualitative and quantitative benefits and costs and the specific directives of the statute being implemented.

<u>Section-by-section Cost and Benefit Analysis</u>
For each rule section deemed significant, the following section-by-section analysis includes a description of the changes as well as the associated benefits and costs of those changes.

WAC 246-296-050: DWSRF loan terms

Description of the amended rule: The rule specifies that disadvantaged communities that have to make system repairs due to an emergency are eligible for principal forgiveness. Principal forgiveness means that, upon department approval, a water system serving a disadvantaged community would not have to pay back up to 75% of the loan amount.

Cost/Benefit Analysis: There is no compliance costs associated with this section. The Environmental Protection Agency's (EPA) Sustainability Policy contains a section titled "Targeting SRF Assistance" that sets principles to guide EPA's implementation of the clean water and drinking water state revolving funds. Included in this section is the statement, "SRF programs will continue to be maintained primarily as loan programs, but strategic use of targeted subsidies will be used to promote sustainable public water systems and assist disadvantaged communities, where appropriate."

Washington has been required to provide subsidies in recent federal appropriations. We limited principal forgiveness to a maximum of 75% percent of the loan amount for emergencies to help preserve the long-term strength of the loan fund, and to assure public water systems and their customers had a stake in maintaining their infrastructure improvements over time. We require projects to be complete before applying principal forgiveness to be sure the borrower has no incentive to default on the loan during project construction.

WAC 246-296-070: Eligible projects and project-related costs

Description of the amended rule: The section adds "projects needed to respond to an emergency" to the list of projects eligible for DWSRF funding.

Cost/Benefit Analysis: There is no compliance costs associated with this section. The rule provides an avenue for public water systems to apply for and receive loans in response to an emergency. This allows the water system to make repairs in a timely manner and enable the system to restore service and provide safe and reliable water to its customers.

WAC 246-296-105: DWSRF emergency loans

Description of the new rule section: This section establishes general requirements for emergency loans. The new rule:

- Allows the department to award DWSRF emergency loans to public water systems if it deems an event meets the definition of "emergency";
- Allows the department to waive one or more specific requirements of chapter 246-296 WAC for public water systems requesting emergency loans to expedite loan approvals; and
- Requires public water systems requesting emergency loans to file a completed emergency loan application package.

Cost/Benefit Analysis: The amended rule requires public water systems that choose to apply for an emergency loan to file a complete emergency loan application. This is similar to applications for all DWSRF loans. The time required to complete the application varies by the size and complexity of the emergency project, but overall should be less than the time to complete all other DWSRF loans.

Currently, public water systems seeking DWSRF funds are required to meet eligibility requirements including the requirement for water systems to have their project included in a current water system plan under chapter 246-290 WAC and approved by the department. Because water systems cannot foresee the need for an emergency project, these projects are not included in water system plans. Under the current rule, water systems would have to submit a water system plan update that includes the emergency project, which could take several months to complete. Consequently, during this time, the water system is unable to address their emergency using DWSRF funds, which may result in a failure to protect public health. The amended rule allows the department to waive this requirement, and others as needed, to help water systems and the department respond effectively and to protect public health in an emergency.

Probable benefit and cost conclusion

There are no additional costs associated with the amended rule. The primary benefit of this rule is to protect public health by 1) providing a structure to award loans to water systems in response to an emergency; and 2) providing a structure to award principal forgiveness of up to 75% for disadvantaged communities that apply for an emergency loan. Providing a funding mechanism for eligible emergency projects will protect public health and safety by allowing the department to quickly award loans due to an emergency event and to restore safe and reliable drinking water service to customers.

Section 6: Identify alternative versions of the rule that were considered, and explain how the department determined that the rule being adopted is the least burdensome alternative for those required to comply with it that will achieve the general goals and specific objectives stated previously.

Least-burdensome determination

The department considered alternate versions of the rule. In considering each requirement, the department chose the version that is the most flexible and least costly for public water systems while meeting the public health mandates of the underlying statute.

Options Considered	Reason for not Selecting
Percentage of loan eligible for principal forgiveness	The department considered using the existing limit of 50% loan forgiveness for disadvantaged communities. Based on the inherent challenge of emergency projects, the department elected to propose a limit of 75%, which will ultimately make more emergency projects affordable.

After consideration, the department determined the amended rules are the least burdensome alternative for those required to comply with the rules that achieves the goals and specific objectives of the underlying statute.

Section 7: Determine that the rule does not require those to whom it applies to take an action that violates requirements of another federal or state law.

The amended rule does not require those to whom it applies to take an action that violates requirements of federal or state law.

Section 8: Determine that the rule does not impose more stringent performance requirements on private entities than on public entities unless required to do so by federal or state law.

The amended rule does not impose more stringent performance requirements on private entities than on public entities.

Section 9: Determine if the rule differs from any federal regulation or statute applicable to the same activity or subject matter and, if so, determine that the difference is justified by an explicit state statute or by substantial evidence that the difference is necessary.

The amended rule does not differ from any applicable federal regulation or statutes.

Section 10: Demonstrate that the rule has been coordinated, to the maximum extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter.

The department has coordinated with EPA, Washington State Department of Commerce, and the Public Works Board in developing these amended rules to ensure they comply with the Safe Drinking Water Act, and other federal and state regulations pertaining to DWSRF loans.