



RULE-MAKING ORDER

CR-103E (May 2009)
(Implements RCW 34.05.360)

Agency: Department of Health

Emergency Rule Only

Effective date of rule:

Emergency Rules

- Immediately upon filing.
- Later (specify) 02/01/2010

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes
 - No
- If Yes, explain:

Purpose: The purpose of this rule is to amend chapter 246-296 WAC, Drinking Water State Revolving Fund Loan Program, to include criteria for water systems to obtain a loan as provided in the federal appropriations bill for fiscal year 2010 under section 1452 of the Safe Drinking Water Act as enacted on October 31, 2009.

Citation of existing rules affected by this order:

Repealed: None
 Amended: 246-296-020 Definitions
 Suspended: None

Statutory authority for adoption: RCW 70.119A.170

Other authority : Safe Drinking Water Act

EMERGENCY RULE

Under RCW 34.05.350 the agency for good cause finds:

- That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.
- That in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, or 2011, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this finding: See Attachment A - Reasons for Emergency Rule

Date adopted: 1/15/10

NAME (TYPE OR PRINT)
Mary C. Selecky

SIGNATURE

TITLE
Secretary

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: January 15, 2010
TIME: 10:51 AM

WSR 10-03-052

(COMPLETE REVERSE SIDE)

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	<u>1</u>	Amended	<u>1</u>	Repealed	<u>0</u>
Federal rules or standards:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Recently enacted state statutes:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>

The number of sections adopted at the request of a nongovernmental entity:

	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
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The number of sections adopted in the agency's own initiative:

	New	<u>1</u>	Amended	<u>1</u>	Repealed	<u>0</u>
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
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The number of sections adopted using:

Negotiated rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Pilot rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Other alternative rule making:	New	<u>1</u>	Amended	<u>1</u>	Repealed	<u>0</u>

Attachment A
Reasons for Emergency Rule

The Administrative Procedure Act allows the Department to adopt an emergency rule as follows:

(1) If an agency for good cause finds:

(a) That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest;

(b) That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule; or

(c) In order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, or 2011, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency,

The agency may dispense with those requirements and adopt, amend, or repeal the rule on an emergency basis. The agency's finding and a concise statement of the reasons for its finding shall be incorporated in the order for adoption of the emergency rule or amendment filed with the office of the code reviser under RCW [34.05.380](#) and with the rules review committee.

The 2010 federal appropriations bill, enacted October 31, 2009, funds section 1452 of Safe Drinking Water Act and includes criteria for Group A public water systems that obtain a Drinking Water State Revolving Fund (DWSRF) loan. To make these funds available in Washington State, the department must immediately adopt a rule for the SRF program, as described below.

The enacted bill contains a number of new requirements that are not currently in rule. The state must assure that our requirements align with these requirements in order to receive this funding. Specifically, the bill requires at least 30% of the new federal award be given out as subsidy to eligible recipients and at least 20% of the federal award must be used for eligible green projects. The current DWSRF rules do not identify any form of funding other than traditional loans with full repayment, nor do they address funding of green projects.

The necessary rule changes must be in place prior to awarding the appropriations funds. The process of awarding funds includes project screening, ranking, and selection. This process must begin February 1, 2010 in order to award funding to eligible recipients within the current federal fiscal year. After completing the screening, ranking, and selection process, the department must

publish for review and comment a draft Intended Use Plan (IUP) that includes a list of fundable projects. IUP's are required to be submitted with the state's application to EPA for the funding. States cannot access the funds until that process is complete. The department plans to publish a draft IUP in April. The short timeframe between the adoption of the federal appropriations bill and the deadline for publication of the IUP do not allow use of the normal rulemaking process. Therefore, an emergency rule is necessary in order to meet the requirements of the federal appropriations bill.

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

WAC 246-296-020 Definitions. "Act" means the Federal Safe Drinking Water Act (SDWA).

"Application" means a DWSRF loan application submitted to DOH for DWSRF assistance.

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

"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.

"Board" means the state of Washington public works board.

"Borrower" means the entity or individual that has the legal and financial responsibility for the 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.

"COM" means the department of commerce.

"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.

"Construction completion report" means a form provided by DOH to the applicant required to be completed for each specific construction project to document project construction in accordance with chapter 246-290 WAC and general standards of engineering practice. The completed form must be stamped with an engineer's seal, 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.

"Default" means failure to meet a financial obligation such as

a loan payment.

"Disadvantaged community" means the service area of a public water system where at least fifty-one 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 at the time of loan execution.

"DOH" means the department of health.

"Drinking water state revolving fund (DWSRF)" means the program established to administer the federal funds and other funds deposited in the account authorized to finance water system infrastructure, drinking water program activities, and to meet the applicable requirements of RCW 70.119A.170.

"Eligible system" means Group A community water systems, both privately and publicly owned, and nonprofit Group A noncommunity water systems.

"EPA" means the United States Environmental Protection Agency.

"Group A system" means a public water system that regularly serves fifteen or more residential connections, or twenty-five or more people per day for sixty or more days per year.

"Group B system" means a public water system that serves less than fifteen residential connections and less than twenty-five people per day, or serves twenty-five or more people per day for sixty or fewer days per year.

"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 water to one single-family residence, or four or fewer connections all of which serve residences on the same farm.

"Intended use plan (IUP)" means the federally required document prepared each year by the state which identifies the intended uses of the funds in the DWSRF and describes how those uses support the 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))~~ principal sum to the DWSRF except when the funds are provided in the form of a loan on which all or some of the principal is forgiven.

"Multiple benefit" means project 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.

"Nonprofit organization" means a system 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.

"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.

"Project report" means a project report developed and approved under chapter 246-290 WAC.

"Public water system" means any system, providing water for human consumption through pipes or other constructed conveyances excluding systems serving only one single-family residence and 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.

"Regional benefit" means project improvements that affect more than one public water system.

"Restructuring" means changing system operation, management and/or ownership, including, but not limited to:

- (1) Mergers;
- (2) Voluntary transfer of ownership; or
- (3) Receivership (involuntary transfer of operation and/or ownership).

"Safe Drinking Water Act (SDWA)" means the Federal Safe Drinking Water Act, 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.

"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 Section 1452 of the SDWA, to fund new programs, and 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.

"State environmental review process (SERP)" means the environmental review process conducted on all DWSRF projects that ensures compliance with state and federal environmental review through a National Environmental Policy Act (NEPA)-like process.

"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.

"Surface water" means a body of water open to the atmosphere

and subject to surface runoff.

"System capacity" means the system's operational, technical, managerial and financial capability to achieve and maintain compliance with all relevant local, state, and federal plans and regulations.

"Transfer of ownership" means to convey ownership of a 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.

"Water right" means 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.

"Water system plan (WSP)" means a water system plan developed and approved under WAC 246-290-100.

NEW SECTION

WAC 246-296-185 Implementation of Public Law 111-88 Making Appropriations for the Department of the Interior, Environment, and Related Agencies for the Fiscal Year Ending September 30, 2010, and for Other Purposes. (1) Purpose and intent.

(a) The purpose of this section is to implement the requirements of Public Law (P.L.) 111-88 Making Appropriations for the Department of the Interior, Environment, and Related Agencies for the Fiscal Year Ending September 30, 2010, and for Other Purposes.

(b) The DWSRF rules in this chapter apply to the federal fiscal year 2010 DWSRF funds except as otherwise provided in this section. If a conflict exists between the rules in this chapter and P.L. 111-88, P.L. 111-88 shall control.

(2) Provision of funds.

(a) Notwithstanding the requirements of section 1452(f) of the Safe Drinking Water Act, 42 U.S.C. Sec. 300j-12(f), the state will provide at least thirty percent of the amount of the 2010 federal grant to provide additional subsidization to eligible recipients in the form of forgiveness of principal.

(b) To the extent there are sufficient eligible applications, the state will provide at least twenty percent of the amount of the

2010 federal grant for green projects to address green infrastructure, water or energy efficiency improvements or other environmentally innovative activities.

(c) In addition to the prioritization criteria listed in WAC 246-296-130, DOH may consider the requirements in (a) or (b) of this subsection for additional subsidies or green projects when ranking projects.

(d) In addition to the criteria identified in WAC 246-296-140, the board, in consultation with DOH, may consider the requirements in (a) or (b) of this subsection for additional subsidies or green projects in the final project selection.

(3) Qualification for principal forgiveness.

(a) If the water system is located in a disadvantaged community, a project may be awarded a loan with principal forgiveness for at least fifty percent of the loan amount.

(b) If the project does not fall under (a) of this subsection, and the water system is located in a distressed county, the project may be awarded a loan with principal forgiveness for at least thirty percent of the loan amount.

(c) If the project results in restructuring of a water system that involves a change of ownership prior to loan execution, the project may be awarded a loan with principal forgiveness for at least fifty percent of the loan amount.

(d) If the project does not fall under (a), (b), or (c) of this subsection, it may be awarded a low interest loan.

(4) Loan fee. A loan fee of one percent will be charged on all loans including those loans on which all, some or none of the principal is forgiven.