

# Chapter 246-296 WAC

## DRINKING WATER STATE REVOLVING FUND LOAN PROGRAM

### WAC

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

[Statutory Authority: RCW 70.119A.170. WSR 16-06-100, § 246-296-010, filed 3/1/16, effective 4/1/16. Statutory Authority: RCW 70.119A.170 and Federal Safe Drinking Water Act, H.R. 1452. WSR 12-01-077, § 246-296-010, filed 12/19/11, effective 2/1/12. Statutory Authority: RCW 70.119A.-170. WSR 01-21-137, § 246-296-010, filed 10/24/01, effective 11/24/01.]

(3/1/16)

**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

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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.

(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 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.

(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.

(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.

(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.

(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.

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

(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.

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

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

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

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

(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.

(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.

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

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

(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.

(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.

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

(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.

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

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

(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.

(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.

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

(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.

(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.

(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.

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

(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 bene-

ficial use of water in accordance with all applicable state laws.

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

(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.

[Statutory Authority: RCW 70.119A.170. WSR 16-06-100, § 246-296-020, filed 3/1/16, effective 4/1/16. Statutory Authority: RCW 70.119A.170 and Federal Safe Drinking Water Act, H.R. 1452. WSR 12-01-077, § 246-296-020, filed 12/19/11, effective 2/1/12. Statutory Authority: RCW 70.119A.-170. WSR 01-21-137, § 246-296-020, filed 10/24/01, effective 11/24/01.]

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

(2) The department shall:

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

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

(c) 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 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 shall select projects to receive DWSRF funding based on the criteria under WAC 246-296-140.

(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.

[Statutory Authority: RCW 70.119A.170 and Federal Safe Drinking Water Act, H.R. 1452. WSR 12-01-077, § 246-296-030, filed 12/19/11, effective 2/1/12. Statutory Authority: RCW 70.119A.170. WSR 01-21-137, § 246-296-030, filed 10/24/01, effective 11/24/01.]

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

(a) Capitalization grants provided by the federal government;

(b) State matching funds appropriated under RCW 70.119A.170;

(c) Principal and interest payments;

(d) DWSRF loan fees; and

(e) Any other funds earned and deposited.

(2) The department may use these funds to:

(a) Finance DWSRF loans for planning, design, and construction of public water system infrastructure projects that will address or prevent violations of applicable federal, state, and local drinking water requirements;

(b) Finance reasonable costs for the department, the board, and commerce to administer the DWSRF program; and

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

(i) DWSRF program administration;

(ii) Technical assistance specific to small public water systems;

(iii) State drinking water program management; and

(iv) Local assistance and other state programs.

[Statutory Authority: RCW 70.119A.170 and Federal Safe Drinking Water Act, H.R. 1452. WSR 12-01-077, § 246-296-040, filed 12/19/11, effective 2/1/12. Statutory Authority: RCW 70.119A.170. WSR 01-21-137, § 246-296-040, filed 10/24/01, effective 11/24/01.]

**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;

(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.

[Statutory Authority: RCW 70.119A.170. WSR 16-06-100, § 246-296-050, filed 3/1/16, effective 4/1/16. Statutory Authority: RCW 70.119A.170 and Federal Safe Drinking Water Act, H.R. 1452. WSR 12-01-077, § 246-296-050, filed 12/19/11, effective 2/1/12. Statutory Authority: RCW 70.119A.-170. WSR 01-21-137, § 246-296-050, filed 10/24/01, effective 11/24/01.]

**WAC 246-296-060 Establishing a DWSRF loan fee, loan fee account, and loan fee uses.** (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, commerce, and the board 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.

[Statutory Authority: RCW 70.119A.170 and Federal Safe Drinking Water Act, H.R. 1452. WSR 12-01-077, § 246-296-060, filed 12/19/11, effective 2/1/12. Statutory Authority: RCW 70.119A.170. WSR 01-21-137, § 246-296-060, filed 10/24/01, effective 11/24/01.]

**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;

(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.

[Statutory Authority: RCW 70.119A.170. WSR 16-06-100, § 246-296-070, filed 3/1/16, effective 4/1/16. Statutory Authority: RCW 70.119A.170 and Federal Safe Drinking Water Act, H.R. 1452. WSR 12-01-077, § 246-296-070, filed 12/19/11, effective 2/1/12. Statutory Authority: RCW 70.119A.-170. WSR 01-21-137, § 246-296-070, filed 10/24/01, effective 11/24/01.]

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

- (1) Acquiring, building, or repairing dams or raw water reservoirs;
- (2) Acquiring water rights, except if the water rights are owned by a public water system that is being acquired by restructuring;
- (3) Laboratory costs for monitoring;
- (4) Operation and maintenance costs;
- (5) Projects needed primarily for fire protection;
- (6) Projects needed primarily to serve future population growth;
- (7) Projects that have received assistance from the national set-aside for Indian tribes and Alaska native villages under Section 1452(i) of the SDWA;
- (8) Projects for an individual water supply system or a Group B public water system unless the public water system is being restructured into a Group A public water system under WAC 246-296-110; and
- (9) Projects that are solely for the purpose of installing service meters.

[Statutory Authority: RCW 70.119A.170 and Federal Safe Drinking Water Act, H.R. 1452. WSR 12-01-077, § 246-296-080, filed 12/19/11, effective 2/1/12. Statutory Authority: RCW 70.119A.170. WSR 01-21-137, § 246-296-080, filed 10/24/01, effective 11/24/01.]

**WAC 246-296-090 Public water system eligibility requirements.** (1) Public water systems eligible for a DWSRF loan include:

- (a) Publicly and privately owned community public water systems, except those public water systems not eligible for 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 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;
  - (d) Group B public water systems, unless restructuring; and
  - (e) Public water systems lacking the system capacity to comply with all applicable federal, state, and local drinking water requirements, unless:
    - (i) The project will bring the public water system into compliance; and
    - (ii) The owner of the public water system agrees to reasonable and appropriate changes in operation and management to stay in compliance.

[Statutory Authority: RCW 70.119A.170 and Federal Safe Drinking Water Act, H.R. 1452. WSR 12-01-077, § 246-296-090, filed 12/19/11, effective 2/1/12. Statutory Authority: RCW 70.119A.170. WSR 01-21-137, § 246-296-090, filed 10/24/01, effective 11/24/01.]

**WAC 246-296-100 DWSRF loan eligibility and application requirements.** To be eligible for a DWSRF loan, an applicant shall:

- (1) Document that the public water system has the system capacity to stay in compliance with applicable federal, state, and local drinking water requirements, unless:

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

[Statutory Authority: RCW 70.119A.170 and Federal Safe Drinking Water Act, H.R. 1452. WSR 12-01-077, § 246-296-100, filed 12/19/11, effective 2/1/12. Statutory Authority: RCW 70.119A.170. WSR 01-21-137, § 246-296-100, filed 10/24/01, effective 11/24/01.]

**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.

[Statutory Authority: RCW 70.119A.170. WSR 16-06-100, § 246-296-105, filed 3/1/16, effective 4/1/16.]

**WAC 246-296-110 Requirements for using DWSRF to create a new Group A public water system.** (1) The department may award a DWSRF loan to create a new Group A public water system that will meet the requirements under chapter 246-290 WAC when the project is complete if:

- (a) The project resolves high priority public health problems caused by unsafe drinking water provided by an individ-

ual 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 prior to submitting the DWSRF loan application to the department. At a minimum, the applicant shall post a legal notice of the intent to create a new public water system in the local newspaper;

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

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

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

[Statutory Authority: RCW 70.119A.170 and Federal Safe Drinking Water Act, H.R. 1452. WSR 12-01-077, § 246-296-110, filed 12/19/11, effective 2/1/12. Statutory Authority: RCW 70.119A.170. WSR 01-21-137, § 246-296-110, 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 submit a completed application package to the department on or before the due date in the application package.

(2) 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) Create a prioritized list of eligible projects in order of public health significance;

(d) Develop an IUP by:

(i) Publishing a draft IUP for public review and comment; and

(ii) Amending the IUP, if necessary, after considering public comments.

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

(f) Revise the IUP if EPA requires changes; and

(g) Provide for administrative review and dispute resolution under WAC 246-296-160.

(3) The board shall:

(a) Determine if each applicant with a project on the prioritized IUP is financially capable and ready to proceed, using the criteria under WAC 246-296-140;

(b) Select projects on the IUP to receive assistance from the fund using the criteria under WAC 246-296-140; and

(c) Provide for administrative review and dispute resolution of departmental or board decisions under WAC 246-296-160.

[Statutory Authority: RCW 70.119A.170 and Federal Safe Drinking Water Act, H.R. 1452. WSR 12-01-077, § 246-296-120, filed 12/19/11, effective 2/1/12. Statutory Authority: RCW 70.119A.170. WSR 01-21-137, § 246-296-120, 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 to assign points, and rate and rank proposed projects:

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

(a) Type and significance of public health problems the project will resolve;

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

(c) Current compliance status; and

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

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

(a) Is to restructure a public water system;

(b) Creates a sustainable regional public health benefit;

(c) Has multiple benefits that are sustainable;

(d) Is consistent with the Growth Management Act as determined by commerce;

(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.

[Statutory Authority: RCW 70.119A.170 and Federal Safe Drinking Water Act, H.R. 1452. WSR 12-01-077, § 246-296-130, filed 12/19/11, effective 2/1/12. Statutory Authority: RCW 70.119A.170. WSR 01-21-137, § 246-296-130, 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, the applicant's ability to:

(1) Repay the DWSRF loan based on a risk assessment;

(2) Provide adequate security in case of DWSRF loan default; and

(3) Promptly begin the project based on past contract performance, if applicable.

[Statutory Authority: RCW 70.119A.170 and Federal Safe Drinking Water Act, H.R. 1452. WSR 12-01-077, § 246-296-140, filed 12/19/11, effective 2/1/12. Statutory Authority: RCW 70.119A.170. WSR 01-21-137, § 246-296-140, filed 10/24/01, effective 11/24/01.]

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

(2) A DWSRF loan agreement must address applicable federal, state, and local laws, orders, regulations, and permits; including, but not limited to:

(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 that conform to generally accepted government accounting stan-

dards issued by the Comptroller General of the United States, available at <http://www.gao.gov/yellowbook>;

(4) A borrower shall document its legal ability to:

(a) Provide a dedicated source of revenue; and

(b) Guarantee the repayment of the DWSRF loan from that dedicated source. Dedicated sources of revenue 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 for all project components and other documentation as required under chapter 246-290 WAC.

(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 borrower shall approve amendments to the DWSRF loan agreement as needed.

(a) The DWSRF loan agreement must be amended:

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

(ii) If additional time is needed to complete project activities.

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

(8) Commerce, or its authorized auditor shall audit the borrower's records.

(9) The board 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 this chapter; or

(b) Uses the DWSRF loan proceeds for activities other than those identified in the DWSRF loan agreement.

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

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

(i) Decision to terminate the loan agreement;

(ii) Reason for terminating the loan agreement;

(iii) Effective date of termination; and

(b) Require immediate payment of the entire remaining balance of the DWSRF loan and any interest accrued.

[Statutory Authority: RCW 70.119A.170 and Federal Safe Drinking Water Act, H.R. 1452. WSR 12-01-077, § 246-296-150, filed 12/19/11, effective 2/1/12. Statutory Authority: RCW 70.119A.170. WSR 01-21-137, § 246-296-150, filed 10/24/01, effective 11/24/01.]

**WAC 246-296-160 Administrative review and dispute resolution.** (1) An applicant may 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 department at: P.O. Box 47822, Olympia, Washington, 98504-7822; and

(3/1/16)

(b) Received within ten working days of the date the department notifies the applicant of the decision.

(2) An applicant that disagrees with the department's decision about rating and ranking its application under WAC 246-296-130 may submit comments to the department during public review of the draft IUP.

(3) An applicant may request a review of the decision by the board about its DWSRF loan application. A request for review must be received by the board in writing at least fourteen calendar days before a scheduled board meeting.

[Statutory Authority: RCW 70.119A.170 and Federal Safe Drinking Water Act, H.R. 1452. WSR 12-01-077, § 246-296-160, filed 12/19/11, effective 2/1/12. Statutory Authority: RCW 70.119A.170. WSR 01-21-137, § 246-296-160, 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 SERP for projects receiving DWSRF loans. The purpose of the SERP is to identify any significant impact to the environment that may be caused by a DWSRF project. This review must be done in compliance with NEPA or SEPA and any other applicable environmental laws and regulations.

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

[Statutory Authority: RCW 70.119A.170 and Federal Safe Drinking Water Act, H.R. 1452. WSR 12-01-077, § 246-296-170, filed 12/19/11, effective 2/1/12. Statutory Authority: RCW 70.119A.170. WSR 01-21-137, § 246-296-170, filed 10/24/01, effective 11/24/01.]

**WAC 246-296-180 Obligation for a public water system to comply if a DWSRF loan is not obtained.** The inability or failure of any public water system to receive a DWSRF loan, or any delay in obtaining a DWSRF loan, does not change the public water system's duty to comply in a timely manner with all applicable federal, state, and local drinking water regulations.

[Statutory Authority: RCW 70.119A.170 and Federal Safe Drinking Water Act, H.R. 1452. WSR 12-01-077, § 246-296-180, filed 12/19/11, effective 2/1/12. Statutory Authority: RCW 70.119A.170. WSR 01-21-137, § 246-290-180 (codified as WAC 246-296-180), filed 10/24/01, effective 11/24/01.]

**WAC 246-296-190 Severability.** If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of this chapter, or the application of the provision to other persons or circumstances, shall not be affected.

[Statutory Authority: RCW 70.119A.170. WSR 01-21-137, § 246-296-190, filed 10/24/01, effective 11/24/01.]