



RULE-MAKING ORDER EMERGENCY RULE ONLY

CR-103E (December 2017) (Implements RCW 34.05.350 and 34.05.360)

CODE REVISER USE ONLY

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STATE OF WASHINGTON
FILED

DATE: October 01, 2020

TIME: 8:19 AM

WSR 20-20-051

Agency: Department of Health

Effective date of rule:

Emergency Rules

- Immediately upon filing.
- Later (specify)

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

- Yes
 - No
- If Yes, explain:

Purpose: WAC 246-296-100, DWSRF loan eligibility and application requirements. Under the current rule, an applicant for a Drinking Water State Revolving Fund (DWSRF) loan must have a current (through the close of the funding application period) Department of Health (department) approved water system plan which includes the proposed project needing funding. The department has amended the existing rule to allow a Group A public water system to submit a water system plan to the department for review prior to the close of the application cycle and receive department approval within one hundred twenty days after the close of the application cycle. The coronavirus disease 2019 (COVID-19) pandemic has created a number of issues with water systems updating existing or preparing new water system planning documents to include the proposed project needing funding because staff have been redeployed to respond to the pandemic. Water systems are needing more time to prepare or update their planning document, with the public meeting requirements being very challenging under current circumstances. Department staff are also having challenges with reviewing and approving planning documents in a timely manner due to many staff being activated to COVID-19 response duties. Not being able to approve loans for the improvement and remediation of drinking water systems is against the general welfare of state citizens. Given these constraints, this emergency rule provides more flexibility for submittal and approval for the water system planning requirement.

Citation of rules affected by this order:

New: None
 Repealed: None
 Amended: WAC 246-296-100
 Suspended: None

Statutory authority for adoption: RCW 70.119A.170

Other authority: Federal Safe Drinking Water Act 40 C.F.R. Part 35 Subpart L

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.

Reasons for this finding: The rule amendment is necessary for the preservation of the public health, safety, and general welfare of state citizens so that Group A public water systems can immediately apply for a drinking water state revolving fund loan and allow the department to review and approve a water system plan during the loan application cycle instead of requiring a current department-approved water system plan prior to application. By amending DWSRF loan application requirements so that more time is provided to water systems and the department for reviewing and approving water system plans, making this change will protect public health when water systems experience infrastructure challenges such as replacing aging infrastructure, installing treatment to remove contaminants, restructuring failing water systems, and responding to public health emergency events.

**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>0</u> | Amended | <u>0</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> |
|-----|----------|---------|----------|----------|----------|

The number of sections adopted on the agency's own initiative:

| | | | | | |
|-----|----------|---------|----------|----------|----------|
| New | <u>0</u> | Amended | <u>1</u> | Repealed | <u>0</u> |
|-----|----------|---------|----------|----------|----------|

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>0</u> | Amended | <u>1</u> | Repealed | <u>0</u> |

Date Adopted: 09/28/2020

Name: Jessica Todorovich for John Wiesman, DrPH, MPH

Title: Chief of Staff for Secretary of Health

Signature:



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) Is department-approved and current through the close of the application cycle; or

(b) Is submitted to the department for review prior to the close of the application cycle and receive department approval within one hundred twenty days after the close of the application cycle;

(c) Includes the proposed project; and

~~((b))~~ (d) 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).