Agency: Department of Health
Effective date of rule:
Permanent Rules
☒ 31 days after filing.
☐ Other (specify) (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?
☐ Yes  ☒ No  If Yes, explain:

Purpose: WAC 246-296-040, Use of funds by the state; WAC 246-296-060 Establishing a DWSRF loan fee, loan fee account, and loan fee uses; and WAC 246-296-080, Ineligible projects and project-related costs. The adopted rule clarifies and aligns WAC 246-296-040 with the Federal rule under 40 Code of Federal Regulations (C.F.R.) Part 35 for set-aside activities which will allow the Department of Health (department) to broaden the use of the loan fee account. The adopted rule amends WAC 246-296-060 to include the use of the loan fee account for projects that are eligible to receive a DWSRF loan under 40 C.F.R. 35.3520. The U.S. Environmental Protection Agency (EPA) has the authority to grant a deviation for prohibited projects on a case-by-case basis. The adopted rule amends WAC 246-296-080 to allow projects currently prohibited from receiving a DWSRF loan under 40 C.F.R. 35.3535 to be considered eligible to receive funds when EPA grants a deviation. This change will allow the department to request a deviation from EPA on a case-by-case basis.

Citation of rules affected by this order:
New: None
Repealed: None
Amended: WAC 246-296-040, 246-296-060, and 246-296-080
Suspected: None

Statutory authority for adoption: RCW 70.119A.170
Other authority: 40 C.F.R. 35.352- and 35.3535

PERMANENT RULE (Including Expedited Rule Making)
Adopted under notice filed as WSR 18-17-119 on 08/17/2018 (date).
Describe any changes other than editing from proposed to adopted version: None.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:
Name:
Address:
Phone:
Fax:
TTY:
Email:
Web site:
Other:
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:

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<td>Recently enacted state statutes</td>
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The number of sections adopted at the request of a nongovernmental entity:

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

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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

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The number of sections adopted using:

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Date Adopted: 10/03/2018

Name: Kim Zabel

Title: Acting Assistant Secretary

Signature: [Signature Image]
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 to administer the DWSRF program; and
(c) Fund set-aside activities as authorized in (categories (b) through (e) of) 40 C.F.R. Section 35.3535 (of the SDWA) including, but not limited to:
(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.

Establishing a DWSRF loan fee, loan fee account, and loan fee uses.  (1) The department shall:
(a) Establish the terms of a DWSRF loan fee; and
(b) Annually set the DWSRF loan fee amount.
(2) The department shall set the DWSRF loan fee for each project.
(3) The DWSRF loan amount may include the DWSRF loan fee.
(4) The department shall determine the amount of DWSRF loan fee account funds to be used for program administration.
(5) The department shall use DWSRF loan fees (only) for program administration activities and for projects in accordance with WAC 246-296-040.
(6) The department shall deposit and retain DWSRF fees in a dedicated DWSRF loan fee account.

Ineligible projects and project-related costs.  Except for projects and project-related costs under subsections (1) and (2) of this section, which are considered eligible to receive funds when EPA grants a deviation as allowed under Section 1452 of the
SWDA, the following 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.