

Significant Legislative Rule Analysis

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

May 2024

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SECTION 1

A brief description of the proposed rule including the current situation/rule, followed by the history of the issue and why the proposed rule is needed.

The Department of Health (department) is proposing amendments to the drinking water state revolving fund loan program as established in chapter 246-296 WAC to allow more public water system infrastructure improvement projects to qualify for disadvantaged community benefits in conformance with direction from the U.S. Environmental Protection Agency (EPA) to states to implement Bipartisan Infrastructure Law (BIL) - Public Law 117-58 – Bipartisan Infrastructure Investment and Jobs Act requirements.

BIL was passed November 15, 2021, which includes new criteria for public water systems to obtain additional funds for a Drinking Water State Revolving Fund (DWSRF) loan. BIL provides funding to the EPA under section 1452 of the Safe Drinking Water Act in the form of capitalization grants to states for the DWSRF loan program.

Specifically, EPA recommended that each state evaluate and revise their definition of a disadvantaged community and furthermore, revise the state revolving fund priority point system for project rating and ranking proportionate with need.

Under WAC 246-296-020, the department currently defines a disadvantaged community to mean a community that has a proposed project within a public water system where the project will result in water rates that are more than one and one-half percent of the median household income of the service area or a disadvantaged community can be one or more public water systems that are forced to restructure due to financial difficulties. The department is proposing amendments to the definition of disadvantaged community to remove strict qualifying calculation criteria and include a variety of indicators including population served, social vulnerability, environmental health disparities, and economic hardships. Additionally, public water systems that are owned and operated by a federally recognized tribe are automatically considered a disadvantaged community.

Under WAC 246-296-050, the department may approve a qualifying disadvantaged community for a DWSRF loan for principal forgiveness up to fifty percent of the loan amount or in a case of an emergency, for up to seventy-five percent of the loan amount. The current rule does not allow for any principal forgiveness for an applicant that does not qualify as a disadvantaged community. The proposed amendments will allow the department to forgive a portion or all of the loan amount to both disadvantaged and non-disadvantaged communities.

Under WAC 246-296-100, the department is proposing to remove the requirement for a water system to include an updated water system plan or small water system management program when applying for a loan that identify lead service lines (LSL) or LSL replacement.

Under WAC 246-296-130, the department is proposing to update or remove obsolete requirements for the priority rating and ranking of new DWSRF loan applications.

The proposed changes comply with the recommendations from EPA to implement BIL and are intended to broaden the types of improvement projects that will qualify for a DWSRF loan. This will bring more money into Washington communities increasing the ability to provide safe and reliable drinking water and improve public health protection.

SECTION 2

Significant Analysis Requirement

As defined in RCW 34.05.328, portions of the rule require significant analysis because the proposed rule changes are not exceptions provided in RCW 34.05.328(5)(b) and (c).

The following SA Table 1. identifies rule sections that have been determined exempt from significant analysis based on the exemptions provided in RCW 34.05.328(5) (b) and (c).

SA Table 1. Summary of Sections not requiring Significant Analysis

WAC Section and Title	Description of Proposed Changes	Rationale for Exemption Determination
<p>WAC 246-296-020</p>	<p>The definition of “Disadvantaged Community” has been amended to ensure funding is available to communities that historically struggle to provide safe and reliable drinking water as guided by EPA.</p> <p>Defined terms no longer used in the chapter are proposed to be removed.</p>	<p>Terms defined in this section are intended to provide clarification on the meaning of the term used throughout the chapter without changing the effects of the rule. The proposed changes are considered exempt under RCW 34.05.328(5)(b)(iv).</p>
<p>WAC 246-296-130(1)(d) and (2) Project priority rating and ranking criteria</p>	<p>Updated obsolete and outdated priority rating and ranking criteria.</p>	<p>The department exercised their discretion per RCW 70A.125.160 to update the points rating system used for internal operations. The proposed changes are considered exempt under RCW 34.05.328(5)(b)(ii).</p>

SECTION 3

Goals and objectives of the statute that the rule implements.

RCW 70A.125.160 authorizes the department to use available federal funding to meet the objectives of the federal Safe Drinking Water act.

The statute requires the department to make every reasonable effort to provide cost-effective, timely services and disburse available federal funds to eligible public water systems as quickly as possible after the federal government has made them available.

Additionally, the department has the authority to establish assistance priorities and carry out oversight and related activities with respect to assistance provided with federal funds. The department shall develop guidelines for aiding public water systems and related oversight prioritization and oversight responsibilities including requirements for prioritization of loans or other financial assistance to public water systems.

SECTION 4

Explanation of why the rule is needed to achieve the goals and objectives of the statute, including alternatives to rulemaking and consequences of not adopting the proposed rule.

The BIL provided billions of dollars in funding to state DWSRFs for the implementation of infrastructure improvement projects, treatment of emerging contaminants, LSL identification and replacement, and other supplemental program needs. Forty-nine percent of the BIL supplemental and LSL, twenty-five percent of the BIL emerging contaminants, and up to thirty-five percent of the DWSRF base funding must be provided as forgivable loans to qualifying disadvantaged communities. BIL also requires that states provide loan subsidization, up to one hundred percent principal forgiveness, to qualifying disadvantaged and non-disadvantaged communities. In order to award additional funding in accordance with BIL requirements, EPA recommended that each state evaluate their definition of a disadvantaged community and priority point system for project ranking commensurate with need.

There are no alternatives to rulemaking. In order for the department to access the additional BIL funds for disadvantaged communities, the department must stay in conformance with the requirements of BIL. Amendments to chapter 246-296 WAC must be adopted before the August 2024 loan cycle guide is published in order for the department to accept loan applications and award these additional DWSRF funds.

SECTION 5

Analysis of the probable costs and benefits (both qualitative and quantitative) of the proposed rule being implemented, including the determination that the probable benefits are greater than the probable costs.

WAC 246-296-050 DWSRF loan terms.

WAC 246-296-050 (1)(b) and (2)(b): The proposed changes are editorial only and are intended to provide clarification without changing the effects of the rule. The proposed changes are considered exempt under RCW 34.05.328(5)(b)(iv).

WAC 246-296-050(1)(a), (2)(a), and (2)(c):

Description:

The proposed rule allows the department to consider loans for up to full principal loan forgiveness for water systems that serve both disadvantaged and non-disadvantaged communities per BIL specifications. To access certain additional funding made available through BIL, the department must offer up to full principal loan forgiveness to not only water systems that serve disadvantaged communities, but non-disadvantaged communities as well.

Cost(s):

There are no probable costs associated with the proposed changes. The proposed rule will allow for additional applicants to apply for DWRSF loans.

Benefit(s):

By allowing up to full principal loan forgiveness in conformance with BIL, more water systems will be provided access to funds available for infrastructure improvements that would qualify for DWSRF loans for uses such as replacing aging infrastructure, installing treatment to remove regulated and emerging contaminants, restructuring failing water systems, and responding to public health emergency events. For example, a water system that serves a non-disadvantaged community could now be eligible for full principal forgiveness, if they serve less than 25,000 people and are applying for a DWSRF loan to remove an emerging contaminant from the drinking water source.

WAC 246-296-100(2) Loan eligibility and application requirements.

Description:

The proposed rule excludes the requirement for a water system plan (WSP) or a small water systems management program (SWSMP) when a water system applies for an LSL identification or an LSL replacement loan. A WSP or SWSMP is only required for a loan on a project that is for capital improvements on water system owned equipment. Since the LSL identification and LSL

replacement requires the identification and replacement of not only water company owned infrastructure like service mains and fittings but also customer owned service lines that run from the meter or connection to a customer’s building then LSL loans would not be considered a capital improvement and should not require a WSP or SWSMP.

Cost(s):

There are no probable costs associated with the proposed changes. The proposed rule reduces barriers and potential costs up to \$100,000 for applicants applying for DWSRF loans because they will no longer need to have a water system plan or small water system management program to qualify.

Benefit(s):

This will help water system to comply with the October 2024 LSL Inventory requirements of the [Lead and Copper Rule Revisions](#) and the future LSL replacement requirements of the [Lead and Copper Rule Improvements](#) without having to potentially spend up to \$100,000 (depending on the size of a system) for a full water system plan before they would qualify for the loan.

Summary of all Cost(s) and Benefit(s)

SA Table 2. Summary of Section 5 probable cost(s) and benefit(s)

WAC Section and Title	Probable Cost(s)	Probable Benefit(s)
WAC 246-296-050 (1)(a), (2)(a), and (2)(c) DWSRF loan terms.	None	Conforming to BIL requirements allows the department to access additional funds for community infrastructure improvements to broaden public health protection.
WAC 246-296-100(2) Loan eligibility and application requirements	None	Helping water systems comply with federal lead and copper public health standards.

Determination

Probable Benefits greater than Probable Costs

It was determined that the probable benefits of additional funding to help water systems improve drinking water infrastructure of the proposed rule are greater than the probable costs.

SECTION 6

List of alternative versions of the rule that were considered including the reason why the proposed rule is the least burdensome alternative for those that are required to comply and that will achieve the goals and objectives of the proposed rule.

The department drafted and reviewed several alternate versions of the proposed rule language considering tribal nation eligibility, household composition, socioeconomic determinants, people living below 300 percent of the federal poverty level, median household income and affordability factors, and how to consider subsections of larger water systems that service disadvantaged communities when the water system as a whole would not qualify as a disadvantaged community. With suggestions from the regulated community, community input during the Environmental Justice Assessment and clarification from EPA, the department was able to remove over burdensome requirements and complicated determination tools, while opening up new qualifying loan factors to tribally owned systems and larger water systems.

SECTION 7

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

SECTION 8

Determination 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 proposed rule does not impose more stringent performance requirements on private entities than on public entities.

SECTION 9

Determination 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 proposed rule does not differ from any applicable federal regulation or statutes.

SECTION 10

Demonstration 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 coordinated with EPA, Ecology, and the [Department of Commerce SYNC team](#) in developing these proposed rules to ensure they comply with the Safe Drinking Water Act, and other federal and state regulations pertaining to DWSRF loans. The department also coordinated with the internal HEAL team to ensure that this significant rulemaking complied with the requirements of [chapter 70A.02 RCW – Environmental Justice Law](#).