

Report to  
Legislative Council Rules Clearinghouse  
Chapter NR 166, Wis. Adm. Code  
Natural Resources Board Order No. CF-13-19

**Wisconsin Statutory Authority:** Section 281.61 (12) (a) to (b), Wis. Stats., authorizes the department to promulgate rules necessary to: a) establish criteria for applicants to the Safe Drinking Water Loan Program and projects for which the Safe Drinking Water Loan Program may provide funding; and b) to execute the department's responsibilities under the Safe Drinking Water Loan Program. Section 281.61 (2), Wis. Stats., requires the Department of Natural Resources and the Department of Administration to administer a program that provides financial assistance for the costs of planning, designing, and constructing or modifying public water systems. The projects funded through this program must facilitate compliance with national primary drinking water regulations or otherwise significantly further the health protection objectives of the Safe Drinking Water Act under 42 USC.

**Federal Authority:** All state programs must comply with the federal requirements of the drinking water state revolving fund program under 42 USC 300f to 300j-26. This rule complies with the requirements of the Safe Drinking Water Act.

**Comparison of Adjacent States:** Each state implements the Safe Drinking Water Act consistently with the associated state statutes and federal requirements. Every state revolving fund program throughout the country has unique features, although there are many similar policies and procedures throughout the country as all of the programs are designed to meet federal Safe Drinking Water Act requirements. Each state has a unique priority scoring system based on state priorities but consistent with federal priorities. The U.S. Environmental Protection Agency (EPA) reviews program implementation to ensure consistency with the federal requirements. Staff in the EPA Region 5 states have monthly calls to share information and help each other with issues. The Region 5 states have many similarities, but there are many unique policies and procedures since each of the states have unique topography, state statutes, habitats, soils, city sizes, etc.

**Court Decisions Directly Relevant:** None.

**Analysis of the Rule - Rule Effect - Reason for the Rule:** Revisions to ch. NR 166, Wis. Adm. Code, relating to the Safe Drinking Water Loan Program, bring the code in line with statutory changes that occurred after the current version became effective, clarify eligibility criteria, streamline processes, revise the scoring system, and update implementation issues since the rule was last revised. No new significant changes to the program result from the rule revisions. The main topics for revision include:

- Definitions – adds, modifies, and removes various definitions to add clarity to several sections of the code.
- Types of financial assistance – adds language to state that the statutes allow funds from the federal capitalization grant to be used as allowed under federal law, including providing principal forgiveness.
- Eligible projects/activities – updates language to incorporate current practices.
- Dates for IT/PERF submittals – revises language to be flexible for implementing

potential changes to the application process after 2021 Wisconsin Act 112 removed some of the barriers to streamlining the process from the statutes (ss. 281.59 and 281.61, Wis. Stats.)

- Application process – requires applicant use of the online intent to apply and application systems, revises language to be flexible for implementing potential changes to the application process after 2021 Wisconsin Act 112 removed some of the barriers to streamlining the process from the statutes (ss. 281.58 and 281.61, Wis. Stats.), and modifies requirements for application submittals, including removing submittals no longer needed, adding clarity for certain submittals, revising requirements for intermunicipal agreements, and adding a design life calculation worksheet requirement for municipalities requesting loan terms greater than 20 years since language was added to the statutes allowing terms of up to 30 years.
- Deadline for signing a financial assistance agreement – modifies the language regarding the timeframe within which a municipality must sign a financial assistance agreement to provide flexibility for potential modifications to the loan process timeline.
- Legal opinion on land ownership and easements - codifies the policies the department has developed over time about what needs to be addressed in the legal opinion regarding who owns the land on which a project is being constructed.
- Loan interest rates – removes language related to procedures for obtaining median household income data for applicants that are not a city, town, or village.
- Median household income – adds a new section to clarify the sources, uses, and determination of the median household income of each financial assistance applicant.
- Procurement and disbursement processes – adds language to clarify what documentation is expected when from municipalities for these processes.
- Amendments – revises the financial assistance agreement amendment process as it was previously based on availability of present value subsidy, which was removed from the statutes, and clarifies the type of financial assistance that may be provided in an amendment.
- Priority scoring system – adds language to provide points for watermain replacement projects that include replacement of lead service lines, removes the financial need section to allow the median household income points to be directly tied to the principal forgiveness points identified in the annual intended use plan, assigns negative points to projects of municipalities that are lacking required capacity items (such as a written emergency action plan or a private well abandonment ordinance), and removes procedures for scoring notifications and reevaluations to allow flexibility in researching what kind of process will work best for program customers and staff as the current process is inadequate.

Agency Procedures for Promulgation: The department will hold a hearing online on November 9, 2022, at 10:30 a.m. The hearing will be followed by board adoption, expected in November 2022, followed by a request for the governor's approval and legislative review.

Description of any Forms: Existing program forms may need some minor revisions, but no new forms are planned at this time.

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