

Chapter NR 165

CLEAN WATER FUND SMALL LOAN PROGRAM—INTEREST RATE SUBSIDIES

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NR 165.01 Purpose. The purpose of this chapter is to establish rules under s. 144.241 (6) (b) 8., Stats., for the implementation and administration of the small loan program for an interest rate subsidy on loans issued by the board of commissioners of public lands for the planning, design and construction of point source pollution abatement facilities with estimated costs of \$750,000 or less.

History: Cr. Register, June, 1994, No. 462, eff. 7-1-94.

NR 165.02 Applicability and cross referencing. This chapter applies to all applicants for and recipients of an interest rate subsidy for planning, design and construction of point source pollution abatement facilities with estimated costs of \$750,000 or less made pursuant to ss. 144.241 and 144.2415, Stats. Compliance with the applicable requirements of this chapter is a prerequisite to receiving an interest rate subsidy under ss. 144.241 and 144.2415, Stats.

History: Cr. Register, June, 1994, No. 462, eff. 7-1-94.

NR 165.03 Definitions. The following definitions are applicable to terms used in this chapter. Definitions of other terms are in ch. NR 162.

- (1) "Amendment" means a change in the scope of the project resulting in an increase or decrease of project costs.
- (2) "Applicant" means any municipality or group of municipalities that applies for financial assistance under this chapter.
- (3) "Approval" means the written approval of the department.
- (4) "Approved areawide waste treatment management plan" means a plan or elements thereof developed pursuant to section 208 of the federal water pollution control act amendments of 1972, as amended by the clean water act amendments of 1977, 33 USC 1251 et seq., and approved by the state of Wisconsin.
- (5) "Biennial finance plan" means the proposed plan described in ss. 144.241 and 144.2415 (3), Stats.
- (6) "Board of commissioners of public lands" means the organization comprised of the secretary of state, state treasurer and the attorney general that operates under the authority of ch. 24, Stats.
- (7) "Change order" means an action that specifies and justifies a change to a construction contract which alters the time of completion, the total price or both.
- (8) "Clean water fund" means the program established under s. 25.43, Stats., for the purpose of providing financial assistance to municipalities for the planning, design and construction of wastewater treatment works, nonpoint source projects, and estuary projects.
- (9) "Compliance maintenance" means the program established and regulated under ch. NR 208, to prevent a permittee under ch. 147, Stats., from significantly exceeding effluent limitations contained in a permit issued under ch. 147, Stats.
- (10) "Connection lateral" means a service sewer line which connects a residence, small commercial establishment or indus-

trial user to a sewage collection system or individual wastewater system. This includes house service pipes and public lateral sewers regardless of ownership or whether located in the public right-of-way or on private property and which connect to the "Y" fitting of a public sanitary sewer main.

(11) "Construction" means any of the following activities:

(a) Performing preliminary planning to determine the need for or the feasibility of building or modifying a treatment works;

(b) Performing engineering, architectural, legal, fiscal or economic investigations or studies;

(c) Preparing surveys, designs, plans, working drawings or specifications;

(d) Erecting, building, altering, remodeling, improving, extending or purchasing a wastewater treatment works;

(e) Inspecting or supervising any of the activities under pars. (a) to (d).

(12) "Construction contract claim" means a demand or request to change one or more terms of a construction contract that has not been resolved by compromise or negotiations. The term does not include bilateral change orders or contract modifications.

(13) "Contingency" means 5% of the awarded project costs, to fund cost overruns and amendments for the project.

(14) "Contractor" means a person or firm who agrees to furnish materials or performs services at a specified price.

(15) "Department" means the department of natural resources.

(16) "Financial assistance" means an interest rate subsidy from the department which is associated with a loan from the state trust fund loan program.

(17) "Force account work" means the work a municipality performs using its own employees or equipment for the planning, design or construction, construction-related activities, repairs or improvements to a treatment works. The term includes any activity listed in sub. (11), if the work is performed by a municipality with its own employees or equipment.

(18) "Fundable range" means that range of projects on the funding list compiled under s. NR 165.05 which are projected to consume all available clean water fund financial assistance present value subsidy or bond authority allocated by the legislature and delineated in the annual funding policy under s. NR 162.17 for each fiscal year.

(19) "Individual system" means a privately or publicly owned wastewater treatment works, such as mound system, conventional system or holding tank, which is operated and maintained by a municipality and serves one or more residences or small commercial establishments.

(20) "Interceptor sewer" means a sewer and associated pump stations whose primary purpose is to transport wastewater from collector sewers to a treatment facility, or which is designed for one or more of the following purposes:

(a) To intercept wastewater from a final point in a sewage collection system and convey the wastes to a sewage treatment facility or to another interceptor.

(b) To replace an existing wastewater treatment facility and transport the wastes to an adjoining sewage collection system or interceptor sewer for conveyance to a sewage treatment facility.

(c) To transport wastewater from one or more municipal sewage collection systems to another municipality or to a regional plant for treatment.

(d) To intercept an existing major discharge of raw or inadequately treated wastewater for transport to another interceptor or to a treatment plant.

(21) "Maintenance" means the preservation of the functional integrity and efficiency of a wastewater treatment facility, including its equipment and structures. The term includes preventive maintenance, correctional maintenance and replacement of equipment.

(22) "Minority business enterprise" or "MBE" means a sole proprietorship, partnership, joint venture or corporation that fulfills both of the following requirements:

(a) It is at least 51% owned, controlled and actively managed by a minority group member or members who are U.S. citizens or persons lawfully admitted to the United States for permanent residence, as defined under 8 USC 1101 (a) (20).

(b) It is currently performing a useful business function.

(23) "Municipality" means any city, town, village, county, town sanitary district, public inland lake protection and rehabilitation district, utility district or metropolitan sewerage district or any federally recognized tribal governing body.

(24) "Operation" means control of the unit processes and equipment which make up a treatment works. The term includes financial and personnel management, records, laboratory control, process control, safety and emergency operation planning.

(25) "Parallel cost estimate" means a cost estimate used to determine the cost of capacity for projects or portions of projects under s. NR 165.04. The parallel cost estimate includes an estimate of all costs for treatment works units necessary to provide the design capacity of the treatment works exclusive of the cost necessary for providing capacity for the items under s. NR 165.04.

(26) "Present value subsidy" means the sum of periodic subsidies for loans made to or projected to be made to municipalities during a fiscal year discounted at a rate of 7% per year to the first day of the biennium during which the loans are made.

(27) "Priority value" means the score assigned to a project by the department pursuant to ch. NR 161.

(28) "Project" means any step 1, step 2 or step 3 activities or activities related to the planning, design and construction under this chapter.

(29) "Project completion" means the point in time when physical completion has been achieved.

(30) "Recipient" means any municipality or group of municipalities that has received financial assistance available under this chapter.

(31) "Replacement" means obtaining and installing any equipment, accessories or appurtenances which are necessary during the useful life of the treatment works to maintain the capacity and performance for which the works were designed and constructed.

(32) "Sanitary sewer" means a sewer intended to carry only sanitary or sanitary and industrial wastewater from residences, commercial buildings, industrial plants and institutions.

(33) "Sewage collection system" means the public sanitary sewer mains, and associated pump stations, including service connection "Y" fittings, which are primarily installed to receive wastewater directly from connection laterals. This includes pumping units and pressurized lines from the pumping units to the

public sanitary sewer main which are owned and maintained by the applicant municipality. This also includes holding tanks and septic tanks which serve one or more residences or small commercial establishments and their sewer lines to a public sanitary sewer main which are owned and maintained by the applicant municipality.

(34) "Sewage treatment facilities" means treatment works exclusive of interceptor sewers and sewage collection systems.

(35) "Small business enterprise" or "SBE" means a business entity, including its affiliates, which is independently owned and operated and not dominant in its field, and which employs fewer than 25 full-time employees or which has gross annual sales of less than \$2,500,000.

(36) "Small commercial establishment" means a private establishment, such as a restaurant, hotel, store, auto service station or recreational facility, with dry weather wastewater flows less than 25,000 gallons per day; and non-profit entities such as churches, schools, hospitals and charitable organizations, if their dry weather flow or equivalent is less than 25,000 gallons per day.

(37) "Step 1" means the preparation of plans, studies and related information for a determination of the wastewater management needs of a municipality, community or area in accordance with the requirements of ss. NR 110.08 and 110.09.

(38) "Step 2" means the preparation of engineering plans and specifications for the construction of a proposed wastewater treatment works project in accordance with the requirements of chs. NR 108 and 110.

(39) "Step 3" means any activity identified in sub. (11) (d), and any inspection or supervision of those activities when the activity being inspected or supervised is in accordance with an approved facility plan and engineering plans and specifications.

(40) "Subsidy" means the amounts provided by the clean water fund under ss. 144.241 and 144.2415, Stats., to reduce the interest rate of loans provided by the board of commissioners of public lands from market rate to a subsidized rate.

(41) "Treatment works" means any devices and systems for the storage, treatment, recycling and reclamation of municipal sewage, domestic sewage or liquid industrial wastes used to meet applicable effluent limitations or necessary to recycle or reuse water at the most economical cost over the useful life of the works. These systems may include intercepting sewers, outfall sewers, sewage collection systems, individual systems, pumping equipment and stations, power and other equipment and their appurtenances; extensions, improvements, additions and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any works, including site acquisition of the land that will be an integral part of the treatment process, or on which the components of the treatment process are located, except for sewers and individual systems, or is used for ultimate disposal of residues resulting from treatment, including land for composting sludge, temporary storage of such compost and land used for the storage of treated wastewater in land treatment systems before land application; or any other method or system for preventing, abating, reducing, storing, treating, separating or disposing of municipal waste or industrial waste, including waste in combined storm water and sanitary sewer systems.

(42) "Unsewered municipality" means a municipality which is wholly or partially unsewered.

(43) "User charge" means a charge levied on users of a treatment works for the user's proportional share of the cost of operation, maintenance and replacement of treatment works.

(44) "Violator" means a person or municipality which cannot receive approval of an application for sanitary sewers under s. NR 110.05 (3), or is not in substantial compliance with the terms, conditions, requirements and schedules of compliance of an applicable ch. 147, Stats., discharge permit, for a reason that the de-

partment determines is or has been within the control of the person or municipality.

History: Cr. Register, June, 1994, No. 462, eff. 7-1-94.

NR 165.04 Project and cost eligibility for an interest rate subsidy. (1) **ELIGIBILITY—GENERAL.** Municipalities are eligible to participate in the interest rate subsidy program established by this chapter for the planning, design and construction of a point source pollution abatement facility. A project shall meet the cost effectiveness analysis criteria contained in s. NR 110.09 (2) as demonstrated by a department approval to an applicant's facility plan, engineering report or other means of meeting the cost-effectiveness criteria.

(2) **ELIGIBLE PROJECTS.** Projects for facility planning, preparation of construction plans and specifications, and the construction of publicly-owned treatment works and privately owned treatment works meeting the requirements of s. 144.241 (7), Stats., this section and the board of commissioners of public lands requirements are eligible for an interest rate subsidy if the project is one of the following types:

(a) Projects that the department determines, under the compliance maintenance program as outlined in ch. NR 208, are necessary to prevent a municipality from significantly exceeding an effluent limitation contained in a discharge permit issued under ch. 147, Stats.

(b) Projects necessary to achieve substantial compliance with an enforceable requirement as defined in s. 144.241 (1) (b), Stats., which was changed or established after May 17, 1988, provided that the municipality remains in substantial compliance with the newly established or changed enforceable requirement or an associated compliance schedule.

(c) Projects necessary to eliminate actual or imminent pollution of groundwater or surface water or threat to human health in unsewered municipalities or portions thereof, including projects for the planning, design and construction of a collection system, and interceptor projects in an unsewered municipality. An interest rate subsidy may be provided only if the department determines that:

1. At least two-thirds of the initial flow for collection system and interceptor projects will be for wastewater originating from residences in existence on October 17, 1972;
2. Population density of the area to be served has been considered in determining the cost-effectiveness of the proposed project;
3. The project is consistent with an approved areawide waste treatment management plan as outlined in chs. NR 110 and 121; and
4. If the unsewered municipality will be disposing of wastewater in the treatment works of another municipality, the unsewered municipality has executed an agreement under s. 66.30, Stats., with this other municipality to receive, treat and dispose of the wastewater.
5. The process is cost effective and is owned by the applicant municipality.

(d) A sewer municipality may receive an interest rate subsidy for a sewage collection system project if the project is for the replacement or major rehabilitation of an existing sewer system and is necessary to maintain the total integrity and performance of the waste treatment works serving the community.

(3) **INELIGIBLE PROJECTS.** The following projects or portions thereof are not eligible to receive an interest rate subsidy under this chapter:

(a) Projects for a municipality that has failed to substantially comply with any of the conditions, requirements or terms of a federal or state grant or loan program used to pay the costs of planning, design or construction associated with wastewater collection, transportation, treatment or disposal or used to pay the cost of studies, investigations, plans, designs or construction

associated with implementing a nonpoint source control management program:

1. Federal construction grants program. Failure to substantially comply with conditions of a federal grant issued under 33 USC 1251 et seq.

2. Wisconsin fund construction grants program. Failure to substantially comply with conditions of a state grant issued under s. 144.24, Stats.

3. Clean water fund. Failure to substantially comply with conditions of an interest rate subsidy agreement issued under ss. 144.241 and 144.2415, Stats.

(b) Connection laterals that transport wastewater from structures to municipally owned or individually owned wastewater systems.

(c) Commodes, sinks, tubs, drains and other wastewater generating fixtures and associated plumbing.

(d) Modifications to homes or commercial establishments.

(e) Costs of improvement or decoration beyond that needed to restore the construction site to preconstruction conditions created by the installation of individual systems.

(f) Planning, design and construction costs related to public sanitary sewer mains, interceptors and individual systems in unsewered municipalities which exclusively serve residences or small commercial establishments that have not yet been constructed or were constructed after October 17, 1972.

(g) The amount of reserve capacity for sewage collection system, interceptor or individual system projects in unsewered municipalities necessary to serve projected flows beyond the initial flows expected at the projected completion date.

(h) Planning, design and construction costs related to public sanitary sewer mains, interceptors and individual systems in unsewered municipalities for projects meeting the criteria established in sub. (2) (c) if the department finds that less than two-thirds of the initial flow will be from wastewater originating from residences or small commercial establishments constructed prior to October 17, 1972.

(i) The amount of reserve capacity for projects, excluding sewage collection system, interceptor or individual system projects in unsewered municipalities, necessary to treat projected flows beyond 10 years from the project completion date.

(j) The amount of capacity for present and future flows from industrial users.

(k) A project to correct violations of effluent limitations that are within the control of a person or municipality contained in a permit issued under ch. 147, Stats. In making a determination that compliance is within the control of a person or municipality, the department shall consider whether the person or municipality has taken or failed to take all actions within its authority which could reasonably have been expected to prevent, correct or eliminate the noncompliance.

(l) The estimated cost of capacity for the portion of the project ineligible for an interest rate subsidy shall be determined as follows:

1. The facility plan shall provide parallel cost estimates for treatment works.

2. The total design capacity shall be determined in accordance with ss. NR 110.09 (2) (j) and 110.10 (2).

3. The estimates provided under subs. 1. and 2. shall be revised, if necessary, at the time the interest rate subsidy application is submitted, based on the final approved engineering design.

(m) Individual systems. A municipality may not receive an interest rate subsidy to construct publicly owned individual systems serving one or more residences or small commercial establishments.

(4) **COST ELIGIBILITY.** (a) *Eligible costs.* The recipient's allocable project costs which are reasonable and necessary are eligible for an interest rate subsidy. Expenditures which are found ineligi-

ble for financing by the board of commissioners of public lands are ineligible for an interest rate subsidy. Eligible costs may include, but are not limited to:

1. Costs of salaries, benefits and expendable material the recipient incurs for the project;
 2. Construction of the project;
 3. Professional, consultant and engineering services;
 4. Planning work directly related to the treatment works;
 5. Sewer system evaluation and rehabilitation;
 6. Project feasibility and engineering reports;
 7. Costs of complying with the Wisconsin environmental policy act, including costs of public notices and hearings;
 8. Preparation of construction drawings, specifications, estimates and construction contract documents;
 9. Landscaping;
 10. Removal, relocation, replacement or temporary provision of utilities, for which the recipient is legally obligated to pay;
 11. Materials acquired, consumed or expended specifically for the project;
 12. An inventory of laboratory chemicals and supplies;
 13. Development and preparation of an operation and maintenance manual;
 14. Costs for the development of water conservation plans, user charge system plans and sewer use ordinances under s. NR 162.11 (4);
 15. Project identification signs;
 16. Start-up services for new treatment works, including the training of operating personnel and the preparation of curriculum and training material for operating personnel on the new equipment or processes funded under this chapter. The cost of routine and entry level training and training for operators to meet state certification requirements under ch. NR 114 is not an eligible cost;
 17. A plan of operation;
 18. Development of a municipal pretreatment or toxicity reduction program and the planning, design or construction of facilities to be used by the municipal treatment works programs, including monitoring equipment;
- Note: This subdivision is intended to include any steps taken by a municipality to require the reduction or treatment of high strength, toxic or hazardous waste prior to discharge into the municipal wastewater treatment plant.
19. Costs necessary to mitigate demonstrated direct, adverse physical impacts resulting from construction of the treatment works;
 20. The cost of safety equipment;
 21. On-site inspection during construction;
 22. Acquisition of land that will be used for storage of treated wastewater in land treatment systems before land application;
 23. Acquisition of land that will be used for composting or temporary storage of compost residues which result from wastewater treatment if the department has approved a program for use of the compost;
 24. Acquisition of land on which the treatment plant or lift stations will be located;
 25. Acquisition of an operable portion of a treatment works, which includes equipment obtained by a municipality such as previously owned equipment no longer treating wastewater from an industry or municipality or new equipment specifically manufactured as a whole to treat wastewater. This provision does not include fees charged by a municipality to obtain treatment capacity from another municipality;
 26. The cost of equipment used for sampling and analysis of industrial discharges to municipal treatment works;
 27. Costs for value engineering studies or analyses performed during step 2;

28. Costs associated with financial audits as required with the submittal of an interest rate subsidy application or as commissioned by the department.

(b) *Ineligible costs.* Costs not directly associated with or not necessary for the planning, design or construction or operation of an eligible project are not eligible for an interest rate subsidy. Costs determined by the board of commissioners of public lands to be ineligible for loan assistance are not eligible for an interest rate subsidy under this chapter. Ineligible costs include, but are not limited to:

1. Bonus payments not legally required for completion of construction before a contractual completion date;
2. Personal injury compensation or damages arising out of the project, whether determined by adjudication, arbitration, negotiation or otherwise;
3. Fines and penalties due to violations of, or failure to comply with, federal, state or local laws;
4. Costs outside the scope of the approved project;
5. Ordinary operating expenses of local government, such as salaries and expenses of a mayor, city council members or city attorney, that are not directly related to the project;
6. Site acquisition expenses, other than administrative and legal costs, for rights-of-way and easements;
7. Costs for which payment has been or will be received under another federal or state program;
8. Costs of claims resulting from mismanagement or caused by the recipient's vicarious liability for the improper action of others;
9. Costs incurred in a contract which creates a real or apparent conflict of interest. An apparent conflict of interest arises when an official or employe of a recipient participates in the selection, awarding or administration of a contract supported by the clean water fund and:

a. The official or employe, the official or employe's spouse or the official or employe's partner has an ownership interest in the firm selected for the contract; or

b. Any person identified in subd. 9. a. receives any contract, gratuity or favor from the award of the contract.

(c) *Indirect costs.* The recipient's indirect costs shall be eligible only if the board of commissioners of public land approves these costs for inclusion in the loan agreement.

(d) *Construction contract claims.* Reasonable and necessary legal, technical and administrative costs associated with further assessing the merits of construction contract claims are eligible, provided:

1. The board of commissioners of public lands approves these costs for inclusion in the loan agreement.
2. The claim arises from work within the scope of the interest rate subsidy;
3. The claim or assessment costs are not a result of mismanagement;
4. The claim or assessment costs are not caused by the recipient's vicarious liability for the improper action of others.

(e) *Disputed costs.* Disputes regarding eligible costs shall be resolved in accordance with s. NR 165.14.

History: Cr. Register, June, 1994, No. 462, eff. 7-1-94.

NR 165.05 Distribution of funds. (1) **GENERAL.** An interest rate subsidy shall be allocated to those projects within the fundable range and in the sequence specified in ch. NR 161.

(a) Between October 1 and December 31 of each year, each municipality intending to apply for an interest rate subsidy during the following state fiscal year shall notify the department of its intent in writing. For those municipalities that notify the department by December 31, and submit complete, approvable and biddable plans and specifications and an interest rate subsidy application by June 30, the department shall annually compile a funding list

which ranks those municipalities in the same order as they appear on the federal project priority list and specified in ch. NR 161. The funding list shall be compiled no earlier than July 1 of the fiscal year for which it is effective. If sufficient bonding authority or present value subsidies are not available to provide subsidy to all requests in the fiscal year, the department shall allocate available bonding authority or present value subsidy to projects in the order in which they appear on the funding list. The department shall provide a "notice of interest rate subsidy commitment" to municipalities which appear on the funding list and which fulfill the requirements of sub. (2) (a).

(b) Municipalities which meet the December 31 notification date but submit complete, approvable and biddable plans and specifications or an interest rate subsidy application after June 30, but submit both on or before June 30 of the subsequent year, may be placed on a supplemental funding list. Such projects may be funded if present value subsidy and bonding authority remain after municipalities meeting both the December 31 and June 30 submission dates have received an allocation of present value subsidy and bonding authority. The order of funding for the supplemental funding list shall be based on the date the department receives complete, biddable and approvable plans and specifications and the date the department receives the complete application for the project.

(c) The lists established under pars. (a) and (b) are effective for the fiscal year beginning on July 1. The lists expire on June 30 of the fiscal year. The department may allocate funds to a municipality on the lists after the expiration of each list if a municipality received a notice of interest rate subsidy commitment before the expiration of each list and the requirements of sub. (2) (b) are met.

(2) ALLOCATION PROCEDURE. (a) The department shall issue a notice of interest rate subsidy commitment for an interest rate subsidy to a municipality on the list compiled under sub. (1), upon the board of commissioners of public lands establishing the maximum loan amount, and upon the following:

1. Applicant submittal and department approval of current detailed plans and specifications which are capable of being bid.
2. Applicant submittal and department approval of an interest rate subsidy application which meets the requirements of s. NR 165.07 or submittal of an application which, in the opinion of the department, can be approved by the department by the applicant's submission of minor additional information.
3. Applicant submittal and department approval of a user charge system which meets the requirements of s. NR 165.10.
4. Written certification from the department of administration that the municipality has the financial capacity to assure sufficient revenues to operate and maintain the project for its useful life, to pay the debt service on the obligation that the municipality issues for the project, to maintain an adequate equipment replacement fund, and that the municipality meets the conditions for receiving an interest rate subsidy established in ss. 144.241 and 144.2415, Stats., and ch. Adm 35, as appropriate.

(b) The board of commissioners of public lands shall establish the maximum amount of the loan and the interest rate and term on any loan.

(c) The department may enter into an interest rate subsidy agreement with a municipality on the funding list compiled under sub. (1) if all the following have occurred:

1. The municipality has entered into a construction contract for the project.
2. The municipality has submitted a loan application with the board of commissioners of public lands, and has received an application approval from the attorney general's office.
3. The municipality has submitted a copy of the accepted bid proposal to the department.
4. The municipality has satisfied the conditions contained in the notice of interest rate subsidy commitment.

(d) The department shall specify the amount of an interest rate subsidy to be provided for each application that it approves.

(e) The date the interest rate subsidy agreement is signed by the department shall be deemed the date the interest rate subsidy is awarded for purposes of s. NR 165.06.

(3) ADDITIONAL COSTS AND AMENDMENTS. Additional costs beyond those established by the board of commissioners of public lands and in the interest rate subsidy agreement are not eligible for an interest rate subsidy under this agreement.

History: Cr. Register, June, 1994, No. 462, eff. 7-1-94.

NR 165.06 Interest rate subsidy. The amount of the interest rate subsidy provided to a recipient under this chapter shall be determined based on the following:

(1) INTEREST RATE CRITERIA. The interest rate subsidy provided for a project shall be set at a level consistent with standards contained in s. 144.241 (12) (c), Stats.

(2) PROJECT TIERS. Interest rate subsidies for projects shall be based on the following 2 tiered approach:

(a) Tier 1 projects include compliance maintenance projects, new or changed limits projects, and sewage collection system replacement or rehabilitation projects.

(b) Tier 2 projects include unsewered projects meeting the requirements of s. NR 165.04 (2) (c). Tier 2 projects shall receive a lesser interest rate subsidy than tier 1 projects.

(c) Modifications to the percentages of interest rate for tier 1 and tier 2 projects listed in pars. (a) and (b) shall be made in conformance with the requirements of s. 144.241 (12) (f), Stats.

(3) ESTIMATED MARKET INTEREST RATE. Each year the department, in consultation with the department of administration, shall establish an estimated market interest rate as part of an annual funding policy established under ch. NR 162 for the fiscal year.

(4) PROJECT INTEREST RATE. The interest rate for projects shall be set at a percent of the market interest rate and shall be prioritized based on the order in sub. (2). The interest rate subsidy for tier 1 projects and tier 2 projects shall be based on a percentage established in s. NR 162.07 (4) of the market interest rates established in sub. (3).

(5) MULTI-TIER PROJECTS. If a project contains costs from each of the tiers in sub. (2), the following methods shall be used to estimate the costs associated with either tier. The resulting estimates shall be provided in the facility plan and revised at the time the interest rate subsidy application is submitted based on the final approved engineering design.

(a) If the cost of a treatment works can be allocated, based on its purpose, to either of the tiers, the sum of the treatment costs allocable to each tier shall be used.

(b) If the cost of a treatment works cannot be allocated to either tier, the cost of the treatment works shall be divided between the tiers based on the portion of the design flow or estimated construction costs of the treatment works attributable to either tier.

(6) COMPOSITE INTEREST RATE. A project which contains costs associated with the tiers described in sub. (2) shall receive an interest rate subsidy based on a composite interest rate. The composite interest rate shall be computed as follows:

$$RC = RT \frac{(P1 \times CT1) + (P2 \times CT2)}{(CT1 + CT2)}$$

Where:

RC is the composite interest rate used to calculate the interest rate subsidy for the project.

RT is the market interest rate established under sub. (3).

CTI is the eligible cost for portions of the project under s. NR 165.04 (2) (a), (b) and (d).

CT2 is the eligible cost for portions of the project under s. NR 165.04(2) (c).

PI is the percent of the market interest rate for tier 1 projects established in s. NR 162.07 (4).

P2 is the percent of the market interest rate for tier 2 projects established in s. NR 162.07 (4).

(7) DETERMINATION OF THE INTEREST RATE SUBSIDY. (a) The project interest rate subsidy shall be annually calculated as follows:

$$IRS = \left[I - \left(\frac{RC}{RF} \times I \right) \right] \times E$$

Where:

RF is the interest rate established by the board of commissioners of public lands for the project.

IRS is the interest rate subsidy provided in a given year to the recipient.

I is the amount of interest due on a recipient's state trust fund loan to the board of commissioners of public lands in a given year.

E is the percentage of loan disbursements made by the board of commissioners of public lands which are eligible for an interest rate subsidy under this chapter compared to the total amount of loan disbursements made by the board of commissioners of public lands. This adjustment is provided under s. NR 165.12 (2).

(b) The department shall determine an estimated interest rate subsidy for a project at the time of the notice of interest rate subsidy commitment. The estimated project interest rate subsidy shall be based on the estimated market interest rate in effect at the time of the notice of interest rate subsidy commitment. Step 1 and step 2 projects financed at the time of step 3 shall receive an interest rate subsidy based on the same interest rate as the step 3 project.

(c) Recipients that received a notice of interest rate subsidy commitment shall receive the interest rate subsidy based on the market interest rate in effect at the time the commitment is converted to an interest rate subsidy agreement.

History: Cr. Register, June, 1994, No. 462, eff. 7-1-94; correction in (6) made under s. 13.93 (2m) (b) 7., Stats., Register, September, 1995, No. 477; am. (2) (b), (6), (7) (a), Register, March, 1996, No. 483, eff. 4-1-96.

NR 165.07 Interest rate subsidy application. (1) PROCEDURE. An interest rate subsidy application shall be submitted to the department for each step 3 project. Step 3 applications submitted under this chapter may include step 1 and step 2 project costs which the applicant has previously incurred. If any information required has been furnished with an earlier application, the applicant may incorporate the information by reference and, if necessary, revise the information utilizing the previous application.

(2) CONTENTS OF APPLICATION. Applicants shall submit the following as part of the interest rate subsidy application:

(a) If requested, copies of any executed engineering contracts for performance of any step 1, 2 or 3 portion of the project.

(b) A written statement from the receiving municipality accepting the discharge of wastewater from the applicant if wastewater generated by the applicant will be discharged to or through wastewater facilities of another municipality.

(c) If requested, the municipality shall submit certification or other supporting documentation including audited financial statements.

History: Cr. Register, June, 1994, No. 462, eff. 7-1-94.

NR 165.08 Interest rate subsidy conditions. Before granting an interest rate subsidy, the department shall determine that all of the following requirements have been met:

(1) FACILITIES PLANNING AND DESIGN REQUIREMENTS. (a) Facilities planning. Facilities planning and design requirements of chs. NR 110, 150 and 208 have been met.

(b) Environmental review. The Wisconsin environmental policy act (WEPA) requirements or national environmental policy act requirements applicable to the project have been met.

(2) PRIORITY DETERMINATION. The project is entitled to priority in accordance with ch. NR 161, as applicable.

(3) FUNDING AND OTHER CAPABILITIES. The applicant has the legal, institutional, managerial and financial capability to insure adequate construction, operation and maintenance of the treatment works throughout the applicant's jurisdiction.

(4) PERMITS. The applicant has or has applied for, the permit or permits as required by ch. 147, Stats.

(5) OPERATION AND MAINTENANCE PROGRAM. The applicant has made satisfactory provision to assure the efficient operating and maintenance of the treatment works.

(6) USER CHARGE SYSTEMS AND SEWER USE ORDINANCES. If, after bidding the step 3 project, the entire project costs are greater than \$750,000 a user charge system and sewer use ordinance shall be approved by the department as outlined in s. NR 162.11 before an interest rate subsidy agreement will be awarded for project costs up to \$750,000.

(7) COMPLIANCE WITH ENVIRONMENTAL LAWS. The treatment works shall comply with all pertinent requirements of federal, state and local environmental laws and regulations.

(8) WATER CONSERVATION PROGRAM. For a step 3 interest rate subsidy agreement an approvable plan and schedule for implementing the flow reduction measures deemed to be cost-effective in accordance with s. NR 110.09 (2) (k) have been submitted by the applicant.

(9) APPLICATION. The applicant shall demonstrate that it has submitted an application to the board of commissioners of public lands and has received application approval from the attorney general's office for the costs associated with the project.

History: Cr. Register, June, 1994, No. 462, eff. 7-1-94.

NR 165.09 Interest rate subsidy agreement requirements. Each interest rate subsidy agreement shall bind the recipient to the following conditions:

(1) NONELIGIBLE CONSTRUCTION COST. The recipient shall pay the costs of planning, design and construction which are ineligible for a loan from the board of commissioners of public lands.

(2) EROSION CONTROL DURING CONSTRUCTION. The recipient shall comply with all rules and policies promulgated or developed pursuant to s. 144.266 (1), Stats., and the conditions of s. NR 110.15 (5) (n).

(3) CONSTRUCTION INSPECTION. The recipient shall provide and maintain adequate construction inspection of the project to insure that the construction conforms with the approved plans and specifications.

(4) SEPTIC TANK HAULERS. The recipient may not prohibit the hauling and discharge of septage from septic tanks or holding tanks within the recipient's service area to the treatment facility, except as provided under s. 144.08, Stats. The recipient may regulate the time, rate, location and quantity of septage discharges. The disposal of septage and leachate at the treatment works facility shall be subject to equitable user charges.

(5) ACCESS. The recipient shall insure that department representatives will have access to the project, including construction activities, whenever it is in preparation or progress. The recipient shall provide proper facilities for access and inspection. The recipient shall allow the department or any authorized representative to have access to any books, documents, plans, reports, papers and other records of the contractor which are pertinent to the proj-

ect for the purpose of making audits, inspections, examinations, excerpts, copies and transcriptions. The recipient shall insure that all parties to engineering contracts will provide the department access to the project, including sites, documents and records.

(6) **PROJECT INITIATION AND COMPLETION.** The recipient shall agree to expeditiously initiate and complete the project or cause it to be constructed and completed in accordance with the interest rate subsidy agreement and application, including any project schedule approved by the department. Failure of the recipient to promptly initiate step 1, 2 or 3 project work may result in termination of the interest rate subsidy agreement.

(7) **FINAL INSPECTIONS.** The recipient shall notify the department of the completion of the project. The department shall cause final inspection to be made within 60 days of the receipt of the notice.

(8) **PROJECT CHANGES.** No approval of a project change shall obligate the state of Wisconsin to increase the amount of the interest rate subsidy payments made under an interest rate subsidy agreement.

(9) **TERMINATION.** The interest rate subsidy agreement shall be terminated if the recipient terminates its loan agreement with the board of commissioners of public lands or prepays all of the principal of the loan prior to the end of the term of the interest rate subsidy agreement.

(10) **REDUCED PAYMENTS.** The department of administration shall reduce interest rate subsidy payments to a recipient based on the interest charged by the board of commissioners of public lands on the principal balance outstanding on the recipient's loan and as established in the interest rate subsidy agreement.

(11) **MBE/SBE REPORTING REQUIREMENTS.** The recipient shall supply the department with documentation of any MBE/SBE utilization of the project.

History: Cr. Register, June, 1994, No. 462, eff. 7-1-94.

NR 165.10 Requirements for a user charge system.

(1) Each recipient shall establish a financial management system that accounts for revenues generated and expenditures for replacement of the treatment system.

(2) Each recipient shall establish a user charge system that generates sufficient revenue to pay the replacement of the treatment works and to pay for debt service costs of this project.

(3) The user charge system shall be incorporated in one or more municipal official enactments or other appropriate authority.

(4) Implementation of the user charge system.

(a) The recipient shall maintain records as are necessary to document compliance with this section.

(b) The department may review a recipient's user charge system to determine that it continues to meet the requirements of this section.

(5) If, after bidding the step 3 project, the entire project costs exceed \$750,000 the recipient shall meet the user charge requirements contained in s. NR 162.11.

History: Cr. Register, June, 1994, No. 462, eff. 7-1-94.

NR 165.11 Procurement. (1) **APPLICABILITY.** Procurement of professional services and planning, design or construction contracts by recipients under this chapter shall be in accordance with state and local law and are subject to review for eligibility and reasonableness. The department in conducting reviews shall, on request, hold confidential the following in accordance with s. NR 2.195 (2) (b) 5:

(a) Professional services' indirect costs breakdowns.

(b) Professional services' audit reports and associated work papers and audit resolution correspondence.

Note: See ss. 60.47, 60.77 (6) (a), 61.54, 61.55, 62.15 and 66.29, Stats.

(2) **PROFITS.** Only fair and reasonable profits may be earned by contractors in engineering contracts under an interest rate sub-

sidy agreements. Profit for which the board of commissioners of public lands has committed or discharged loan funds or profits included in a formally advertised, competitively bid, fixed price or unit price for a planning, design or construction contract is presumed to be reasonable.

(3) **RECIPIENT RESPONSIBILITY.** The recipient is responsible for the administration and successful completion of the project for which an interest rate subsidy is awarded in accordance with sound business judgment and good administrative practice under state and local laws. Review or approval of facilities plans or other planning documents, design drawings and specifications or other documents by or for the department is for administrative purposes only and does not relieve the recipient of its responsibility to properly plan, design, build and effectively operate and maintain the treatment works described in the interest rate subsidy agreement as required by law, regulations, permits and good management practices. The department is not responsible for the subsidy of added costs resulting from defects in the approved plans, design drawings and specifications or other subagreement documents.

(4) **UTILIZATION OF SMALL AND MINORITY OWNED BUSINESSES.** Recipients are encouraged to utilize small businesses and minority owned businesses to allow these sources the maximum feasible opportunity to compete for engineering contracts and construction contracts to be performed utilizing assistance from the clean water fund. Small and minority owned businesses should be utilized to the extent possible as sources for supplies and services. The recipient shall report any small or minority business utilization to the department.

Note: Municipalities receiving funding from the clean water fund under ch. NR 162 must comply with different small and minority business requirements. Refer to ch. NR 162 for guidance.

(5) **GENERAL REQUIREMENTS FOR ENGINEERING CONTRACTS.** Engineering contracts shall:

(a) Be necessary for and directly related to the project;

(b) Be in the form of a bilaterally executed written agreement, except for purchases smaller than the amounts specified in applicable state statutes; and

(c) Be for monetary or in-kind consideration.

(6) **FORCE ACCOUNT WORK.** An interest rate subsidy may be provided for force account work subject to the following:

(a) The board of commissioners of public lands has committed or dispersed loan funds for the force account work, and

(b) The force account work is directly related to the project.

(7) **LIMITATION ON SUBAGREEMENT AWARD.** No subagreement may be awarded to any person or organization which does not operate in conformance with state and federal civil rights, equal opportunity and affirmative action laws.

(8) **ENGINEERING CONTRACTS FOR ARCHITECTURAL OR ENGINEERING SERVICES.** (a) Step 1, step 2 or administration and management of step 3 project work may be performed by procured architectural or engineering service contractors. Subagreements for those services shall be negotiated with candidates selected on the basis of demonstrated competence and qualifications for the type of professional services required and at fair and reasonable prices. To the maximum extent practicable all negotiated procurement shall be conducted in a manner to provide open and free competition. This section does not require competitive bids or price competition in the procurement of architectural or engineering services.

(b) 1. The department shall review architectural or engineering service contracts and amendments for the eligibility and reasonableness of costs.

2. For step 2 and step 3 projects, reasonableness reviews shall, at a minimum, consist of a comparison of architectural or engineering fees for the project to the range of architectural or engineering fees for other similar projects undertaken within the state. Consideration shall be given to completeness of scope of work,

the recipient's procurement and negotiation process associated with the costs, any conditions unique to the project and all other factors impacting costs.

3. The department may perform other reviews of architectural or engineering costs for eligibility, allocability and reasonableness.

(9) CONSTRUCTION CONTRACTS OF RECIPIENTS. (a) *Applicability.* This subsection applies to construction contracts awarded by recipients for any step 3 activity. The project work shall be performed under one or more contracts awarded by the recipient to private firms except for force account work authorized by sub. (6).

(b) *Negotiation of contract change orders.* Recipients are responsible for the negotiation of construction contract change orders. During negotiation with the contractor the recipient shall secure a fair and reasonable price for the required work.

History: Cr. Register, June, 1994, No. 462, eff. 7-1-94.

NR 165.12 Interest rate subsidy. **(1) GENERAL.** Upon the department's approval, the department of administration may provide an interest rate subsidy for the eligible portion of project costs incurred within the scope of an approved project. The department shall initially determine conformance with the terms and conditions of the interest rate subsidy agreement.

(2) ADJUSTMENT. The department may review or audit invoices, refunds, rebates and credits or other information for eligibility under the interest rate subsidy agreement. Based on a review or audit, the department may request the department of administration to reduce or increase the subsidy payment established in the interest rate subsidy agreement.

(3) AMENDMENTS AND CHANGE ORDERS. The eligible project costs used to calculate the subsidy payment established in the interest rate subsidy agreement may not be increased by amendment or change order. Changes in the project that are consistent with the objectives of the project, within the scope of the interest rate subsidy agreement and which do not require review under ch. NR 110, and are provided for within the contingency amount stated in the interest rate subsidy agreement may be eligible for an interest rate subsidy.

(4) FINAL SUBSIDY PAYMENT ADJUSTMENT. Prior to the final adjustment of the subsidy payment established in the interest rate subsidy agreement, the department may complete a final inspection of the project and shall certify in writing to the department of administration the recipient's compliance with all applicable requirements of this chapter and the interest rate subsidy agreement.

(5) SUBSIDY PAYMENT ADJUSTMENTS DUE TO PREPAYMENTS. An adjustment of the interest rate subsidy may be made by the department of administration if the recipient prepays all or a portion of the principal established in the loan agreement issued by the board of commissioners of public lands for the project.

History: Cr. Register, June, 1994, No. 462, eff. 7-1-94.

NR 165.13 Recipient accountability. **(1) FINANCIAL CAPABILITY.** The department of administration shall evaluate a municipality's financial capability for conformance with s. 144.2415 (9), Stats., and ch. Adm 35 and shall certify in writing to the department the municipality's financial capability. The department may not issue a notice of interest rate subsidy commitment unless the department of administration has notified the department in writing that the municipality has satisfied the department of administration requirements under ss. 144.241 and 144.2415, Stats., and ch. Adm 35.

(2) MUNICIPAL OBLIGATION. The board of commissioners of public lands shall determine the type of municipal obligation which is required for the repayment of their financial assistance.

(3) FINANCIAL MANAGEMENT. The recipient is responsible for:

(a) The maintenance of project accounts in accordance with generally accepted government accounting standards.

(b) The maintenance of a financial management system which conforms with the requirements, terms and conditions of the interest rate subsidy agreement.

(c) Compliance with any federal requirements for cash management and arbitrage.

(d) Any other requirements of the board of commissioners of public lands.

(4) RECORDS AND RECORD RETENTION. The following record keeping policies are applicable to all recipients and engineering contracts.

(a) The recipient shall maintain books, records, documents and other evidence and accounting procedures and practices sufficient to accurately reflect:

1. The amount, receipt and disposition by the recipient of all assistance received for the project, including assistance from the clean water fund and any other assistance program; and

2. The total costs of the project, including all direct and indirect costs of whatever nature incurred for the performance of the project. In addition, the recipient shall require contractors, including contractors for professional services, to maintain books, documents, papers and records which are pertinent to a specific interest rate subsidy agreement.

(b) The recipient's records and the records of its contractors, including professional services contracts, shall be subject at all reasonable times to inspection, copying and audit by the department and department of administration.

(c) The recipient and contractors of recipients shall preserve and make their records available to the department until any of the following:

1. Until expiration of 3 years from the date of project completion.

2. For longer periods, if required by applicable statute or requirement.

3. If an interest rate subsidy agreement is partially or completely terminated, the records relating to the work terminated shall be preserved and made available for a period of 3 years from the date of any resulting final termination settlement.

4. Records which relate to appeals, disputes, litigation on the settlement of claims arising out of the performance of the project, or costs and expenses of the project to which exception has been taken by the department or any of its duly authorized representatives, shall be retained until any appeals, litigation, claims or exceptions have been finally resolved or for a period of 3 years from the date of project completion, whichever is later.

(5) AUDIT. (a) The department or the department of administration may perform or require the recipient to commission an audit prior to execution of the interest rate subsidy agreement, during project development, prior to project completion, or at any time during the term of project financing. Disbursements made under the interest rate subsidy agreement may be adjusted because of underpayment or overpayment identified by audit.

(b) The department shall rely on commissioned audits to the extent feasible once it satisfies itself of the quality of the audit by appropriate tests or other acceptable methods as described in government auditing standards issued by the comptroller general of the United States. The department shall rely on and not duplicate single audits performed in accordance with the federal and state auditing standards. The department may perform additional audits to supplement work done in single audits to the extent it deems necessary to carry out its responsibilities under the program.

History: Cr. Register, June, 1994, No. 462, eff. 7-1-94.

NR 165.14 Disputes. **(1) DECISION OF THE DEPARTMENT.** Except as otherwise provided by law, any dispute arising under an interest rate subsidy agreement or subsidy payment adjustment shall be decided in writing by the department. A copy of the decision shall be served on the recipient personally or by certified mail, return receipt requested.

(2) **REVIEW OF THE DECISION.** A decision of the department made pursuant to this section shall be final unless, within 30 days from the date the decision is mailed, the department receives a written petition specifically stating the facts or law which warrant a modification or reversal of the decision. Any review of a department decision filed pursuant to this subsection shall be treated as a class 2 contested case and shall be adjudicated in accordance with ch. 227, Stats., and ch. NR 2.

History: Cr. Register, June, 1994, No. 462, eff. 7-1-94.

NR 165.15 Termination and rescision of interest rate subsidy. (1) **TERMINATION OF THE INTEREST RATE SUBSIDY.** The interest rate subsidy may be terminated in whole or in part by the department pursuant to one or more of the following procedures:

(a) The department and recipient may enter into an agreement to terminate the interest rate subsidy agreement at any time pursuant to terms which are consistent with this subsection. The agreement shall establish the effective date of termination of the interest rate subsidy agreement, the basis for settlement of termination costs, and the amount and date of payment of any sums due either party.

(b) If a recipient wishes to unilaterally terminate all or any part of the project work for which interest rate subsidy has been awarded, the recipient shall promptly give written notice to the department. If the department determines that there is a reasonable basis for the requested termination, the department may enter into a termination agreement, including a provision for assistance agreement termination costs, which may include costs necessary to terminate the financial assistance agreement or other costs, effective with the date of cessation of the project work by the recipient. If the department determines that a recipient has ceased work on a project without reasonable basis, the department may unilaterally terminate the interest rate subsidy pursuant to sub. (3) or rescind the interest rate subsidy agreement pursuant to sub. (2).

(c) The department shall terminate the interest rate subsidy agreement if the recipient terminates its loan agreement with the board of commissioners of public lands or prepays all of the principal of the loan prior to the end of the term of the loan agreement.

(2) **RESCISION OF THE INTEREST RATE SUBSIDY.** The department may rescind the interest rate subsidy agreement if it determines that:

(a) There has been substantial non-performance of the project work by the recipient without acceptable justification under the circumstances;

(b) There is substantial evidence the interest rate subsidy agreement was obtained by fraud;

(c) There is substantial evidence of gross abuse or corrupt practices in the administration of the project; or

(d) The recipient has failed to comply with the terms or conditions of the interest rate subsidy agreement.

(3) **PROCEDURES FOR TERMINATION AND RESCISION.** (a) The interest rate subsidy may be terminated or rescinded by the department in accordance with the following procedure:

1. The department shall make a written finding that grounds as specified in sub. (2) or in s. NR 165.16 (1) exist with respect to the specific project.

2. The department shall give not less than 30 days written notice to the recipient of its intent to terminate or rescind interest rate subsidy in whole or in part. Notice shall be served on the recipient personally or by mail (certified mail - return receipt requested) and shall include the grounds for termination or rescision required under subd. 1.

3. The recipient shall be afforded an opportunity for consultation with the department within 20 days after service of notice if practicable, and in any event, prior to any termination or rescision. After the department has received any views expressed by the recipient, the department may terminate or rescind the interest rate subsidy agreement in whole or in part. Any termination or rescision

shall be in writing and shall respond to the view expressed by the recipient and shall state the reasons relied on by the department in terminating or rescinding the interest rate subsidy. A notice of termination or rescision shall be served on the recipient personally or by mail (certified mail - return receipt requested). Termination or rescision shall be effective on the date specified in the notice of termination or notice of rescision, which shall be no less than 10 days after the date of the notice.

4. Service on the recipient under subs. 2. and 3. shall be on any appropriate municipal official.

(b) Upon termination or rescision, the recipient shall refund or credit to the state of Wisconsin that portion of the interest rate subsidy paid or owed to the recipient and allocable to the project for which the interest rate subsidy has been terminated or rescinded, except a portion as may be required to meet commitments which had become legally enforceable prior to the effective date of termination or rescision and are otherwise eligible. The recipient may not make any commitments after the effective date of termination or rescision without department approval. The recipient shall reduce the amount of outstanding commitments insofar as possible and report to the department the uncommitted balance of funds awarded under the interest rate subsidy agreement.

(c) The recipient may appeal a termination or rescision of an interest rate subsidy agreement pursuant to s. NR 165.14 (2).

History: Cr. Register, June, 1994, No. 462, eff. 7-1-94.

NR 165.16 Enforcement. (1) Noncompliance with the provisions of this chapter or any interest rate subsidy agreement made under this chapter which jeopardizes timely completion of the project or the interests of the state in administering the clean water fund shall be cause for the imposition of one or more of the following sanctions:

(a) The department may seek a court of appropriate jurisdiction to enter an injunction or afford other equitable or judicial relief as the court finds appropriate.

(b) The department may seek such other administrative remedies as may be appropriate.

(2) If the recipient fails to make timely payments to the board of commissioners of public lands when due under an agreement and fails to cure any nonpayment or is in substantial noncompliance with the provisions of the agreement and fails to cure the noncompliance, the department shall have cause for the imposition of one or more of the following sanctions at the discretion of the department:

(a) The interest rate subsidy agreement may be terminated or, if applicable, rescinded; and

(b) Interest rate subsidy payments may be rescinded;

(c) The department of administration may seek recovery of past payments of interest rate subsidy made to the recipient;

(3) Notwithstanding subs. (1) and (2) and ch. Adm 35, in the event of any material noncompliance with the provisions of this chapter or any interest rate subsidy agreement made under this chapter, project costs directly related to the noncompliance may be declared ineligible for an interest rate subsidy.

History: Cr. Register, June, 1994, No. 462, eff. 7-1-94.

NR 165.17 Variances. (1) **GENERAL.** The department may approve a variance from requirements of this chapter when the department determines that a variance is essential to meet department or financial assistance objectives where special circumstances make a variance in the best interest of the state. Before granting a variance, the department shall take into account factors such as good cause, circumstances beyond the control of the recipient and financial hardship.

(2) **APPLICABILITY.** A recipient may request a variance from any nonstatutory requirement of this chapter.

(3) **REQUEST FOR VARIANCE.** A request for a variance shall be submitted in writing to the department, as far in advance as the sit-

uation will permit. Each request for a variance shall contain the following:

- (a) The name of the applicant or the interest rate subsidy agreement number and the dollar value;
- (b) The section of this chapter from which a variance is sought and a statement explaining why the variance is necessary;
- (c) An adequate description of the variance and the circumstances in which it will be used, including any pertinent back-

ground information which is relevant to making a determination on the justification of granting the variance; and

- (d) A statement as to whether the same or similar variance has been requested previously, and if so, circumstances of the previous request.

(4) APPROVAL OF VARIANCE. A copy of each approved variance request shall be retained in the department interest rate subsidy file.

History: Cr. Register, June, 1994, No. 462, eff. 7-1-94.