

Chapter NR 166

SAFE DRINKING WATER LOAN PROGRAM

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Note: Chapter NR 166 was created as an emergency rule effective March 18, 1998.

NR 166.01 Purpose. (1) The purpose of this chapter is to establish rules under ss. 281.59 and 281.61, Stats., for the implementation and administration of a financial assistance program to plan, design, construct or modify public water systems.

(2) All forms necessary for financial assistance under this chapter may be acquired at no charge from the Department of Natural Resources, 101 S. Webster St., P.O. Box 7921, Madison, Wisconsin 53707-7921.

History: Cr. Register, July, 1998, No. 511, eff. 8-1-98.

NR 166.02 Applicability. This chapter applies to all applicants and recipients of financial assistance to plan, design, construct or modify public water systems made pursuant to ss. 281.59 and 281.61, Stats. Compliance with the applicable requirements of this chapter is a prerequisite to receiving financial assistance under ss. 281.59 and 281.61, Stats.

History: Cr. Register, July, 1998, No. 511, eff. 8-1-98.

NR 166.03 Project definitions. In this chapter:

(1) "Action level" or "AL" is the concentration of lead or copper in water which determines, in some cases, the treatment requirements that a public water system is required to complete.

(2) "Applicant" means any local governmental unit that applies for financial assistance under ss. 281.59 and 281.61, Stats.

(3) "Approval" means the written approval of the department.

(4) "Biennial finance plan" means the proposed plan described in s. 281.59 (3), Stats.

(5) "Breach of contract" means the failure of the local governmental unit to comply with:

(a) The terms and conditions of the financial assistance agreement; or

(b) The terms and conditions of the municipal resolution authorizing the issuance and sale of bonds or notes to the safe drinking water loan program.

(6) "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.

(7) "Community water system" means a public water system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents. Any water system serving 7 or more homes, 10 or more mobile homes, 10 or more apartment units or 10 or more condominium units shall be considered a community water system unless information is provided by the owners indicating that 25 year-round residents will not be served.

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

(a) Preparing an engineering report containing the controlling assumptions made and the factors used in the functional design of the water system facility as a whole or of individual component units.

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

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

(d) Building or modifying a water system, or purchasing a package water system.

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

(9) "Contaminant" means any physical, chemical, biological or radiological substance or matter in water.

(10) "Contractor" means a person or firm that agrees to furnish materials or perform services for consideration for a project funded by the safe drinking water loan program.

(11) "Department" means the state of Wisconsin department of natural resources.

(12) "Distribution system" means all pipes or conduits by which water is delivered to consumers except piping inside buildings served and water service from a building to a distribution main or pipe.

(13) "DOA" means the state of Wisconsin department of administration.

(14) "Financial assistance" means loans, refinancing debts, debt guarantees, purchases of insurance or credit enhancements provided to a local governmental unit under ss. 281.59 and 281.61, Stats.

(15) "Financial assistance agreement" means an agreement between a local governmental unit, the department and DOA which provides for financial assistance to the local governmental unit and contains the terms and conditions of the financial assistance.

(16) "Force account work" means the work a local governmental unit performs using its own employees or equipment for construction, construction-related activities, repairs or improvements to a water system. The term includes any activity listed in sub. (8) if the work is performed by a local governmental unit with its own employees or equipment.

(17) "Future growth" means distribution system expansion beyond the existing system and excess capacity built into facilities which is above and beyond normally accepted standard engineering practice.

(18) "Interim financing" means a debt necessary to temporarily finance a project until permanent financing is obtained.

(19) "Interim financing costs" means the net interest, fees and charges associated with issuing interim financing. "Interim financing costs" include underwriter's discounts, financial advisor fees, printing costs, bond rating charges, attorney's fees and trustee's fees.

(20) "Loan" means a sum of money lent to a local governmental unit pursuant to a financial assistance agreement.

(21) "Local governmental unit" means a city, village, town, county, town sanitary district, public inland lake protection and rehabilitation district or municipal water district.

(22) "Maintenance" means the preservation of the functional integrity and efficiency of the public water system, including its equipment and structures. The term includes preventive maintenance, correctional maintenance and replacement of equipment.

(23) "Market interest rate" means the effective interest rate, as determined by DOA, of a revenue obligation issued by the state to fund a loan or a portion of a loan under ss. 281.59 and 281.61, Stats., and in effect at the time of preparing the financial assistance agreement.

(24) "Maximum contaminant level" or "MCL" means the maximum permissible level of a contaminant in water which is delivered to any user of a public water system. "Maximum contaminant level" or "MCL" does not include contaminants added to the water under circumstances controlled by the user, except those resulting from corrosion of piping and plumbing caused by water quality.

Note: The maximum permissible level and the sampling and analytical requirements vary depending on the specific contaminant. Chapter NR 809 should be consulted for specific information regarding any contaminant.

(25) "MCL exceedance" means, for inorganic, organic, synthetic organic, volatile organic, total trihalomethane and radionuclide contaminants, the numerical value, as determined by methodology outlined in ch. NR 809, in excess of the MCL of the contaminant.

(26) "Median household income" means median household income determined by the U.S. bureau of the census as adjusted by the department to reflect changes in household income since the most recent federal census.

(27) "Minority owned business enterprise" means a sole proprietorship, partnership, joint venture or corporation that 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), and is currently performing a useful business function.

(28) "Non-community water system" means a public water system that is not a community water system.

(29) "Operation" means control of the unit processes and equipment which make up a water system. The term includes financial and personnel management, record keeping, laboratory control, process control, safety and emergency operation planning.

(30) "Population" means the most recent year's final population estimate published by the DOA demographic services center for the city, town, village or county which submitted an intent to apply form. For a public water system owned by other than a city, town or village, such as a sanitary district, "population" means the most recent population count or estimate done for the system.

(31) "Priority score" means the numerical value, determined by the department, which is assigned to each project in accordance with s. NR 166.25.

(32) "Project" means a combination of activities listed under sub. (8) and s. NR 166.06 (1) to construct a water system or a modification thereof that are reasonably necessary and appropriate

to address a public health concern and are addressed in the engineering report.

(33) "Public water system" means a system for the provision to the public of piped water for human consumption if the water system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days each year. A public water system is either a community water system or a non-community water system.

Note: The definition of public water system as regulated by this chapter is broader and includes more water systems than those governed by the Public Service Commission under its definition of a public utility in ch. 196, Stats.

(34) "Recipient" means any local governmental unit or group of local governmental units that has been awarded or has received financial assistance under ss. 281.59 and 281.61, Stats.

(35) "Safe drinking water act" means the federal safe drinking water act, 42 USC 300f to 300j-26.

(36) "Safe drinking water loan program" means the program established under ss. 281.59 and 281.61, Stats., for the purpose of providing financial assistance to local government units for the construction or modification of water system projects.

(37) "Significant noncomplier" means a public water system that has been reported to the department by the U. S. environmental protection agency as in continuing noncompliance.

(38) "Subsidy" means the amounts provided by the safe drinking water loan program for projects receiving financial assistance under ss. 281.59 and 281.61, Stats., to reduce the interest rate of a loan made under the safe drinking water loan program from the market interest rate to a lesser rate.

(39) "Substantial completion" means the point in time at which the project can be utilized for the purposes for which it is intended.

(40) "Total and or fecal coliform positive" means that a bacteriological water test from the public water system was determined to be positive from a state approved drinking water certified laboratory.

(41) "Treatment technique" means one or more methods of treatment that are known to remove or inactivate giardia and viruses as determined in ss. NR 809.76 and 809.77.

(42) "Utility" means a public utility as defined in s. 196.01 (5), Stats.

(43) "Water rates" means a charge or system of charges levied on users of a water system for the user's proportional share of the revenue requirement of a water system which consists of operation and maintenance expenses, depreciation, taxes and return on investment.

(44) "Water system" means all structures, conduits and appurtenances by means of which water is delivered to consumers except piping and fixtures inside buildings served and service pipes from buildings to street mains.

(45) "Woman-owned business" means an independent business concern which is at least 51% owned by a woman or women who also control and operate it.

History: Cr. Register, July, 1998, No. 511, eff. 8-1-98.

Subchapter I – Financial assistance

NR 166.04 Types of financial assistance available. The department and DOA may, subject to applicable requirements of ss. 281.59 and 281.61, Stats., and ch. Adm 35, provide financial assistance to eligible applicants as follows:

(1) To purchase or refinance the debt obligation of a local governmental unit if the debt was incurred to finance the cost of constructing an eligible project located within the state and the debt obligation was incurred after July 1, 1993.

(2) To guarantee, or purchase insurance for, municipal obligations for the construction of public water systems, if the guarantee

or purchase would improve credit market access or reduce interest rates applicable to the obligation.

(3) To make loans at or below the market interest rate.

History: Cr. Register, July, 1998, No. 511, eff. 8-1-98.

NR 166.05 Annual funding policy and funding list.

(1) FUNDING POLICY. Each year, the department shall prepare an annual funding policy for the fiscal year. The funding policy shall be subject to public hearing.

(2) FUNDING LIST. The department shall annually prepare a funding list which ranks projects in the same order as they appear on the project priority list and as specified in s. NR 166.26.

History: Cr. Register, July, 1998, No. 511, eff. 8-1-98.

NR 166.06 Project eligibility. (1) ELIGIBLE PROJECTS. A local governmental unit, having an existing public water system, may receive financial assistance under this chapter for a project which has any of the following purposes:

(a) To address safe drinking water act health standards that have been exceeded or to prevent future violations of a rule. These include projects to maintain compliance with existing regulations for contaminants with acute health effects and regulations for contaminants with chronic health effects. This includes the surface water treatment rule, the total coliform rule, and nitrate standard and regulations for contaminants with chronic health effects such as the lead and copper rule, phases I, II and V rules, safety standards for total trihalomethanes, arsenic, barium, cadmium, chromium, fluoride, mercury, selenium, combined radium-226, -228, and gross alpha particle activity.

(b) To replace aging infrastructure if necessary to maintain compliance or further the public health protection goals of the safe drinking water act. These would include projects with any of the following purposes:

1. To rehabilitate or develop sources, excluding reservoirs, dams, dam rehabilitation and water rights, to replace contaminated sources;

2. To install or upgrade treatment facilities, if in the department's opinion, the project would improve the quality of drinking water to comply with primary or secondary drinking water standards;

3. To install or upgrade storage facilities, including finished water reservoirs, to prevent microbiological contaminants from entering the public water system;

4. To install or replace transmission and distribution pipes to prevent contamination caused by leaks or breaks in the pipe, or improve water pressure to safe levels.

(c) To consolidate water supplies. For example, when individual homes or other public water supplies have a water supply that is contaminated, or the system is unable to maintain compliance for financial or managerial reasons.

(d) To purchase a portion of another public water system's capacity if it is the most cost effective solution.

(e) To restructure a public water system that is in noncompliance with the safe drinking water act requirements or lacks the technical, managerial and financial capability to maintain the system if the assistance will ensure that the system will return to and maintain compliance with the safe drinking water act requirements.

(2) INELIGIBLE PROJECTS. The following projects or portions of projects are not eligible to receive financial assistance under this chapter:

(a) Construction or rehabilitation of dams.

(b) Water rights, except if the water rights are owned by a public water system that is being purchased through consolidation as part of a capacity development strategy.

(c) Reservoirs, except for finished water reservoirs and those reservoirs that are part of the treatment process and are located on the property where the treatment facility is located.

(d) Projects needed primarily for fire protection.

(e) Projects for systems that lack the adequate technical, managerial and financial capability, unless assistance will ensure compliance.

(f) Projects for systems determined to be significant noncompliers unless funding will ensure compliance with safe drinking water act requirements.

(g) Projects primarily intended to serve future growth.

(h) Projects for systems owned by state or federal agencies.

(i) Projects or portion of projects that are not reasonably necessary and appropriate to address a public health concern.

History: Cr. Register, July, 1998, No. 511, eff. 8-1-98.

NR 166.07 Cost eligibility. (1) ELIGIBLE COSTS. (a) Project costs which are reasonable and necessary are eligible for financial assistance. Eligible costs include, but are not limited to, any of the following:

1. Costs of salaries, benefits and expendable material, incurred by the recipient for the project.

2. Planning work directly related to the water system.

3. Preparation of environmental assessment reports and evaluations.

4. Preparation of engineering reports.

5. Preparation of construction drawings, specifications, estimates and construction contract documents.

6. Landscaping.

7. Removal, relocation, replacement or temporary provision for utilities, for which the recipient is legally obligated to pay.

8. Materials acquired, consumed or expended specifically for the project.

9. Land that is an integral part of the treatment process.

10. An inventory of laboratory chemicals and supplies.

12. Development and preparation of an operation and maintenance manual.

13. Costs for the development of water conservation plans, water rates and water system ordinances.

14. Project identification signs.

15. Costs necessary to mitigate demonstrated direct adverse physical impacts resulting from the project construction.

16. The cost of safety equipment.

17. On-site inspection during construction and to complete punch list items.

18. Professional, consulting and engineering services.

19. Costs associated with the federal single audit portion of the audit report until the project is complete.

20. Interim financing costs in accordance with s. NR 166.13 (2).

21. Cost of preparing the financial assistance application, including costs to conduct studies or investigations necessary to complete the application.

22. Issuance costs related to eligible project debts.

23. Other capital costs incurred solely for the purpose of the project.

(b) Project costs attributable to state and federal facilities are eligible for financial assistance. If the amount of the project cost attributable to these facilities is more than 5% of the total project costs, then the costs attributable to the state and federal facilities are only eligible for financing at the market interest rate.

(2) INELIGIBLE COSTS. Costs not directly associated with or not necessary for the construction or operation of an eligible project are not eligible for financial assistance. Ineligible costs include, but are not limited to the following:

(a) Basin or area wide planning not related to the project.

(b) Bonus payments not legally required for completion of construction before a contractual completion date.

(c) Personal injury compensation or damages arising out of the project, whether determined by adjudication, arbitration, negotiation or otherwise.

(d) Fines and penalties due to violations of, or failure to comply with, federal, state or local laws.

(e) Costs outside the scope of the approved project.

(f) Laboratory fees for monitoring.

(g) Operation and maintenance expenses.

(h) Ordinary operating expenses of local government such as salaries and expenses of a mayor, city council members or a city attorney.

(i) Site acquisition expenses other than those integral to the approved project.

(j) Costs for which payments will be made under another federal or state program.

(k) Costs of claims resulting from mismanagement or caused by the recipient's vicarious liability for the improper action of others.

(L) Costs incurred in a contract which creates a real or apparent conflict of interest. An apparent conflict of interest arises when an official or employee of a recipient participates in the selection, awarding or administration of a contract supported by the safe drinking water loan program and none of the following conditions exist:

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

2. Any person identified in subd. 1. who receives any contract, gratuity or favor from the award of the contract.

(m) Project costs incurred after the project completion date.

(3) LIMITATION ON ELIGIBILITY OF INTERIM FINANCING COSTS IN REFINANCING PROJECTS. (a) *Net costs.* Interim financing costs will be offset with any interest earnings, during the eligible time period, from the investment of the proceeds from the interim financing.

(b) *Interim interest costs.* The period of time for which interest on interim financing is eligible for funding shall run from no earlier than 6 months prior to the start of construction through the earliest of the following:

1. The closing date of the safe drinking water loan; or

2. One year following completion of construction.

(c) *Cost proration.* If the interim financing is not exclusively for the safe drinking water loan program project, costs will be prorated accordingly.

History: Cr. Register, July, 1998, No. 511, eff. 8-1-98.

NR 166.08 Notice of intent to apply. (1) A local governmental unit shall submit to the department a notice of its intent to apply for funding. The notice shall be filed with the department by December 31, if funding will be requested within the following 2 fiscal years. The notice shall be on a form provided by the department. The notice will be valid for 2 calendar years.

(2) The department may waive the requirement in sub. (1) upon the written request of a local governmental unit pursuant to s. 281.61 (3) (c), Stats.

History: Cr. Register, July, 1998, No. 511, eff. 8-1-98.

NR 166.09 Engineering report. (1) Prior to submitting an application for financial assistance under this section, a local governmental unit shall submit to the department, for approval, an engineering report.

(2) An engineering report shall comply with the requirements of s. NR 811.13 (3).

(3) The department shall determine what qualifies as a project under s. NR 166.03 (32).

History: Cr. Register, July, 1998, No. 511, eff. 8-1-98.

NR 166.10 Application. (1) **PROCEDURES.** (a) Local governmental units shall apply by April 30 to be considered for funding in the following fiscal year. The application shall be on a form provided by the department.

(2) **CONTENTS OF APPLICATION.** The applicant shall submit all of the following with the application:

(a) Evidence of approval of an engineering report in accordance with s. NR 166.09.

(b) Copies of any executed contracts for performance of planning and design work.

(c) Copies of proposed or executed contracts for performance of architectural or engineering work for construction.

(d) A copy of plans and specifications which are approvable by the department.

(e) Financial information, in Part IV of the application, required by DOA to determine the affordability of the proposed project, the financial capability of the local governmental unit and the adequacy of the pledge of revenues to repay the obligation securing the proposed safe drinking water loan.

(f) A statement of the types of financial assistance being applied for and the reasons for each type being requested.

(g) A proposed or an executed intermunicipal agreement if the project involves serving more than one local governmental unit.

Note: All forms necessary for financial assistance under this chapter may be acquired at no charge from the Department of Natural Resources, 101 S. Webster St., P.O. Box 7921, Madison, Wisconsin 53707-7921.

History: Cr. Register, July, 1998, No. 511, eff. 8-1-98.

NR 166.11 Financial assistance requirements. Before entering into a financial assistance agreement for any project, the department shall make a determination that all of the following conditions have been met:

(1) All of the applicable requirements of s. NR 162.10 have been met.

(2) The department has approved the plans and specifications for the project.

(3) The project is entitled to priority in accordance with s. NR 166.25.

(4) The applicant has the legal, institutional, managerial, technical and financial capability to insure adequate construction, operation and maintenance of the water system throughout the applicant's jurisdiction.

(5) DOA is satisfied that the local unit of government has the financial capacity as described in ch. Adm 35 to assure sufficient revenues to operate and maintain the project for its useful life and to pay the debt service on the obligations it issues for the project.

(6) The applicant has, or has applied for, any permit required by ch. 283, Stats.

(7) The applicant has made satisfactory provision to assure the efficient operation and maintenance of the water system during and after the project.

(8) If a public water system is regulated by the public service commission, the applicant has filed the appropriate applications to increase water rates with the public service commission and the corresponding order authorizing the water rates and rules has been issued by the public service commission.

(9) If a public water system is not regulated by the public service commission, the applicant has, to the satisfaction of the department and DOA, developed and adopted water rates and operating rules.

History: Cr. Register, July, 1998, No. 511, eff. 8-1-98.

NR 166.12 Procurement. (1) **APPLICABILITY.** Procurement of professional services and construction contracts by recipients under this chapter shall be in accordance with state and local law. No contract 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.

(2) **PROFITS.** Only fair and reasonable profits may be paid to contractors by local governmental units under financial assistance agreements. Profits included in a formally advertised, competitively bid, fixed price or unit price construction contract are presumed to be reasonable.

(3) **FINANCIAL ASSISTANCE RECIPIENT RESPONSIBILITY.** The recipient is responsible for the administration and successful completion of the project as well as acceptance of the terms of the financial assistance agreement.

(4) **UTILIZATION OF MINORITY- AND WOMAN-OWNED BUSINESSES.** In order to provide minority- and woman-owned businesses with an opportunity to compete for work related to the project, all of the following conditions shall be met:

(a) Recipients of financial assistance, contractors and subcontractors shall use minority- and woman-owned businesses to the extent possible.

(b) Recipients, contractors and subcontractors shall make good faith efforts to provide minority- and woman-owned businesses the maximum feasible opportunity to compete for contracts and subcontracts. Good faith efforts include but are not limited to the following:

1. Soliciting bids from qualified, minority-owned businesses certified by the department of development and qualified woman-owned businesses whenever contracts and subcontracts are awarded.

2. Providing to minority- and woman-owned businesses, upon request, a list of individuals and firms in possession of plans, specifications and other information relevant to the project.

3. Breaking down work into smaller projects to maximize the opportunity of minority- and woman-owned businesses to compete for contracts and subcontracts.

4. Establishing work schedules which will allow minority- and woman-owned businesses to compete for contracts and subcontracts.

5. Using the assistance of the department as appropriate.

(c) The recipient shall document the efforts made to provide minority- and woman-owned businesses with the opportunity to compete for contracts and subcontracts.

(d) If requested, a recipient shall explain to a minority- or woman-owned business which bid but did not receive a contract, why the contract was not awarded to it.

(e) Failure to comply with pars. (b) to (d) shall result in a portion of the project cost eligible for subsidy being financed at market interest rate.

(f) This subsection applies to each recipient of financial assistance and those employed by the recipient to plan, design, construct or modify the project. It applies to contracts for services, equipment, raw materials, and supplies.

Note: The utilization goal for minority- and woman-owned businesses is negotiated annually between the department and the U.S. environmental protection agency.

(5) **FORCE ACCOUNT WORK.** The department may approve financial assistance for force account work based on the applicant's certification that one of the following conditions exist:

(a) The applicant has the necessary competence required to accomplish the work and that the work can be accomplished more economically by the use of force account work; or

(b) Emergency circumstances dictate the use of force account work.

(6) **CONTRACTS FOR ARCHITECTURAL OR ENGINEERING SERVICES.** (a) The department may review architectural or engineering service contracts and amendments for the eligibility and reasonableness of costs. The department may not provide financial assistance for costs which are not eligible or reasonable.

(b) Reasonableness reviews shall consider the of scope of work, the recipient's procurement and negotiation process

associated with the costs, conditions unique to the project and any other factors impacting costs.

(c) Architectural or engineering service contracts shall indicate a maximum estimated cost for a defined scope of work which cannot be exceeded without a negotiated contract amendment prior to incurring additional costs.

(7) **CONSTRUCTION CONTRACTS AND SUBCONTRACTS.** (a) *Type of contract.* 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. (5). Each contract shall be a fixed or unit price contract, unless the department gives advance written approval for the recipient to use some other acceptable type of contract. In any event, the cost-plus-a-percentage-of-cost contract may not be used.

(b) *Contract change orders.* 1. The recipient shall secure a fair and reasonable price for the required work.

2. The department may require that change orders for projects funded under this chapter be approved by the department.

History: Cr. Register, July, 1998, No. 511, eff. 8-1-98.

NR 166.13 Reimbursements and refinancing.

(1) **REIMBURSEMENT OF PREVIOUSLY PAID PROJECT COSTS.** The department may reimburse eligible project costs previously paid by the local governmental unit from its internal funds, if the reimbursement is in compliance with applicable federal internal revenue service reimbursement regulations covering the use of tax-exempt bond or note proceeds.

(2) **REFINANCING OF INTERIM FINANCING.** The department may refinance the eligible portion of a local governmental unit's interim financing subject to the limits established in s. NR 166.07 (3).

History: Cr. Register, July, 1998, No. 511, eff. 8-1-98.

NR 166.14 Loan interest rates. Interest rates for eligible projects as determined in s. NR 166.06 shall be set in accordance with s. 281.61 (11), Stats., and this section. The interest rate on a loan shall be as follows:

(1) If the local governmental unit meets the following financial eligibility criteria, the loan interest rate shall be 33% of market interest rate:

(a) The population of the municipality and local governmental unit is less than 10,000.

(b) The median household income of the local governmental unit is 80% or less of the median household income in this state.

1. If the local governmental unit is a city, town, village, county or census designated place, the department shall obtain a median household income figure for the local governmental unit from the most recent federal census as published by the U.S. bureau of the census.

2. If the local governmental unit is a town sanitary district, public inland lake protection and rehabilitation district or municipal water district, the local governmental unit shall submit to the department with its intent to apply form a map showing the boundaries of the local governmental unit. The department shall compare this map to a census block map and determine which census blocks contain any portion of the local governmental unit. The department shall then obtain from the U.S. bureau of the census a median household income figure for the local governmental unit through special tabulation of census block data collected in the most recent federal census for the appropriate census blocks.

3. Median household income figures from the most recent federal census shall be adjusted for inflation. The department shall apply to the census data the percent increase in per capita income since the most recent federal census in the county in which the local governmental unit is located. The percent increase in per capita income data shall be determined using figures published by the U.S. department of commerce.

4. If a local governmental unit is located in more than one county, the percent increase in per capita income used to adjust the median household income figure for inflation shall be weighted according to population or number of households located within each county's portion of the local governmental unit.

(2) If the local governmental unit does not meet the financial eligibility criteria established in sub. (1), the loan interest rate shall be 55% of market interest rate.

(3) If a project includes both costs which are eligible for market interest rate only under s. NR 166.07 (1) (b) and costs under sub. (1) or (2), a composite interest rate shall be computed for the project as follows:

$$CR = (BR) (PB) + (MR) (PM)$$

Where:

CR is the composite interest rate for the project.

BR is the appropriate below market interest rate.

PB is the percentage of the project that is eligible for below market interest rate and is being financed by the safe drinking water loan program.

MR is the market interest rate.

PM is the percentage of the project that is eligible for market interest rate only and is being financed by the safe drinking water loan program.

Note: The interest rate shall be based on the market rate in effect at the time the financial assistance agreement is executed.

History: Cr. Register, July, 1998, No. 511, eff. 8-1-98.

NR 166.15 Financial assistance agreement conditions. (1) Each financial assistance agreement shall bind the recipient to the following conditions:

(a) The recipient shall agree to maintain system water rates and operating rules in accordance with s. NR 166.11 (8) or (9).

(b) The water system shall comply with all pertinent requirements of federal, state and local environmental laws and regulations.

(c) The recipient shall agree to comply with the requirements contained in the safe drinking water act amendments of 1996, section 1452.

(d) The recipient shall pay the costs of water system construction which are ineligible for financial assistance under this chapter.

(e) The recipient shall comply with all state and local laws regarding procurement and public contracts.

(f) The recipient shall provide department representatives access to the project, including construction activities, whenever the project is in preparation or in progress, or for a final inspection when the project is complete. The recipient shall allow the department access to records of the contractor and subcontractor which are pertinent to the project for the purpose of making inspections, examinations, excerpts, copies and transcriptions. The recipient shall also allow DOA or its agent access to records for audits.

(g) The recipient shall expeditiously initiate and complete the project in accordance with the financial assistance agreement and application, including any project schedule approved by the department. Failure of the recipient to promptly initiate project work may be deemed a breach of the financial assistance agreement.

(h) The recipient shall promptly notify the department of changes to the project.

(i) The recipient shall promptly submit to the department a copy of any prime contract or modification of it and of revisions to plans and specifications.

(j) The recipient shall begin repayment of principal no later than 12 months after the expected substantial completion date of the project and shall make the final principal payment no later than 20 years after the date of the financial assistance agreement.

(k) The recipient shall submit an operations and maintenance manual to the department except as waived by the department.

1. The project engineer and the authorized representative of the recipient shall certify that the operations and maintenance manual meets or exceeds the requirements of this chapter.

2. The operations and maintenance manual shall address the following areas:

a. General information.

b. Staffing.

c. Records and recordkeeping.

d. Laboratory.

e. Safety.

f. Utility systems.

g. A description of the process, operations and controls.

h. Maintenance.

i. Manufacturer's information.

j. Sample collection locations and methods.

k. Monitoring schedules.

(L) The recipient shall utilize best management practices for erosion control.

(m) The recipient shall provide and maintain adequate construction inspection for conformance with the approved plans and specifications.

(n) The recipient shall notify the department of the substantial completion of the project.

(2) The financial assistance agreement is not effective until it is executed by all parties to the agreement.

History: Cr. Register, July, 1998, No. 511, eff. 8-1-98.

NR 166.16 Financial management. The recipient shall do all of the following:

(1) Maintain project accounts in accordance with generally accepted governmental accounting standards.

(2) Maintain a financial management system which conforms with the requirements, terms and conditions of the financial assistance agreement and ch. Adm 35.

(3) Comply with any U.S. treasury requirements for maintaining the tax-exempt status of the bonds or notes sold to the safe drinking water loan program.

History: Cr. Register, July, 1998, No. 511, eff. 8-1-98.

NR 166.17 Financial assistance disbursements.

(1) REQUESTS FOR DISBURSEMENT. The recipient shall submit to the department requests for loan disbursements for eligible costs, including progress payments to contractors, in the form specified by the department.

(2) ADJUSTMENT. Before the final disbursement under the financial assistance agreement, the department may recommend to DOA that any request for disbursement be reviewed or audited.

(3) WITHHOLDING OF FUNDS. The department may request DOA to withhold financial assistance disbursements where the department determines in writing that a recipient has failed to comply with project objectives, or the terms, conditions or reporting requirements of the financial assistance agreement.

(4) FINAL DISBURSEMENT. (a) The recipient shall promptly submit the final request for disbursement after completion of the project. The recipient shall include written certification that it has accepted the project from its contractors in the final disbursement request.

(b) Prior to the final disbursement, the department and DOA shall determine that the recipient has complied with all applicable requirements of this chapter, and the financial assistance agreement.

History: Cr. Register, July, 1998, No. 511, eff. 8-1-98.

NR 166.18 Amendments to financial assistance agreement. (1) The local governmental unit may request an

amendment to a financial assistance agreement if it is proposing one of the following:

(a) Altering the type of water treatment.

(b) Substantially altering the engineering report, plans and specifications, or any major part of the project.

(2) Changes in the project that are consistent with the objectives of the project, within the scope of the financial assistance agreement and which do not require review under ch. NR 809 or 811 will not require the execution of an amendment before the recipient implements the change.

(a) The amount of financial assistance in the financial assistance agreement may only be increased by an amendment and may only be made upon department review and acceptance of any cost increases as eligible, reasonable and necessary for the accomplishment of project objectives.

(b) Financial assistance agreement amendments which increase the amount of financial assistance shall be subject to the availability of funds, subsidy, and any bonding authority needed in accordance with s. 281.59, Stats.

(c) The interest rate for loan funds advanced in accordance with an amended financial assistance agreement shall be the same as the interest rate of the original financial assistance agreement unless there is no subsidy available, in which case the interest rate will be the market interest rate. The final loan maturity shall remain the same as established in the financial assistance agreement.

(d) A financial assistance agreement amendment shall be effective on the date it is executed by the department and DOA.

History: Cr. Register, July, 1998, No. 511, eff. 8-1-98.

NR 166.19 Disputes. (1) **DECISION OF THE DEPARTMENT.** Except as otherwise provided by law, any dispute arising under this chapter, prior to the execution of a financial assistance agreement, shall be decided in writing by the department. The department shall serve a copy of the decision on the recipient personally or by mail.

(2) **REVIEW OF THE DECISION.** A final decision of the department shall be reviewed pursuant to ch. 227, Stats., and ch. NR 2.

History: Cr. Register, July, 1998, No. 511, eff. 8-1-98.

NR 166.20 Records and records retention. The recipient shall maintain books, documents, papers, records and accounting procedures in accordance with generally accepted government accounting standards, the financial assistance agreement and ch. Adm 35 and retain them in accordance with ch. 19, Stats. The recipient shall require contractors, including contractors for professional services, to maintain books, documents, papers and records in the same manner.

History: Cr. Register, July, 1998, No. 511, eff. 8-1-98.

NR 166.21 Breach of contract. (1) Upon breach of contract by the recipient, the department and DOA may do any of the following:

(a) Declare the unpaid loan balance mature and immediately payable.

(b) Increase the interest rate on the unpaid balance of the loan to the market interest rate in effect on the date the financial assistance agreement was executed.

(c) Immediately terminate the agreement and disburse no additional loan funds, if the loan has not been fully disbursed.

(d) Seek an injunction or any other equitable or judicial relief from a court of appropriate jurisdiction.

(e) Seek any other appropriate administrative remedy.

(2) DOA's receipt of any payment after the occurrence of a breach of contract does not constitute the department's waiver of any rights and remedies under this section.

History: Cr. Register, July, 1998, No. 511, eff. 8-1-98.

NR 166.22 Noncompliance. Upon failure of the recipient to comply with ss. 281.59 and 281.61, Stats., or with provisions of this chapter, the department may do any of the following:

(1) Refuse to enter into a financial assistance agreement.

(2) Seek penalties as provided in s. 281.59 or 281.61, Stats.

(3) Seek any other appropriate remedy, relief or penalty.

History: Cr. Register, July, 1998, No. 511, eff. 8-1-98.

NR 166.23 Variances. (1) **GENERAL.** The department may approve a variance from a requirement of this chapter when it determines that a variance is essential to effect necessary financial assistance actions or department 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 situation will permit. Each request for a variance shall contain the following:

(a) The name of the applicant.

(b) The section of this chapter from which a variance is sought and an adequate description of the variance desired, and the facts which the recipient believes warrant the department's approving the variance.

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

History: Cr. Register, July, 1998, No. 511, eff. 8-1-98.

Subchapter II – Priority Scoring and Ranking System

NR 166.24 Priority scoring criteria. The purpose of the priority scoring criteria is to establish a list of eligible projects to be funded in a manner that is in accordance with the federal requirements of the 1996 safe drinking water act reauthorization. Consistent with the act, the following criteria shall apply:

Note: The act requires, to the maximum extent practicable, that priority ranking be given to projects that: 1) address the most serious risk to human health; 2) are necessary to ensure compliance with the requirements of the safe drinking water act (including requirements for filtration); and 3) assist systems most in need on a per household basis according to state affordability criteria. The department will give first priority to acute public health risk, particularly those related to microbiological organisms and second priority given to situations that pose chronic and longer term health risks to consumers, such as organic chemical contamination. The scoring criteria also considers issues that are related to infrastructure upgrading or replacement to address those projects (or portions of a project) which are eligible for funding but not included in the first two sections.

(1) **RISK TO HUMAN HEALTH.** The following criteria are divided into acute and chronic risk categories. A project shall be assigned points based on criteria in a single category in par. (a) or a single category in par. (b), but not from both. If the severity of the problem is not reflected in any of the following categories, the department will determine the number of points the project shall be assigned.

(a) Project addresses a maximum contaminant level violation, action level exceedence or treatment technique violation, or an acute or chronic health hazard.

1. Acute contaminants: The acute contaminants are divided into 3 groups. Points are awarded in the following manner for a project that eliminates a problem that poses an acute health hazard from one of these groups:

a. Five hundred points shall be awarded to a project that proposes to eliminate an MCL violation that has occurred or will address a confirmed waterborne disease outbreak as defined in s. NR 809.04 (65).

b. Four hundred points shall be awarded to a project that eliminates violations of filtration requirements given in s. NR 809.76

and disinfection requirements in s. NR 809.77, or confirmed microbial, including giardia and cryptosporidium, contamination found in finished water.

c. Three hundred points shall be awarded to a project that eliminates a continuing nitrate and or nitrite MCL exceedance.

2. Chronic contaminants: The chronic contaminants are divided into the 5 subgroups of: inorganics, volatile organic chemicals, synthetic organic chemicals, radionuclides and total trihalomethane compounds. Points shall be awarded in the following manner for a project that eliminates a chronic health hazard from these groups of chemicals:

a. For each subgroup, other than the trihalomethane subgroup, only the MCL exceedance of greatest percentage magnitude is to be used for the point calculation, even though multiple contaminant MCL exceedances might be occurring. For exceedances in multiple subgroups, see subd. 2. c. The MCL exceedance shall be divided by the current MCL or AL and then multiplied by 50 to obtain a subgroup point total.

b. For the THM subgroup, the total sum THM exceedance as defined in s. NR 809.23 is used for the calculation similar to subd. 2. a.

c. For MCL exceedances in more than one subgroup, the highest point level of the subgroups shall be used as the primary number to be divided by the current MCL or AL and then multiplied by 50. The other subgroup exceedances will be divided by their respective MCL or AL and then multiplied by 10. The total point value shall be the sum of points in each subgroup.

(b) Project prevents an anticipated MCL, AL or treatment technique violation or critical health hazard. Points shall be awarded to a single group under either subd. 1. or 2. to a project that proposes to eliminate an anticipated acute or chronic health hazard.

1. Acute contaminants: The acute contaminants are divided into 3 groups. Points shall be awarded from one of the following groups for a project that eliminates an anticipated acute health hazard.

a. Three hundred points shall be awarded to a project that eliminates an anticipated MCL violation, where no actual violation has yet occurred.

b. Two hundred points shall be awarded to a project that proposes to eliminate anticipated violations of filtration requirements, or turbidity, given in s. NR 809.76, interim enhanced surface water treatment rule requirements, or microbial, including giardia and cryptosporidium, detections in the raw water.

c. One hundred points shall be awarded to a project that proposes to eliminate an anticipated nitrate and or nitrite violation.

2. Chronic contaminants: The chronic contaminants are divided into the 5 subgroups of: inorganics, volatile organic chemicals, synthetic organic chemicals, radionuclides and total trihalomethane compounds. Points shall be awarded in the following manner for a project that eliminates an anticipated chronic health hazard from these groups of chemicals:

a. Twenty points shall be awarded to a project that proposes to eliminate an anticipated exceedance of an inorganic, volatile organic chemical, synthetic organic chemical, radionuclide or total trihalomethane chemical contaminant.

b. Five points shall be awarded for each additional subgroup addressed by a project that eliminates an anticipated exceedance.

(2) FINANCIAL NEED. Projects shall be granted additional points if the project is associated with a system considered most in need of financial assistance on a per household basis. The number of points shall be determined by evaluating table A and table B for the public water system in question and totaling the points allocated in the point columns. A public water system must have a population less than 10,000 and a median household income less than or equal to 80% of the state's median household income to acquire any points in this section.

TABLE A

Population	Points
0-99	30
100-999	25
1000-1999	20
2000-2999	15
3000-4999	10
5000-9999	5

TABLE B

Median Household Income	Points
75%-80%	5
70%-74%	10
65%-69%	15
60%-64%	20
<60%	25

(3) SECONDARY CONTAMINANT VIOLATIONS OR SYSTEM COMPLIANCE WITH CH. NR 811. No points will be awarded for specific areas already receiving points under sub. (1). A project shall be assigned points from the following categories:

(a) Ten points shall be awarded if the project will reduce a secondary drinking water contaminant, as listed in s. NR 809.60 (2), to a level below the aesthetic standard.

(b) Ten points shall be awarded if the project addresses areas of inadequate distribution system pressure, as defined in s. NR 811.63 (1).

(c) Ten points shall be awarded if the project will address a documented storage deficiency, excluding fire demand, within an existing public water supply system.

(d) Ten points shall be awarded if the project addresses a source or capacity deficiency where there is a demonstrated need within the existing public water supply system.

(e) Four points shall be awarded if the project includes replacement of lead service lines.

(f) Four points shall be awarded if the project includes long-term zebra mussel control.

(g) Four points shall be awarded if the project includes installation of an auxiliary power source to a well, pump station or water treatment plant.

(h) Four points shall be awarded if the project includes replacement of asbestos-cement pipe material.

(i) Four points shall be awarded if the project includes upgrading of existing supervisory control and data acquisition system.

(j) Four points shall be awarded if the project includes installation or replacement of fluoridation equipment.

(k) Four points shall be awarded if the project includes the upgrading of existing facilities for capturing, holding or disposing of liquid or solid waste generated from the water system operation.

(L) Four points shall be awarded if the project includes the replacement of main less than 6 inches in diameter.

(m) Four points shall be awarded if the project includes the looping of water mains or the elimination of dead end water mains.

(n) Four points shall be awarded if the project includes treatment that reduces the potential for formation of disinfection by-products, including trihalomethanes.

(o) Four points shall be awarded if the project as a secondary benefit will increase the fire protection of the community.

Note: If the primary purpose of the project is to improve the fire protection of the system, the project is not eligible for funding.

(p) Four points shall be awarded if the project will include the installation of a water booster station or pressure reducing station

to improve the quality of service to the customers by supplying water at a more acceptable level.

(q) Four points shall be awarded if the project includes the installation of an additional river, railroad or highway crossing to a major system divide that results in better system reliability.

(r) Four points shall be awarded if the project includes the replacement of one or more pumps or pump motors that are no longer functional, or have reached the end of their useful life.

(s) Four points shall be awarded if the project improves the intake structure for a surface water plant.

(t) Four points shall be awarded if the public water system currently has a documented water loss in excess of 30% and the project reduces the water loss within the system.

(u) Four points shall be awarded if the project includes removal of water mains that pass through sanitary sewer manholes.

(4) **SYSTEM CAPACITY POINTS.** Points shall be awarded to a project based on the technical, financial and managerial capacity of the public water system in the following manner:

(a) Five points shall be awarded if the applicant has a written emergency action plan for the public water system.

(b) Five points shall be awarded if the applicant has implemented a private well abandonment ordinance for the public water system.

(c) Five points shall be awarded if the applicant has a wellhead protection plan and ordinance for all the wells in the public water system.

(d) Five points shall be awarded if the applicant has a certified operator and provisions for a certified back-up operator.

(e) Five points shall be awarded if the applicant has a cross connection control program for the public water system.

(f) Five points shall be awarded if the applicant has a dedicated replacement fund for the water system.

(5) **PROJECT PRIORITY SCORE.** The total points from subs. (1) to (4) shall be added together to determine the final project priority score.

History: Cr. Register, July, 1998, No. 511, eff. 8-1-98.

NR 166.25 Procedure for determining and updating project priority scores. (1) An applicant intending to apply for safe drinking water loan program financial assistance under this chapter shall submit to the department an intent to apply form and a project priority ranking form.

(2) No project shall be assigned a priority score or be placed on the project priority list until a completed priority ranking form has been submitted by the applicant and evaluated by the department.

(3) Upon completion of the review and determination of the priority score, the department shall notify the applicant in writing of the determination.

(4) The department may review and, if necessary under the requirements of this chapter, recalculate priority scores to assure accuracy and timeliness of the information provided. The department shall notify the applicant in writing of any change in the priority score.

(5) If the applicant objects to the department's determination of the priority score in sub. (3) or (4), the applicant shall notify the department in writing within 30 days. The notice shall state the specifics of the objection. The applicant shall submit any information which supports the objection and the priority score which the applicant believes should be assigned to the project based on this information.

(6) Upon receipt of a notice under sub. (5), the department shall reevaluate its determination of the project priority score and shall notify the applicant. If the department denies the requested priority value, it shall state the reasons in writing.

(7) Notwithstanding sub. (4), an applicant may request a reevaluation of its project priority score or any factor thereof at any time. The department shall notify the applicant of the results of the reevaluation in the same manner as required in sub. (5).

Note: All forms necessary for financial assistance under this chapter may be acquired at no charge from the Department of Natural Resources, 101 S. Webster St., P.O. Box 7921, Madison, Wisconsin 53707-7921.

History: Cr. Register, July, 1998, No. 511, eff. 8-1-98.

NR 166.26 Project ranking system. (1) The department shall maintain a project priority list which shall be based on the intent to apply forms submitted and shall rank the projects for which priority scores have been determined. The projects shall be ranked in the order of descending priority score, with the project with the highest priority score ranked first. A funding list shall be developed consisting of all projects for which applications have been submitted under s. NR 166.05 (2).

(2) If 2 or more projects have the same priority score, the project serving the larger population shall have the higher priority.

(3) Projects shall be funded in the order they appear on the funding list, except that projects may be given priority or removed from the list, upon written notice by the department, if any of the following situations occur:

(a) Ranking the projects in descending order do not result in at least 15% of the funds going to small systems with a population less than 10,000. In this case, systems under 10,000 population will be given priority until the 15% funding requirement is met.

(b) Requirements of s. NR 166.10 are not met.

(c) A project is canceled or the funding request is withdrawn by an applicant.

(d) The department determines that the applicant is unable to proceed with construction of the project in the fiscal year in which funds are requested.

(e) The project fails to meet the engineering review requirements or does not have department approval of the project.

(f) The applicant has reached the 25% biennial present value subsidy cap.

(g) DOA is not satisfied that the local governmental unit has the financial capacity as described in ch. Adm 35 to assure sufficient revenues to operate and maintain the project for its useful life and to pay the debt service on the obligations it issues for the project.

(h) Federal or state refinancing or reimbursement restrictions prevent funding.

History: Cr. Register, July, 1998, No. 511, eff. 8-1-98.

