

STATEMENT OF SCOPE

Department of Natural Resources

Rule No.: CF 13-19

Relating to: Safe Drinking Water Loan Program, Ch. NR 166, Wis. Adm. Code

Rule Type: Permanent

1. Finding/nature of emergency (Emergency Rule only):

The rule will be proposed as a permanent rule.

2. Detailed description of the objective of the proposed rule:

Chapter NR 166 is the administrative rule for the Safe Drinking Water Loan Program (SDWLP), which provides loans to local units of government to finance drinking water infrastructure projects. There are four objectives for revising ch. NR 166, Wis. Adm. Code.

Objective 1: To update areas of ch. NR 166 that are either: (a) no longer in line with federal regulations, or (b) need efficiency, accuracy, or clarity changes.

Objective 2: To update the code to reflect statutory changes. Revisions to Wis. Stats. as part of the 2015-17 Biennial Budget (2015 Wis. Act 55) took effect on the same day that previous revisions to ch. NR 166 became effective, causing some parts of the code to be obsolete on the day it was published.

Objective 3: To codify new policies and procedures related to streamlining the SDWLP loan processes.

Objective 4: To lay the groundwork for implementing more innovative funding mechanisms to assist municipalities in financing non-traditional projects and some of DNR's high priorities, such as lead service line replacement.

Additional improvements to ch. NR 166 may be identified by the Advisory Committees that will be convened to assist in the rule revision process.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

A. Existing policies relevant to the rule

Revisions to ch. NR 166 must maintain compliance with the following existing federal requirements, but the revised rule may include minor changes related to these requirements:

- Conduct environmental review of the sites on which projects will take place. Some of the submittal requirements for conducting environmental reviews may be modified in the revised rule.

- Comply with all federal crosscutting authorities and require loan recipients to comply with crosscutters. Crosscutting authorities include laws and Executive Orders such as the Davis-Bacon Act, Archaeological and Historic Preservation Act, Clean Water Act, Endangered Species Act, and the National Historic Preservation Act.
- Prioritize projects each year giving top priority to projects that: (a) address the most serious risks to human health; (b) are necessary to ensure compliance with the requirements of the Safe Drinking Water Act; and (c) assist systems most in need, on a per household basis.
- Require borrowers to meet requirements regarding the use of American iron and steel, federal wage rates, and the solicitation of disadvantaged business enterprises (DBEs) for participation in drinking water projects.

B. New Policies Proposed to be Included in the Revised Rule

Through discussions with the SDWLP's partners, customers, and Advisory Committees, new policies will be identified for inclusion into ch NR 166, including some policies related to financing projects in which lead services lines may be replaced. The department is collaborating with the Public Service Commission to develop effective ways to assist municipalities that need to remove lead from their systems. The policies being developed are very important in the protection of public health and should be codified in ch. NR 166 as municipalities will be working for a number of years to remove lead from their drinking water systems.

Revisions to ch. NR 166 will also include new policies related to the program's streamlined priority scoring, application, and disbursement request processes.

C. Analysis of Policy Alternatives

One alternative to handling federal and state law changes through code revision is to use annual Intended Use Plan for our federal capitalization grant to propose new policies. This alternative leaves customers wondering what changes are coming for the next financing year and is less vetted than a code revision.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

Sections 281.61(12)(a) and (b), Wis. Stats., contain the statutory authority for the Department of Natural Resources to promulgate rules for administration of the SDWLP.

The Environmental Improvement Fund, which includes the SDWLP, is administered cooperatively by the Wisconsin DNR and Department of Administration (DOA). Revisions to ch. NR 166 must also be coordinated with both ss. 281.59 and 281.61, Wis. Stats., to avoid conflict with these statutes and DOA policies and procedures.

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

The program estimates that approximately 800 hours of existing staff time will be needed to complete the rule revision process. This time includes drafting rule

language, legal review, holding the public hearing, and providing information to the Natural Resources Board and the Legislature.

6. List with description of all entities that may be affected by the proposed rule:

- Applicants for SDWLP funding – Wisconsin local governmental units (cities, towns, villages, sanitary districts, lake rehab & protection districts, joint local water authorities, counties) and private owners of community water systems that serve municipalities.
- Bond counsels – Private attorneys hired by applicants to prepare municipal bond documents for SDWLP loan closings.
- Construction contractors & subcontractors – Awarded bids by applicants to construct necessary infrastructure projects; must follow certain program requirements, such as paying Davis-Bacon wage rates and soliciting and reporting utilization of disadvantaged business enterprises.
- Consulting engineers – Hired by applicants to plan, design, and conduct bidding processes for construction projects, oversee construction, and coordinate various players in the projects, including financial assistance agencies.
- Financial advisors – Hired by applicants to advise them on best financial options for interim financing and permanent project financing.
- Municipal attorneys – Applicant staff that prepare statements required by the SDWLP for proof of land ownership and provide legal advice related to other loan related documents and issues.
- Wisconsin DOT Regional Offices and Division of Transportation System Development – Provide bidding and contract documentation to the SDWLP for projects let by DOT, and work cooperatively with the SDWLP to monitor Davis-Bacon compliance without agency duplication of effort.
- Wisconsin Public Service Commission – Sets rates for applicant municipalities' water systems; works cooperatively with the SDWLP to assure applicants will be able to collect enough user fees to make scheduled payments on the SDWLP loan, and to assist municipalities in establishing financing programs in their own communities to fund lead service line replacements on private land.
- US Department of Agriculture, Rural Development (Wisconsin) – Works cooperatively with the SDWLP to provide special funding packages for local governmental units that need assistance from more than one funding agency on a project.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

Drinking water state revolving loan programs in each state must comply with the Safe Drinking Water Act and Amendments (42 U.S.C. 300f through 300j), federal regulations under *40 CFR Parts 9 and 35*, EPA Guidelines, and EPA grant conditions specific to each annual capitalization grant the state receives. Our current statutes already include the major requirements for drinking water state revolving funds, as identified in Section 3.A. above.

We would like to have language in ch. NR 166 that generally reflects the federal requirements with which applicants must comply but leave room for shifting requirements. While the SDWLP is not heavily regulated, guidelines are prescribed

by the US EPA. The guidelines usually allow flexibility for each state to establish how they will implement the laws governing the State Revolving Fund programs in their own state.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

Revisions to ch. NR 166 would likely have a minor positive impact on small businesses. Some revisions will help streamline processes and enhance the efficiency of funding municipal infrastructure projects, which will allow engineering firms to spend less time preparing documents for project funding.

9. Anticipated number, month and locations of public hearings:

The Department anticipates holding one public hearing via webcast in the month of July 2021. The hearing would be available to anyone with access to the Internet.

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Preston D. Cole, Secretary

Date Submitted