

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

**Proposing rulemaking related to drinking water state revolving fund
and providing an opportunity for public comment**

The Environmental Protection Commission (Commission) hereby proposes to rescind Chapter 44, “Drinking Water State Revolving Fund,” Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 455B.103(2), 455B.105(3) and 455B.299.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 455B.291 through 455B.299 and the Safe Drinking Water Act (SDWA) as amended (42 U.S.C. §300f et seq.).

Purpose and Summary

Proposed new Chapter 44 establishes a program for the joint administration of Iowa’s Drinking Water State Revolving Fund (DWSRF). The DWSRF provides financial assistance through below market rate loans to eligible public water supply systems for the design and construction of drinking water facilities to ensure public health and for the provision of safe and adequate drinking water pursuant to the SDWA. Iowa has implemented a DWSRF program since 1998. This chapter has been reviewed and edited consistent with Executive Order 10.

Regulatory Analysis

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 4, 2024. A public hearing was held on the following date(s):

- September 24, 2024

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any, pursuant to 567—Chapter 13.

Public Comment

Any interested person may submit comments concerning this proposed rulemaking, which must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on February 6, 2025. Comments should be directed to:

Tara Naber
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200

Des Moines, Iowa 50321
Email: tara.naber@dnr.iowa.gov

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Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

February 5, 2025 9 to 10 a.m.	Virtual meeting A meeting registration link will be provided prior to the hearing
February 6, 2025 10 to 11 a.m.	Virtual meeting A meeting registration link will be provided prior to the hearing

The public hearings will be held virtually via Zoom. See www.iowadnr.gov/Environmental-Protection/Water-Quality/Water-Quality-Rulemaking for meeting information.

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a hearing and have special requirements, such as those related to hearing impairments, should contact the Department and advise of specific needs.

Free Language Assistance: if you need assistance in a language other than English, contact the Department at tara.naber@dnr.iowa.gov or civilrights@dnr.iowa.gov or by telephone at 515.776.8922 at least seven days before the event.

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Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 567—Chapter 44 and adopt the following **new** chapter in lieu thereof:

CHAPTER 44 DRINKING WATER STATE REVOLVING FUND

567—44.1(455B) Statutory authority. The authority for the Iowa department of natural resources (department) to administer the drinking water state revolving fund (DWSRF) is provided by Iowa Code sections 455B.291 through 455B.299.

567—44.2(455B) Scope of title. The department and the Iowa Finance Authority (authority) are jointly designated to administer the DWSRF loan program to assist in the financing of infrastructure projects pursuant to the Safe Drinking Water Act (SDWA). The director will coordinate with the authority under the terms of an interagency agreement entered into pursuant to Iowa Code chapter 28E.

567—44.3(455B) Purpose.

44.3(1) The DWSRF provides financial assistance to eligible public water supply systems (PWS) for the design and construction of facilities to ensure public health and the provision of safe and adequate drinking water.

44.3(2) The EPA provides capitalization grants for this program to the department. Financial assistance projects must be in conformance with the requirements of the Public Health Service Act (42 U.S.C. 300f et seq.), United States Code, Title XIV, Section 1452, Part E, and must comply with this chapter to be eligible for a DWSRF loan.

44.3(3) The department establishes priorities for the use of the DWSRF and publishes them in its intended use plan (IUP). The IUP will identify all proposed uses of set-asides and available loan funds. All potentially funded projects must be approved by the department and the environmental protection commission (EPC).

567—44.4(455B) Definitions. Definitions and abbreviations provided in 567—Chapter 40 apply to this chapter.

567—44.5(455B) Set-asides. The DWSRF may use a portion of the capitalization grant funds for set-asides, in accordance with 40 CFR §35.3535. The SDWA authorizes set-aside funds to enable states to implement specific SDWA requirements. The amount and use of set-aside money is set each year in the IUP pursuant to rule 567—44.9(455B) and may be adjusted from year to year based on available funds and priorities as outlined in the IUP.

567—44.6(455B) Eligibility.

44.6(1) Eligible systems. The following systems are eligible to receive funds from the DWSRF for improvements as listed and defined in the SDWA amendments of 1996 (P.L. 104-182, August 6, 1996).

- a. Community drinking water systems (CWSs).
- b. Nonprofit nontransient noncommunity drinking water systems (NTNCs).
- c. Cities and counties that are PWSs or can become viable new PWSs as a result of this project.
- d. Any other governmental subdivision of the state responsible for a PWS.

44.6(2) Ineligible systems and activities. The following systems and activities are ineligible to receive funds from the DWSRF.

a. Any applicant that has not adopted and implemented satisfactory department-approved water conservation plans and practices, or demonstrated to the department an ongoing effort to adopt and implement such plans and practices within one calendar year from the date of the loan agreement.

b. Any applicant in significant noncompliance with any applicable primary drinking water regulation, unless the project will return the applicant to compliance.

c. Any applicant lacking viability (an applicant whose system lacks technical, financial, and managerial viability to comply with the SDWA and is nonviable or lacks capacity according to the definition in the SDWA), unless the applicant commits to undertake appropriate changes in operations, including ownership, management accounting, rates, maintenance, consolidation, alternative sources of water supply, or other procedures if the director determines that such changes are necessary to demonstrate viability.

d. Projects and activities deemed ineligible for participation in the DWSRF by the EPA's DWSRF regulations (40 CFR Part 35, Subpart L) or program guidance, or by the department.

44.6(3) Certified operator requirement. An eligible system must submit to the department the name, certification number, and certification expiration date of the certified operator, pursuant to 567—Chapter 81, in direct responsible charge for the facility operation before receiving a loan. A system without a certified operator shall not receive loan assistance.

567—44.7(455B) Application.

44.7(1) Application. Applications for placement on the project priority list shall be accepted by the department on a continuous basis and will be presented to the EPC for approval according to the schedule described in the IUP. Application shall be made on the form provided by the department; the

applicant may include additional information in the application. Forms may be obtained from www.iowasrf.com.

44.7(2) Construction project application requirements. An applicant seeking financial assistance for construction must include with the application:

a. A description of the entity's current drinking water supply system, including a discussion of existing and potential problems or failures in the current system and compliance with state and federal criteria;

b. A description of the type of project for which financial assistance is being requested;

c. An estimate of the population and the number of households to be served;

d. A completed Self-Assessment Manual for Iowa Water System Viability;

e. A description of the basis for project design;

f. A map showing the geographical area that the project is expected to serve;

g. A cost estimate for the selected project;

h. The amount of financial assistance being requested;

i. A proposed project construction schedule; and

j. A preliminary engineering report.

44.7(3) Preliminary engineering report requirements. To be eligible for placement on the project priority list for a construction loan, a system must have a preliminary engineering report of potential system needs (also known as a "planning" study) approved by the department, and must submit to the director a written application for placement on the list.

567—44.8(455B) Project point ranking system (project priority list).

44.8(1) Project priority list. The director shall develop and maintain a project priority list of PWSs that have requested financial assistance through the DWSRF program to address either a new or an upgraded drinking water system, including individual subcomponents. The term "public water system projects" may also include separate segments or phases of a segmented or phased project. Projects will continue to be eligible for loan funding when funded for the first year of a multiyear project effort.

44.8(2) Project priority list ranking criteria.

a. A construction project's priority points shall be the total number of points assigned by the department pursuant to the scoring system delineated in 44.8(3). All projects shall be listed in descending order on the published project priority list according to the number of total priority points assigned each project.

b. When two or more projects have the same priority point total, the project sponsored by a system in the process of consolidation shall receive the higher priority. A private system in the process of forming and becoming a PWS shall have the next highest priority, and the entity with the smallest served population shall receive the next highest priority.

c. The most current official census population shall be used for all municipalities that serve only the population within their incorporated boundaries and that apply for these loan funds. For all other municipalities and other CWSs, and for NTNCs, population will be counted based on either the actual population, verifiable by the department, or population as calculated by multiplying by an occupancy factor of 2.5 persons per service connection. New systems will be counted based on census data, an occupancy factor of 2.5 persons per service connection, an occupancy factor of 2.5 persons per identifiable occupied building, or other means acceptable to the department.

d. Funding shall be offered to the projects with highest rank on the project priority list, subject to the project's readiness to proceed, and shall proceed from the highest project downward, subject to availability of funds.

e. The published project priority list shall be included in the department's IUP pursuant to 567—44.9(455B).

f. Projects involving a multiyear, phased effort may carry over their original priority point total from the previous year's application, provided that the project owner reapplies at each stage.

44.8(3) Project priority list scoring criteria. Eligible public drinking water supply projects shall be scored pursuant to the following priority point scoring system.

IOWA DWSRF PROJECT SCORING SYSTEM

(Multiple attributes within a lettered subcategory are not additive, but points are additive from other subcategories; consolidation/restructuring is an approved option to correct violations or “improve” treatment.)

Scoring Criterion	Points
A. Human Health Risk-related Criteria (maximum of 60 points)	
1. Correction of acute MCL or Tier I TT violation as defined in 567—paragraph 42.1(2) “a” (fecal coliform, nitrate, nitrite, chlorine dioxide, turbidity, CT corrective measures, and Giardia), or resolution of a health-based related BCA	60
2. Correction of nonacute MCL violation (IOCs excluding acute contaminants, radionuclides, SOCs, VOCs)	50
3. Correction of an expected MCL or TT violation (acute or nonacute)	45
4. Correction of Tier II TT violation as defined in 567—paragraph 42.1(3) “a” (Pb/Cu corrective measures, disinfection byproduct precursor removal)	40
5. Mitigation of an imminent threat from groundwater contamination (from a UST site, CERCLA site, or uncontrolled site)	35
6. Connection of individual residences to PWS to eliminate use of contaminated individual private wells (bacterial, nitrate, radionuclide, or IOC/VOC/SOC well contamination all eligible)	35
7. Replacement of asbestos cement pipe (replace at least 200 feet of pipe)	15
B. Infrastructure and Engineering-related Improvement Criteria (maximum of 35 points)	
1. Development of system redundancy and additional source to meet peak day demand with largest well or intake out of service; plant process rehabilitation (to ensure redundancy of treatment units to protect against acute or chronic MCL with system’s largest treatment unit out of service); water storage improvements (reliability enhancement to increase effective storage to Average Daily Demand, including either at-ground or elevated storage); pumping improvements (meeting hydraulic and Ten-State Standard requirements for Average Daily Demand); or resolution of an infrastructure-related BCA	35
2. Water systems over capacity expansion. Points are allowable only when the system is operating at 85% or more of system design capacity. Source, plant, or distribution system improvements for system expansion are all eligible under this category.	30
3. Pressure and other distribution system improvements, including pump upgrades, pipe looping, valves, fittings, line replacement, hydrants, pumping stations, and water meters	25
4. Construction of resiliency projects to mitigate expected reduction or degradation of source and/or finished water quality or quantity caused by disaster events including but not limited to floods, droughts, ice storms, tornadoes, and cyberattacks	20
5. Treatment plant improvements, excluding operation and maintenance costs	15
6. Provision of emergency power/emergency pumping capacity including purchase of diesel generators or installation of automatic switching systems	15
7. Security improvements (fencing, lighting, video surveillance, locks, access control)	10
C. Affordability Criteria (maximum of 15 points)	
1. System meets the state DWSRF program’s Disadvantaged Community (DAC) criteria as defined in the IUP	15
D. Special Category Improvements (maximum of 15 points)	
1. Wellhead or source water protection plan development or implementation meeting department standards, including loans for land or easement acquisition	15
2. Water conservation measures/conservation plan preparation, adoption, and enforcement	5
E. Department Adjustment Factor for Population	
1. (Project Serves) Population less than 10,000	10
TOTAL MAXIMUM POINTS	135

567—44.9(455B) Intended use plan (IUP).

44.9(1) Development. The director shall prepare an IUP at least annually and on a quarterly basis as needed. The IUP will be subject to a public hearing and approved by the commission and EPA.

44.9(2) Contents. The IUP will identify the anticipated uses of loan funds and will include:

- a. The state project priority list (defined in rule 567—44.8(455B)) that includes all projects that are eligible for DWSRF loans. The list will comply with 40 CFR §35.3555;
- b. Discussion of the long-term and short-term DWSRF goals;

c. Information on the types of activities to be supported by the DWSRF, including requests for planning and design loans and any proposed activities eligible for assistance under set-aside authority of the SDWA;

d. The method by which the IUP may be amended; and

e. Assurances on how the state intends to meet environmental review requirements of the SDWA.

44.9(3) Eligibility. The department will consider the following in developing the list of eligible recipients for inclusion in the IUP:

a. Whether a project will be ready to proceed on a schedule consistent with time requirements for outlay of funds; and

b. Whether the project addresses the need upon which the system's priority is based.

567—44.10(455B) Department review and approval of projects.

44.10(1) Project initiation conference. The department may require a project initiation meeting with an applicant or the applicants' representative.

44.10(2) Required project information.

a. An applicant seeking financial assistance from the DWSRF for a construction project must provide the following information to the director for review and approval:

(1) A complete construction permit application pursuant to 567—Chapters 41 and 43, including plans and specifications, consistent with the IUP and the approved preliminary engineering report submitted pursuant to 44.7(3);

(2) A complete description of the planned project, including the construction requirements necessary to complete the project as proposed;

(3) The latest engineering cost estimate for the project; and

(4) A demonstration of the applicant's ability to provide the necessary legal, institutional, managerial, and financial capability to complete the project.

b. Those portions of projects not meeting eligibility requirements may be excluded from the funded project, but included in the submitted plans and specifications if the applicant chooses to keep the loan-ineligible part of the project as part of the overall system improvement. Ineligible portions of projects include but are not limited to dams, water rights, monitoring costs, operation and maintenance expenses, projects designed primarily in anticipation of speculative growth, and projects needed primarily for fire protection.

44.10(3) Department review. Departmental review requirements shall consist of the following:

a. Upon review and approval of construction projects submitted as required under 567—44.7(455B) and the plans and specifications as required under 44.10(2), and following a determination that the project meets the applicable requirements of the SDWA, federal regulations, Iowa statutes, and relevant portions of this chapter, the director shall approve the project in writing.

b. If there is an alteration (change order) to a project after the director approves the project, the eligible applicant must request, in writing, an amended department approval. The director shall review the request and proposed project alteration (change order) and, upon a determination that the project meets the applicable SDWA requirements, federal regulations, the August 7, 2000, DWSRF: Interim Final Rule (40 CFR Part 35, Subpart L), program guidance, Iowa statutes, and relevant portions of this chapter, the director shall approve the project as amended.

c. If the project is not approved, the director shall notify the applicant in writing of the reason for disapproval.

567—44.11(455B) General administrative requirements.

44.11(1) Allowable costs. Allowable costs shall be limited to those costs deemed necessary, reasonable, and directly related to the efficient completion of the project. The director will determine project costs eligible for state assistance in accordance with rule 567—44.6(455B). Land purchase, easement, or rights-of-way costs are ineligible, with the exception of land that is integral to a project needed to meet or maintain public health protection and that is needed to locate eligible treatment or distribution works. Source water protection easements are considered to be integral to a project. The

acquisition of land or easements has to be from a willing seller. In addition to costs identified in this chapter, unallowable costs include the following:

- a. Costs of service lines, except lead-containing service lines and connectors;
- b. Costs of in-house plumbing;
- c. Administrative costs of the loan recipient; and
- d. Costs of vehicles and tools.

44.11(2) Audits. The recipient shall provide access at all times for the department, the authority, the state auditor, and the Office of the Inspector General (OIG) at EPA to all project records and documents for inspection and audit purposes for a period of three years from the date of the final loan payment. The same access to the project site(s) shall be provided for inspection purposes.

44.11(3) Cross-cutters. Other federal and state statutes and programs, including federal “cross-cutters,” will be applicable to DWSRF projects.

44.11(4) Additional loan amount. If eligible costs exceed the loan amount, the recipient may request an increase. The director in coordination with the authority will evaluate the request by considering available money in the fund as well as compliance with other state and federal requirements.

567—44.12(455B) Construction phase and postconstruction phase requirements.

44.12(1) Final inspection. A final inspection of the project may be performed by the director to verify that construction is complete (except for weather-related items) and conforms with the approved plans and specifications and all approved change orders.

44.12(2) Adequate project performance. The department shall undertake measures to discern adequate project performance as follows:

a. The loan recipient must certify to the director that the project is operating as planned and designed using a form approved by the department.

b. If the loan recipient is unable to certify that the project is operating as planned and designed, the recipient must submit a corrective action report to the director for review and approval. An acceptable corrective action report must contain an analysis of the project’s failure to operate as designed; a discussion of the nature, scope, and cost of the action needed to correct the failure; and a schedule for completing the corrective work.

567—44.13(455B) Sanctions. Failure of a project to conform to approved plans and specifications or failure of a loan recipient to comply with the requirements of 567—Chapter 40 through 567—Chapter 44 constitutes grounds for the withholding of loan disbursements. The loan recipient is then responsible for ensuring that the identified problem is rectified such that disbursements may be resumed. Once an agreement for correcting the conditions that led to the withholding of funds is reached between the department and the loan recipient, the retained funds shall be released according to the provisions of the agreement.

567—44.14(455B) Disputes. A person or entity that disagrees with the project rankings, department decisions, or the withholding of project funding pursuant to this chapter may request a formal review of the action. A person or entity must submit a review request in writing to the director within 45 days of the action date. A decision by the director in a formal review case may be further appealed to the EPC.

These rules are intended to implement Iowa Code sections 455B.291 through 455B.299.