

## RULEMAKING NOTICE

Notice Number _____	Rule Number _____	<b>Env-Dw 1100</b>
<p>1. Agency Name &amp; Address:</p> <p>Department of Environmental Services 29 Hazen Drive P.O. Box 95 Concord, NH 03302-0095</p>	<p>2. RSA Authority:</p> <p>3. Federal Authority:</p> <p>4. Type of Action:</p> <p>Adoption _____</p> <p>Amendment _____</p> <p>Repeal _____</p> <p>Readoption _____</p> <p>Readoption w/amendment <u>  <b>X</b>  </u></p>	<p>RSA 486:14, I(a) &amp; (c)</p> <p>42 U.S.C. §300j-12; 40 CFR Part 35, Subpart L</p>

5. Short Title: **Drinking Water State Revolving Loan Fund Program**

6. (a) Summary of what the rule says and of any proposed amendments:

The existing rules, Env-Dw 1100, implement RSA 486:14, which authorizes the Department to participate in federally-funded drinking water revolving loan funds or grants under the federal Safe Drinking Water Act. The rules are proposed to be readopted with amendment in response to an audit of the program that identified several deficiencies, including needing to clarify how interest rates are selected during the supplemental loan agreement process. In addition, revisions are proposed to (1) better align the Drinking Water State Revolving Loan Fund (DWSRF) rules with the Clean Water State Revolving Loan Fund (CWSRF) rules and the Drinking Water and Groundwater Trust Fund (DWGTF) rules and (2) update the rules, including but not limited to the following:

- (a) Clarify existing definitions, add missing definitions, and delete definitions that are not needed;
- (b) Expand the categories of eligible infrastructure projects to match the federal rules;
- (c) Clarify the process for review of draft Environmental Assessments;
- (d) Adjust how the interest rate is determined to allow flexibility within each authorizing grant period;
- (e) Reorganize and clarify the rules regarding public hearings, the development of original loan agreements and supplemental loan agreements, the environmental review process, and bidding requirements;
- (f) Incorporate all program requirements into the rules instead of incorporating forms by reference; and
- (g) Add existing policies and procedures for the program that are currently missing from the rules, including procedures for entering into loans with non-governmental water systems.

6. (b) Brief description of the groups affected:

The rules affect any public water system owner/operator that wishes to receive financial assistance from the Drinking Water State Revolving Loan Fund (DWSRF), that has applied for financial assistance from the DWSRF, or that already receives financial assistance from the DWSRF.

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

Rule Section(s)	State Statute(s) Implemented	Federal Requirements Implemented
Env-Dw 1101 – 1106	RSA 486:14, I	42 U.S.C. §§ 300f - 300j-26
Env-Dw 1107	RSA 486:14, I; RSA 486:14, III	42 U.S.C. §§ 300f - 300j-26
Env-Dw 1108 – 1109	RSA 486:14, I	42 U.S.C. §§ 300f - 300j-26
Env-Dw 1110	RSA 541-A:22, IV	

**RULEMAKING NOTICE - Page 2**

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name:	Johnna McKenna	Title:	Administrator II, Drinking Water & Groundwater Bureau
Address:	Dept. of Environmental Services 29 Hazen Drive; P.O. Box 95 Concord, NH 03302-0095	Phone #:	(603) 271-7017
		Fax#:	(603) 271- 5171
		E-mail:	<a href="mailto:Johnna.McKenna@des.nh.gov">Johnna.McKenna@des.nh.gov</a>

The rules also can be viewed in PDF at <http://des.nh.gov/organization/commissioner/legal/rulemaking/index.htm> TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **4:00 p.m. on Friday, July 31, 2020**

**YOU MAY SUBMIT WRITTEN COMMENTS WITHOUT ATTENDING THE PUBLIC HEARING**

Fax  E-mail  Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Thursday, July 16, 2020 at 1:00 PM**

Place: **This will be a virtual hearing via WebEx. Contact Kathryn Sanders at [Kathryn.Sanders@des.nh.gov](mailto:Kathryn.Sanders@des.nh.gov) to obtain the link, meeting number, and password.**

**You also may call in to the meeting:**

**Call in Number: +1-415-655-0001**

**Access Code: 160 891 7098**

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant): FIS # 20:043, dated 05/28/2020:

**1. Comparison of the costs of the proposed rule(s) to the existing rule(s):**

There is no difference in cost when comparing the proposed rules to the existing rules. Not applicable to Env-Dw 1106.04-1106.06, 1106.10, 1107.03, 1107.09, 1107.10 and 1109.05 which are new sections.

**2. Cite the Federal mandate. Identify the impact on state funds:**

The federal Safe Drinking Water Act (SDWA) Amendments of 1996, 42 U.S.C. §300f through §300j-26 (specifically §300j-12) and 40 CFR Part 35, Subpart L set forth the requirements for state Drinking Water State Revolving Funds (DWSRFs). New Hampshire is not mandated to have a DWSRF, but public water systems in the state would lose a significant source of funding if New Hampshire did not participate. If the rules are not adopted, EPA could withdraw approval/authorization, resulting in the loss of approximately \$11,000,000 annually in pass-through federal funds to the Department. This would increase costs to regulated public water systems financing drinking water infrastructure projects as they would have to go to commercial lenders.

**3. Cost and benefits of the proposed rule(s):**

The new sections do not result in an additional cost or benefit.

- 1106.04-1106.06 are narrative rules to replace the forms that currently are incorporated by reference.
- 1106.10 reflects the signature and certification requirements that currently exist on the incorporated forms.
- 1107.03, 1107.09, & 1107.10 are processes that have always been followed but were not written in the rules.
- 1109.05 are bidding requirements that have always applied based on federal requirements and are now being added in the proposed rules.

**A. To State general or State special funds:**

None.

**B. To State citizens and political subdivisions:**

None.

**C. To independently owned businesses:**

None.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

Costs are only incurred by political subdivisions if they choose to apply for funding from the DWSRF, which would necessarily include a vote to incur the costs associated with applying, receiving, and administering the funds. The rules thus not mandate or assign any new, expanded or modified programs or responsibilities to any political subdivision in such a way as to necessitate additional local expenditures by the political subdivision, and so do not violate Part I, Article 28-a of the New Hampshire Constitution.