Regulatory Analysis

Notice of Intended Action to be published: 265—Chapter 26
"Water Pollution Control Works and
Drinking Water Facilities Financing Program"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 16.5(1)"r" and 16.133

State or federal law(s) implemented by the rulemaking: Iowa Code chapter 455B, subchapter III, part 5, and sections 16.131 through 16.133A

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

July 1, 2025	1963 Bell Avenue
2 to 2:15 p.m.	Des Moines, Iowa

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis, which must be received by the Iowa Finance Authority no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Lisa Connell
Iowa Finance Authority
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Des Moines, Iowa 50315
Email: lisa.connell@iowaeda.com

Purpose and Summary

Pursuant to Executive Order 10, the Authority proposes to rescind Chapter 26 and adopt a new chapter in lieu thereof. The chapter describes the policies and procedures applicable to the Water Pollution Control Works and Drinking Water Facilities Financing Program. The program provides loans to finance drinking water and wastewater treatment facilities and water pollution control projects.

Analysis of Impact

1. **Persons affected by the proposed rulemaking:**

- **Classes of persons that will bear the costs of the proposed rulemaking:**

Entities that apply for and are approved for loans through the program will bear the costs of the rulemaking.

- **Classes of persons that will benefit from the proposed rulemaking:**

Entities that apply for and are approved for loans will benefit from clarity and streamlining of the rules.

2. **Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:**

- **Quantitative description of impact:**

Entities interested in applying for loans may require staff time to complete an application. Recipients may similarly incur costs to comply with reporting and monitoring requirements. Some

applicants may choose to rely on an external service provider to complete these tasks. The amount of the costs will vary depending on the compensation of staff or service providers involved.

- **Qualitative description of impact:**

Entities that apply for and are approved for loans will benefit from clarity and streamlining of the rules.

3. **Costs to the State:**

- **Implementation and enforcement costs borne by the agency or any other agency:**

Authority staff time is required to review and approve applications, administer loans, and communicate with program applicants and recipients.

- **Anticipated effect on State revenues:**

This rulemaking has no fiscal impact. The Authority is authorized to issue bonds for the purposes of the program pursuant to Iowa Code section 16.131. Such bonds issued by the authority are not debt of the State pursuant to Iowa Code section 16.131(5).

4. **Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:**

Only the entities that will potentially benefit from financial assistance bear the costs of the rulemaking. The costs to the State to administer the program are proportional to the activities supported by financial assistance.

5. **Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:**

The Authority has not identified less costly methods or less intrusive methods of administering the program.

6. **Alternative methods considered by the agency:**

- **Description of any alternative methods that were seriously considered by the agency:**

The Authority did not consider any alternative methods.

- **Reasons why alternative methods were rejected in favor of the proposed rulemaking:**

The Authority did not consider any alternative methods.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed rules do not have a substantial impact on small business. The rules do not establish design or operational standards.

Text of Proposed Rulemaking

ITEM 1. Rescind 265—Chapter 26 and adopt the following **new** chapter in lieu thereof:

CHAPTER 26
WATER POLLUTION CONTROL WORKS AND DRINKING WATER FACILITIES FINANCING PROGRAM

265—26.1(16) Purpose and authority responsibilities. The program is established pursuant to Iowa Code chapter 455B, subchapter III, part 5, and is jointly administered by the department and the authority. The authority is primarily responsible for the financial management of the program pursuant to Iowa Code chapter 455B, subchapter III, part 5, and Iowa Code chapter 16, subchapter X, part 2. The authority's financial management responsibilities include but are not limited to the following:

1. Ensuring the program maintains sufficient financial resources to support projects in perpetuity, including providing state match funds for federal capitalization grants;
2. Managing the financial assets of the program, including investments and audits;
3. Receiving, reviewing and approving loan applications;
4. Executing loan agreements, including establishing loan terms; and
5. Disbursing loan funds and monitoring loan repayments.

265—26.2(16) Definitions.

"Authority" or *"IFA"* means the Iowa finance authority created in Iowa Code section 16.1A.

"Clean Water Act" means the same as defined in Iowa Code section 16.131A.

"Department" or *"DNR"* means the Iowa department of natural resources.

"Director" means the director of the authority.

"Disadvantaged community" means a community that qualifies for more favorable loan terms, including but not limited to loan forgiveness, based on criteria established in the IUP.

"Eligible costs" means all costs related to the completion of a project as defined in the Clean Water Act and Safe Drinking Water Act and 567—Chapters 40 and 90.

"EPA" means the United States Environmental Protection Agency.

"Intended use plan" or *"IUP"* means the program document developed by DNR identifying the intended uses of funds available through the program.

"Linked deposit" means funds deposited by the authority to induce a participating lending institution to offer a loan at a lower interest rate for a project type identified in subrule 26.6(7).

"Net revenues" means the same as defined in Iowa Code section 384.80.

"Nonpoint source project" means any project described in Section 319 of the Clean Water Act.

"Participating lending institution" means a lending institution approved by the authority to make loans for a project type identified in subrule 26.6(7).

"Program" means the same as defined in Iowa Code section 16.131A.

"Recipient" means the entity receiving funds from the program.

"Safe Drinking Water Act" means the same as defined in Iowa Code section 16.131A.

265—26.3(16) Eligibility, application, and approval.

26.3(1) Only projects included on state project priority lists developed and maintained by DNR pursuant to 567—Chapters 44 and 90 are eligible for the program. The authority will consider the following when determining whether to provide a loan to an eligible recipient:

a. Recipient's financial capability;

b. Recipient's willingness to accept all loan terms, conditions, and covenants;

c. The priority of the project;

d. Funds available; and

e. Whether the recipient has a record of violations of the law that over a period of time tends to show a consistent pattern or that establishes intentional, criminal, or reckless conduct in violation of such laws.

26.3(2) Applications for loans shall be submitted to the authority in the form and content established by the authority. The application will include:

a. A description of the project, project budget, and estimated project timeline;

b. The requested loan amount and loan term;

c. The proposed security for the loan and documentation that approval processes have been initiated;

d. The tax status of the loan;

e. The other sources of funds for the project;

f. A pro forma cash flow analysis in a form acceptable to the authority that demonstrates that the net revenues of the borrower are sufficient pursuant to paragraph 26.5(2)*"d"*;

g. Documentation that technical and environmental review has been completed;

h. An opinion from the applicant's counsel documenting that public procurement procedures have been followed, including but not limited to Iowa Code chapters 26 and 26A; and

i. Any other information reasonably requested by the authority.

26.3(3) Subsequent segments of a project that has been previously awarded financial assistance will receive priority over new projects. Loans made for separate segments of a project will be administered separately.

26.3(4) Requested loan amounts may be adjusted to reflect eligible costs.

26.3(5) Complete and eligible loan applications that are recommended for approval based on the criteria in subrule 26.3(1) will be considered by the authority board. The board may approve, deny, or defer an application for a loan.

265—26.4(16) Infrastructure construction loans.

26.4(1) *Loan agreements.* The authority will prepare a loan agreement after an application has been approved by the authority board. Prior to execution of the agreement, the recipient shall provide an enforceability opinion and, if applicable, a bond counsel opinion as to the status of interest on the obligation in forms acceptable to the authority.

26.4(2) *Loan terms.*

a. Interest rates.

(1) The interest rate for tax-exempt loans with terms up to 20 years is calculated by taking 75 percent of the average daily Bloomberg Valuation Service (BVAL) General Obligation Municipal AAA 20-year yield for the calendar month immediately preceding the first business day of each July, October, January, and April.

(2) The interest rate for the taxable portions of loans with terms up to 20 years is calculated by taking 75 percent of the average BVAL Taxable General Obligation Municipal AAA 20-year yield for the calendar month immediately preceding the first business day of each July, October, January, and April.

(3) Loans with terms over 20 years will be assessed an additional 1 percentage point.

b. Fees.

(1) Recipients shall pay a loan initiation fee to the authority upon loan closing. The fee will be 0.50 percent of the full loan commitment amount, not to exceed $100,000. The fee will be waived for projects located in a disadvantaged community.

(2) Recipients shall pay an annual loan servicing fee equal to 0.25 percent of the outstanding principal balance. Payment of the loan servicing fee will be made semiannually along with scheduled interest payments.

c. Revenue pledge. The recipient shall establish sufficient revenue sources for the repayment of the loan, as determined by the authority. To ensure repayment of obligations according to the terms of the loan agreement, the recipient shall agree to impose, collect, and increase, if necessary, user charges, taxes, or other dedicated revenue sources identified for the loan repayment in order to maintain annual net revenues at a level equal to at least 110 percent of the amount necessary to pay debt service on all revenue obligations during the next fiscal year. At the discretion of the director or

director's designee, the authority may allow other revenue sources and coverage of less than 110 percent. At the discretion of the director or director's designee, the authority may require revenue sources and coverage in excess of 110 percent of the amount necessary to pay all revenue obligations if the recipient has a history of default on its revenue obligations or insufficient credit history, as determined by the authority. The loan agreement shall authorize the authority to require revenue adjustment to collect delinquent loan payments.

d. Security.

(1) A loan may be secured by a first lien upon the net revenues of the recipient's system. Loans secured by net revenues of a system may rank on a parity basis with other outstanding obligations, or, with the approval of the director or director's designee, those loans may be subordinate in right of payment to the recipient's other outstanding revenue obligations.

(2) A loan may be secured by a general obligation of the recipient, and the recipient may achieve this through the provision for a levy of taxes to repay the loan.

e. Construction payment schedules. The loan agreement shall include an estimated construction drawdown schedule provided by the recipient.

26.4(3) *Loan commitments.* Loan funds are considered a binding commitment at the time a loan agreement is executed.

26.4(4) *Costs.* The recipient shall use the program loan proceeds solely for the purpose of eligible costs of the approved project. The recipient must document all eligible costs to the satisfaction of the authority and the department before loan proceeds are disbursed.

26.4(5) *Loan amount and repayment period.* All loans shall be made contingent on the availability of funds. The maximum loan term will be that allowed by the EPA. Repayment of the loan must begin no later than one year after the project is substantially complete.

26.4(6) *Prepayment.* A recipient may prepay a loan, in whole or in part, on any date with the prior written consent of the authority.

265—26.5(16) Planning and design loans.

26.5(1) *Timing of loan.* Prior to a recipient's execution of a loan agreement for an infrastructure construction loan described in rule 265—26.4(16), funds may be loaned to the recipient to pay for initial eligible costs, including the cost of facility planning and design engineering.

26.5(2) *Duration.* Planning and design loans must be repaid within three years from the date a loan agreement is executed unless the director or director's designee provides written consent to a longer term.

26.5(3) *Interest rate.* The interest rate will be zero percent.

26.5(4) *Rollover to construction loan.* All funds borrowed by the recipient as a planning and design loan may be financed as a part of a construction loan agreement upon expiration of the term of the planning and design loan.

26.5(5) *Repayment.* If the recipient does not execute a state revolving fund construction loan, the planning and design loan shall be paid in full at the end of the three-year term, unless the loan term is extended by written consent of the director. The authority may negotiate a payment plan with the recipient in lieu of immediate payment in full.

265—26.6(16) Nonpoint source set-aside loan programs.

26.6(1) *Nonpoint source loan assistance.* Loan assistance for nonpoint source projects will be in the form of low-interest loans, linked deposits, or loan participations through participating lending institutions.

26.6(2) *Application for loan assistance.* Application for loan assistance pursuant to this rule may be made at any participating lending institution or submitted to the authority or the authority's agent, as applicable. A list of participating lending institutions will be made available by the authority or other entity that assists the authority to administer this program. Applications for loan assistance shall be in the form and content established by the authority.

26.6(3) *Project approval.* Each project must be approved by the appropriate environmental or conservation agency identified in subrule 26.6(7).

26.6(4) *Loan approval.* For linked deposit programs, the participating lending institution will either approve or deny the loan in accordance with the program requirements after receipt of a completed loan application form. If the loan is approved, the lending institution will notify the authority, or its agent, to reserve funds in that amount. This reservation is necessary to ensure that funds are available at the time of disbursement. If the loan is denied, the lending institution must notify the loan applicant, and the lending institution must clearly state the reasons for the loan denial. For low-interest loans with the authority, the authority or its agent will notify the applicant of the loan approval or denial. For loan participation, the authority or its agent will notify the applicant of the approval or denial.

26.6(5) *Availability of funds.* Before acting on a loan application, the lending institution shall ensure that adequate funds are available for the project.

26.6(6) *Property transfer.* The balance of a loan made pursuant to this rule shall be immediately due in full if the recipient transfers the project property.

26.6(7) *Loan amount and period.* All loans will be made contingent on the availability of funds in the applicable fund or set-aside program as indicated in the IUP. The minimum and maximum loan amounts for each project type are as follows:

Type of Project	Type of Assistance	Minimum Loan Amount	Maximum Outstanding Balance	Maximum Loan Term	Project Approval Agency
General Nonpoint Source	Low-interest loans, Linked deposit or Loan participations	$5,000	No maximum	20 years	DNR
Local Water Protection	Linked deposit	$5,000	$500,000 per common ownership	10 years	Division of Soil Conservation
Livestock Water Quality Facilities	Linked deposit	$10,000	$500,000 per common ownership	15 years*	Division of Soil Conservation
On-site Wastewater Systems Assistance	Linked deposit	$2,000	No maximum	10 years	County

*If the loan is made only for preparation of a comprehensive nutrient management plan, the loan period shall not exceed five years.

For the purposes of this subrule, “common ownership” means the ownership of an animal feeding operation as a sole proprietor, or a majority ownership interest held by a person, in each of two or more animal feeding operations as a joint tenant, tenant in common, shareholder, partner, member, beneficiary, or other equity interest holder. The majority ownership interest is a common ownership interest when it is held directly, indirectly through a spouse or dependent child, or both.

26.6(8) *Prepayment.* A recipient may prepay a loan, in whole or in part, without penalty, with the written consent of the authority.

26.6(9) *Loan adjustments.* If the eligible costs exceed the loan amount, the recipient may request an increase in the loan amount. The lending institution is authorized to execute a loan for a principal amount of up to 10 percent above the amount of the loan application if the eligible costs exceed the application amount. The authority will evaluate the request by considering available moneys and financial risk. Should the eligible costs be less than the loan amount, the loan shall be appropriately adjusted so that the loan amount does not exceed the amount of eligible costs.

26.6(10) *Disbursement of funds.* Funds shall be disbursed in accordance with the loan agreement. The loan agreement may allow for periodic disbursement of funds.

265—26.7(16) Administration.

26.7(1) The recipient shall maintain records that document all costs associated with the project. The recipient shall provide access to these records to the authority, the department, the auditor of the state of Iowa, the EPA, the Office of the Inspector General at the EPA, or their agents or designees

upon request. The recipient shall retain such records and documents for inspection and audit purposes for a period of three years from the date of the final loan payment.

26.7(2) The recipient shall provide the authority, the DNR, or their agents or designees access to the project site on request for the duration of the loan to verify that the funds are being used for the purpose intended, that the construction work meets applicable state and federal requirements, and that the project is being operated and maintained as designed.

26.7(3) The recipient's accounting procedures shall conform to generally accepted government accounting standards.

26.7(4) The authority may, for cause, find that a recipient is not in compliance with the requirements of the program. Remedies for noncompliance may include penalties up to and including withholding of or return of loan funds. Findings of noncompliance may include but are not limited to the use of loan funds for activities not described in the application for the grant; failure to begin construction within one year of execution of a loan agreement; or failure to comply with any applicable state or federal rules, regulations, or laws.

265—26.8(16) References to the Clean Water Act and Safe Drinking Water Act in this chapter are as in effect on [effective date of rulemaking].

These rules are intended to implement Iowa Code chapter 455B, subchapter III, part 5, and Iowa Code sections 16.131 through 16.133A.