

## Chapter NR 165

## CLEAN WATER FUND SMALL LOAN PROGRAM—INTEREST RATE SUBSIDIES

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**Note:** Chapter NR 165 as it existed on June 30, 1996 was repealed and a new chapter NR 165 was created, Register, June, 1996, No. 486, eff. 7-1-96.

**NR 165.01 Purpose.** The purpose of this chapter is to establish rules under s. 281.58 (6) (b) 8., Stats., for the implementation and administration of the small loan program for an interest rate subsidy on loans issued by the board of commissioners of public lands for the planning, design and construction of treatment works with estimated costs of \$750,000 or less.

**History:** Cr. Register, June, 1996, No. 486, eff. 7-1-96; correction made under s. 13.93 (2m) (b) 7., Stats., Register, October, 1999, No. 526.

**NR 165.02 Applicability and cross referencing.** This chapter applies to all applicants for and recipients of an interest rate subsidy for planning, design and construction of treatment works with estimated costs of \$750,000 or less made pursuant to ss. 281.58 and 281.59, Stats. Compliance with the requirements of this chapter and applicable provisions of ch. NR 162 is a prerequisite to receiving an interest rate subsidy under ss. 281.58 and 281.59, Stats.

**History:** Cr. Register, June, 1996, No. 486, eff. 7-1-96; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, October, 1999, No. 526.

**NR 165.03 Definitions.** The following definitions are applicable to terms used in this chapter. Definitions of other terms are in ch. NR 162.

(1) "Amendment" means a change in the scope of the project resulting in an increase or decrease of project costs.

(2) "Board of commissioners of public lands" means the organization comprised of the secretary of state, state treasurer and the attorney general that operates under the authority of ch. 24, Stats.

(3) "Contractor" means a person or firm that agrees to furnish materials or performs services at a specified price.

(4) "Interest rate subsidy" means the amounts provided by the clean water fund under ss. 281.58 and 281.59, Stats., to reduce the interest cost of loans provided by the board of commissioners of public lands.

**History:** Cr. Register, June, 1996, No. 486, eff. 7-1-96; correction in (4) made under s. 13.93 (2m) (b) 7., Stats., Register, October, 1999, No. 526.

**NR 165.04 Project eligibility. (1) ELIGIBLE PROJECTS.** A municipality may receive an interest rate subsidy for a project which is:

- (a) A compliance maintenance project.
- (b) Necessary to achieve substantial compliance with an enforceable requirement which was new or changed after May 17, 1988.
- (c) Necessary to eliminate actual or imminent pollution of groundwater or surface water or threat to human health in unsewered areas within a municipality. Financial assistance may be provided only if the department determines that:

1. At least two-thirds of the initial flow for collection system, interceptor and individual system projects will be for wastewater originating from residences in existence on October 17, 1972;

2. There is a facility plan or other planning document for the project approved by the department; and

3. The unsewered municipality has executed an agreement under s. 66.0301 or 66.0303, Stats., with another municipality to receive, treat and dispose of wastewater if the unsewered municipality will be disposing of wastewater in the treatment works of another municipality.

(d) Necessary for the replacement or major rehabilitation of an existing sewer collection system and is necessary to maintain the total integrity and performance of the treatment works serving the community.

(e) The construction of individual systems serving one or more residences if the municipality will:

1. Own each individual system;
2. Be responsible for the proper installation, operation and maintenance of each individual system;
3. Have unlimited access to each individual system at all reasonable times for the purposes of inspection, monitoring, construction, maintenance, operation, rehabilitation and replacement of the system; access shall be evidenced by easements or covenants running with the land;

4. Establish a comprehensive program for the regulation, inspection, operation and maintenance of individual systems and for monitoring the impact of the systems on the groundwater. The department may require that the program include periodic testing of water from existing potable water wells and monitoring of aquifers in the area;

5. Comply with all other applicable requirements, limitations and conditions for publicly-owned treatment works projects funded under this chapter and ch. NR 162.

**Note:** The department may grant a variance to allow the individual system to be privately owned if the municipality can show that public ownership of the system is not feasible and that private ownership will not adversely affect the tax exempt status of clean water fund revenue bonds.

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

(a) Projects which are found ineligible for financing by the board of commissioners of public lands.

(b) Projects for a municipality that has failed to substantially comply with any of the conditions or requirements of the clean water fund program or a financial assistance agreement, or the terms of a federal or state grant used to pay the costs to plan, design or construct a treatment works.

(c) Connection laterals that transport wastewater from structures to municipally owned or individually owned wastewater systems.

(d) Hook up charges imposed by one municipality on another for hooking into a treatment plant or transport system to a treatment plant.

(e) Public sanitary sewers mains, individual systems and interceptors in unsewered communities which exclusively save development not in existence as of the date of the application.

**History:** Cr. Register, June, 1996, No. 486, eff. 7-1-96; correction in (1) (c) 3. was made under s. 13.93 (2m) (b) 7., Stats.

**NR 165.05 Cost eligibility. (1) ELIGIBLE COSTS.** Allocable project costs which are reasonable and necessary are eligible for an interest rate subsidy. Eligible costs may include, but are not limited to:

- (a) Costs of salaries, benefits and expendable material the recipient incurs for the project;
  - (b) Planning work directly related to the treatment works;
  - (c) Sewer system evaluation and rehabilitation;
  - (d) Costs of complying with ch. NR 150, including costs of public notices and hearings;
  - (e) Preparation of construction drawings, specifications, estimates and construction contract documents;
  - (f) Landscaping;
  - (g) Removal, relocation, replacement or temporary provision of utilities, for which the recipient is legally obligated to pay;
  - (h) Materials acquired, consumed or expended specifically for the project;
  - (i) An inventory of laboratory chemicals and supplies;
  - (j) Development and preparation of an operation and maintenance manual;
  - (k) Costs for the development of water conservation plans, user charge system plans and sewer use ordinances under s. NR 162.11;
  - (L) Project identification signs;
  - (m) Start-up services for new treatment works, including the training of operating personnel and the preparation of curriculum and training material for operating personnel on the new equipment or processes funded under this chapter. The cost of routine and entry level training and training for operators to meet state certification requirements under ch. NR 114 is not an eligible cost;
  - (n) A plan of operation;
  - (o) Development of a municipal pretreatment or toxicity reduction program and construction of facilities to be used by the municipal treatment works in the programs, including monitoring equipment;
- Note:** This paragraph is intended to include any steps taken by a municipality to require the reduction or treatment of high strength, toxic or hazardous waste prior to discharge into the municipal wastewater treatment plant.
- (p) Costs necessary to mitigate demonstrated direct, adverse physical impacts resulting from construction of the treatment works;
  - (q) The cost of safety equipment;
  - (r) On-site inspection during construction;
  - (s) Acquisition of land that will be used for storage of treated wastewater in land treatment systems before land application;
  - (t) Acquisition of land that will be used for composting or temporary storage of compost residues which result from wastewater treatment if the department has approved a program for use of the compost;
  - (u) Acquisition of land on which the treatment plant or lift stations will be located;
  - (v) Acquisition of an operable portion of a treatment works;
  - (w) The cost of equipment used for sampling and analysis of industrial discharges to municipal treatment works;
  - (x) Costs for value engineering studies or analyses performed during step 2;
  - (y) Professional, consultant and engineering services;

(z) Costs associated with financial audits;

(za) Costs of preparing the financial assistance application, including costs to conduct studies or investigations necessary to complete the application;

(zb) Indirect costs, only if the board of commissioners of public lands approves these costs for inclusion in the loan agreement.

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

- (a) Basin or areawide 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) Ordinary operating expenses of local government such as salaries and expenses of a mayor, city council members or city attorney.
  - (g) Site acquisition expenses, other than administrative and legal costs, for rights-of-way and easements;
  - (h) Costs for which payment has been or will be received under another federal or state program other than the board of commissioners of public lands;
  - (i) Costs of monitoring equipment used by industry for sampling and analysis of industrial discharges to municipal treatment works;
  - (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 clean water fund and:
    1. The official or employee, the official or employee's spouse or the official 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 assistance agreement end date.
  - (n) Project costs determined to be ineligible for loan assistance by the board of commissioners of public lands.
- History:** Cr. Register, June, 1996, No. 486, eff. 7-1-96.
- NR 165.06 Interest rate subsidy.** Interest rate subsidies shall be set in accordance with s. 281.58 (12) (c), Stats., and this section. Subsidies are not available for interest payments that were due the board of commissioners of public lands prior to the execution of an interest rate subsidy agreement with the department.
- (1) PROJECT COST TIERS.** Interest rate subsidies for projects or portions of projects shall be classified according to the following tier system:
- (a) Tier 1 projects include compliance maintenance projects, new or changed limits projects, and sewage collection system replacement or rehabilitation projects.
  - (b) Tier 2 projects include unsewered projects meeting the requirements of s. NR 165.04 (1) (c) and (e).
- (2) ESTIMATED MARKET INTEREST RATE.** Each year the department, in consultation with the department of administration, shall

establish an estimated market interest rate as part of an annual funding policy established under ch. NR 162 for the fiscal year.

**(3) PROJECT INTEREST RATE.** (a) If all of the eligible costs of a project are classified under one of the tiers, the interest rate shall be the rate established in s. NR 162.14 (2) for that tier. If a project contains eligible costs from one or more of the tiers, a composite rate shall be computed in accordance with sub. (4). Project costs shall be based on the final approved engineering design.

(b) The following methods, in the order listed, shall be used to estimate the total eligible costs associated with each tier:

1. If each eligible cost of the project can be allocated, based on its purpose, exclusively to any one of the tiers, the sum of the treatment costs allocable to each tier shall be used.

2. If all of the eligible costs of a project cannot be allocated to a particular tier, the cost of the eligible costs of the project shall be divided among the tiers based on the portion of the design flow of the project that is attributable to a tier.

**(4) COMPOSITE INTEREST RATE.** The composite interest rate shall be computed as follows:

$$RC = (RT_1)(TP_1) + (RT_2)(TP_2)$$

Where:

RC is the composite interest rate used to calculate the interest rate subsidy for the project.

RT<sub>1</sub> is the tier 1 interest rate.

TP<sub>1</sub> is the percentage of the project being subsidized by the clean water fund that is eligible for tier 1 rate under **s. NR 165.04 (1) (a), (b) and (d).**

RT<sub>2</sub> is the tier 2 interest rate.

TP<sub>2</sub> is the percentage of the project being subsidized by the clean water fund that is eligible for the tier 2 rate under **s. NR 165.04 (1) (c) and (e).**

**Note:** The RT<sub>1</sub> and RT<sub>2</sub> interest rates shall be based on the tier rates in effect at the time the Interest Rate Subsidy Agreement is executed.

**(5) DETERMINATION OF THE INTEREST RATE SUBSIDY AMOUNT.**

(a) The project interest rate subsidy shall be annually calculated as follows:

$$IRS = I * E * ((RF-RC)/RF)$$

Where:

IRS is the interest rate subsidy provided in a given year to the recipient.

RF is the interest rate established for the project by the board of commissioners of public lands.

I is the amount of interest due on a recipient's state trust fund loan to the board of commissioners of public lands in a given year.

E is the percentage of loan disbursements made by the board of commissioners of public lands which are eligible for an interest rate subsidy under this chapter compared to the total amount of loan disbursements made by the board of commissioners of public lands.

(b) The department shall determine an estimated interest rate subsidy for a project at the time of the notice of interest rate subsidy commitment. The estimated project interest rate subsidy shall be based on the estimated market interest rate in effect at the time of the notice of interest rate subsidy commitment.

(c) Recipients that received a notice of interest rate subsidy commitment shall receive the interest rate subsidy based on the market interest rate in effect at the time the commitment is converted to an interest rate subsidy agreement.

**History:** Cr. Register, June, 1996, No. 486, eff. 7-1-96; correction in (intro.) and (3) (b) made under s. 13.93 (2m) (b) 1., Stats., Register, October, 1999, No. 526.

**NR 165.07 Intent to apply and application.** (1) An intent to apply shall be filed in accordance with s. NR 162.08.

(2) An interest rate subsidy application shall be submitted to the department for each step 3 project. Step 3 applications submitted under this chapter may include step 1 and step 2 project costs which the applicant has previously incurred. If any information required has been furnished with an earlier application, the applicant may incorporate the information by reference and, if necessary, revise the information utilizing the previous application.

(3) Applicants shall submit the following as part of the interest rate subsidy application:

(a) If requested, copies of any executed engineering contracts for performance of any step 1, 2 or 3 portion of the project.

(b) A written statement from the receiving municipality accepting the discharge of wastewater from the applicant if wastewater generated by the applicant will be discharged to or through wastewater facilities of another municipality.

(c) If requested, the municipality shall submit certification or other supporting documentation including audited financial statements.

(d) A copy of current plans and specifications.

(e) A copy of the facility plan approval letter.

(f) A listing of equipment and balance of cost covered by the replacement fund.

(4) The municipality shall sign an interest rate subsidy agreement for the project within 6 months after application submittal.

**History:** Cr. Register, June, 1996, No. 486, eff. 7-1-96.

#### **NR 165.08 Interest rate subsidy requirements.**

Before granting an interest rate subsidy, the department shall determine that all of the following requirements have been met:

**(1) FACILITIES PLANNING AND DESIGN REQUIREMENTS.** (a) Facilities planning and design requirements of chs. NR 110, 150 and 208 have been met.

(b) The environmental reviews applicable to the project have been met.

**(2) PRIORITY DETERMINATION.** The project is entitled to priority in accordance with ch. NR 161, as applicable.

**(3) FUNDING CAPABILITY.** The applicant has the legal, institutional, managerial and financial capability to insure adequate construction, operation and maintenance of the treatment works throughout the applicant's jurisdiction.

**(4) PERMITS.** The applicant has or has applied for, the permit or permits as required by ch. 283, Stats.

**(5) OPERATION AND MAINTENANCE PROGRAM.** The applicant has made satisfactory provision to assure the efficient operation and maintenance of the treatment works.

**(6) USER CHARGE SYSTEMS AND SEWER USE ORDINANCES.** If, after bidding the step 3 project, the entire project costs are greater than \$750,000, a user charge system and sewer use ordinance shall be approved by the department as outlined in s. NR 162.11 before an interest rate subsidy agreement will be awarded for project costs up to \$750,000.

**(7) WATER CONSERVATION PROGRAM.** The applicant has submitted an approvable plan and schedule for implementing the flow reduction measures deemed to be cost-effective in accordance with s. NR 110.09 (2) (k).

**(8) DEPARTMENT OF ADMINISTRATION REQUIREMENTS.** The department of administration has determined that the municipality can meet the terms and conditions for receiving financial assistance under ch. Adm 35 and s. 281.59, Stats.

**(9) APPLICATION.** The applicant shall submit an application to the board of commissioners of public lands and receive applica-



tion approval from the attorney general's office for the costs associated with the project.

**History:** Cr. Register, June, 1996, No. 486, eff. 7-1-96; corrections in (4) and (8) made under s. 13.93 (2m) (b) 7., Stats., Register, October, 1999, No. 526.

**NR 165.09 Interest rate subsidy agreement conditions.** Each interest rate subsidy agreement shall bind the recipient to the following conditions:

(1) **MUNICIPAL OBLIGATION.** The board of commissioners of public lands shall determine the type of municipal obligation which is required for the repayment of their financial assistance.

(2) **INELIGIBLE CONSTRUCTION COST.** The recipient shall pay the costs of planning, design and construction which are ineligible for a loan from the board of commissioners of public lands.

(3) **EROSION CONTROL DURING CONSTRUCTION.** The recipient shall provide construction site erosion control in accordance with the design criteria, standards and specification outlined in the Wisconsin Construction Site Best Management Practice Handbook, WDNR Pub. WR-222 November, 1993 Revision. WDNR publication WR-222 is incorporated by reference in ch. NR 162.

(4) **CONSTRUCTION INSPECTION.** The recipient shall provide and maintain adequate construction inspection of the project to insure that the construction conforms with the approved plans and specifications.

(5) **SEPTIC TANK HAULERS.** The recipient may not prohibit the hauling and discharge of septage from septic tanks or holding tanks within the recipient's service area to the treatment facility, except as provided under s. 281.49, Stats. The recipient may regulate the time, rate, location and quantity of septage discharges. The disposal of septage and leachate and other wastes at the treatment works facility shall be subject to equitable user charges.

(6) **ACCESS.** The recipient shall insure that department representatives will have access to the project, including construction activities, whenever it is in preparation or progress. The recipient shall allow the department access to records of the contractor and subcontractors which are pertinent to the project for the purpose of making inspections, examinations, excerpts, copies and transcriptions. The recipient shall also allow the department of administration access to records for audits.

(7) **FINAL INSPECTIONS.** The recipient shall notify the department of the completion of the project. The department shall cause final inspection to be made within 60 days of the receipt of the notice.

(8) **PROJECT CHANGES.** No approval of a project change shall obligate the state of Wisconsin to increase the amount of the interest rate subsidy payments made under an interest rate subsidy agreement.

(9) **REDUCED PAYMENTS.** The department of administration shall reduce interest rate subsidy payments to a recipient based on the interest charged by the board of commissioners of public lands on the principal balance outstanding on the recipient's loan and as established in the interest rate subsidy agreement.

(10) **MBE/WBE REPORTING REQUIREMENTS.** The recipient shall supply the department with documentation of any MBE/WBE utilization of the project.

**History:** Cr. Register, June, 1996, No. 486, eff. 7-1-96; correction in (5) made under s. 13.93 (2m) (b) 7., Stats., Register, October, 1999, No. 526.

**NR 165.10 Requirements for a user charge system.**

(1) Each recipient shall establish a financial management system that accounts for revenues generated and expenditures for equipment replacement.

(2) Each recipient shall establish a user charge system that generates sufficient revenue to pay for equipment replacement.

(3) The user charge system shall be incorporated in one or more municipal official enactments or other appropriate authority.

(4) Implementation of the user charge system.

(a) The recipient shall maintain records as are necessary to document compliance with this section.

(b) The department may review a recipient's user charge system to assure that it continues to meet the requirements of this section.

(5) If, after bidding the step 3 project, the entire project costs exceed \$750,000, the recipient shall meet the user charge requirements contained in s. NR 162.11.

**History:** Cr. Register, June, 1996, No. 486, eff. 7-1-96.

**NR 165.11 Procurement.** (1) **APPLICABILITY.** Procurement of professional services and planning, design or construction contracts by recipients under this chapter shall be in accordance with state and local law.

(2) **PROFITS.** Only fair and reasonable profits may be earned by contractors under an interest rate subsidy agreement. Profits are presumed to be reasonable if either the board of commissioners of public lands has committed or disbursed funds or if they are included in a formally advertised, competitively bid contract.

(3) **RECIPIENT RESPONSIBILITY.** The recipient is responsible for the administration and successful completion of the project for which an interest rate subsidy is awarded in accordance with sound business judgment and good administrative practice under state and local laws. The department is not responsible for the subsidy of added costs resulting from defects in the approved plans, design drawings and specifications or other subagreement documents.

(4) **UTILIZATION OF MINORITY-OWNED AND WOMEN-OWNED BUSINESSES.** Recipients are encouraged to utilize minority-owned and women-owned businesses to allow these sources the maximum feasible opportunity to compete for engineering contracts and construction contracts to be performed utilizing assistance from the clean water fund. Minority- and women- owned businesses should be utilized to the extent possible as sources for supplies and services. The recipient shall report any minority- or women-owned business utilization to the department.

**Note:** Municipalities receiving funding from the clean water fund under ch. NR 162, other than interest rate subsidies, must comply with different minority- and women-owned business requirements. Refer to ch. NR 162 for guidance.

(5) **FORCE ACCOUNT WORK.** An interest subsidy may be approved for force account work if the work is directly related to the project and is approved by the board of commissioners of public lands.

(6) **LIMITATION ON SUBAGREEMENT AWARD.** No subagreement 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.

(7) **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.

(b) Reasonableness reviews shall, at a minimum, consist of a comparison of architectural or engineering fees for the project to the range of architectural or engineering fees for other similar projects undertaken within the state. Consideration shall be given to completeness of scope of work, the recipient's procurement and negotiation process associated with the costs, any conditions unique to the project and all other factors impacting costs.

(c) Architectural or engineering services 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.

(8) **CONSTRUCTION CONTRACTS OF RECIPIENTS.** (a) *Applicability.* This subsection applies to construction contracts awarded by recipients for any step 3 activity.

(b) *Negotiation of contract change orders.* Recipients are responsible for the negotiation of construction contract change

orders. During negotiation with the contractor the recipient shall secure a fair and reasonable price for the required work.

**History:** Cr. Register, June, 1996, No. 486, eff. 7-1-96.

**NR 165.12 Interest rate subsidy payments.** (1) GENERAL. Upon the department's approval, the department of administration may provide an interest rate subsidy for the eligible portion of project costs incurred within the scope of an approved project. The department shall determine conformance with the terms and conditions of the interest rate subsidy agreement before interest rate subsidy payments are made.

(2) AMENDMENTS AND CHANGE ORDERS. The eligible project costs used to calculate the subsidy payment established in the interest rate subsidy agreement may not be increased by amendment or change order.

(3) FINAL SUBSIDY PAYMENT. Prior to the final subsidy payment established in the interest rate subsidy agreement, the department may complete a final inspection of the project and shall certify in writing to the department of administration the recipient's compliance with all applicable requirements of this chapter and the interest rate subsidy agreement.

(4) SUBSIDY PAYMENT ADJUSTMENTS DUE TO PREPAYMENTS. An adjustment of the interest rate subsidy may be made by the department of administration if the recipient prepays all or a portion of the principal established in the loan agreement issued by the board of commissioners of public lands for the project.

**History:** Cr. Register, June, 1996, No. 486, eff. 7-1-96.

**NR 165.13 Financial management.** The recipient is responsible for:

(1) The maintenance of project accounts in accordance with generally accepted government accounting standards.

(2) The maintenance of a financial management system which conforms with the requirements, terms and conditions of the interest rate subsidy agreement.

(3) Compliance with any federal requirements for cash management and arbitrage.

(4) Any other requirements of the board of commissioners of public lands.

**History:** Cr. Register, June, 1996, No. 486, eff. 7-1-96.

**NR 165.14 Breach of contract and noncompliance.**

The department may rescind an interest rate subsidy agreement or take other actions pursuant to s. NR 162.21 if the municipality fails to comply with the terms and conditions of the agreement or the department may seek relief in the event of noncompliance pursuant to s. NR 162.22.

**Note:** NR 162.22 was repealed eff. 3-1-01.

**Note:** The department of administration may under s. 281.59(1)(b), Stats., seek recovery of some or all financial assistance payments by deducting those amounts from any state payments due to a municipality, or by adding a special charge to the amount of taxes apportioned to and levied upon the county under s. 70.60, Stats.

**History:** Cr. Register, June, 1996, No. 486, eff. 7-1-96.

**NR 165.15 Termination.** The department shall terminate the interest rate subsidy agreement, if the recipient terminates its loan agreement with the board of commissioners of public lands or prepays all of the principal of the loan prior to the end of the term of the loan agreement. The department of administration shall determine the amount and date of payment of any subsidy due either party.

**History:** Cr. Register, June, 1996, No. 486, eff. 7-1-96.