

## Environmental Protection Agency

## § 35.3570

program, EPA may permit an exception to these cash draw rules and provide for a more accelerated cash draw. A State must demonstrate that:

(i) There are eligible projects ready to proceed in the immediate future with enough costs to justify the amount of the secured bond issue;

(ii) The absence of cash on an accelerated basis will substantially delay these projects;

(iii) The Fund will provide substantially more assistance if accelerated cash draws are allowed; and

(iv) The long-term viability of the State program to meet drinking water needs will be protected.

(f) *Loans to privately-owned systems.* In cases where State monies cannot be used to provide loans to privately-owned systems, a State may draw 100 percent Federal monies for costs incurred by privately-owned systems. When Federal monies are drawn for incurred costs, the State must deposit or have previously deposited into the Fund the required match associated with the amount of cash drawn. Every 18 months, the State must submit documentation showing that it has met its proportionate Federal share within the last 6 months. If a State is unable to document that it has met its proportionate Federal share, State match deposited into the Fund must be expended before Federal monies are drawn for costs incurred by publicly-owned systems until the State meets its proportionate Federal share.

### § 35.3570 Reports and audits.

(a) *Biennial report*—(1) *General.* A State must submit a Biennial Report to the RA describing how it has met the goals and objectives of the previous two fiscal years as stated in the IUPs and capitalization grant agreements, including the most recent audit of the Fund and the entire State allotment. The State must submit this report to the RA according to the schedule established in the capitalization grant agreement. Information provided in the Biennial Report on other EPA programs eligible for assistance from the DWSRF program may not replace the reporting requirements for those other programs.

(2) *Financial report.* As part of the Biennial Report, a State must present the financial status of the DWSRF program, including the total dollar amount in fee accounts. This report must, at a minimum, include the financial statements and footnotes required under GAAP to present fairly the financial condition and results of operations.

(3) *Matters to establish in the biennial report.* A State must establish in the Biennial Report that it has complied with section 1452 of the Act and this subpart. In particular, the Biennial Report must demonstrate that a State has:

(i) Managed the DWSRF program in a fiscally prudent manner and adopted policies and processes which promote the long-term financial health of the Fund;

(ii) Deposited its match (cash or State LOC) into the Fund in accordance with the requirements of § 35.3550(g);

(iii) Made binding commitments with assistance recipients to provide assistance from the Fund consistent with the requirements of § 35.3550(e);

(iv) Funded only the highest priority projects listed in the IUP and documented why priority projects were bypassed in accordance with § 35.3555(c)(2);

(v) Provided assistance only to eligible public water systems and for eligible projects and project-related costs under § 35.3520;

(vi) Provided assistance only for eligible set-aside activities under § 35.3535 and conducted activities consistent with workplans and other requirements of § 35.3535 and § 35.3540;

(vii) Provided loan assistance to small systems consistent with the requirements of § 35.3525(a)(5) and § 35.3555(c)(2)(iv);

(viii) Provided assistance to disadvantaged communities consistent with the requirements of § 35.3525(b) and § 35.3555(c)(7);

(ix) Used fees for eligible purposes under § 35.3530(b)(2) and (b)(3) and assessed fees included as principal in a loan in accordance with the limitations in § 35.3530(b)(3)(i) through (b)(3)(iii);

(x) Adopted and implemented procedures consistent with the requirements of § 35.3530(c) and § 35.3555(c)(8) if funds

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were transferred between the DWSRF program and CWSRF program;

(xi) Adopted and implemented procedures consistent with the requirements of § 35.3530(d) and § 35.3555(c)(9) if Fund assets of the DWSRF program and CWSRF program were cross-collateralized;

(xii) Reviewed all DWSRF program funded projects and activities for compliance with Federal cross-cutting authorities that apply to the State as a grant recipient and those which apply to assistance recipients in accordance with § 35.3575;

(xiii) Reviewed all DWSRF program funded projects and activities in accordance with approved State environmental review procedures under § 35.3580; and

(xiv) Complied with general grant regulations at 40 CFR part 31 and specific conditions of the grant.

(4) *Joint report.* A State which jointly administers the DWSRF program and the CWSRF program may submit a report that addresses both programs. However, programmatic and financial information for each program must be identified separately.

(b) *Audit.* (1) A State must comply with the provisions of the Single Audit Act Amendments of 1996, 31 U.S.C. 7501-7, and Office of Management and Budget's Circular A-133 and Compliance Supplement.

(2) A State may voluntarily agree to conduct annual independent audits which provide an auditor's opinion on the DWSRF program financial statements, reports on internal controls, and reports on compliance with section 1452 of the Act, applicable regulations, and general grant requirements. The agreement to conduct voluntary independent audits should be documented in the Operating Agreement or in another part of the capitalization grant agreement.

(3) Those States that do not conduct independent audits will be subject to periodic audits by the EPA Office of Inspector General.

(c) *Annual review*—(1) *Purpose.* The purpose of the annual review is to assess the success of the State's performance of activities identified in the IUP, Biennial Report (in years when it is submitted), and Operating Agreement

(if used) and to determine compliance with the capitalization grant agreement, requirements of section 1452 of the Act, and this subpart. The RA will complete the annual review according to the schedule established in the capitalization grant agreement.

(2) *Records access.* After reasonable notice by the RA, the State or assistance recipient must make available such records as the RA reasonably considers pertinent to review and determine State compliance with the capitalization grant agreement and requirements of section 1452 of the Act and this subpart. The RA may conduct on-site visits as deemed necessary to perform the annual review.

(d) *Information management system*—

(1) *Purpose.* The purpose of the information management system is to assess the DWSRF programs, to monitor State progress in years in which Biennial Reports are not submitted, and to assist in conducting annual reviews.

(2) *Reporting.* A State must annually submit information to EPA on the amount of funds available and assistance provided by the DWSRF program.

§ 35.3575 Application of Federal cross-cutting authorities (cross-cutters).

(a) *General.* A number of Federal laws, executive orders, and government-wide policies apply by their own terms to projects and activities receiving Federal financial assistance, regardless of whether the statute authorizing the assistance makes them applicable. A few cross-cutters apply by their own terms only to the State as the grant recipient because the authorities explicitly limit their application to grant recipients.

(b) *Application of cross-cutter requirements.* Except as provided in paragraphs (c) and (d) of this section and in § 35.3580, cross-cutter requirements apply in the following manner:

(1) All projects for which a State provides assistance in amounts up to the amount of the capitalization grant deposited into the Fund must comply with the requirements of the cross-cutters. Activities for which a State provides assistance from capitalization