

§ 35.3500

40 CFR Ch. I (7-1-11 Edition)

(8) Other anticipated public works projects including coordination with such projects.

Subpart L—Drinking Water State Revolving Funds

AUTHORITY: Section 1452 of the Safe Drinking Water Act, as amended, 42 U.S.C. 300j-12.

SOURCE: 65 FR 48299, Aug. 7, 2000, unless otherwise noted.

§ 35.3500 Purpose, policy, and applicability.

(a) This subpart codifies and implements requirements for the national Drinking Water State Revolving Fund program under section 1452 of the Safe Drinking Water Act, as amended in 1996. It applies to States (*i.e.*, each of the 50 States and the Commonwealth of Puerto Rico) which receive capitalization grants and are authorized to establish a Fund under section 1452. The purpose of this subpart is to ensure that each State's program is designed and operated in such a manner as to further the public health protection objectives of the Safe Drinking Water Act, promote the efficient use of all funds, and ensure that the Fund corpus is available in perpetuity for providing financial assistance to public water systems.

(b) This subpart supplements section 1452 of the Safe Drinking Water Act by codifying statutory and program requirements that were published in the Final Guidelines for the Drinking Water State Revolving Fund program (EPA 816-R-97-005) signed by the Assistant Administrator for Water on February 28, 1997, as well as in subsequent policies. This subpart also supplements general grant regulations at 40 CFR part 31 which contain administrative requirements that apply to governmental recipients of Environmental Protection Agency (EPA) grants and subgrants. EPA will not impose additional major program requirements without providing an opportunity for affected parties to comment.

(c) EPA intends to implement the national Drinking Water State Revolving Fund program in a manner that preserves for States a high degree of flexibility to operate their programs in accordance with each State's unique needs and circumstances. To the max-

imum extent practicable, EPA also intends to administer the financial aspects of the national Drinking Water State Revolving Fund program in a manner that is consistent with the policies and procedures of the national Clean Water State Revolving Fund program established under Title VI of the Clean Water Act, as amended, 33 U.S.C. 1381-1387.

§ 35.3505 Definitions.

The following definitions apply to terms used in this subpart:

Act. The Safe Drinking Water Act (Public Law 93-523), as amended in 1996 (Public Law 104-182). 42 U.S.C. 300f *et seq.*

Administrator. The Administrator of the EPA or an authorized representative.

Allotment. Amount available to a State from funds appropriated by Congress to carry out section 1452 of the Act.

Automated Clearing House (ACH). A Federal payment mechanism that transfers cash to recipients of Federal assistance using electronic transfers from the Treasury through the Federal Reserve System.

Binding commitment. A legal obligation by the State to an assistance recipient that defines the terms for assistance from the Fund.

Capitalization grant. An award by EPA of funds to a State for purposes of capitalizing that State's Fund and for other purposes authorized in section 1452 of the Act.

Cash draw. The transfer of cash from the Treasury through the ACH to the DWSRF program. Upon a State's request for a cash draw, the Treasury will transfer funds to the DWSRF program account established in the State's bank.

CWSRF program. Each State's clean water state revolving fund program authorized under Title VI of the Clean Water Act, as amended, 33 U.S.C. 1381-1387.

Disadvantaged community. The entire service area of a public water system that meets affordability criteria established by the State after public review and comment.

Environmental Protection Agency

§ 35.3510

Disbursement. The transfer of cash from the DWSRF program account established in the State's bank to an assistance recipient.

DWSRF program. Each State's drinking water state revolving fund program authorized under section 1452 of the Act, as amended, 42 U.S.C. 300j-12. This term includes the Fund and set-asides.

Fund. A revolving account into which a State deposits DWSRF program funds (e.g., capitalization grants, State match, repayments, net bond proceeds, interest earnings, etc.) for the purposes of providing loans and other types of assistance for drinking water infrastructure projects.

Intended Use Plan (IUP). A document prepared annually by a State, after public review and comment, which identifies intended uses of all DWSRF program funds and describes how those uses support the overall goals of the DWSRF program.

Net bond proceeds. The funds raised from the sale of the bonds minus issuance costs (e.g., the underwriting discount, underwriter's legal counsel fees, bond counsel fee, and other costs incidental to the bond issuance).

Payment. An action taken by EPA to increase the amount of funds available for cash draw through the ACH. A payment is not a transfer of cash to the State, but an authorization by EPA to make capitalization grant funds available for transfer to a State after the State submits a cash draw request.

Public water system. A system as defined in 40 CFR 141.2. A public water system is either a "community water system" or a "noncommunity water system" as defined in 40 CFR 141.2.

Regional Administrator (RA). The Administrator of the appropriate Regional Office of the EPA or an authorized representative of the Regional Administrator.

Set-asides. State and local activities identified in sections 1452(g)(2) and (k) of the Act for which a portion of a capitalization grant may be used.

Small system. A public water system that regularly serves 10,000 or fewer persons.

State. Each of the 50 States and the Commonwealth of Puerto Rico, which receive capitalization grants and are

authorized to establish a Fund under section 1452 of the Act.

§ 35.3510 Establishment of the DWSRF program.

(a) *General.* To be eligible to receive a capitalization grant, a State must establish a Fund and comply with the other requirements of section 1452 of the Act and this subpart.

(b) *Administration.* Capitalization grants must be awarded to an agency of the State that is authorized to enter into capitalization grant agreements with EPA, accept capitalization grant awards made under section 1452 of the Act, and otherwise manage the Fund in accordance with the requirements and objectives of the Act and this subpart. The State agency that is awarded the capitalization grant (*i.e.*, grantee) is accountable for the use of the funds provided in the capitalization grant agreement under general grant regulations at 40 CFR part 31.

(1) The authority to establish assistance priorities and to carry out oversight and related activities of the DWSRF program, other than financial administration of the Fund, must reside with the State agency having primary responsibility for administration of the State's public water system supervision (PWSS) program (*i.e.*, primacy) after consultation with other appropriate State agencies.

(2) If a State is eligible to receive a capitalization grant but does not have primacy, the Governor will determine which State agency will have the authority to establish priorities for financial assistance from the Fund. Evidence of the Governor's determination must be included with the capitalization grant application.

(3) If more than one State agency participates in implementation of the DWSRF program, the roles and responsibilities of each agency must be described in a Memorandum of Understanding or interagency agreement.

(c) *Combined financial administration.* A State may combine the financial administration of the Fund with the financial administration of any other revolving fund established by the State if otherwise not prohibited by State law under which the Fund was established. A State must assure that all monies in