



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-
MAKING REVIEW COMMITTEE**

AGENCY: Environmental Protection Secretarys Office TITLE-SERIES: 60-12
RULE TYPE: Legislative Amendment to Existing Rule: No Repeal of existing rule: No
RULE NAME: 60-12 Drinking Water Treatment Revolving Fund

PRIMARY CONTACT

NAME: Jason Wandling
ADDRESS: 601 57th St Se
Charleston, WV 25304
EMAIL: jason.e.wandling@wv.gov
PHONE NUMBER: 304-553-1405

CITE STATUTORY AUTHORITY: 22-36-1

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

The 2023 Legislature transferred administration of the Safe Drinking Water Treatment Fund from DHHR to DEP. This rule simply substitutes DEP for DHHR.

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/28/2023

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/28/2023

COMMENTS RECEIVED: No

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: Yes

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

DEP public notice listserv and website

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

The 2023 Legislature transferred administration of the Safe Drinking Water Treatment Fund from DHHR to DEP.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

The 2023 Legislature transferred administration of the Safe Drinking Water Treatment Fund from DHHR to DEP.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

0

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

0

C. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

0

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2023 Increase/Decrease (use "-")	2024 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

There is no net fiscal impact to the state

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Jason E Wandling -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 60
LEGISLATIVE RULE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF WATER AND WASTE MANAGEMENT

SERIES 12
ADMINISTRATION OF DRINKING WATER TREATMENT REVOLVING FUND AND SAFE
DRINKING WATER SET-ASIDES

§60-12-1. General.

1.1. Scope. -- The 1996 Safe Drinking Water Act Amendments authorized a Drinking Water Treatment Revolving Fund program. The federal government provided most of the initial funding to start the West Virginia Drinking Water Treatment Revolving Fund program. This program allows the State to provide financial assistance to public water systems to finance the cost of infrastructure improvements needed to comply with the requirements of the federal Safe Drinking Water Act. The fund has been and will continue to be administered by the Water Development Authority along with the West Virginia Department of Environmental Protection. This rule establishes State-level procedures, standards for project eligibility, and gives direction to the Water Development Authority. The Drinking Water Treatment Revolving Fund was originally created under West Virginia Code § 16-13C-3, is continued under West Virginia Code § 22-36-3, and all monies and assets of the Fund continue to be held by the Fund which is permanent and perpetual.

1.2. Authority. -- W. Va. Code § 22-36-1 et seq.

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Sunset Provision. – This series is sunset-exempt.

§60-12-2. Definitions.

2.1. “Capacity Development” means the technical, managerial and financial capability of a public water system.

2.2. “Capitalization Grant” means the assistance agreement by which the United States Environmental Protection Agency obligates funds allotted to a State for purposes of capitalizing the State’s revolving fund and funds for other purposes authorized in Section 1452 of the Safe Drinking Water Act.

2.3. “Community Water System” means a public water system which serves at least fifteen (15) service connections used by year-round residents or regularly serves at least twenty-five (25) year-round residents.

2.4. “Compliance” means conformity with State and federal laws, rules, and regulations applicable to public water systems.

2.5. “Cost” means the cost of all labor, materials, machinery, equipment, lands, property, rights and

easements, plans and specifications, and all other expenses necessary or incident to the acquisition, construction, improvement, expansion, extension, repair, or rehabilitation of all or part of a project, including, but not limited to:

2.5.1. The costs of developmental, planning, and feasibility studies, surveys, plans, and specifications;

2.5.2. The costs of architectural, engineering, financial, legal, or other special services;

2.5.3. The costs of acquisition of land, only if the land is necessary to locate eligible project components and the land is acquired from a willing seller (land which must be condemned is not eligible);

2.5.4. The costs of site preparation and development, including demolition or removal of existing structures, construction and reconstruction, labor, materials, machinery, and equipment;

2.5.5. The reasonable costs of financing incurred by the local entity in the course of the development of the project, carrying charges incurred before placing the project in service, interest on funds borrowed to finance the project to a date subsequent to the estimated date the project is to be placed in service, necessary expenses incurred in connection with placing the project in service, and the funding of accounts and reserves as required by the Authority and the Instrumentality; and

2.5.6. Such other items as are deemed reasonable and necessary by the Instrumentality.

2.6. "Cross Cutter Authorities" means the Federal laws and authorities that apply by their own terms to projects or activities receiving federal assistance.

2.7. "Disadvantaged Community" means the service area of a public water system that meets the affordability criteria established in the annual Intended Use Plan after public review and comment by the Instrumentality and as approved by the United States Environmental Protection Agency.

2.8. "Drinking Water Treatment Revolving Fund" or "DWTRF" means the fund continued by W. Va. Code § 22-36-3(a) to be used for financial assistance to the public water systems for eligible infrastructure project costs.

2.9. The "Instrumentality," "Department," or "the WVDEP" mean the West Virginia Department of Environmental Protection, and any successor thereto, which has the primary responsibility for administering the DWTRF pursuant to requirements of the federal Safe Drinking Water Act.

2.10. "Intended Use Plan" means a document prepared by the Instrumentality each year which identifies the intended uses of the funds in the Drinking Water Treatment Revolving Fund, any new capitalization grants from the United States Environmental Protection Agency, any remaining funds from previous capitalization grants, and any state match.

2.11. "Local entity" means any municipality, public utility, or person, including any individual, firm, partnership, association, not-for-profit corporation, or other corporation organized and existing under the laws of the state which may construct and operate an eligible project.

2.12. "Public water system," as defined by West Virginia Code §16-1-9a, means any water supply or system which regularly supplies or offers to supply water for human consumption through pipes or other

constructed conveyances, if serving at least an average of 25 individuals per day for at least 60 days per year, or which has at least 15 service connections, and shall include:

2.12.1. Any collection, treatment, storage, and distribution facilities under the control of the owner or operator of the system and used primarily in connection with the system; and

2.12.2. Any collection or pretreatment storage facilities not under such control which are used primarily in connection with the system;

2.12.3. A public water system does not include a system which meets all of the following conditions:

2.12.3.a. Consists only of distribution and storage facilities and does not have any collection and treatment facilities;

2.12.3.b. Obtains all of its water from, but is not owned or operated by, a public water system which otherwise meets the definition;

2.12.3.c. Does not sell water to any person; and

2.12.3.d. Is not a carrier conveying passengers in interstate commerce.

2.13. "Project" means a project for improving a drinking water system for the purpose of achieving or maintaining compliance with applicable state and federal drinking water regulations.

2.14. "Project Priority List" means the list of projects that are eligible to be funded which is published in the Intended Use Plan.

2.15. "Safe Drinking Water Act" means the federal statute commonly known as the "Safe Drinking Water Act," 42 U.S.C. 300f *et seq.*, as enacted, amended, and as may be subsequently amended.

2.16. "Secretary" means the cabinet secretary of the Instrumentality or the Instrumentality's successor.

2.17. "Set-Aside" means the moneys from the capitalization grant to be used for non-project activities specific to the Safe Drinking Water Act.

2.18. "Set-aside accounts" means those accounts that shall be set up for activities required by the federal Safe Drinking Water Act and the moneys for these accounts may be taken from the federal capitalization grant for these non-project activities before the capitalization grant is deposited into the fund.

2.19. "Small System" means a public water system serving 10,000 or fewer persons.

2.20. "USEPA" means the United States Environmental Protection Agency or any successor thereto.

2.21. "Water Development Authority" means the Water Development Authority created by W. Va. Code § 22C-1-4, and any successor thereto.

§60-12-3. Procedure.

3.1. The Instrumentality will receive capitalization grants from the USEPA for the purpose of capitalizing the Drinking Water Treatment Revolving Fund to provide financial assistance to public water systems for the cost of infrastructure needed to comply with the federal Safe Drinking Water Act and to fund non-project activities outlined in Section 4 of this rule.

3.2. The Instrumentality shall develop an annual Intended Use Plan for the Drinking Water Treatment Revolving Fund program and present the plan for review and comment by the public.

3.2.1. The Intended Use Plan shall contain the proposed set-aside amounts for non-project activities. The set-aside accounts are described in Section 4.2 of this rule.

3.2.2. The Intended Use Plan shall contain a priority list of eligible projects per Section 5 of this rule that the State may fund during the fiscal year covered. The priority ranking procedure is described in Section 6 of this rule. This list shall contain at a minimum, the public water system name and Public Water System identification number, population served, water supply, project description, project type, estimated project cost, project priority and the expected financial terms. The financial administration is described in Section 7 of this rule.

3.2.3. The Instrumentality shall also maintain a comprehensive priority list of anticipated future projects as described in Section 6 of this rule. This list shall contain the projects, the estimated priority and the expected funding schedule for each.

3.2.4. The Intended Use Plan shall include a discussion of the financial status of the Drinking Water Treatment Revolving Fund. This discussion shall include the total amount of moneys in the fund from all sources, the types of projects to be funded, the general types and terms of financial assistance to be provided, the amounts for non-project activities and the amounts used for disadvantaged communities. The procedure for disadvantaged communities is described in Section 8 of this rule and shall be included in the annual Intended Use Plan.

3.3. The Instrumentality shall submit a capitalization grant application to the USEPA annually during the years that capitalization grants are available for the federal Drinking Water Treatment Revolving Fund program.

3.4. After the WVDEP receives USEPA approval of the annual Intended Use Plan, financial assistance may be made to public water systems by the Water Development Authority as specified in Section 7 of this rule and W. Va. Code §22-36-1 *et seq.*

3.5. The WVDEP shall submit an annual report to the USEPA regional administrator outlining the State's activities which receive funding from the federal capitalization grant and the projects funded during the reporting period from the DWTRF.

§60-12-4. Fund Establishment.

4.1. Establishment of the Fund. The Water Development Authority shall continue to administer and manage, under the direction of the Instrumentality, a permanent and perpetual fund known as the West Virginia Drinking Water Treatment Revolving Fund. The fund shall be kept separate and apart from all other funds or programs of the Water Development Authority and the Instrumentality.

4.2. Establishment of Set Aside Accounts. There are four allowable set-asides from the capitalization

grant, each to be administered by the Instrumentality:

4.2.1. Program Oversight (Administration of the Fund). An amount up to the percentage allowable by law of the capitalization grant may be used to finance the costs of the Instrumentality or its agents in administering the program and for other administrative costs determined eligible by USEPA guidance.

4.2.2. Technical Assistance. An amount up to two percent (2%) of the federal capitalization grants shall be utilized to provide technical assistance services for small systems to assist those systems in maintaining compliance with the federal Safe Drinking Water Act. The technical assistance services for small systems shall be contracted by the Instrumentality to non-profit organizations that:

4.2.2.a. Have a membership that represents at least 25% of the small systems of this State; and

4.2.2.b. Have at least five years of experience in providing on-site technical assistance to small systems.

4.2.3. Local Assistance. An amount up to 15% of the capitalization grant may be used for local assistance such as, but not limited to: delineation and assessment of source water protection areas, loans for source water protection programs and well-head protection programs and capacity development assistance. Contractual services may be funded from this account for these services. No more than 10% may be used for any one activity.

4.2.4. State Activities. An amount up to 10% of the capitalization grant may be used for State activities such as, but not limited to: the public water supply supervision program, source water protection, capacity development, and operator certification

4.2.5. Reserving Set-Asides. Each year, the Instrumentality may reserve the Program Oversight, Technical Assistance, Local Assistance, and State Activities set-asides to be used in a future year. When used in a future year, the reserved amounts may be taken from capitalization grant in addition to the amounts in Sections 4.2.1, 4.2.2, 4.2.3, and 4.2.4

4.3. Sources of Money for the Drinking Water Treatment Revolving Fund. The Drinking Water Treatment Revolving Fund is comprised of moneys appropriated by the legislature, moneys allocated to the State by the federal government for the purposes of continuing to capitalize the Drinking Water Treatment Revolving Fund, all receipts and repayments from loans made from the Drinking Water Treatment Revolving Fund, all income from investment of moneys held in the Drinking Water Treatment Revolving Fund, and all other sums designated for deposits to the Drinking Water Treatment Revolving Fund from any source, public or private.

4.4. Use of Moneys in the Drinking Water Treatment Revolving Fund. Moneys in the Fund shall be used solely to make loans and other allowable financial assistance to local entities to finance or refinance the costs of a project and to defray the costs incurred by the Authority and the Instrumentality in administering the Fund and the programs created by the Act.

4.5. Investment of Moneys in the Drinking Water Treatment Revolving Fund. The Water Development Authority is permitted to invest the moneys in the Drinking Water Treatment Revolving Fund that are not needed for immediate disbursement or use in obligations or securities that are lawful investments for public funds of the State.

4.6. Disbursement of Moneys from the Drinking Water Treatment Revolving Fund. Moneys are to be disbursed from the Drinking Water Treatment Revolving Fund only for purposes allowed pursuant to the Safe Drinking Water Act for project expenses deemed eligible by the Instrumentality and upon written authorization from the director of the Water Development Authority or his or her designee.

§60-12-5. Project and System Eligibility.

5.1. Both community and non-community non-transient public water systems are eligible for Drinking Water Treatment Revolving Fund funding, with the following exceptions:

5.1.1. For-profit non-community non-transient water systems; and

5.1.2. Federally owned public water systems.

5.2. The eligible system shall not be significantly out of compliance with any national or State drinking water rules, regulations, or variances unless the Instrumentality determines that the proposed project will enable it to come into compliance. The system shall provide assurances to the Instrumentality that the proposed project will enable the system to attain compliance.

5.3. Projects must conform to USEPA guidance to be considered eligible for funding by the DWTRF.

5.4. The purchase of a portion of another system's capacity is eligible for a loan, if the system to be purchased is a small system which is part of a consolidation plan to bring the system into compliance, and it is the most cost-effective solution for that small system, when considering the buy-in and user fees.

5.5. The costs of project planning, design and other related costs are eligible for DWTRF funding. Funding of the design of a project does not guarantee funding of the project construction. The design loan assistance shall be described in the annual Intended Use Plan.

5.6. Costs of preparing environmental assessment reports (Section 11 of this rule) may be included as part of costs of planning the project and are eligible costs from the DWTRF.

5.7. Land is an eligible cost only if it is integral to a project that is needed to meet or maintain compliance and further public protection. In this instance, land that is integral to a project is only the land needed to locate eligible treatment or distribution projects. Land must be acquired from a willing seller and condemnation may not be used.

5.8. Ineligible projects. The following projects are ineligible for assistance from the DWTRF:

5.8.1. Expenditures that do not facilitate compliance with the national primary drinking water regulations or do not otherwise significantly further the public health protection objectives of the SDWA.

5.8.2. Projects that are deemed ineligible by the USEPA.

5.8.3. Reservoirs or rehabilitation of reservoirs, except for finished water reservoirs and those reservoirs that are part of the treatment process and are on the property where the treatment facility is located.

5.8.4. Projects needed primarily for fire protection.

5.8.5. Projects needed primarily to serve future population growth. Projects must be sized only to accommodate a reasonable amount of population growth expected to occur over the useful life of the facility.

5.8.6. Projects that have received assistance from the national set-aside for Indian Tribes and Alaska Native Villages under section 1452(i) of the Act.

5.9. Ineligible project-related costs. The following project-related costs are ineligible for assistance from the DWTRF:

5.9.1. Laboratory fees for routine compliance monitoring.

5.9.2. Operation and maintenance expenses.

§60-12-6. Priority Ranking Procedure.

6.1. The Instrumentality shall develop an annual Intended Use Plan indicating how the Drinking Water Treatment Revolving Fund will be used. The Instrumentality shall give the highest priority to projects that:

6.1.1. Address the most serious health risks;

6.1.2. Are necessary to achieve compliance; and

6.1.3. Assist those systems most in need on a per household basis.

6.2. The Intended Use Plan shall include criteria for bypass procedures which identify the conditions which would allow a project to be bypassed and the way in which the Instrumentality will identify projects to receive the bypassed funds.

6.3. The Intended Use Plan shall undergo public review and comment and shall be submitted to the USEPA for approval.

§60-12-7. Financial Administration.

7.1. Evidence and Security for Loans. Each loan shall be evidenced by revenue bonds or notes or other debt instruments issued by the local entity and purchased by the Water Development Authority, at par or at a discount to reflect the costs of the Water Development Authority and the Instrumentality incurred to the financing, in whole or in part, of the costs of a project. Each loan shall be secured by a pledge of the fees, charges, and all other revenues of the project to be constructed, in whole or in part, with the proceeds of the loan and any other collateral as may be required by the Water Development Authority. The Water Development Authority may require a water customer survey or user agreements to ensure that the proposed new customers will connect to the system.

7.2. Applications for Loans. A local entity that has the authority under State law to undertake a project and has been approved as an eligible recipient by the Instrumentality may apply for a loan. An eligible recipient desiring a loan shall make a separate application to the Water Development Authority, on the forms prescribed by the director of the Water Development Authority, for each project for which a loan is desired. Following approval by the Water Development Authority and the Instrumentality and when

moneys are available for loan the Instrumentality shall provide the local entity with a binding commitment letter setting forth the terms of the loan.

7.3. Determination of Eligible Recipients. Public water systems projected to be able to qualify for DWTRF financial assistance shall be identified in the annual Intended Use Plan as described in Section 3 of this rule. Only those projects included in the State's Intended Use Plan for the current fiscal year shall be considered by the Water Development Authority and the Instrumentality for financial assistance from the DWTRF.

7.4. Loan Agreements. Prior to providing a loan to an eligible recipient, the Water Development Authority shall execute and enter into a loan agreement with the applicant which shall be binding under the laws of the State and which shall contain such provisions as may be required by the Water Development Authority and the Instrumentality under the Safe Drinking Water Act including:

7.4.1. The cost of the project, the amount of the loan and the security therefor, which may include in addition to a pledge of fees, charges and other revenues from the project after a reasonable allowance for operation, maintenance, renewal and replacement expenses, and a reasonable reserve fund;

7.4.2. A deed of trust or other appropriate security instrument creating a lien on such project: Provided, That the annual repayment of principal and payment of interest begins not later than one year after the project completion and that the final payment shall not exceed 40 years (or as approved under the Safe Drinking Water Act) from said completion date except as provided in Section 8 of this rule;

7.4.3. The specific purposes for which the proceeds of the loan shall be expended, the procedures as to the disbursement of the loan proceeds including an estimated monthly draw schedule, and the duties and obligations imposed upon the applicant in regard to the acquisition or construction of the project;

7.4.4. If notes or other interim obligations are being issued by the applicant, the agreement of the applicant to issue the revenue bonds and take such other actions as are required of the applicant under the loan agreement;

7.4.5. The agreement of the applicant to accept the Water Development Authority's remedies in the event of any default under the loan; and

7.4.6. The agreement of the applicant to comply with all applicable federal and State statutes, rules and regulations, the applicable requirements of all federal cross cutting authorities, and all applicable local ordinances pertinent to the financing, acquisition, construction, operation, maintenance, and use of the project.

7.5. Payment of Principal and Interest on Loans. Payments of the principal or any interest on a loan shall be made by the applicant in accordance with the provisions of the loan agreement.

7.6. Computation of Interest on Loans. Each loan shall bear interest at such rate or rates as are established by the Intended Use Plan, at a rate or rates per annum, either fixed or variable, provided that said rate or rates shall be made at or below market rate as stated in the Safe Drinking Water Act.

7.7. Fees and Charges. Administrative fees are charged on all loans as a means of supporting the administrative costs of operating the DWTRF in perpetuity. The administrative fees are established in the Intended Use Plan.

7.8. Loans Conditioned Upon Availability of Moneys in the Drinking Water Treatment Revolving Fund. The obligation of the Water Development Authority to make any loan shall be conditioned upon the availability of the moneys in the DWTRF in such amounts and on such terms and conditions as, in the sole judgment of the Water Development Authority, shall enable it to make loans.

7.9. Disbursement of Loan Moneys.

7.9.1. The Water Development Authority shall disburse to each recipient the amount certified to the Water Development Authority as costs incurred for the project. The certification shall be made in the form prescribed by the Water Development Authority and shall be accompanied by a written approval from the Instrumentality. The director of the Water Development Authority or his or her authorized representative shall then provide written authorization for the disbursement of the approved dollar amount to the recipient.

7.9.2. Each recipient shall comply with all terms and conditions of both the loan agreement and the resolution or ordinance authorizing the issuances of revenue bonds or notes or other debt instruments evidencing the loan.

7.10. Audit Requirements.

7.10.1. The programmatic set-aside accounts shall be audited annually by the Instrumentality in accordance with federal and State requirements and shall use generally accepted government accounting standards.

7.10.2. The DWTRF construction funds shall be audited annually by the Water Development Authority with separate opinions as required by the federal government generally and as required specifically by the Safe Drinking Water Act. The audit shall be in accordance with generally accepted government accounting standards. The annual audit of the DWTRF shall include an audit of the fund's financial statements and an opinion on the financial statements and additional reports on internal controls and compliance with all federal laws and regulations.

§60-12-8. Disadvantaged Communities.

8.1. Thirty percent (30%) of the annual federal capitalization grant shall be dedicated to the funding of projects for disadvantaged communities.

8.2. The subsidy options for assistance to disadvantaged communities shall be described in the annual Intended Use Plan.

8.3 Extended loan terms. The loan from the DWTRF is up to 30 years, but in the case of a system defined as a disadvantaged community the State may provide extended loan terms, up to 40 years. The loan terms may not exceed the expected design life of the project.

§60-12-9. Application Procedures and Requirements.

9.1. Pre-application Process.

9.1.1. The applicant shall complete and submit to the Instrumentality a preliminary application

package obtained from the Instrumentality.

9.1.2. The application shall provide documentation that the project has been approved, and funding recommended, by the West Virginia Infrastructure and Jobs Development Council.

9.2. Pre-Bid Process.

9.2.1. The applicant shall obtain prior written permission from the Instrumentality to bid the project. The project may be bypassed from the project priority list if the project is bid prior to receiving written approval. The applicant shall meet the uniform bidding procedures of the West Virginia Infrastructure and Jobs Development Council.

9.2.2. The following documents, where applicable, shall be submitted to the Instrumentality prior to bidding the project:

9.2.2.a. Updated project costs and financing plan;

9.2.2.b. A copy of the engineering agreement;

9.2.2.c. A set of project plans prepared by a registered professional engineer and approved by the Instrumentality;

9.2.2.d. The Public Service Commission's or County Commission's schedule for the approval, if required;

9.2.2.e. Copies of applicable permits from the BPH and/or the Instrumentality;

9.2.2.f. Evidence of other applicable permits including, but not limited to: permits from the BPH; the West Virginia Division of Highways; and the United States Army Corps of Engineers;

9.2.2.g. Bid documents and proposed bid advertisement;

9.2.2.h. Evidence that 100% of all necessary easements and rights-of-way have been obtained;

9.2.2.i. The project administration agreement; and

9.2.2.i.1. If the project will serve two or more entities, a PSC-approved agreement between the entities; or

9.2.2.i.2. If the project will serve a municipality, evidence of adoption of a non-appealable rate ordinance.

9.3. Pre-Loan Closing Requirements. Before loan closing the applicant shall submit the following documents to the Instrumentality:

9.3.1. A final order from the Public Service Commission or County Commission, if legally required, which approves the construction and financing of the project, including project rates;

9.3.2. Evidence that all applicable permits have been obtained;

9.3.3. An affidavit of publication of advertisement for bids;

9.3.4. A set of bid documents if changed since the previous submittal;

9.3.5. Bid tabulation certified by a registered professional engineer, indication of which bid was selected, and if the lowest bidder was not selected, a statement prepared by an attorney describing why the lowest bidder was not selected;

9.3.6. A statement by a registered professional engineer that the chosen bidder received any and all addenda to the original bid documents;

9.3.7. A statement by a registered professional engineer that the bid documents reflect the project as approved by the Instrumentality, that the chosen bid includes every construction item necessary to complete the project and that the uniform bidding procedures were followed;

9.3.8. A title opinion signed by an attorney, which identifies the project and contracts and which indicates that one hundred percent (100%) of the necessary titles, easements and rights-of-way have been obtained or that the governmental agency has received rights-of-entry for the same;

9.3.9. Copies of invoices to be paid at closing;

9.3.10. Payment instructions for funds to be received at closing and on a monthly draw basis thereafter;

9.3.11. All necessary ordinances or resolutions in a form and substance satisfactory to the Water Development Authority and assurance that the applicant has taken or will take all measures required by law to enable it to enter into a loan agreement and to issue its revenue bonds or notes for purchase by the Water Development Authority;

9.3.12. An acceptable schedule for project initiation and completion;

9.3.13. Agreement that the applicant will follow all applicable procurement procedures set forth by State laws and rules;

9.3.14. Documentation that the applicant has obtained approval of user charges necessary to finance the project;

9.3.15. Documentation that the applicant has the financial, managerial and technical capability to complete the project;

9.3.16. Documentation that all federal cross-cutters have been addressed in project planning and assurances that the applicant will comply with applicable cross-cutters during project construction.

9.4. Construction and Post Construction.

9.4.1. The system shall follow all applicable procurement procedures set forth by the West Virginia Code.

9.4.2. The recipient shall establish and maintain a financial management system to account for all the costs incurred related to the project. The financial management system shall assure that generally accepted accounting principles and practices are consistently applied in all financial matters related to the project. Financial management shall include the following:

9.4.2.a. The establishment of appropriate controls over project funds, property, and other assets;

9.4.2.b. The maintenance of ledgers containing accurate, current and complete records of all financial actions related to the project;

9.4.2.c. The maintenance of records that identify the source and amount of all moneys used for the project and document how such moneys were used;

9.4.2.d. The maintenance of records that allow a comparison of actual project costs with budgeted costs; and

9.4.2.e. The establishment of procedures that assure a timely resolution of audit findings and recommendations.

9.5. In maintaining the accounting system, the recipient shall:

9.5.1. Establish a separate account for the project;

9.5.2. Record all transactions in ledgers;

9.5.3. Record all transactions in a timely manner;

9.5.4. Prepare and submit to the Instrumentality monthly reports of the financial status of the project; and

9.5.5. Prepare and submit to the Instrumentality an annual budget for the project.

9.6. The recipient shall maintain records for each loan received that include:

9.6.1. Loan application and loan approval documents;

9.6.2. All contracts and sub-agreements related to the project;

9.6.3. All documents related to the financial management;

9.6.4. All documents requiring action by the State;

9.6.5. Documentation of compliance with applicable federal and State laws, rules, and regulations;
and

9.6.6. Documentation of moneys received and expended.

9.7. All records maintained shall be made available for inspection by the Instrumentality or the

Authority upon request.

9.8. Prior written approval from the Instrumentality shall be obtained for any change orders to the construction contract.

9.9. Explanation of any project budget item overrun shall be submitted with that month's funds draw request.

§60-12-10. Capacity Development.

The Instrumentality shall continue to follow a capacity development strategy to assist systems in developing and maintaining technical, financial and management capability. The strategy shall be designed to ensure that all new community water systems and non-community non-transient water systems demonstrate technical, managerial and financial capability needed to comply with applicable federal and State laws, rules and regulations for drinking water.

§60-12-11. Environmental Review.

11.1. General Requirements. The Instrumentality shall conduct or cause to be conducted, an environmental review for each project funded, in whole or in part, from the Fund. Any adverse environmental impacts that may occur on a project, as determined by the Secretary, shall be mitigated by the local entity. The local entity shall implement all measures, as stipulated by the Secretary, that are necessary to prevent adverse impacts to the public health, safety, or welfare or to the environment. The environmental review must be conducted before the project loan is closed upon.

11.2. In accordance with 40 CFR Part 35, Subpart L (§35.3140), projects must undergo a State environmental review process (SERP) that conforms generally to the National Environmental Policy Act (NEPA), 42 U.S.C. §4321 *et. seq.*

11.3. The applicant should consult with the State early in the facilities planning stage to determine whether a project is eligible for a categorical exclusion, to determine alternatives to the proposed project for evaluation, and to identify potential environmental issues and opportunities for public recreation and open space.

11.3.1. All requests for a categorical exclusion shall conform to 40 CFR Part 6, subpart B (§6.204).

11.3.2. One public meeting must be held by the local entity prior to the Instrumentality's issuance of the categorical exclusion to discuss the chosen alternative as well as the reasons for rejecting other alternatives and to allow for comments.

11.4. Environmental Review Procedures. The applicant shall prepare and submit an environmental information document in conjunction with the facilities plan. The facilities plan must comply with the Instrumentality's policies and procedures. The environmental information document must include the following information:

11.4.1. Correspondence with and responses from the West Virginia Division of Culture and History concerning possible impacts to historic, architectural, archaeological, and cultural sites.

11.4.2. Correspondence with and responses from the United States Army Corp of Engineers

concerning possible impacts to floodplains and wetlands.

11.4.3. Correspondence with and responses from the U.S. Department of the Interior (Fish and Wildlife Service) and the West Virginia Division of Natural Resources concerning possible impacts to wetlands, wild and scenic rivers, fish and wildlife, and endangered or threatened species.

11.4.4. Correspondence with and responses from the U. S. Department of Agriculture concerning possible impacts to important farmlands.

11.4.5. Evaluation of possible impacts to air quality, development, and noise levels.

11.5. Environmental Assessment. An environmental assessment shall be prepared by the Instrumentality to provide sufficient data and analysis to determine whether a finding of no significant impact (FNSI) can be issued. The environmental assessment will address the concerns and impacts listed in 40 CFR Part 6, subpart B (§6.205(d) - (§6.205(e)(4)).

11.6. Finding of No Significant Impact (FNSI). When the environmental review indicates no significant impacts are anticipated or when the project is altered to eliminate any significant adverse impacts, a FNSI shall be issued and made available to the public. The environmental assessment shall be included as a part of the FNSI. The FNSI shall list all mitigation measures as defined in 40 CFR §1508.20, and specifically identify the measures necessary to make the recommended alternative environmentally acceptable.

11.6.1 The Instrumentality is responsible for monitoring mitigation measures identified in the FNSI. The Instrumentality will not close on a loan until the applicant complies with all conditions of the FNSI.

11.6.2. If it is not possible to mitigate or eliminate significant impacts caused by the project and allow the issuance of a FNSI, funds from the SRF will not be used to fund the project.

11.7. Public Involvement. The Instrumentality shall make diligent efforts to involve the public in the environmental review process and shall allow for sufficient public review of a FNSI before a facilities plan is approved. A period of at least 30 calendar days for comments will be allowed before administrative action will be taken after the release and publication of the FNSI. Comments will be submitted as directed in the FNSI. The FNSI will be posted at the applicant's office location or other locations as directed and mailed to appropriate agencies and interested parties. One public meeting must be held by the local entity prior to FNSI issuance to discuss the chosen alternative as well as the reasons for rejecting other alternatives and to allow for comments.

11.8. All environmental assessment/FNSI determinations shall be re-evaluated in accordance with 40 CFR §6.200(h)

11.9. Public Notification. The public notification requirements of this section shall be fulfilled and consistent with 40 CFR §1506.6. The Instrumentality may institute such additional NEPA-related public participation procedures as are deemed necessary during the environmental review process.

11.9.1. Public notification options from 40 CFR §1506.6 include, but are not limited to, publication in local newspapers (in papers of general circulation rather than legal papers), publication in local newsletters that may be expected to reach potentially interested persons, direct mailing to owners and

occupants of nearby or affected property, and posting of notice on and off site in the area where the action is to be located.

§60-12-12. Records.

The Instrumentality shall maintain files for each DWTRF project in perpetuity.