



WEST VIRGINIA SECRETARY OF STATE

KRIS WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF PUBLIC COMMENT PERIOD

AGENCY: Health

TITLE-SERIES: 64-49

RULE TYPE: Legislative Amendment to Existing Rule: No Repeal of existing rule: Yes

RULE NAME: DRINKING WATER TREATMENT REVOLVING FUND

CITE STATUTORY AUTHORITY: W. Va. Code §16-13C-2(b)

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 07/25/2026 5:00 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Virginia M Payne

ADDRESS: 321 Capitol Street
Charleston, WV 25301

EMAIL: virginia.m.payne@wv.gov

PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:

The 1996 Safe Drinking Water Act Amendments authorized a drinking water treatment revolving fund program. The federal government will provide 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 will be administered by the water development authority. This rule establishes State-level procedures, standards for project eligibility, and gives direction to the State water development authority.

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN THE RULE AND A STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE:

The rule is being repealed in its entirety because control of the Drinking Water Treatment Revolving Fund has been transferred to the West Virginia Department of Environmental Protection.

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

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

None

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

None

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

None

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2026 Increase/Decrease (use "-")	2027 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):

N/A

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

Yes

Virginia M Payne -- 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 64
LEGISLATIVE RULE
DIVISION OF HEALTH**

**SERIES 49
DRINKING WATER TREATMENT REVOLVING FUND**

§64-49-1. General.

1.1. Scope. — The 1996 Safe Drinking Water Act Amendments authorized a drinking water treatment revolving fund program. The federal government will provide 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 will be administered by the water development authority. This rule establishes State level procedures, standards for project eligibility, and gives direction to the State water development authority.

1.2. Authority. — W. Va. Code §16-13C-2(b).

1.3. Filing Date. — April 6, 1998.

1.4. Effective Date. — June 1, 1998.

1.5. Administration. — This rule is administered by the division of health of the department of health and human resources.[†]

§64-49-2. Definitions.

2.1. Capacity Development. — The technical, managerial and financial capability of a public water system.

2.2. Capitalization Grant. — The assistance agreement by which the U. S. Environmental Protection Agency obligates to award 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. — 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. — Compliance with State and Federal laws, rules and regulations applicable to public water systems.

2.5. Cross Cutter Authorities. — Federal laws and authorities that apply by their own terms to projects or activities receiving federal assistance.

[†]The Department of Health and Human Resources (DHHR) was created by the Legislature's reorganization of the executive branch of State government in 1989. The Department of Public Health was renamed the Division of Health and made a part of the DHHR (W. Va. Code § 5F-1-1 et seq.). Administratively within the DHHR the Bureau for Public Health through its Commissioner carries out the public health function of the Division of Health.

~~2.6. Disadvantaged Community. — 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 division and as approved by the U. S. Environmental Protection Agency.~~

~~2.7. Division of Health. — The division of health of the department of health and human resources.²~~

~~2.8. Drinking Water Treatment Revolving Fund. — The fund established by W. Va. Code §16-13C-3(a) to be used for financial assistance to the public water systems for eligible project costs.~~

~~2.9. Intended Use Plan. — A document prepared by the division each year which identifies the intended uses of the funds in the drinking water treatment revolving fund.~~

~~2.10. Public Water System. — Any water system or supply which regularly supplies or offers to supply, piped water to the public for human consumption, if serving at least an average of twenty five (25) individuals per day for at least sixty (60) days per year, or which has at least fifteen (15) service connections and includes:~~

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

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

~~(1) which consists only of distribution and storage facilities (and does not have any collection and treatment facilities);~~

~~(2) which obtains all of its water from, but is not owned or operated by a public water system which otherwise meets the definition;~~

~~(3) which does not sell water to any person; and~~

~~(4) which is not a carrier conveying passengers in interstate commerce.~~

~~2.11. Project Priority List. — The list of projects that are to be funded which is published in the intended use plan.~~

~~2.12. Safe Drinking Water Act. — 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.~~

~~2.13. Set Aside. — Moneys from the capitalization grant to be used for non-project activities specific to the Safe Drinking Water Act.~~

~~2.14. Small System. — A drinking water system serving ten thousand (10,000) or fewer persons.~~

~~2.15. Water Development Authority. — The water development authority provided for in W. Va. Code~~

² - See footnote 1.

~~§22C-1-4.~~

~~§64-49-3. Procedure.~~

~~3.1. The division will receive capitalization grants from the U. S. Environmental Protection Agency for the purpose of establishing a drinking water treatment revolving fund construction fund to assist public water systems to finance the cost of infrastructure needed to comply with the Safe Drinking Water Act and to fund non-project activities defined in Section 4 of this rule.~~

~~3.2. The division shall develop an annual intended use plan for each year that the drinking water treatment revolving fund program is in place.~~

~~3.2.a. The intended use plan shall contain the proposed set-aside amounts for non-project activities that the division intends to use. The set-aside accounts are described in Section 4 of this rule.~~

~~3.2.b. The intended use plan shall contain a priority list of eligible projects per Section 5 of this rule that the State intends to 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, 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.c. The division 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.d. 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 division shall submit a capitalization grant application to the U. S. Environmental Protection Agency annually during the years that capitalization grants are available for the federal drinking water treatment revolving fund program.~~

~~3.4. After the division receives U. S. Environmental Protection Agency approval of the capitalization grant application which includes 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 §16-13C-1 et seq.~~

~~3.5. The applicant's procedures and requirements for drinking water treatment revolving fund assistance are described in Section 9 of this rule.~~

~~3.6. The division shall submit a biennial report to the U. S. Environmental Protection Agency regional administrator discussing the State's activities which receive funding from the federal capitalization grant.~~

~~§64-49-4. Fund Establishment.~~

~~4.1. Establishment of the Fund. — The water development authority shall establish a permanent and~~

perpetual fund to be 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 division.

~~4.2. Establishment of Set Aside Accounts. — There are four (4) allowable set asides from the capitalization grant, as described in subdivisions 4.2.a through 4.2.d of this rule.~~

~~4.2.a. Program Oversight (Administration of the Fund). — An amount up to four percent (4%) of the capitalization grant may be used for to finance the cost to the division or its agents of administering the program.~~

~~4.2.b. Technical Assistance. — 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 division to non-profit organizations that:~~

~~4.2.b.1. Have a membership that represents at least twenty five percent (25%) of the small systems of this State; and~~

~~4.2.b.2. Have at least five (5) years of experience in providing on-site technical assistance to small systems.~~

~~4.2.c. Local Assistance. — An amount up to fifteen percent (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 ten percent (10%) may be used for any one (1) activity.~~

~~4.2.d. State Activities. — An amount up to ten percent (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.~~

~~4.3. 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 establishing the drinking water treatment revolving fund, all receipts 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 drinking water treatment revolving fund are to be used solely to make loans and to make other allowable financial assistance to eligible projects for public water systems, as described in the Safe Drinking Water Act and in W. Va. Code §16-3C-1 et seq. Each loan shall be in an amount that covers those costs of a project for which funds are sought by the applicant from the water development authority.~~

~~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 upon written authorization from the director of the water development authority or his or her designee.

~~§64-49-5. 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.a. For-profit non-community non-transient water systems; and~~

~~5.1.b. 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 division determines that the proposed project will enable it to come into compliance. The system shall provide assurances to the division that the proposed project will enable the system to attain compliance.~~

~~5.3. Subdivisions 5.3.a through 5.3.g list examples of some of the types of projects that may be funded by the drinking water treatment revolving fund. The examples listed are not to be construed as an exhaustive or limiting list of potentially eligible projects.~~

~~5.3.a. Examples of eligible public health and compliance projects are projects to:~~

~~5.3.a.1. Facilitate compliance;~~

~~5.3.a.2. Further health protection objectives;~~

~~5.3.a.3. Address exceedances of action levels and maximum contaminant levels (MCL's) specified in the Division of Health Legislative Rule, Public Water Systems, 64 CSR 3;~~

~~5.3.a.4. Prevent future violations; and~~

~~5.3.a.5. Maintain compliance.~~

~~5.3.b. Examples of eligible restructuring projects are projects to:~~

~~5.3.b.1. Upgrade or replace infrastructure to continue to provide the public with safe drinking water;~~

~~5.3.b.2. Replace aging infrastructure, including, but not limited projects to:~~

~~5.3.b.2.A. Rehabilitate or develop water sources to replace contaminated sources;~~

~~5.3.b.2.B. Install or upgrade treatment facilities, if the installation or upgrading will improve the quality of drinking water to comply with federal primary or secondary drinking water standards as adopted in the Division of Health Legislative Rule, Public Water Systems, 64 CSR 3;~~

~~5.3.b.2.C. Install or upgrade storage facilities to prevent microbiological contaminants from entering the water system; and~~

~~5.3.b.2.D. Install or replace transmission and distribution pipes to prevent contamination caused by leaks or breaks in the pipe, or improve water pressure to safe levels.~~

~~5.3.c. Projects to consolidate water supplies are eligible when:~~

~~5.3.c.1. Individual homes or public water systems have an inadequate quantity of water;~~

~~5.3.c.2. A water supply is contaminated; or~~

~~5.3.c.2.A. The system is unable to maintain compliance for financial or managerial reasons.~~

~~5.3.d. 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.~~

~~5.3.e. The costs of project planning, design and other related costs are eligible for drinking water treatment revolving fund funding. Funding of the design of a project does not guarantee funding of the project construction. The design loan assistance amounts shall be described in the annual intended use plan.~~

~~5.3.f. 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 drinking water treatment revolving fund. The cost for the State to review the environmental assessments is not eligible under the drinking water treatment revolving fund and is considered administrative costs.~~

~~5.3.g. 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.~~

~~5.4. The following projects and activities are not eligible for drinking water treatment revolving fund assistance:~~

~~5.4.a. Dams or rehabilitation of dams;~~

~~5.4.b. Water rights, except if the water rights are owned by a system that is being purchased through consolidation as part of a capacity development strategy;~~

~~5.4.c. Reservoirs, except for finished water reservoirs that are part of the treatment process and are located on the property where the treatment facility is located;~~

~~5.4.d. Laboratory fees for monitoring;~~

~~5.4.e. Operation and maintenance expenses;~~

~~5.4.f. Projects needed mainly for fire protection;~~

~~5.4.g. Projects for systems in significant non-compliance, unless funding will ensure compliance; and~~

~~5.4.h. Projects primarily intended to serve future growth.~~

~~5.5. Projects which are designed solely for growth are not eligible for drinking water treatment revolving~~

fund assistance, although reasonable growth may be part of an eligible project.

~~5.6. Current and future monitoring, operation and maintenance expenditures are not eligible for drinking water treatment revolving fund assistance.~~

~~§64-49-6. Priority Ranking Procedure.~~

~~6.1. The division shall develop an annual intended use plan indicating how the drinking water treatment revolving fund will be used. The division shall give the highest priority to projects that:~~

- ~~6.1.a. Address the most serious health risks;~~
- ~~6.1.b. Are necessary to achieve compliance; and~~
- ~~6.1.c. 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 division will identify projects to receive the bypassed funds.~~

~~6.3. The intended use plan shall undergo public review and shall be submitted to the U. S. Environmental Protection Agency for approval.~~

~~§64-49-7. 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 applicant and purchased by the water development authority, at par or at a discount to reflect the costs of the water development authority and the division incurred to the financing, in whole or in part, of the costs of a project, and 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 public water system that has water development authority under applicable law to undertake a project and has been approved as an eligible recipient by the division 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 division and when moneys are available for loan the water development authority and the division shall provide the public water system with a 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 drinking water treatment revolving fund financial assistance shall be identified in the annual intended use plan as described in Section 3 of this rule. Only those projects on the State project priority list for the current fiscal year shall be considered by the water development authority for financial assistance from the drinking water treatment revolving fund.~~

~~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 division under the Safe Drinking Water Act including:

~~7.4.a. 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.b. 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 (1) year after the project completion and that the final payment shall not exceed twenty (20) years from said completion date except as provided in Section 8 of this rule;~~

~~7.4.c. 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.d. 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.e. 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.f. 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 from the date of the delivery of the bonds or notes of the applicant evidencing the loan to the applicant at a rate or rates per annum, either fixed or variable, as determined by the water development authority and the division provided that said rate or rates shall be made at or below market rate as stated in the Safe Drinking Water Act (1452(f)(1)(A) and further provided that, pursuant to the provisions of the loan agreement, the interest rate or rates shall reflect the costs of the water development authority incurred in issuing its obligations, if any, and other costs related to the making of the loan.~~

~~7.7. Fees and Charges. — In addition to payments of principal and interest on a loan, each applicant shall agree in the loan agreement to pay fees and charges to the water development authority equal to the applicant's share of the administrative expenses of the water development authority relating to the loan program. Such fees shall be specifically identified in the loan agreement. These revenues shall be deposited and maintained in an account separate from the drinking water treatment revolving fund construction fund.~~

~~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 drinking water treatment revolving fund in such amounts and on such terms and conditions as, in the sole judgement of the water development authority, shall enable it to make loans.~~

~~7.9. Disbursement of Loan Moneys.~~

~~7.9.a. 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 division. 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.b. 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.a. The programmatic set-aside accounts shall be audited annually in accordance with federal and State requirements, and shall use generally accepted government accounting standards.~~

~~7.10.b. The drinking water treatment revolving fund construction funds shall be audited annually with separate opinion 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 drinking water treatment revolving fund 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.~~

~~§64-49-8. Disadvantaged Communities.~~

~~8.1. Thirty percent (30%) of the 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. Options include the following:~~

~~8.2.a. Principal forgiveness or other incentive agreed upon between the borrower and the division within the U. S. Environmental Protection Agency guidelines; and~~

~~8.2.b. Extended loan terms. The normal loan from the drinking water treatment revolving fund is twenty (20) years, but in the case of a system defined as a disadvantaged community the State may provide extended loan terms, up to thirty (30) years. The loan terms may not exceed the expected design life of the project.~~

~~§64-49-9. Application Procedures and Requirements.~~

~~9.1. Pre-application Process.~~

~~9.1.a. The applicant shall complete and submit to the division a preliminary application package obtained from the division.~~

~~9.1.b. The application shall provide documentation that the project has been approved by the West Virginia infrastructure and jobs development council.~~

~~9.2. Pre-Bid Process.~~

~~9.2.a. The applicant shall obtain written permission from the division to bid the project. The project may be bypassed from the project priority list if the project is bid prior to receiving approval. The applicant shall meet the uniform bidding procedures of the West Virginia infrastructure and jobs development council.~~

~~9.2.b. The following documents, where applicable, shall be submitted to the division prior to bidding the project:~~

~~9.2.b.1. Updated project costs and financing plan;~~

~~9.2.b.2. A copy of the engineering agreement and the public service commission order which approved such agreement;~~

~~9.2.b.3. The public service commission's schedule for the certificate of convenience and necessity application;~~

~~9.2.b.4. Copies of applicable permits from the division;~~

~~9.2.b.5. Evidence of other applicable permits including, but not limited to: permits from the division of environmental protection; the division of highways; and the U. S. Corps of Engineers;~~

~~9.2.b.6. Bid documents and proposed bid advertisement;~~

~~9.2.b.7. Evidence that eighty percent (80%) of all necessary easements and rights of way have been obtained and a list of all titles that need to be acquired with an attorney's list of exceptions;~~

~~9.2.b.8. The project administration agreement; and~~

~~9.2.b.9.A. If the project will serve two (2) or more entities, an agreement between the entities; or~~

~~9.2.b.9.B. If the project will serve a municipality, evidence of adoption of a rate ordinance.~~

~~9.3. Pre Loan Closing Requirements. — Before loan closing the applicant shall submit the following documents to the division:~~

~~9.3.a. A final order from the public service commission which approves the construction and financing of the project;~~

~~9.3.b. Evidence that all applicable permits have been obtained;~~

~~9.3.c. A set of project plans prepared by a registered professional engineer;~~

~~9.3.d. An affidavit of publication of advertisement for bids;~~

~~9.3.e. A set of bid documents if changed since the previous submittal;~~

~~9.3.f. Bid tabulation certified by a registered professional engineer, indication of which bid was selected, and if the lowest bidder was not selected, an statement prepared by an attorney describing why the lowest bidder was not selected;~~

~~9.3.g. A statement by a registered professional engineer that the chosen bidder received any and all addenda to the original bid documents;~~

~~9.3.h. A statement by a registered professional engineer that the bid documents reflect the project as approved by the division, that the chosen bid includes every construction item necessary to complete the project and that the uniform bidding procedures were followed;~~

~~9.3.i. 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.j. Copies of invoices to be paid at closing;~~

~~9.3.k. Payment instructions for funds to be received at closing and on a monthly draw basis thereafter;~~

~~9.3.l. 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.m. An acceptable schedule for project initiation and completion;~~

~~9.3.n. Agreement that the applicant will follow all applicable procurement procedures set forth by State laws and rules;~~

~~9.3.o. Documentation that the applicant has obtained approval of user charges necessary to finance the project;~~

~~9.3.p. Documentation that the applicant has the financial, managerial and technical capability to complete the project;~~

~~9.3.q. Documentation that an environmental review per section 11 of this rule has been completed;~~
and

~~9.3.r. 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.a. The system shall follow all applicable procurement procedures set forth by the West Virginia Code.~~

~~9.4.b. 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.b.1. The establishment of appropriate controls over project funds, property, and other assets;~~

~~9.4.b.2. The maintenance of ledgers containing accurate, current and complete records of all financial actions related to the project;~~

~~9.4.b.3. 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.b.4. The maintenance of records that allow a comparison of actual project costs with budgeted costs; and~~

~~9.4.b.5. 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.a. Establish a separate account for the project;~~

~~9.5.b. Record all transactions in ledgers;~~

~~9.5.c. Record all transactions in a timely manner;~~

~~9.5.d. Designate one (1) person who is responsible for project operations to account for all project funds;~~

~~9.5.e. Prepare and submit to the division monthly reports of the financial status of the project; and~~

~~9.5.f. Prepare and submit to the division an annual budget for the project.~~

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

~~9.6.a. Loan application and loan approval documents;~~

~~9.6.b. All contracts and sub-agreements related to the project;~~

~~9.6.c. All documents related to the financial management;~~

~~9.6.d. All documents requiring action by the State;~~

~~9.6.e. Documentation of compliance with applicable federal and State laws, rules, and regulations;~~

~~9.6.f. Documentation of moneys received and expended; and~~

~~9.6.g. A statement by a registered professional engineer that the as-built project is in accordance with the plans and specifications approved by the division and that the as-built project is in proper working condition.~~

~~9.7. All records maintained shall be made available for inspection by the director upon request.~~

~~9.8. Prior written approval from the division 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.~~

~~§64-49-10. Capacity Development.~~

~~The division shall, by August, 2000, establish a capacity development strategy to define systems and 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.~~

~~§64-49-11. Environmental Review.~~

~~11.1. An environmental review shall be completed for each project that receives funds from the drinking water treatment revolving fund. Any adverse environmental impacts that may occur on a project, as determined by the director, shall be mitigated by the local entity.~~

~~11.2. The director hereby adopts and incorporates by reference the provisions contained in 40 CFR Part 6 subpart E and related subparts as applicable to drinking water systems.~~

~~11.3. The costs of preparing the environmental assessment reports may be included as part of costs of planning the project and are eligible for drinking water treatment revolving fund assistance. The cost for the State to review the environmental assessments are not eligible from the drinking water treatment revolving fund and are considered administrative costs. Environmental reviews required by other funding agencies participating in the funding of the project may fulfill the requirements for environmental review. The applicant shall obtain written approval from the division.~~

~~§64-49-12. Records.~~

~~The division shall maintain files for each drinking water treatment revolving fund project.~~

~~§64-49-13. Administrative Due Process.~~

~~Those persons adversely affected by the enforcement of this rule desiring a contested case hearing to determine any rights, duties, interests or privileges shall do so in a manner prescribed in W. Va. Division of Health Administrative Rules, Rules and Procedures for Contested Case Hearings and Declaratory Rulings, 64 CSR 1.~~