

200 KAR 17:070. Drinking Water State Revolving Fund.

RELATES TO: KRS 151.601, 151.603, Chapter 224A, 42 U.S.C. 300f, 300g, 300j, 40 C.F.R. Part 25, Part 35 Subpart L

STATUTORY AUTHORITY: KRS 224A.070, 224A.1115, 224A.113, 224A.300

NECESSITY, FUNCTION, and CONFORMITY: KRS 224A.070(1) and 224A.113 authorize the Kentucky Infrastructure Authority to promulgate administrative regulations to implement KRS 224A.1115. This administrative regulation establishes requirements for applying for funding from the Drinking Water State Revolving Fund for the planning, design, or construction of new and expanded facilities to deliver potable water for public use and establishes requirements and criteria to prioritize the projects to receive funds. This administrative regulation conforms to federal requirements, except is more stringent in that projects must be consistent with state drinking water planning requirements contained in KRS Chapter 151.

Section 1. Definitions. (1) "Applicant" means any governmental agency, except a federal agency, that has submitted an application to the authority for financial assistance from the Drinking Water State Revolving Fund.

(2) "Application" means the information submitted by an applicant to the authority to obtain assistance, including the need for a specific project or infrastructure, and including financial information necessary to determine eligibility for assistance from the federally-assisted Drinking Water State Revolving Fund.

(3) "Area water management plan" means the community-based plan, as authorized by KRS 224A.300(1), and 151.603, identifying needs and service projects to address water supply and drinking water with the goal of making potable water treatment available to all Kentuckians.

(4) "Area water management planning council" means the group of elected and appointed leaders, utility representatives, health department representatives, and citizens at large designated pursuant to KRS 151.601 to develop an area water management plan for water-related services in regions which are generally coterminous with Kentucky's Area Development Districts.

(5) "Assistance agreement" is defined by KRS 224A.011(3).

(6) "Authority" is defined by KRS 224A.011(4).

(7) "Best practicable treatment and distribution technology" means a treatment and distribution technology which, in the best professional judgment of the cabinet's engineers, will adequately treat and deliver the water from the raw water source to assure public health and compliance with existing and future national drinking water standards, in a cost effective manner.

(8) "Cabinet" means the Environmental and Public Protection Cabinet established in accordance with KRS 224.10-100.

(9) "Capacity" means the financial, managerial, and technical ability of a public water system to comply with all applicable state and federal regulations.

(10) "Capacity development strategy" means the strategic planning process used to determine how to assure the long-term ability of public water systems to obtain or retain the capacity to comply with all applicable state and federal requirements.

(11) "Clean Water Act" is defined by KRS 224A.011(12) and is otherwise known as the Federal Water Pollution Control Act.

(12) "Closing date" means the date established by the authority for execution of the assistance agreement upon satisfaction of the conditions contained in the conditional commitment letter.

(13) "Conditional commitment letter" means a letter delivered to the applicant stating the authority's commitment to provide financial assistance under specifications and subject to the satisfaction of certain conditions by the applicant on or before the closing date.

(14) "Disadvantaged community" means the service area of a public water system that meets

the affordability criteria established by the authority after public review and comment and may qualify for additional subsidization of the financial assistance terms.

(15) "Drinking water project" means a drinking water project consistent with Section 3 of this administrative regulation.

(16) "Drinking Water State Revolving Fund" means the federally-assisted water supply revolving fund created by KRS 224A.1115.

(17) "Intended use plan" means the document prepared annually by the cabinet and the authority, after public review and comment, which identifies intended uses of all Drinking Water State Revolving Fund Program funds and describes how those uses support the overall goals of the Drinking Water State Revolving Fund Program and the Safe Drinking Water Act.

(18) "Kentucky eClearinghouse" means the automated Kentucky State Clearinghouse coordinating the federal executive review process and the Kentucky intergovernmental review process, for which the Governor's office for Local Development has been designated as the single point of contact for federal or state financial assistance as required by KRS 147A.021(3)(k).

(19) "Kentucky State Data Center" means the agency within the Urban Studies Institute of the University of Louisville designated by the Commonwealth to serve as the repository and analyst of data and information generated by the U.S. Census Bureau.

(20) "Median household income" means the statistical middle value in household income, considering all households in Kentucky with an equal number of households above and below the middle value, as determined by the Kentucky State Data Center.

(21) "NEPA-like process" means the state environmental review process that is functionally equivalent to the review undertaken by the U.S. Environmental Protection Agency under the National Environmental Policy Act, 42 U.S.C. 4321 et seq.

(22) "Project priority list" means a list of all drinking water projects, with the exception of projects funded on an emergency basis, that are scored using the cabinet's priority system, go through a public review process prior to receiving financial assistance, and are included in the intended use plan.

(23) "Public water system" means a water system for the provision to the public of water for human consumption, if the system has at least fifteen (15) service connections or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days of the year. The term includes collection, treatment, storage and distribution facilities under the control of the operator of the system and used primarily in connection with the system and collection and pretreatment storage facilities not under the control of the operator of the water system which are used primarily in connection with the water system.

(24) "Regionalization" means the creation of expanded service areas which take in a large geographic area or multiple systems; the creation of multijurisdictional utility commissions, special districts, authorities or corporations; the utilization of interlocal cooperation agreements; the consolidated operation or management of multiple systems which may include regional facilities, smaller systems, or on-site systems; or the merger, consolidation, or combination of two (2) or more existing facilities or systems.

(25) "Replacement reserve fund" means the special depreciation fund that may be established and funded by an applicant in connection with financial assistance from the Drinking Water State Revolving Fund.

(26) "Safe Drinking Water Act" means the federal Safe Drinking Water Act, 33 U.S.C. 300f-j.

Section 2. Eligible Applicants. (1) Any governmental agency, except a federal agency, shall be eligible to apply for financial assistance for planning, design and construction of eligible drinking water supply projects described in Section 3 of this administrative regulation.

(2) Financial assistance under this administrative regulation shall not be provided to an agency

for a public water system that:

(a) Does not have capacity to insure compliance with the requirements of 401 KAR Chapter 8 and the Safe Drinking Water Act; or

(b) Is not in compliance with requirements of 401 KAR Chapter 8 or the Safe Drinking Water Act, unless:

1. The use of the assistance will insure compliance; and

2. The owner or operator of the system agrees to undertake feasible and appropriate changes in operations, including ownership, management, accounting, rates, maintenance, consolidation, alternative water supply, or other procedures, that the cabinet and the Authority determine are necessary to insure that the system has the capacity to comply with the requirements of 401 KAR Chapter 8 and the Safe Drinking Water Act.

Section 3. Eligible Drinking Water Projects. (1) Funds in the Drinking Water State Revolving Fund may be used for:

(a) Planning, design, and construction of drinking water intake, treatment, and distribution systems;

(b) Refinancing or buying eligible debt obligations of a public water system;

(c) Purchasing water systems by other public water systems;

(d) Guaranteeing or purchasing insurance for a local obligation to improve credit market access or reduce the interest rate of the obligation;

(e) Transferring fund assets between the Clean Water State Revolving Fund and the Drinking Water State Revolving Fund as allowed in the Clean Water Act and the Safe Drinking Water Act; and

(f) Providing a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the state if the proceeds of the sale of the bonds will be deposited in the fund.

(2) Drinking water projects shall address Safe Drinking Water Act health goals, or situations where compliance standards have been exceeded, or prevent future violations of the rules. The projects may include:

(a) Drinking water treatment plants, including basins for rapid mix, flocculation, coagulation, filtration, pretreatment disinfection, and disinfection prior to entry to the distribution system;

(b) Distribution systems;

(c) Storage tanks;

(d) Intake lines and short-term raw water storage;

(e) Clearwells;

(f) Drilled wells and wellhead areas;

(g) Security related facilities;

(h) Emergency measures for the protection of public health; and

(i) Any other structure or facility that the cabinet considers necessary to the efficient and sanitary operation of a public water system.

(3) Funds shall not be used for:

(a) Projects not listed on the project priority list, except for emergency projects as provided in subsection (2)(h) of this section.

(b) Dams or rehabilitation of dams.

(c) Water rights.

(d) Reservoirs, except for finished water reservoirs and those reservoirs that are part of a treatment process and are located on the property where the treatment facility is located.

(e) Laboratory fees and other monitoring expenses.

(f) Operation and maintenance expenses.

- (g) Projects needed mainly for fire protection.
- (h) Projects for systems that lack adequate capacity, unless financial assistance will assure capacity and compliance.
- (i) Land acquisition where eminent domain is necessary.
- (j) Projects primarily intended to finance the expansion of any public water system in anticipation of future population growth.
- (k) Projects not favorably considered by the area water management council unless the board finds circumstances that justify overriding the council's recommendation.

Section 4. Process for Selecting Eligible Drinking Water Projects. (1) The cabinet shall develop the project priority list once a year and shall provide public notice and seek public comment of the contents of the project priority list in accordance with 40 C.F.R. Part 25.

(2) The project priority list may be divided into a fundable list of projects that are expected to receive financial assistance from available funds designated for use in the current intended use plan and a comprehensive list of projects that are expected to receive financial assistance in the future, or the cabinet may combine the fundable and comprehensive lists into one (1) list.

(3) The project priority list shall identify the projects to be funded, both in the current year and in future years.

(4) The order on the list shall be determined by the priorities set forth in Section 5 of this administrative regulation.

(5) If a project is not ready to proceed, it shall be bypassed. The next highest priority project which meets the requirements of this administrative regulation shall be considered for funding.

(6) In accordance with 42 U.S.C. 300j-12 of the Safe Drinking Water Act and this subsection, at least fifteen (15) percent of the funds available for projects shall be awarded to projects for public water systems serving fewer than 10,000 people, unless all projects for systems serving fewer than 10,000 people have been funded, or are not ready to be funded, due to a failure to comply with all of the requirements of this administrative regulation.

(7) Funds may be designated in the intended use plan to be used for financial assistance pursuant to the provisions of 42 U.S.C. 300j-12(k) of the Safe Drinking Water Act for land acquisition or a conservation easement for source water protection. The Cabinet shall prioritize these projects separately from other projects, based on public health protection and how the financial assistance will aid compliance.

(8) All projects shall be assessed in accordance with a NEPA-like review process, which shall include consideration of regionalization, and shall be reviewed through the Kentucky eClearinghouse process.

Section 5. Criteria for Prioritization. (1) Priority shall be given by the cabinet to the projects that are necessary to:

- (a) Ensure compliance with the requirements of the Safe Drinking Water Act;
- (b) Address the most serious risk to human health; and
- (c) Assist systems most in need on a per household basis.

(2) The cabinet shall make these determinations based on the following factors:

(a) Resource development. Projects shall include:

1. Projects that will improve a public water system's ability to achieve capacity to comply with existing and future national drinking water standards.

2. Projects to assure a sufficient quantity and quality of raw water for treatment.

3. Projects which allow one (1) or more public water systems to consolidate to achieve capacity to meet national standards, such as intakes, wells, raw and finished water lines, and pump stations.

(b) Improved treatment. Projects to prevent or correct compliance problems and produce potable water, such as presettling basins; aeration towers; full water treatment plant processes such as rapid mix, coagulation, flocculation, sedimentation, filtration, and clearwell; baffling; and chemical feeders.

(c) Improved water distribution systems, which includes projects to allow public water systems to prevent and correct compliance problems and deliver potable water through the existing distribution system, such as installation, refurbishment, or replacement of finished water lines; storage facilities or pump stations; elimination of constantly running or hydropneumatic pump stations; looping of water lines; flushing devices; baffling of storage facilities; and disinfection booster stations.

(d) Improving public health through extension of new service lines and connections, including projects where there is insufficient raw water available, or where the raw water is of a quality that is unsuitable for an individual to treat to potable water standards.

(e) Eligible security-related projects such as fences, alarms, security cameras, or other system improvements that will assist in preventing vandalism, terrorism, or other deliberate adverse acts that will damage the system or pose a risk to public health.

Section 6. Submission Requirements. (1) Projects proposed to be placed on the project priority list shall be submitted to the local area water management planning council for inclusion in the area water management plan. All project proposals shall be electronically forwarded by the area water management planning council to the authority. The authority shall electronically forward the necessary project information to the cabinet.

(2) After inclusion on the project priority list, a complete application package, including all supporting documentation, shall be required for consideration for financial assistance from the Drinking Water State Revolving Fund.

(3) The procurement of professional services and construction contracts shall conform to KRS Chapter 45A or 424. Allowable engineering service fees shall be determined using procedures similar to those used by federal agencies conducting similar loan programs.

Section 7. Drinking Water Project Requirements. In addition to other requirements stated in this administrative regulation, the following specific requirements shall be met:

(1) The drinking water project shall use the best practicable treatment and distribution technology.

(2) Any drinking water project with a related distribution system shall assure that the distribution system is in good repair, or shall include a component to address system problems, to assure that water loss will be within acceptable ranges for the system.

(3) The drinking water project shall be consistent with long range water supply plans developed pursuant to KRS Chapter 151, and with capacity development strategies developed pursuant to the Safe Drinking Water Act.

(4) The applicant shall demonstrate that the public water system that is to benefit from the project, has capacity to operate in accordance with 401 KAR Chapter 8 and this administrative regulation; or, the applicant shall demonstrate that the project will create capacity for the public water system to operate or be operated in accordance with 401 KAR Chapter 8 and this administrative regulation.

(5) The applicant shall have an adequate revenue stream to assure the repayment of the financial assistance while allowing capacity to efficiently operate the public water system.

(6) The drinking water project shall be cost effective.

(7) All construction contracts shall be awarded to the lowest responsive responsible bidder.

Section 8. Provision for Financial Assistance. (1) Upon completion of the credit review by the authority's staff, the application shall be submitted to the authority's board for action, subject to the cabinet's priority ranking and favorable recommendation of the project. The credit review shall include an analysis of the applicant's ability to generate sufficient revenue based on financial statements provided by the applicant to cover operating costs and to repay the required principal, interest, fees, and reserves required by receipt of the financial assistance. The cabinet's recommendation shall be based on the project's compliance with the technical and environmental requirements of the Safe Drinking Water Act.

(2) If the authority approves the application, a conditional commitment letter shall be issued to the applicant. This letter shall set forth the conditions and documentation required by the authority prior to execution of an assistance agreement. Funds shall not be provided until the assistance agreement is fully executed and any special conditions included therein met.

(3)(a) The authority shall establish interest rates based on:

1. Prevailing market conditions;
2. Availability of funds; and
3. Demand for financial assistance.

(b) The executive director of the authority shall recommend rates to the authority board for approval at least annually.

(c) The rate of interest on financial assistance shall be set forth in the conditional commitment letter.

(d) Interest rates shall be offered at the:

1. Standard rate; and
2. A nonstandard rate, which may be lower than the standard rate.

(e) Applicants shall receive the standard rate of interest unless they qualify for the nonstandard rate.

(f) The authority may establish one (1) or more nonstandard rates and shall use the following criteria in establishing a nonstandard rate:

1. The median household income of the applicant's jurisdiction or service area as published by the Kentucky State Data Center;
2. The median household income of the service area as identified by income surveys;
3. Regionalization as set out in Section 1(24) of this administrative regulation and verified by the authority;
4. Qualification as a disadvantaged community as set out in Section 1(14) of this administrative regulation and verified by the authority;
5. The existence of an order or judgment addressing environmental noncompliance; or
6. Other criteria relating to public health or safety or financial considerations that the authority may determine.

(g) If the nature of a drinking water project financed by the authority's financial assistance causes interest on any authority bonds issued to fund the drinking water project to become taxable, the authority may consider adjustments in the interest rate to reflect the additional costs of authority funds.

(4) Principal on any financial assistance shall be repaid over a period not to exceed federal requirements or the life of the facilities being financed. Repayment of principal shall commence within one (1) year of the initiation of operation of the drinking water project or upon another date as may be set forth in the assistance agreement. Principal shall be payable semiannually, unless the authority establishes a more frequent payment schedule based on the credit review. The repayment period may be equal to or less than the federally-permitted maximum at the discretion of the authority.

(5) Interest payments on the outstanding principal amount of the financial assistance shall be

paid semiannually and shall commence within six (6) months of initial disbursement of financial assistance proceeds, unless the interest payments are dependent upon revenues generated from the drinking water project. If interest payments are directly dependent upon revenues, interest payments shall begin within six (6) months after the drinking water project is completed, and interest to cover the authority's cost of money during the construction period may be added to the amount of the financial assistance.

(6) The principal amount of financial assistance shall be equal to the amount approved by the authority's board. The financial assistance amount may be adjusted by the authority's executive director up to ten (10) percent of the amount stated in the conditional commitment letter without further action by the board, subject to the availability of user fees sufficient to service the debt and authority funds to provide the increase.

(7) To ensure adequate funds for major maintenance and replacement of the drinking water projects funded by this program, the applicant may be required to set aside annually to a replacement reserve fund from current revenues, after taking into account costs of operations and maintenance and debt service requirements, an amount to be determined by the authority. Monies may be withdrawn from the account if major maintenance or replacement of equipment in excess of budgeted amounts is required.

(8) The assistance agreement between the authority and applicant shall contain terms and conditions as the authority deems necessary to maintain the financial integrity of the Drinking Water State Revolving Fund.

Section 9. Applicants' Capacity. The cabinet and the authority may require as a condition of any financial assistance that the applicant perform any or all of the following:

(1) Document compliance with requirements for adequate capacity to operate the public water system;

(2) Demonstrate the ability to operate as well as maintain, the project in a proper manner through the final maturity date of the financial assistance or the useful life of the project, whichever is greater; and

(3) Document compliance with any other state or federal requirements that apply to this program.

Section 10. Submission and Review of Requisition for Funds. (1) The original requisition for funds with the required invoices attached shall be submitted to the authority and one (1) copy of each requisition for funds with the required invoices attached shall be submitted to the cabinet.

(2) The cabinet shall review requisitions for funds for compliance with federal and state requirements as defined in the conditional commitment letter and assistance agreement before approving payment by the authority.

Section 11. Financial Assistance Closing. (1) If an applicant does not meet all conditions for financial assistance closing and take action to award contracts for the drinking water project as outlined in the conditional commitment letter, the financial assistance commitment shall expire.

(2) An extension may be granted upon request of the applicant if the authority staff, after consultation with the cabinet, determines that circumstances warrant the granting of the extension. If the extension is denied, the loan commitment shall be rescinded.

(3) If a request for a time extension is granted but all the conditions still cannot be met during the extension period, the loan commitment may be rescinded. The applicant may reapply for a loan for any project for which the loan commitment has expired or has been rescinded under this section. An applicant that reapplies for a loan for substantially the same project shall be given, at the authority's discretion, the standard or hardship interest rate applicable when reapplying or the

initial rate assigned, depending on affordability. Except, the interest rate shall not be lower than the initial rate assigned to the project.

Section 12. Financial Assistance Conditions. (1) In order to establish and maintain or improve capacity, the applicant shall:

(a) Adopt a uniform system of accounting, consistent with nationally-recognized standards and approved by the authority, which includes an annual budget, a chart of accounts, and a monthly management reporting;

(b) Certify that rates and charges for drinking water services are, or will be adjusted to be adequate to cover costs and that they are based upon the cost of providing the service; and

(c) Comply with other financial, managerial, and technical conditions as established by the authority's board.

(2) If an applicant is found by an administrative or court order to have violations which were cited by the cabinet or other regulatory agency, the applicant shall be subject to a financial review by the authority, and may be subject to a management assessment or other review by the authority and shall comply with the recommendations contained in the review or assessment.

Section 13. Authority to Administer the Program. The authority staff shall monitor the assistance agreements and require that financial reports be made available to the authority by the governmental agency at intervals as shall be deemed necessary by the authority based on financial performance or the compilation of a program report. The authority staff shall monitor the cash flows of the project and perform all actions that shall be required to assure that the agreements continuously meet the program standards established by this administrative regulation.

Section 14. Administrative Fees. At the beginning of each state fiscal year, the authority shall set an administrative fee to be charged for all financial assistance approved during that year. The fee shall apply to the unpaid balance of the financial assistance and shall be used to defray the authority's expenses of servicing the financial assistance and necessary operating expenses of the program.

Section 15. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Fund F Loan Form", 2006; and

(b) "Request for Payment", 2006.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Infrastructure Authority, 1024 Capital Center Drive, Suite 340, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be obtained on the Kentucky Infrastructure Authority internet Web site at <http://www.kia/ky.gov>. (23 Ky.R. 4246; Am. 24 Ky.R. 855; eff. 9-25-97; 32 Ky.R. 1323; 1910; 2242; eff. 7-7-2006; Crt eff. 2-28-2020.)