
Rules of
Department of Natural Resources
Division 60—Public Drinking Water Program
Chapter 13—Grants and Loans

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**Title 10—DEPARTMENT OF
NATURAL RESOURCES**
**Division 60—Public Drinking Water
Program**
Chapter 13—Grants and Loans

**10 CSR 60-13.010 Grants for Public Water
Supply Districts and Small Municipal
Water Supply Systems**

PURPOSE: This rule establishes the department's grant application procedure and a means of administering the state funds appropriated for construction of public water supply systems.

(1) Grant Application Requirements.

(A) An application for a grant shall be submitted on forms provided by the department. The application shall be supported by the necessary documents and forms from other state and federal grant or lending agencies or private lending agencies to enable the department to establish eligibility for grant funds.

(B) The project for which the grant application is submitted shall comply with appropriate state and local laws, rules and ordinances.

(C) These grants are to be considered secondary sources of funding and, as such, shall in no case exceed one thousand four hundred dollars (\$1400) per contracted connection or fifty percent (50%) of the total project cost, whichever is less.

(D) The grant application shall contain the information listed in paragraphs (1)(D)1.-6. of this rule:

1. The preliminary engineering cost study for the proposed project including, but not limited to, the following items: development and administration costs; land, structures, right-of-way costs; legal costs; engineering costs; interest costs; equipment costs; contingencies; other costs; and total project costs;

2. Bonded indebtedness of the district or community, including: outstanding general obligation and revenue bonds; the purpose of each indebtedness; the amount of each indebtedness; the amortization period; the date payments are due; amount of installment; and the interest rate;

3. The financial condition of the district or community, including: the total assessed value of agricultural, commercial and industrial property, vacant lots and residential property; total annual revenue anticipated from this assessed property; other sources of income available to finance the project; and cash on hand. The latest audit with an update would satisfy the requirements of this paragraph;

4. The information required to determine the cost per contracted connection;

5. The median annual gross income of the residents in the district or community as determined in the latest census; and

6. Information required to determine the ratio of the contracted users to the potential users.

(2) Grant Priorities.

(A) Priorities for grants for public water supply districts and rural community water systems shall be established by the department.

(B) The establishment of priorities and determination of relative need will be coordinated with appropriate federal grant and lending agencies and with appropriate state agencies.

(3) Approval and Payment of Grants.

(A) The applicant shall be notified by the department when the grant application has been approved.

(B) Installment payments of the grant shall be made at the request of the applicant and shall be based on expenditures outlined in paragraph (1)(D)1. of this rule. Payments will be made in equal installments as listed in paragraphs (3)(B)1.-4. of this rule—

1. A first installment will be made when not less than twenty-five percent (25%) of the construction of the project is completed;

2. A second installment will be made when not less than fifty percent (50%) of the construction of the project is completed;

3. A third installment will be made when not less than seventy-five percent (75%) of the construction of the project is completed; and

4. A fourth installment will be made after the project is completed, appropriate receipts and expenditures have been submitted and approved by the department, a final inspection has been performed by department personnel and construction is approved by the department.

(C) Any cost of work completed after the department's final inspection approval shall not be an eligible project cost.

(D) An audit to verify expenditures of grant funds may be made by the department after the completion of each approved project.

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**Original authority 1989.*

**10 CSR 60-13.020 Drinking Water Revolving
Fund Loan Program**

PURPOSE: This rule sets forth eligibility and application requirements for applicants for loans from the Drinking Water Revolving Fund established in section 640.107, RSMo as a subfund of the Water and Wastewater Loan Fund, and describes the evaluation and priority point award process.

The rule establishes requirements for loan recipients, including binding commitments, pre-closing, loan closing, accounting, record keeping, procurement and contract requirements. Eligible and noneligible costs are specified. Criteria for project by-pass, project removal and modification of funding are established. The leveraged loan structure for the Drinking Water Revolving Fund established in section 640.107, RSMo as a subfund of the Water and Wastewater Loan Fund is described.

(1) Application and Eligibility Requirements. This section applies to applicants for loan assistance from the Drinking Water Revolving Fund established in section 640.107, RSMo as a subfund of the Water and Wastewater Loan Fund.

(A) Definitions.

1. The terms and definitions in 10 CSR 60-2.015 apply to the rules in this chapter.

2. Additional terms specific to the Drinking Water State Revolving Fund (DWSRF) program are defined in this subsection.

A. Binding commitment—A legal obligation by the state to a local recipient that defines the terms and the timing for assistance under the Drinking Water Revolving Fund.

B. Comprehensive project list—The list of all eligible projects for which applications have been received and evaluated.

C. Drinking water revolving fund (DWRF)—The drinking water revolving fund for loans established as a subfund of the Water and Wastewater Loan Fund by section 640.107, RSMo. The DWRF shall be maintained and accounted for separately and moneys in the DWRF shall be used only for purposes authorized in the federal Safe Drinking Water Act (SDWA).

D. Drinking water state revolving fund (DWSRF)—The entire program established under section 1452 of the federal Safe Drinking Water Act (SDWA), which includes DWRf loans and other activities allowed under that section of the SDWA.

E. Equivalency projects—Projects that must total the amount equal to the federal capitalization grants, and must comply with environmental review requirements and federal cross-cutting authorities.

F. Fundable list—The list of projects to receive funding during the fiscal year covered by the intended use plan (IUP).

G. Intended use plan—A document prepared each year that identifies the intended uses of the funds in the DWSRF and describes how those uses support the goals of the DWSRF.

(B) Eligible Public Water Systems.

1. Community water systems and non-profit noncommunity water systems located in Missouri that are not federally owned are eligible to apply for DWRf loans. Eligibility to apply does not guarantee assistance or eligibility for assistance.

2. All other types of public water systems are not eligible to apply for DWRf loans.

(C) Eligible Projects.

1. Assistance may be provided for expenditures (not including monitoring, operation, and maintenance expenditures) of a type or category which will facilitate compliance with national primary drinking water regulations applicable to the system or otherwise significantly further the health protection objectives of the federal Safe Drinking Water Act (SDWA).

2. Projects to address federal SDWA health standards identified in the intended use plan or in the DWRf loan priority point criteria that have been exceeded and projects to prevent future violations of the rules are eligible for funding. These include projects to maintain compliance with existing regulations for contaminants with acute health effects (such as the Surface Water Treatment Rule, the Total Coliform Rule, and nitrate standard) and regulations for contaminants with chronic health effects (such as Lead and Copper Rule, Phases I, II, and V Rules, and safety standards for total trihalomethanes, arsenic, barium, cadmium, chromium, fluoride, mercury, selenium, combined radium-226, -228, and gross alpha particle activity).

3. Projects to address imminent federal SDWA health standards (identified in the annual intended use plan) that have been exceeded or to prevent future violations of the anticipated rules are eligible for funding.

4. Projects to replace aging infrastructure are eligible if they are needed to maintain compliance or further the public health protection objectives of the federal SDWA. Examples of these include projects to:

A. Rehabilitate or develop sources (excluding reservoirs, dams, dam rehabilitation and water rights) to replace contaminated sources;

B. Install or upgrade treatment facilities if, in the department's opinion, the project would improve the quality of drinking water to comply with primary or secondary standards;

C. Install or upgrade storage facilities, including finished water reservoirs, to prevent microbiological contaminants from entering the water system; and

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. Projects to consolidate water supplies (for example, when individual homes or other public water supplies have a water supply that is contaminated, or the system is unable to maintain compliance for financial or managerial reasons) are eligible for DWRf loan assistance.

6. The purchase of a portion of another system's capacity is eligible for a loan if it is the most cost-effective solution.

(D) Application Procedures.

1. Application deadline. Applications must be postmarked or received by the Public Drinking Water Program by the calendar date established in the annual application package as the application deadline. The deadline will be no sooner than sixty (60) days after the application package is made available. The department may extend this deadline if insufficient applications are received to use all of the funds expected to be available.

2. Applicants shall provide:

A. A completed application form provided by the department;

B. Documentation that they have a chief operator certified at the appropriate level, or expect to have prior to loan award;

C. Documentation that they have an emergency operating plan, or expect to have prior to loan award;

D. Any additional information requested by the department for priority point award or project evaluation;

E. Any additional information request by the department to determine the applicant's compliance history and technical, managerial and financial capacity as required under the federal SDWA; and

F. Any additional information for determination of financial capability of the applicant. This may include but is not limited to: changes in economic growth, changes in population growth, depreciation, existing debt, revenues, project costs, and effects of the project on user charge rates.

3. Unsuccessful applicants requesting funds during a given fiscal year who have completed the requirements in this section (1) shall be considered for funding the next fiscal year and need not reapply.

4. By submission of its application, the applicant certifies and warrants that he/she has not, nor will through the DWRf loan amortization period, violate any of his/her bond covenants.

(E) Evaluation and Priority Point Award.

1. Projects will be assigned priority points in accordance with the DWRf loan priority point criteria. The department shall annually seek public review and comment on the DWRf loan priority point criteria. The commission shall approve the DWRf loan priority point criteria at least sixty (60) days prior to the annual application deadline.

2. Projects will be listed in the intended use plan in priority order according to the number of priority points assigned to the project. Projects accumulating the same number of total priority points will be ranked using the tie-breaking criteria in the DWRf loan priority point criteria.

3. The department shall prepare and seek public comment on an annual intended use plan that meets or exceeds federal requirements, including the list of proposed projects. The commission may hold one or more public meetings or public hearings on the intended use plan for loans. Any applicant aggrieved by his/her standing may appeal to the commission during the public comment process.

4. No DWRf loan assistance shall be provided to a public water system that does not have the technical, managerial, and financial (TMF) capacity to ensure compliance with the federal SDWA, unless the owner or operator of the system agrees to undertake feasible and appropriate changes to ensure that the system has TMF capacity.

5. No DWRf loan assistance shall be provided to a public water system that is in significant noncompliance with any requirement of a national primary drinking water regulation or variance unless use of the assistance will ensure compliance.

(2) Requirements for Loan Recipients. This section applies to recipients of loans from the Drinking Water Revolving Fund established in section 640.107, RSMo as a subfund of the

Water and Wastewater Loan Fund. The recipient must satisfy more stringent requirements if required to do so by federal, state or local statutes, policies, rules, ordinances or orders.

(A) Leveraged Loans. The department may direct projects toward the leveraged loan structure described in section (4) of this rule. The department's decisions shall be based upon the amount of DWRf assistance funds available, the amount of DWRf assistance funds requested, the size of the project, the credit worthiness of the applicant and the applicant's authority to incur long-term debt. For such projects, the requirements in section (4) apply in addition to the requirements in sections (1)–(3) of this rule.

(B) Fees.

1. Under the authority of section 644.106, RSMo, the department may charge an administrative fee on assistance made pursuant to Chapter 644, RSMo, which includes the Water and Wastewater Loan Fund. The Drinking Water Revolving Fund is a subfund of that fund. The department and Clean Water Commission set the administrative fee under their authority in section 644.106, RSMo and the fee does not exceed one percent (1%) of the outstanding loan balance of each DWRf loan.

2. Additional administrative fees. Additional administrative fees may be assessed by the department, under the authority of section 644.106, RSMo, at the time the administration fee is calculated for failure by a recipient to submit approved documents to the department (for example, operation and maintenance manuals, plan of operation, enacted user charge and water use ordinances, executed contract documents) in accordance with the time frames provided under the program agreement entered into by the recipient. The additional fee will be an additional one-tenth percent (.1%) per month that the document remains delinquent. The additional fee will be collected only during the year in which the document is not submitted.

(C) Equivalency Projects. For equivalency projects the recipient and its contractors must comply with all requirements associated with funds provided under the federal Safe Drinking Water Act. The department will identify equivalency projects and notify potential loan recipients.

(D) Design. Design of projects for community water systems shall conform with accepted engineering practices. Design of projects for applicable noncommunity water systems shall conform with accepted engineering practices and the current "Standards for Non-Community Public Water Supplies." A preliminary design submittal, including the

design criteria and facilities layout sheet, may be required at approximately the twenty percent (20%) design stage.

(E) Public Participation. The public must be allowed an opportunity to exchange ideas with the applicant during project development. Public participation must be preceded by timely distribution of information and must occur sufficiently in advance of decision making to allow the recipient to assimilate public views into action. At a minimum, the recipient must provide the following opportunities for public participation:

1. A public meeting shall be conducted to discuss the alternative engineering solutions;

2. Prior to approval of the draft user charge ordinance, a public meeting shall be conducted to address the proposed user charge rates. Public notice of the meeting should be published at least thirty (30) days prior to the meeting date in one (1) or more local newspapers, as needed to cover the project service area. The recipient shall prepare a transcript, recording or other complete record of the proceeding along with proof of publication and submit it to the department and make it available at no more than cost to anyone who requests it. A copy of the record should be available for public review; and

3. Public participation requirements for environmental review are in 10 CSR 60-13.030.

(F) Binding Commitment. In order for the department to offer to enter into a binding commitment, all documents and information required in this subsection (2)(F) must be submitted to the department at least sixty (60) days prior to the applicant's binding commitment deadline established by the department.

1. Engineering report. The applicant must submit an engineering report that meets or exceeds the requirements in this subsection and applicable public participation requirements in subsection (2)(E) of this rule.

A. Engineering reports of projects for community water systems must be in accordance with accepted engineering practices. References such as the current "Design Guide for Community Water Systems" and "Ten State Standards" should be considered for design standards.

B. Engineering reports of projects for non-community water systems must be in accordance with accepted engineering practices and the current "Standards for Non-Community Public Water Supplies."

C. The most feasible, economic and environmentally sound alternatives for providing safe drinking water must be studied and evaluated.

D. An estimate of the average user charge including documentation of the basis of the estimate must be included.

E. An assessment of the environmental conditions and impact of the proposed project on the environment is required.

2. Detailed project budget. A detailed proposed project budget shall be submitted.

3. Project schedule. A proposed project schedule shall be submitted, including, at a minimum:

A. Construction start defined as date of issuance of notice to proceed;

B. Construction completion;

C. Initiation of operation; and

D. Project completion.

4. Environment review. All applicable environmental review requirements in 10 CSR 60-13.030 must be completed before the department enters into a binding commitment with the applicant.

(G) Additional Preclosing Requirements. After the department has entered into a binding commitment with the applicant, the following requirements must be met before loan closing can occur. All documents and information necessary to provide assistance must be submitted to the department in sufficient time to allow adequate time for review and must be approved sixty (60) days prior to the loan closing date established by the department. The department may extend deadlines if justified.

1. Final document submittal. The following documents must be submitted to and approved by the department:

A. Resolution identifying the authorized representative by name. Applicants for assistance under the DWRf shall provide a resolution by the governing body designating a representative authorized to file the application for assistance, reimbursement requests and act in behalf of the applicant in all matters related to the project;

B. Any and all changes to the proposed project schedule;

C. Draft engineering contract as described in subsection (2)(L) of this rule;

D. Plans and specifications certified by a registered professional engineer licensed in Missouri;

E. Certification of easements and real property acquisition. Recipients of assistance under the DWRf loan program shall have obtained title or option to the property or easements for the project prior to loan closing;

F. Draft user charge and water use ordinances as described in paragraph (2)(G)3. of this rule; and

G. Other information or documentation deemed necessary by the applicant or the

department to ensure the proper expenditure of DWRF funds.

2. Projects serving multiple water systems. Prior to closing, if the project serves two (2) or more public water systems, the applicant shall submit executed agreements or contracts between the public water systems for the financing, construction and operation of the proposed facilities. At a minimum, the agreement or contract shall include:

A. The operation and maintenance responsibilities of each party upon which the costs are allocated;

B. The formula by which the costs are allocated; and

C. The manner in which the costs are allocated.

3. User charge (water rate) ordinance.

A. Loan recipients are required to maintain, for the useful life of the project, user charge ordinances approved by the department. User charge ordinances, at a minimum, shall be adopted prior to financing and implemented by the initiation of operation of the financed project. A copy of the enacted ordinances shall be submitted prior to initiation of operation.

B. The user charge system shall be designed to produce adequate revenues required for the operation and maintenance, including a reserve for equipment replacement. A one hundred ten percent (110%) debt service reserve may be required. Each user charge system shall—

(I) Be based upon actual use;

(II) Include an adequate financial management system that will accurately account for revenues generated by the system, debt service and loan fee costs and expenditures for operation and maintenance, including replacement based on an adequate budget identifying the basis for determining the annual operation and maintenance costs and the costs of personnel, material, energy and administration;

(III) Provide for an annual review of charges; and

(IV) Be based on an approved rate guidance, such as the American Waterworks Association guidance.

C. The loan recipient shall provide certification that the rates were derived using an acceptable rate method.

4. Water use ordinance. Applicants dependent on user fees for debt payment or operation and maintenance expenses shall have in place an enforceable water use ordinance prior to loan closure. The water use ordinance shall address water system responsibilities and customer responsibility relating to installation and maintenance of water meters and water lines; easements; alterna-

tive sources of water; and provisions for breach of contract and liquidated damages. The water use ordinance is intended to be an effective business tool for the efficient management of the water system.

5. Additional requirements for privately-owned public water systems. Privately-owned public water systems must provide documentation from the Missouri Department of Economic Development showing an allocation under Missouri's private activity bond cap and must obtain any necessary approvals from the Public Service Commission.

(H) Operation and Maintenance.

1. Plan of operation.

A. If required by the department, the recipient of assistance for construction of public water systems must make provision satisfactory to the department for the development of a plan of operation designed to assure operational efficiency be achieved as quickly as possible. A plan of operation must be submitted by fifty percent (50%) construction completion and approved by ninety percent (90%) construction completion.

B. The recipient will ensure that the schedule of tasks as outlined in the approved plan of operation is implemented and completed in accordance with the schedules and prior to final inspection of the project. Plan of operations must be approved by the official project start-up date.

2. Operation and maintenance manual. The recipient must make provision satisfactory to the department for assuring effective operation and maintenance of the constructed project throughout its design life. Recipients of assistance for construction of mechanical facilities must make provision satisfactory to the department to develop for approval an operation and maintenance manual. A draft operation and maintenance manual must be submitted by fifty percent (50%) construction completion. At ninety percent (90%) construction, the final operation and maintenance manual must be approved.

3. Start-up training. At fifty percent (50%) construction completion, a start-up training proposal (if required) and proposed follow-up services contract must be submitted. This contract must be approved by ninety percent (90%) construction completion.

4. Certified operator. The recipient must make provision satisfactory to the department for assuring that certified operator(s) and maintenance personnel are hired in accordance with an approved schedule.

5. System certification. One (1) year after initiation of operation of the constructed public water system, the recipient shall certify to the department whether or not the pub-

lic water system meets the project performance standards. Any statement of noncompliance must be accompanied by a corrective action report containing an analysis of the cause of the project's inability to meet performance standards, actions necessary to bring it into compliance and reasonably scheduled date for positive certification of the project. Timely corrective action shall be executed by the recipient.

(I) Accounting and Audits. Applicants are required to have a dedicated source for repayment of any loans and an adequate financial management system and audit procedure for the project which provides efficient and effective accountability and control of all property, funds and assets related to the project. The applicant's financial system is subject to state or federal audits to assure fiscal integrity of public funds.

1. Each recipient is expected to have an adequate accounting system for the project which provides efficient and effective accountability and control of all property, funds and assets.

A. The recipient is responsible for maintaining a financial management system which will adequately provide for an accurate, current and complete disclosure of the financial results of each DWRF loan project. Accounting for project funds will be in accordance with generally accepted government accounting principles and practices, consistently applied, regardless of the source of funds.

B. An acceptable accounting system includes books and records showing all financial transactions related to the construction project. The system must document all receipt and disbursement transactions. It also must group them by type of account (for example, asset, revenue, expense, etc.) and by individual expense account (for example, personnel salaries and wages, subcontract costs, etc.) The recipient shall maintain books, records, documents and other evidence and accounting procedures and practices, sufficient to reflect properly the amount, receipt and disposition by the recipient for all assistance received for the project and the total costs of the project of whatever nature incurred for the performance of the project for which the assistance was awarded. Some of the minimum standards for an adequate accounting system are—

(I) The accounting system should be on a double entry basis with a general ledger in which all transactions are recorded in detail or in summary from subordinate accounts;

(II) Recording of transactions pertaining to the construction project should be

all inclusive, timely, verifiable and supported by documentation;

(III) The system must disclose the receipt and use of all funds received in support of the project;

(IV) Responsibility for all project funds must be placed with either a project manager or trust agent;

(V) Responsibility for accounting and control must be segregated from project operations. The accounting system and related procedures should be documented for consistent application;

(VI) The accrual basis of accounting is strongly recommended for construction projects as it provides an effective measure of costs and expenditures;

(VII) Inventories of property and equipment should be maintained in subordinate records controlled by the general ledger and should be verified by physical inventory at least biennially;

(VIII) The accounting system must identify all project costs and differentiate between eligible and ineligible costs;

(IX) Accounts should be set up in a way to identify each organizational unit, function or task providing services to the construction project;

(X) An important project management objective of the system is the derivation of information regarding actual versus budgeted costs by project task and performing organization; and

(XI) Financial reports should be prepared monthly to provide project managers with a timely, accurate status of the construction project and costs incurred.

2. Audits. The recipient must comply with the provisions of OMB Circular A-128 governing the audit of state and local government.

(J) Record Retention Requirements.

1. Construction-related activities. At a minimum, the recipient must retain all financial, technical and administrative records related to the planning, design and construction of the project for a minimum period of seven (7) years following receipt of the final construction payment from DWRP loan program associated assistance or the recipient's acceptance of construction, whichever is later. Records shall be available to state, federal officials, or both, for audit purposes during normal business hours during that period.

2. Post-construction financing activities. At a minimum, the recipient must retain all financial and administrative records related to post-construction project financing for a minimum period of seven (7) years following full repayment of any assistance on the DWRP loan program project.

(K) Minimum Requirements for Architectural or Engineering Contracts.

1. General requirements for subagreements. The subagreement must—

A. Be necessary for and directly related to the accomplishment of the project;

B. Be a lump sum or cost plus fixed fee contract in the form of a bilaterally executed written agreement;

C. Be for monetary consideration;

D. Not be in the nature of a grant or gift;

E. State a time frame for performance;

F. State a cost which cannot be exceeded except by amendment; and

G. State provisions for payment.

2. The nature, scope and extent of work to be performed during construction should include, but not be limited to, the following:

A. Preparing a plan of operation if required by the department that meets the requirements of paragraph (2)(H)1. of this rule;

B. Preparing an operation and maintenance manual if required by the department that meets the requirements of paragraph (2)(H)2. of this rule;

C. Assisting the recipient in letting bids;

D. Assisting the recipient in reviewing and analyzing construction bids and making recommendations for award;

E. Inspecting during construction to ensure conformance with the construction contract documents unless waived by the department; and

F. Assisting with facility operation for purposes of certifying that the facility is operating properly one (1) year after start-up.

3. Executed engineering contract submittal. The final approved executed engineering contract must be submitted prior to the first reimbursement request.

(L) Procurement of Engineering Services.

1. Contracts for architectural, engineering and land surveying services shall be negotiated on the basis of demonstrated competence, qualifications for the type of services required and at fair and reasonable prices. The procedures and procurement requirements in sections 8.285–8.291, RSMo apply unless the applicant elects to use the design/build option described in subsection (2)(O) of this rule.

2. Use of the same architect or engineer during construction. If the recipient is satisfied with the qualifications and performance of the architect or engineer who provided any or all of the facilities planning or design services for the project and wishes to retain that firm or individual during construction of the

project, he/she may do so without further public notice and evaluation of qualifications, provided the recipient selected the firm using, at a minimum, the procedures in sections 8.285–8.291, RSMo.

(M) Specifications. The construction specifications must contain the following:

1. Recipients must incorporate in their specifications a clear and accurate description of the technical requirements for the material, product or service to be procured. The description, in competitive procurement, shall not contain features which unduly restrict competition unless the features are necessary to test or demonstrate a specific thing or to provide for interchangeability of parts and equipment. The description shall include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use;

2. The recipient shall avoid the use of detailed product specifications if at all possible;

3. When in the judgment of the recipient it is impractical or uneconomical to make a clear and accurate description of the technical requirements, recipients may use a brand name or equal description as a means to define the performance or other salient requirements of a procurement. The recipient need not establish the existence of any source other than the named brand. Recipients must state clearly in the specification the salient requirements of the named brand which must be met by offerers;

4. Sole source restriction. A specification shall not require the use of structures, materials, equipment or processes which are known to be available only from a sole source, unless the department determines that the recipient's engineer has adequately justified in writing to the department that the proposed use meets the particular project's minimum needs;

5. Experience clause restriction. The general use of experience clauses requiring equipment manufacturers to have a record of satisfactory operation for a specified period of time or of bonds or deposits to guarantee replacement in the event of failure is restricted to special cases where the recipient's engineer adequately justifies any such requirement in writing. Where this justification has been made, submission of a bond or deposit shall be permitted instead of a specified experience period. The period of time for which the bond or deposit is required shall not exceed the experience period specified;

6. Domestic products procurement law. In accordance with sections 34.350–34.359, RSMo, the bid documents shall require all manufactured goods or commodities used or supplied in the performance of any contract or subcontract awarded on a loan project to be manufactured, assembled or produced in the United States, unless obtaining American-made products would increase the cost of the contract by more than ten percent (10%);

7. Bonding. On construction contracts exceeding one hundred thousand dollars (\$100,000), the bid documents shall require each bidder to furnish a bid guarantee equivalent to five percent (5%) of the bid price. In addition, the bid documents must require the successful bidder to furnish performance and payment bonds, each of which shall be in an amount not less than one hundred percent (100%) of the contract price;

8. State wage determination. The bid documents shall contain the current prevailing wage determination issued by the Missouri Department of Labor and Industrial Relations, Division of Labor Standards;

9. Small, minority, women’s and labor surplus area businesses.

A. The recipient shall take affirmative steps and the bid documents shall require the bidders to take affirmative steps to assure that small, minority and women’s businesses are used when possible as sources of supplies, construction and services.

B. If the contractor awards subagreements, then the contractor is required to take the affirmative steps in this paragraph (2)(M)9.

C. Affirmative steps shall include the following:

(I) Including qualified small, minority and women’s businesses on solicitation lists;

(II) Assuring that small, minority and women’s businesses are solicited whenever they are potential sources;

(III) Dividing total requirements, when economically feasible, into small tasks or quantities to permit maximum participation of small, minority and women’s businesses;

(IV) Establishing delivery schedules, where the requirements of the work permit, which will encourage participation by small, minority and women’s businesses; and

(V) Using the services and assistance of the Small Business Administration and the Office of Minority Business Enterprise of the United States Department of Commerce as appropriate;

10. Debarment/suspension. The recipient agrees to deny participation in services, supplies or equipment to be procured for this

project to any debarred or suspended firms or affiliates in accordance with Executive Order 12549. The recipient acknowledges that doing business with any party listed on the List of Debarred, Suspended or Voluntarily Excluded Persons may result in disallowance of project costs under the assistance agreement;

11. Right of entry to the project site shall be provided for representatives of the department, Environmental Improvement and Energy Resources Authority (EIERA) and U.S. Environmental Protection Agency so they may have access to the work wherever it is in preparation or progress; and

12. The specifications must include the following statement: “The owner shall make payment to the contractor in accordance with section 34.057, RSMo.”

(N) Construction Equipment and Supplies Procurement. This section describes the minimum procurement requirements which the recipient must use under the DWRP loan program unless the applicant elects to use the design/build option described in subsection (2)(O) of this rule.

1. Small purchases. A small purchase is the procurement of materials, supplies and services when the aggregate amount involved in any one (1) transaction does not exceed twenty-five thousand dollars (\$25,000). The small purchase limitation of twenty-five thousand dollars (\$25,000) applies to the aggregate total of an order, including all estimated handling and freight charges, overhead and profit to be paid under the order. In arriving at the aggregate amount involved in any one (1) transaction, all items which should properly be grouped together must be included. Department approval and a minimum of three (3) quotes must be obtained prior to purchase.

2. Bidding requirements. This paragraph applies to procurement of construction equipment, supplies and construction services in excess of twenty-five thousand dollars (\$25,000) awarded by the recipient for any project. No contract shall be awarded until the department has approved the formal advertising and bidding.

A. Formal advertising.

(I) Adequate public notice. The recipient will cause adequate notice to be given of the solicitation by publication in newspapers of general circulation beyond the recipient’s locality (preferable statewide), construction trade journals or plan rooms, inviting bids on the project work and stating the method by which bidding documents may be obtained or examined.

(II) Adequate time for preparing bids. A minimum of thirty (30) days shall be

allowed between the date when public notice, publication, insertion or document availability in a plan room is first published and the date by which bids must be submitted. Bidding documents shall be available to prospective bidders from the date when the notice is first published or provided.

B. Bid document requirements and procedure.

(I) The recipient shall prepare a reasonable number of bidding documents (Invitations for Bids) and shall furnish them upon request on a first-come, first-served basis. The recipient shall maintain a complete set of bidding documents and shall make them available for inspection and copying by any party. The bidding documents shall include, at a minimum:

(a) A completed statement of the work to be performed or equipment to be supplied and the required completion schedule;

(b) The terms and conditions of the contract to be awarded;

(c) A clear explanation of the method of bidding and the method of evaluation of bid prices and the basis and method for award of the contract or rejection of all bids;

(d) Responsibility requirements and criteria which will be employed in evaluating bidders;

(e) The recipient shall provide for bidding by sealed bid and for the safeguarding of bids received until public opening;

(f) If a recipient desires to amend any part of the bidding documents during the period when bids are being prepared, addenda shall be communicated in writing to all firms which have obtained bidding documents in time to be considered before the bid opening time. All addenda must be approved by the department prior to award of the contract;

(g) A firm which has submitted a bid shall be allowed to modify or withdraw its bid before the time of bid opening;

(h) The recipient shall provide for a public opening of bids at the place, date and time announced in the bidding documents. Bids received after the announced opening time shall be returned unopened;

(i) Award shall be to the lowest, responsive, responsible bidder. After bids are opened, the recipient shall evaluate them in accordance with the methods and criteria set forth in the bidding documents. The recipient shall award contracts only to responsible contractors that possess the potential ability to perform successfully under the terms and conditions of a proposed

contract. A responsible contractor is one that has financial resources, technical qualifications, experience, organization and facilities adequate to carry out the contract or a demonstrated ability to obtain these. The recipient may reserve the right to reject all bids. Unless all bids are rejected for good cause, award shall be made to the lowest responsive, responsible bidder. The recipient shall have established protest provisions in the specifications. These provisions shall not include the department as a participant in the protest procedures. If the recipient intends to make the award to a firm which did not submit the lowest bid, the recipient shall prepare a written statement before any award, explaining why each lower bidder was deemed nonresponsive or nonresponsive and shall retain the statements in its files. The recipient shall not reject a bid as nonresponsive for failure to list or otherwise indicate the selection of subcontractor(s) or equipment unless the recipient has clearly stated in the solicitation documents that the failure to list shall render a bid nonresponsive and shall cause rejection of a bid;

(j) The recipient is encouraged though not required to use the model specification clauses developed by the department; and

(k) Departmental concurrence with contract award must be obtained prior to actual contract award. Recipients shall notify the department in writing of each proposed construction contract which has an aggregate value over twenty-five thousand dollars (\$25,000). The recipient shall notify the department within ten (10) calendar days after the bid opening for each construction subagreement. The notice shall include:

I. Proof of advertising;
 II. Tabulation of bids;
 III. The bid proposal from the bidder that the recipient wishes to accept, including justification if the recommended successful bidder is not also the lowest bidder;

IV. Recommendation of award;

V. Any addenda not submitted previously and bidder acknowledgment of all addenda;

VI. Copy of the bid bond;
 VII. One (1) set of as-bid specifications;

VIII. Suspension/Debarment Certification;

IX. Revised financial capability worksheet and certification if bids exceed prebid estimates by more than fifteen percent (15%);

X. MBE/WBE Worksheet;

XI. Recipient's statement that proposed contractor(s) positive efforts, MBE/WBE utilization, or both, have been reviewed and meet regulatory requirements;

XII. Site certification, if not previously submitted; and

XIII. For equivalency projects, Certification of Nonsegregated Facilities.

(O) Design/Build Projects. Applicants may elect to use the design/build method of procuring design and construction services in lieu of the procurement methods described in subsection (2)(L) of this rule.

1. Additional application requirements. In addition to the application requirements listed in subsections (2)(L) and (2)(M) of this rule, the applicant must provide the department with—

A. A legal opinion of the applicant's counsel stating that the design/build procurement method is not in violation of any state or local statutes, charters, ordinances or rules pertaining to the applicant; and

B. A bid package that is sufficiently detailed to ensure that the bids received for the design/build work are complete, accurate, comparable and will result in the most cost-effective operable facility which meets the design requirements of the department. References such as the current "Design Guide for Community Water Systems," "Ten State Standards," and "Standards for Non-Community Public Water Supplies" should be considered for design standards. The pre-bid package shall contain, at a minimum, the clauses in paragraphs (2)(M)6.-8. of this rule.

2. Bidding procedures. Bidding shall be conducted in accordance with the procedures described in paragraph (2)(N)2. of this rule.

3. Contract type. Design/build contracts shall be lump sum contracts for the cost associated with design and construction. No increases to contract price for design and construction services shall be permitted. Recipients are encouraged to incorporate facility operations into the contract. When included in the contract, the cost of operations for an established time period may be included in the criteria for evaluating bids and selecting the lowest, responsible, responsive bidder.

4. Review and oversight. The recipient shall procure engineering services to oversee the design work performed by the design/build contractor and to provide resiliency inspection of construction. The department may require the recipient to submit plans, specifications and documentation during design and construction as necessary to

ensure that the facility meets state standards for design and construction.

5. Department approvals and permits. Prior to construction start, the recipient must obtain approval of the construction plans and specifications and obtain a construction permit from the department.

(P) Conflict of Interest.

1. No employee, officer or agent of the recipient shall participate in the selection, award or administration of a subagreement supported by state or federal funds if a conflict of interest, real or apparent, would be involved. This conflict would arise when—

A. Any employee, officer or agent of the recipient, any member of their immediate families or their partners have a financial or other interest in the firm selected for a contract; or

B. An organization which may receive or has been awarded a subagreement employs, or is about to employ, any person listed in subparagraph (2)(P)1.A. of this rule.

2. The recipient's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of substantial monetary value from contractors, potential contractors or other parties to subagreements.

(Q) Changes in Contract Price or Time. The contract price or time may be changed only by a change order. The value of any work covered by a change order or of any claim for increase or decrease in the contract price shall be determined by the methods set forth in the following:

1. Unit prices.

A. Unit prices previously approved are acceptable for pricing changes of original bid items. However, when changes in quantities exceed fifteen percent (15%) of the original bid quantity and the total dollar change of that bid item is greater than twenty-five thousand dollars (\$25,000), the recipient shall review the unit price to determine if a new unit price should be negotiated.

B. Unit prices of new items shall be negotiated;

2. A lump sum to be negotiated; and

3. Cost reimbursement. The actual cost for labor, direct overhead, materials, supplies, equipment and other services necessary to complete the work plus an amount to cover the cost of general overhead and profit.

(R) Progress Payments to Contractors.

1. Recipients should make prompt progress payments to prime contractors and prime contractors should make prompt progress payments to subcontractors and suppliers for eligible construction, supplies and equipment costs.

A. For purposes of this section, progress payments are defined as follows:

(I) Payments for work in place; and

(II) Payments for materials or equipment which have been delivered to the construction site or which are stockpiled in the vicinity of the construction site in accordance with the terms of the contract, when conditional or final acceptance is made by or for the recipient. The recipient shall assure that items for which progress payments have been made are adequately insured and are protected through appropriate security measures.

2. Appropriate provisions regarding progress payments must be included in each contract and subcontract.

3. Retention from progress payments. The recipient may retain a portion of the amount otherwise due the contractor. The amount the recipient retains shall be in accordance with section 34.057, RSMo.

(S) Classification of Costs. The information in this section represents policies and procedures for determining the eligibility of project costs for assistance under programs supported by the DWRP loan program.

1. All project costs will be eligible if they meet the following tests:

- A. Reasonable and cost effective;
- B. Necessary for the approved project including required mitigation; and
- C. Meet the eligibility requirements of the federal Safe Drinking Water Act.

2. Eligible costs include, at a minimum:

A. Engineering services and other services incurred in planning and in preparing the design drawings and specifications for the project. These services and their related expenses can be reimbursed based on actual invoices to be submitted after loan closing or by means of an allowance. For invoice reimbursement, the department must have a copy of the executed engineering contract for planning and design of the project. Allowance reimbursement for these services will be based on a percentage of the total eligible construction contract amounts at bid opening plus land, equipment, materials and supplies identified or referenced in the approved engineering report, Finding of No Significant Impact, or Categorical Exclusion as determined from Table 1 or 2 (as applicable). For phased or segmented projects, incremental allowance calculations and corresponding reimbursements may be made;

B. The reasonable cost of engineering services incurred during the building and initial operation phase of the project to ensure that it is built in conformance with the design drawings and specifications. A registered professional engineer licensed in Missouri or a person under the direction and continuing

supervision of a registered professional engineer licensed in Missouri must provide inspection of construction for the purpose of assuring and certifying compliance with the approved plans and specifications. Eligible construction phase and initial operation phase service are limited to—

- (I) Office engineering;
- (II) Construction surveillance;
- (III) Stakeout surveying;
- (IV) As-built drawings;
- (V) Special soils/materials testing;
- (VI) Operation and maintenance manual;

(VII) Follow-up services and the cost of start-up training for operators of mechanical facilities constructed by the project to the extent that these costs are incurred prior to this department's final inspection. Costs shall be limited to on-site operator training tailored to the facilities constructed or on- or off-site training may be provided by the equipment manufacturer if this training is properly procured;

- (VIII) User charge ordinance; and
- (IX) Plan of operation;

C. Abandoning costs. The reasonable and necessary cost of abandoning drinking water facilities no longer in use. Generally, these costs will be limited to the demolition and disposal of the structures, and abandoning unused wells in accordance with 10 CSR 23-3.110, and final grading and seeding of the site;

D. Change orders and the costs of meritorious contractor claims for increased costs under subagreements as follows:

(I) Within the allowable scope of the project;

(II) Costs of equitable adjustments due to differing site conditions; and

(III) Settlements, arbitration awards and court judgments which resolve contractor claims shall be allowable only to the extent that they are not due to the mismanagement of the recipient;

E. Costs necessary to mitigate only direct, adverse, physical impacts resulting from building of the treatment works;

F. The costs of site screening necessary to comply with environmental studies and facilities plans or necessary to screen adjacent properties;

G. Equipment, materials and supplies.

(I) The cost of a reasonable inventory of laboratory chemicals and supplies necessary to initiate plant operations and laboratory items necessary to conduct tests required for plant operation.

(II) Cost of shop equipment installed at the public water system necessary to the operation of the works.

(III) The costs of necessary safety equipment, provided the equipment meets applicable federal, state, local or industry safety requirements.

(IV) The costs of mobile equipment necessary for the operation of the overall public water system, or for the maintenance of equipment. These items include: portable standby generators; large portable emergency pumps; trailers and other vehicles having as their purpose the transportation or application, or both, of liquid or dewatered water treatment plant residuals; and replacement parts identified and approved in advance;

H. Costs of royalties for the use of or rights in a patented process or product with the prior approval of the department;

I. Land or easements when the acquisition of real property or interests therein is integral to a project authorized by section 1452(a)(2) of the federal Safe Drinking Water Act and the purchase is from a willing seller. Land must be purchased in accordance with the Uniform Relocation and Real Property Acquisition Policies Act of 1970, P.L. 91-646, as amended, and certification by the recipient of compliance with the Uniform Relocation and Real Property Acquisition Policies Act is required;

J. Force account work for construction oversight and engineering planning and design. If force account is used for planning and design, all engineering services during construction must be provided through force account;

K. The cost of preparing an environmental impact statement if required under 10 CSR 60-13.030;

L. Costs of issuance, capitalized interest, EIERA application fees, and contracted project administration costs; and

M. Debt service reserve deposits.

3. Noneligible costs include, but are not limited to:

A. The cost of ordinary site and building maintenance equipment such as lawnmowers and snowblowers;

B. The cost of general purpose vehicles for the transportation of the recipient's employees;

C. Costs allowable in subparagraph (2)(S)2.I. of this rule that are in excess of just compensation based on the appraised value;

D. Ordinary operating expenses of the recipient including salaries and expenses of elected and appointed officials and preparation of routine financial reports and studies,



and any permit fees necessary for the normal operation of the constructed facility;

E. Preparation of applications and permits required by federal, state or local regulations or procedures;

F. Administrative, engineering and legal activities associated with the establishment of special departments, agencies, commissions, regions, districts or other units of government;

G. Personal injury compensation or damages arising out of the project;

H. Fines and penalties due to violations of, or failure to comply with, federal, state or local laws, regulations or procedures;

I. Costs outside the scope of the approved project;

J. Costs for which grant or loan payment have been or will be received from another state or federal agency;

K. Force account work except that listed in subparagraph (2)(S)2.J. of this rule; and

L. Costs associated with acquisition of easements and land except that listed in subparagraph (2)(S)2.I.



Table 1—Maximum Eligible Amount for Facilities Planning and Design

Table 2—Maximum Eligible Amount—Design Only

Table 1—Maximum Eligible Amount for Facilities Planning and Design		Table 2—Maximum Eligible Amount—Design Only	
Construction Cost	Allowance as a Percentage of Construction Cost*	Construction Cost	Allowance as a Percentage of Construction Cost*
\$ 100,000 or less	14.49	\$ 100,000 or less	8.57
120,000	14.11	120,000	8.38
150,000	13.66	150,000	8.16
175,000	13.36	175,000	8.01
200,000	13.10	200,000	7.88
250,000	12.68	250,000	7.67
300,000	12.35	300,000	7.50
350,000	12.08	350,000	7.36
400,000	11.84	400,000	7.24
500,000	11.46	500,000	7.05
600,000	11.16	600,000	6.89
700,000	10.92	700,000	6.77
800,000	10.71	800,000	6.66
900,000	10.52	900,000	6.56
1,000,000	10.36	1,000,000	6.43
1,200,000	10.09	1,200,000	6.34
1,500,000	9.77	1,500,000	6.17
1,750,000	9.55	1,750,000	6.05
2,000,000	9.37	2,000,000	5.96
2,500,000	9.07	2,500,000	5.80
3,000,000	8.83	3,000,000	5.67
3,500,000	8.63	3,500,000	5.57
4,000,000	8.47	4,000,000	5.48
5,000,000	8.20	5,000,000	5.33
6,000,000	7.98	6,000,000	5.21
7,000,000	7.81	7,000,000	5.12
8,000,000	7.66	8,000,000	5.04
9,000,000	7.52	9,000,000	4.96
10,000,000	7.41	10,000,000	4.90
12,000,000	7.22	12,000,000	4.79
15,000,000	6.99	15,000,000	4.67
17,500,000	6.83	17,500,000	4.58
20,000,000	6.70	20,000,000	4.51
25,000,000	6.48	25,000,000	4.39
30,000,000	6.31	30,000,000	4.29
35,000,000	6.17	35,000,000	4.21
40,000,000	6.06	40,000,000	4.14
50,000,000	5.86	50,000,000	4.03
60,000,000	5.71	60,000,000	3.94
70,000,000	5.58	70,000,000	3.87
80,000,000	5.47	80,000,000	3.81
90,000,000	5.38	90,000,000	3.75
100,000,000	5.30	100,000,000	3.71
120,000,000	5.16	120,000,000	3.63
150,000,000	4.99	150,000,000	3.53
175,000,000	4.88	175,000,000	3.46
200,000,000	4.79	200,000,000	3.41

*Interpolate between values.

Note: These tables shall not be used to determine the compensation for facilities planning or design services. The compensation for facilities planning for design services should be based upon the nature, scope and complexity of the services required by the community.



(3) Project By-Pass, Project Removal and Modification of Funding. This section applies to loan applicants on the fundable priority list. In order to assure best use of the loan funds in a reasonably expeditious manner, projects may be by-passed or removed from the fundable priority list or loan amounts may be modified. The department will confer and negotiate with affected applicants prior to making or recommending decisions on project by-pass, project removal or modification of loan amounts.

(A) Project By-Pass.

1. Eligibility for by-pass. The Safe Drinking Water Commission (the commission) may by-pass any project on the fundable priority list which is not, in the opinion of the commission, making satisfactory progress toward satisfying requirements for drinking water revolving fund (DWRf) assistance.

2. By-pass criteria. In determining if a project should be by-passed the commission shall use the criteria listed in this subsection.

A. Any project on the fundable priority list may be by-passed if the applicant fails to submit the documents required for DWRf assistance at least sixty (60) days prior to the beginning of the quarter for which the assistance is anticipated.

B. The commission may use individual schedules developed by the department to determine whether a DWRf project is making satisfactory progress during the fiscal year. A project may be by-passed for failure to meet the schedule.

3. By-pass procedures.

A. By-passed projects will be removed from the fundable priority list and, if the application is still valid, will be placed on a project list, in priority order, for funding consideration in the next federal fiscal year.

B. Funds recovered through project by-pass will be considered uncommitted and available for distribution to the next priority project in accordance with the requirements of section 640.107, RSMo.

(B) Project Removal. Projects may be removed from the fundable priority list at the request of the applicant, upon a finding by the department that the project is ineligible for DWRf assistance, or upon a finding that the applicant's credit is not adequate for participation in the DWRf loan program.

(C) Modification of Funding.

1. In order to maximize use of the aggregate funds available to the state for drinking water infrastructure improvements, the commission may remove projects or modify funding amounts upon a finding by the department that the applicant is eligible for funding from other government programs

(such as USDA Rural Development, the Department of Economic Development's Community Development Block Grant program, or the Environmental Improvement and Energy Resources Authority). The department will coordinate with the other funding agencies to arrive at equitable and workable funding options for the applicant.

2. The department reserves the right to limit the maximum loan amount awarded. If utilized, the amount of the maximum loan limit will be addressed in the annual intended use plan and will be open for public comment.

(4) Leveraged Loans.

(A) This section describes the leveraged loan process and contains additional requirements for recipients of a leveraged loan under the Drinking Water Revolving Fund established in section 640.107, RSMo as a sub-fund of the Water and Wastewater Loan Fund. All other requirements also apply, including administrative fees in subsection (2)(B) of this rule.

(B) General Description.

1. This rule sets out the general format for the leveraged loan program. The commission, the department and the Environmental Improvement and Energy Resources Authority (EIERA) shall have the authority to make specific refinements, variations or additional requirements as may be necessary or desirable in connection with the efficient operation of the leveraged loan program.

2. The leveraged loan program is designed to maximize the funding available to make loans to recipients for the planning, design and construction of eligible projects. The EIERA will participate in the leveraged loan program by issuing its bonds or notes in accordance with its governing statute. The determination as to whether a recipient shall receive a leveraged loan under this rule shall be made in accordance with 10 CSR 60-13 and shall be subject to the approval of the EIERA.

3. Under the leveraged loan program, the recipient must obtain construction funds and any needed financing from EIERA. The recipient will receive a loan from the Drinking Water Revolving Fund which will be placed in a debt service reserve fund to secure the construction loan. The interest earnings on the debt service reserve fund will provide a subsidy by paying a portion of the interest costs of the EIERA bonds or notes used to provide the construction loan. The principal amount of the loan will be repaid to the DWRf.

(C) Target Interest Rate. The target interest rate (TIR) for all assistance provided under

this rule shall not be less than thirty percent (30%) of the net interest cost of the EIERA bonds or notes issued for this purpose. The TIR shall be established by the department in consultation with the EIERA based upon current economic factors, projected fund utilization, deposits in the subfund and actual or anticipated federal capitalization grants. The department shall not undertake project-by-project revisions.

(D) Additional Application Requirements.

1. Financial disclosure. Loan applicants shall provide upon request any detailed financial information as may be required to determine the applicant's eligibility for the leveraged loan program.

2. Other financing. In addition to the application requirements in this rule, leveraged loan recipients must provide a description of the proposed method of obtaining any necessary financing for costs not being financed by the DWRf loan program, including information regarding the applicant's progress toward obtaining the funds and assistance.

(E) DWRf Leveraged Loan Structure.

1. As each leveraged loan is made, the loan from the DWRf will be used to fund a debt service reserve. The loan from the DWRf will be paid in one (1) or more installments by deposit to the debt service reserve fund on behalf of the recipient. Interest earnings on the debt service reserve fund will pay a portion of the interest costs of the EIERA bonds or notes used to provide the construction loan. DWRf loans deposited to the debt service reserve fund shall bear an interest rate of zero percent (0%).

2. Recipients will be charged a fee on the loan in accordance with section 644.106, RSMo and a subsidized interest rate.

3. Loans shall be sized to provide an estimated subsidy adequate to reduce the net interest cost of the EIERA loan to the target interest rate (TIR).

(F) Construction Loan Fund. Net proceeds from the sale of any project bonds or notes issued by the EIERA for eligible project costs shall be used to fund construction of the project. These proceeds shall be deposited with a construction loan trustee and disbursed as construction progresses pursuant to subsection (4)(H) of this rule.

(G) Loan Agreements. In addition to the other requirements of this rule, the department and the EIERA may require the recipient to include assurances and certifications in the loan agreements and bond resolutions deemed necessary to protect the interest of the state and the EIERA and to comply with federal requirements.

(H) Disbursement from Loan Proceeds. The recipient shall request payments from the construction loan fund, which shall include the information listed in this subsection (4)(H) and other information deemed necessary and approved by the EIERA to ensure proper project management and expenditure of public funds.

1. Completed reimbursement request form.
2. Construction pay estimates signed by the construction contractor, the recipient and the resident inspector if applicable.
3. Invoices for other eligible services, equipment and supplies for the project.
4. Any other documentation required under the provisions of the trust indenture.

(I) Amortization Schedules. The EIERA shall establish amortization schedules for long-term loans awarded under this rule. Repayment of principal shall begin not later than one (1) year after initiation of operation. The loans shall be fully repaid in no more than twenty (20) years after initiation of operation.

(J) Loan Repayment.

1. Repayment of principal and penalties to the DWRP loan program will be made by the release of money from the debt service reserve fund. If funds for these payments are not available in the debt service reserve, then the payment shall be made from other funds of the recipient.

2. Repayment of principal and interest on the EIERA bonds or notes will be paid from revenues of the user charge system or from another dedicated source of revenue as may be designated in the applicable bond resolutions or loan agreements.

AUTHORITY: sections 640.100 and 640.107, RSMo Supp. 1998. Emergency rule filed July 15, 1998, effective July 25, 1998, expired Feb. 25, 1999. Original rule filed Aug. 17, 1998, effective April 30, 1999.*

**Original authority: 640.100, RSMo 1939, amended 1978, 1981, 1982, 1988, 1989, 1992, 1993, 1995, 1996, 1998 and 640.107, RSMo 1998.*

10 CSR 60-13.030 Environmental Review

PURPOSE: This rule establishes procedures and requirements for environmental reviews required for assistance from the Drinking Water State Revolving Fund loan program.

(1) General. The purpose of the environmental review is to ensure that the project will comply with applicable local, state and federal laws and rules relating to the protection and enhancement of the environment. Based upon the staff's review, the director will make

formal determinations regarding the potential social and environmental impacts of the proposed project. As necessary, the determination will include mitigative provisions as a condition of the provision of financial assistance for building. No financial assistance will be provided until a final environmental determination has been made. Nothing in this rule shall prohibit any public, private or governmental party from seeking administrative or legal relief from the determinations of the director.

(2) Basic Environmental Determinations. Three (3) basic environmental determinations apply to projects proposed to be implemented with assistance from the fund.

(A) Categorical Exclusion (CE). The categorical exclusion (CE) determination applies to categories of projects that have been shown over time not to entail significant impacts on the quality of the human environment.

1. Projects which meet either of the following criteria may be categorically excluded from formal environmental review requirements:

A. The project is directed solely toward minor rehabilitation of existing facilities, functional replacement of equipment or toward the construction of related facilities adjoining the existing facilities that do not affect the degree of water treatment or the capacity of the public water system. Examples include rehabilitation of existing equipment and structures, and the construction of small structures on existing sites; and

2. CEs will not be granted for projects that entail—

A. The construction of new water mains;

B. A new water supply source or relocation of an existing water supply source;

C. An increase of more than thirty percent (30%) in the required capacity of the water system;

D. Provision of a capacity for a population thirty percent (30%) or greater than the existing population;

E. Known or expected impacts to cultural resources, threatened or endangered species, or other environmentally sensitive areas; and

F. The construction of facilities that are known or expected to be not cost-effective or are likely to cause significant public controversy.

(B) Finding of no significant impact/environmental assessment (FNSI/EA). The FNSI/EA will be based upon an environmental review by the staff supported by an environmental information document (EID) prepared by the applicant in conformance with

guidance developed by the department. If a FNSI/EA is not appropriate, a public notice noting the preparation of an EIS will be required. The director's issuance of a FNSI/EA will be based upon documentation that the potential environmental impacts will not be significant or that they may be mitigated without extraordinary measures.

(C) Record of Decision (ROD). The ROD may only be based upon an EIS in conformance with the format and guidelines described in this subsection. An EIS will be required when the director determines any of the following:

1. The project significantly will affect the pattern and type of land use or growth and distribution of the population;

2. The effects resulting from any structure or facility constructed or operated under the proposed action may conflict with local or state land use plans or policies;

3. The project may have significant adverse impacts upon—

A. Wetlands;

B. Floodplains;

C. Threatened and endangered species or their habitats;

D. Cultural resources including parks, preserves, other public lands or recognized scenic, recreational, prime farmlands, archeological or historic value; and

E. Prime farmland;

4. The project will displace populations or significantly alter the characteristics of existing residential areas; and

5. The project directly or indirectly (for example, through induced development) may have significant adverse effect upon local ambient air quality, local noise levels, surface and groundwater quantity or quality, fish, shellfish, wildlife or their natural habitats.

(3) When five (5) or more years have elapsed between the last environmental determination and the submittal of an application to the fund, the director will reevaluate the project, environmental conditions and public views and, prior to approval of the application, proceed in accordance with subsection (6)(A) of this rule.

(4) Pre-Environmental Review Construction.

(A) An applicant may request advance authority to construct part of the proposed drinking water project prior to completion of the necessary environmental review when that part of the project will—

1. Remedy a severe public health problem immediately;

2. Not preclude any reasonable alternatives identified for the complete system;

3. Not cause significant direct or indirect environmental impacts including those which cannot be acceptably mitigated without completing the entire project; and

4. Not be highly controversial.

(B) Based upon the review of the information required by section (2) of this rule, the director will issue a FNSI/EA so conditioned as to prohibit construction of the remainder of the project until a complete environmental review has been performed and a subsequent environmental determination has been issued.

(5) Information Required for Environmental Review. A minimum of three (3) copies of all information required in this section shall be submitted to the department.

(A) Applicants seeking a CE shall provide the director with sufficient documentation to demonstrate compliance with the criteria of subsection (2)(A). At a minimum, this shall consist of a—

1. Brief, complete description of the proposed project and its costs;

2. Statement indicating that the project is cost-effective and that the applicant is financially capable of constructing, operating and maintaining the facilities; and

3. Plan map(s) of the proposed project showing—

A. The location of all construction areas;

B. The planning area boundaries; and

C. Any known environmentally sensitive areas.

(B) An EID shall be submitted by those applicants whose proposed projects do not meet the criteria for a CE and for which the director has made a preliminary determination that an EIS will not be required. The director will provide guidance on both the format and contents of the EID to potential applicants prior to initiation of facilities planning.

1. At a minimum, the contents of an EID shall include:

A. The purpose and need for the project;

B. The environmental setting of the project and the future of the environment without the project;

C. The alternatives to the project as proposed;

D. A description of the proposed project;

E. The potential environmental impacts of the project as proposed including those which cannot be avoided;

F. The relationship between the short-term uses of the environment and the

maintenance and enhancement of long-term productivity;

G. Any irreversible and irretrievable commitments of resources to the proposed project;

H. A description of public participation activities conducted, issues raised and changes to the project which may be made as a result of the public participation process; and

I. Documentation of coordination with appropriate governmental agencies.

2. The applicant shall hold a public hearing on the proposed project and the EID, and provide the director with a verbatim transcript of the hearing. The director will provide guidance to the applicant regarding the contents of the hearing notice and of the hearing. The hearing will be advertised at least thirty (30) days in advance in a local newspaper of general circulation. Concurrent with the advertisement, a notice of the public hearing and availability of the documents will be sent to all local, state and federal agencies and public and private parties that may have an interest in the proposed project. Included with the transcript will be a list of all attendees with addresses, any written testimony and the applicant's responses to the issues raised.

3. The department will provide copies of the FNSI/EA to all federal, state and local agencies and others with an interest in the project.

(C) The format of an EIS shall encourage sound analyses and clear presentation of alternatives, including the no-action alternative and the selected alternative and their environmental, economic and social impacts. The following format shall be followed by the applicant unless the director determines there are compelling reasons to do otherwise:

1. A cover sheet identifying the applicant, the project(s), the program through which financial assistance is requested and the date of publication;

2. An executive summary consisting of a five to fifteen (5-15) page summary of the critical issues of the EIS in sufficient detail that the reader may become familiar with the proposed project and its cumulative effects. The summary will include:

A. A description of the existing problem;

B. A description of each alternative;

C. A listing of each alternative's potential environmental impacts, mitigative measures and any areas of controversy; and

D. Any major conclusions;

3. The body of the EIS which shall contain the following information:

A. A complete and clear description of the purpose and need for the proposed project that clearly identifies its goals and objectives;

B. A balanced description of each alternative considered by the applicant. The descriptions will include the size and location of the facilities and pipelines, land requirements, operation and maintenance requirements and construction schedules. The alternative of no action will be discussed and the applicant's preferred alternative(s) will be identified. Alternatives that were eliminated from detailed examination will be presented with the reasons for their elimination;

C. A description of the alternatives available to the department including:

(I) Providing financial assistance to the proposed project;

(II) Requiring that the proposed project be modified prior to providing financial assistance to reduce adverse environmental impacts or providing assistance with conditions requiring the implementation of mitigative measures; and

(III) Not providing financial assistance;

D. A description of the alternatives available to other local, state and federal agencies which may have the ability to issue or deny a permit, provide financial assistance or otherwise affect or have an interest in any of the alternatives;

E. A description of the affected environment and environmental consequences of each alternative including secondary and cumulative impacts. The affected environment on which the evaluation of each alternative will be based includes, as a partial listing, hydrology, geology, air quality, noise, biology, socioeconomics, land use and cultural resources of the facilities planning area. The department will provide guidance, as necessary, to the applicant regarding the evaluation of the affected environment. The discussion will present the total impacts of each alternative in a manner that will facilitate comparison. The effects of the no-action alternative must be included to serve as a baseline for comparison of the adverse and beneficial impacts of the other alternatives. A description of the existing environment will be included in the no-action section to provide background information. The detail in which the affected environment is described will be commensurate with the complexity of the situation and the significance of the anticipated impacts;

4. The draft EIS will be provided to all local, state and federal agencies and public groups with an interest in the proposed project and be made available to the public for

review. The final EIS will include all objections and suggestions made before and during the draft EIS review process along with the issues of public concern expressed by individuals or interested groups. The final EIS must include discussions of any such comments pertinent to the project or the EIS. All commenters will be identified. If a comment has led to a change in either the project or the EIS, the reason should be given. The department will always endeavor to resolve any conflicts that may have arisen, particularly among permitting agencies, prior to the issuance of the final EIS. In all cases, the comment period will be no less than forty-five (45) days;

5. Material incorporated into an EIS by reference will be organized into a supplemental information document and be made available for public review upon request. No material may be incorporated by reference unless it is reasonably available for inspection by interested persons within the comment periods specified in paragraph (5)(C)4. and subparagraph (5)(C)7.C.;

6. When an EIS is prepared by contractors, either in the service of the applicant or the department, the department will independently evaluate the EIS prior to issuance of the ROD and take responsibility for its scope and contents. The staff who undertake this evaluation will be identified under the list of preparers along with those of the contractor and any other parties responsible for the content of the EIS; and

7. The public participation required for an EIS is extensive but, depending upon the nature and scope of the proposed project, should be supplemented by the applicant. The following requirements represent the minimum allowable:

A. Upon making the determination that an EIS is required of a proposed project, the department will distribute a notice of intent to prepare an EIS;

B. As soon as possible after the notice of intent has been issued, the director will convene a meeting of the affected federal, state and local agencies, the applicant and other interested parties to determine the scope of the EIS. A notice of this scoping meeting may be incorporated into the notice of intent or prepared as in paragraph (5)(B)2. of this rule except that in no case will the notification period be less than forty-five (45) days. As part of the scoping meeting the director will, at a minimum—

(I) Determine the significance of issues and analyze in depth the scope of those significant issues in the EIS;

(II) Identify the preliminary range of alternatives to be considered;

(III) Identify potential cooperating agencies and determine the information or analyses that may be needed from cooperating agencies or other parties;

(IV) Discuss the method for EIS preparation and the public participation strategy;

(V) Identify consultation requirement of other laws and regulations; and

(VI) Determine the relationship between the preparation of the EIS and the completion of the engineering report and any necessary arrangements for coordination of the preparation of both documents; and

C. Following the scoping process, the director will begin the identification and evaluation of all potentially viable alternatives to adequately address the range of issues developed in the scoping. A summary of this, including a list of the significant issues identified, will be provided to the applicant and other interested parties. Preparation of the EIS will be done at the discretion of the department: directly, by the staff; by consultants to the department; or by a consultant contracted by the applicant subject to approval by the department. In the latter two (2) cases, the consultant will be required to execute a disclosure statement prepared by the department signifying they have no financial or other conflicting interest in the outcome of the project. Both the draft EIS and final EIS will be distributed and made available for public review in a fashion consistent with the requirements of paragraph (5)(B)2. of this rule except that the advertisement and comment period for the public participation will be no less than forty-five (45) days. The department will publish in a newspaper of general circulation in the project area, a notice of availability of the EIS giving locations at which it will be available for public review at least forty-five (45) days prior to making any environmental determination.

(6) Environmental Review.

(A) When the director has determined that an applicant's proposed project may be excluded from a formal environmental review, the director will prepare a public notice of the determination to categorically exclude the project and the availability of supporting documentation for public inspection. The notice will be published in a local newspaper of community-wide circulation by the applicant. The director, concurrent with the publication, will distribute the notice to all interested parties.

(B) An environmental review of the proposed project, supported by the applicant's EID, will be conducted by the director to determine whether any significant impacts

are anticipated and whether any changes may be made in the proposed project to eliminate significant adverse impacts. As part of this review, the director may require the applicant to submit additional information or undertake additional public participation and coordination to support its environmental determination. Based on the environmental review, the director will prepare a FNSI/EA describing—

1. The purpose and need for the proposed project;

2. The proposed project including its costs;

3. The alternatives considered and the reasons for their rejection or acceptance;

4. The existing environment;

5. Any potential adverse impacts and mitigative measures; and

6. Any proposed conditions to the provision of financial assistance and any means provided for the monitoring of compliance with the conditions.

(C) The FNSI/EA will be distributed to all parties, governmental entities and agencies that may have an interest in the proposed project. No action regarding approval of the engineering report or the provision of financial assistance will be taken by the director for at least thirty (30) days after the issuance of the FNSI/EA.

(D) Public participation requirements for an EIS are detailed in paragraph (5)(B)2. except the ROD and final EIS shall have a forty-five (45)-day period of notice.

(E) In accordance with section (7) of this rule, the director will conduct environmental reviews and issue public notices or amended determinations as appropriate.

(7) Project Modification. Recognizing that a project may be altered at some time after an environmental determination on the project has been issued, the director will provide that, prior to approval, the plans and specifications, loan application and related documents will be examined for consistency with the environmental determination. If inconsistencies are found, the director may revoke a CE and require the preparation of an FNSI/EA or an EIS, or require the preparation of amendments to a FNSI/EA or supplements to an EIS, as appropriate. Based upon the staff's review of the amended project, the director will—

(A) Reaffirm the original environmental determination through the issuance of a public notice or statement of finding;

(B) Issue a FNSI for a project for which a CE has been revoked or issue a public notice that the preparation of an EIS will be required;

(C) Issue an amendment to a FNSI/EA or revoke a FNSI and issue a public notice that the preparation of an EIS will be required; or

(D) Issue a supplement to a ROD or revoke a ROD and issue a public notice that financial assistance will not be provided.

AUTHORITY: sections 640.100 and 640.107, RSMo Supp. 1998. Emergency rule filed July 15, 1998, effective July 25, 1998, expired Feb. 25, 1999. Original rule filed Aug. 17, 1998, effective April 30, 1999.*

**Original authority: 640.100, RSMo 1939, amended 1978, 1981, 1982, 1988, 1989, 1992, 1993, 1995, 1996, 1998 and 640.107, RSMo 1998.*