

DIVISION 49
SAFE DRINKING WATER REVOLVING LOAN FUND

123-049-0005

Purpose, Scope and Incorporated Documents

(1) This division of administrative rules implements a federally funded **S**tate revolving fund to provide financing to **C**ommunity and **N**onprofit non-community drinking water systems for planning, design, construction or improvement of drinking water facilities or systems needed to maintain or achieve compliance with drinking water standards and to further public health protection goals of the federal Safe Drinking Water Act Amendments of 1996 [P.L. 104-182](#) and this state's Drinking Water Quality Act.

(2) In accordance with ORS 285A.213, this division of administrative rules governs the administration of the moneys awarded through this Safe Drinking Water Revolving Loan Fund by the Economic and Community Development Department in cooperation with the State of Oregon's Health Services of the Oregon Department of Human Services, but not activities of Health Services itself.

(3) "SAFE DRINKING WATER IN OREGON: Program Guidelines & Applicant's Handbook for the Federally Funded Safe Drinking Water Revolving Loan Fund & Drinking Water Protection Loan Fund" ([July 2003/September 2008](#)), including but not limited to its appendices, is:

- (a) The principal source of information on this program, as prepared by the **D**epartment;
- (b) Available by contacting any of the **D**epartment's regionally assigned staff;
- (c) Incorporated into and adopted as part of this division of administrative rules, by reference; and
- (d) Subject to the same definitions as used in this division of administrative rules.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 285A.075, 285A.213(4)

Stats. Implemented: ORS 285A.213

Hist.: EDD 6-1999, f. & cert. ef. 8-26-99; EDD 11-2000(Temp), f. 7-20-00, cert. ef. 7-20-00 thru 1-16-01; EDD 1-2001, f. 1-11-01, cert. ef. 1-12-01; EDD 8-2004, f. & cert. ef. 2-3-04

123-049-0010

Definitions

As used in this division of administrative rules, unless the context clearly indicates otherwise:

- (1) "Act" means the Safe Drinking Water Act Amendments of 1996, Public Law 104-182, and any subsequent amendments.
- (2) "Applicant" means a **C**ommunity or **N**onprofit non-community water system that is applying for a loan from the Fund.
- (3) "Community water system" means a public water system, other than one owned by an agency of the federal government, that:
 - (a) Has 15 or more service connections used by year-round residents; or
 - (b) Regularly serves 25 or more year-round residents.
- (4) "Contract" means a legally binding agreement between the **D**epartment and **R**ecipient that sets out the terms and conditions for award of **P**roject funds.
- (5) "Department" means the State of Oregon's Economic and Community Development Department as (re)organized under ORS 285A.070.
- (6) "Fund" means the Safe Drinking Water Revolving Loan Fund, which is the financing program managed by the Department under this division of administrative rules to pay for infrastructure improvements to eligible public water systems, and which includes moneys originating directly from federal capitalization grants (apart from set-asides), this state's match of such grants, program loan repayments, interest earnings and any additional funds provided by this state.
- (7) "Intended Use Plan" the description of how the state intends to use moneys awarded and loaned from the **F**und to meet the objectives of the Act, as annually prepared by Health Services pursuant to USEPA guidelines.

- (8) "Nonprofit non-community water system" means a public water system that:
- (a) Is not a **C**ommunity water system;
 - (b) Regularly serves at least 25 people, even if they are not year-around residents; and
 - (c) Is recognized under Oregon law as a nonprofit corporation.
- (9) "Project" means facility design construction activities or related/preceding tasks identified in the **C**ontract and loan agreement for which the **R**ecipient may expend, obligate or commit funds to address a drinking water problem or a documented health hazard.
- (10) "Project **P**riority **L**ist" means the comprehensive priority list of potential, eligible activities, as developed under the Intended Use Plan in response to letters of interest from **C**ommunity and **N**onprofit non-community water systems.
- (11) A "public water system" means a system or infrastructure for the provision to the public of water for human consumption through pipe or other constructed conveyances, regardless of ownership, including but not limited to facilities for source of supply, filtration, treatment, storage, transmission or metering of that water.
- (12) "Recipient" means a **C**ommunity or **N**onprofit non-community water system that has been awarded a loan from the **F**und for a **P**roject.
- (13) "USEPA" means the Environmental Protection Agency of the United States federal government.
[Publications: Publications referenced are available from the agency.]
- Stat. Auth.: ORS 285A.075, 285A.213(4)
Stats. Implemented: ORS 285A.213
Hist.: EDD 6-1999, f. & cert. ef. 8-26-99; EDD 8-2004, f. & cert. ef. 2-3-04

123-049-0020

Eligible Applicants and Activities

- (1) All **C**ommunity water systems and **N**onprofit non-community water systems are eligible to apply for a **F**und loan except those determined to be ineligible by the **D**epartment because of prior nonperformance.
- (2) Eligible and ineligible activities are defined in the Act and in USEPA's Drinking Water State Revolving Fund Program Guidelines, EPA 816-R-97-005 (February 1997), as well as subsequent revisions or editions of such guidelines.
[Publications: Publications referenced are available from the agency.]
- Stat. Auth.: ORS 285A.075, 285A.213(4)
Stats. Implemented: ORS 285A.213
Hist.: EDD 6-1999, f. & cert. ef. 8-26-99; EDD 8-2004, f. & cert. ef. 2-3-04

123-049-0030

Program Information

- (1) The **D**epartment shall prepare program guidelines, application forms and other supplementary program information to help eligible **A**pplicants seek financing and prepare loan applications for the **F**und.
- (2) Program guidelines as prepared under section (1) of this rule shall include an explanation of project eligibility, the **P**roject **P**riority **L**ist, the Intended Use Plan, disadvantaged communities, types of financial assistance, loan rates and terms, borrowing limits, public notification process, contract administration, federal crosscutting requirements and environmental review process.
- (3) In addition to this division of administrative rules, the **D**epartment shall administer the **F**und in compliance with the requirements of the Act, as amended, and the Act's applicable rules, guidelines and requirements from USEPA.
- (4) For purposes of land use coordination, any **P**roject activity paid for with **F**und loans shall comply with the applicable requirements of division 8 of this chapter of administrative rules and OAR chapter 660.

Stat. Auth.: ORS 285A.075, 285A.213(4)

Stats. Implemented: ORS 285A.213

Hist.: EDD 6-1999, f. & cert. ef. 8-26-99; EDD 8-2004, f. & cert. ef. 2-3-04

123-049-0040

Program Rights and Remedies

(1) The **D**epartment may exercise certain rights and remedies in the event the **R**ecipient fails to comply with **C**ontract provisions and the **R**ecipient fails to correct the deficiencies within a reasonable time after the **R**ecipient is notified of the deficiencies. The circumstances that may warrant the **D**epartment's exercise of rights or remedies include, but are not limited to one or more of the following:

- (a) None of the **P**roject activities have begun within six months after award;
- (b) Any third party agreement relating to the **P**roject is not legally binding within six months of the award;
- (c) Federal or **S**tate statutory or regulatory requirements have not been met;
- (d) There is a significant deviation from the **C**ontract;
- (e) The **D**epartment finds that significant corrective actions are necessary to protect the integrity of the **P**roject funds, and those corrective actions are not, or will not, be made within a reasonable time; or
- (f) A **R**ecipient defaults on loan payments, which may otherwise be made from any source of revenue at the **R**ecipient's disposal, including but not limited to General Fund revenue.

(2) One or more of the following rights and remedies may be exercised by the **D**epartment if the **R**ecipient fails to comply with **C**ontract provisions and the **R**ecipient fails to correct the deficiencies within a reasonable time after **R**ecipient is notified of the deficiencies:

- (a) Bar a **R**ecipient from applying for future **D**epartment assistance;
- (b) Revoke an existing **D**epartment award;
- (c) Withhold unexpended **D**epartment funds;
- (d) Require immediate return of unexpended **D**epartment funds;
- (e) Require repayment of expended **D**epartment funds;
- (f) Withhold other state funds otherwise due to the **R**ecipient, such as state-shared revenues; or
- (g) Other remedies that may be incorporated into the contract.

(3) The remedies set forth in this rule are cumulative, are not exclusive, and are in addition to any other rights and remedies provided by law or under the **C**ontract.

(4) The **R**ecipient shall be responsible for ensuring that any subcontractor complies with the applicable terms and conditions of the contract. Nothing in this rule shall restrict the **D**epartment's right to enforce independently the terms of any contract or to recover any sums that may become due as the result of a breach of such **C**ontract.

Stat. Auth.: ORS 285A.075, 285A.213(4)

Stats. Implemented: ORS 285A.213

Hist.: EDD 6-1999, f. & cert. ef. 8-26-99; EDD 8-2004, f. & cert. ef. 2-3-04

123-049-0050

Private Ownership and Regulation of Loan Subsidies for Public Benefit

(1) Only if a privately owned public water system is regulated under the jurisdiction of the State of Oregon Public Utility Commission (PUC) may it enjoy the benefits of a "disadvantaged community," pursuant to section 1452(d) of the Act, in receiving financial assistance through the **F**und, including but not limited to principal forgiveness.

(2) For purposes of principal forgiveness of a loan by the **F**und, the amount of forgiven principal shall not be treated as equity, but rather in all cases as a contingent liability on the balance sheet of the public water system receiving the loan and on the balance sheet of any entity that acquires that system or the assets financed by the loan.

(3) If a water system is sold that was awarded principal forgiveness by the **F**fund, the value of the principal forgiveness shall be effectively excluded from the purchase price, consistent with section (2) of this rule, such that the benefit of the principal forgiveness continues to accrue to the ratepayers or users of the system rather than to the seller. (This section also applies to the sale or lease of system assets financed by the loan, and it pertains but is not limited to the privatization of a publicly owned system)

(4) If section (2) or (3) of this rule is violated, then the water system shall repay the full amount of the forgiven principal into the **F**fund. The **D**epartment shall determine the schedule of such repayment, as it deems appropriate under the circumstances.

(5) The Oregon Public Utility Commission has full authority to enforce the effects of this rule through applicable regulation of an affected water system.

Stat. Auth.: ORS 285A.075, 285A.213(4)

Stats. Implemented: ORS 285A.213

Hist.: EDD 11-2000(Temp), f. 7-20-00, cert. ef. 7-20-00 thru 1-16-01; EDD 1-2001, f. 1-11-01, cert. ef. 1-12-01; EDD 8-2004, f. & cert. ef. 2-3-04

123-049-0060

Drinking Water Protection ~~Loan~~ Fund

(1) For purposes of implementing section 1452(k)(1) of the Act, the **D**epartment shall administer loans and grants to public water systems for protecting surface and underground sources of drinking water, in order to solve or prevent health problems before the water is collected or treated by the system.

(2) The moneys for these loans and grants are derived from the "local assistance" set-aside of the federal capitalization grant, such that unused amounts will be transferred to the **F**fund, and repayments shall be either added to the **F**fund or placed in a dedicated account for further lending under this rule.

(3) The loans and grants under this rule are distinct from the **F**fund. Relevant provisions of this division of administrative rules, however, shall apply to the administration of such loans.

(4) For purposes of this rule, administration includes underwriting assessments, loan awards, grant awards, contract execution, disbursements, loan repayments and so forth.

(5) Health Services (Oregon Department of Human Services) and the Oregon Department of Environmental Quality shall handle determinations of eligibility, prioritization of loan and grant recipients and related duties.

(6) More specific guidelines for the loans and grants under this rule are available and included in the document incorporated by reference in OAR 123-049-0005(3).

Stat. Auth.: ORS 285A.075, 285A.213(4)

Stats. Implemented: ORS 285A.213

Hist.: EDD 8-2004, f. & cert. ef. 2-3-04