

Environmental Protection Agency

§ 35.3510

discount, underwriter's legal counsel fees, bond counsel fee, and other costs incidental to the bond issuance).

Payment. An action taken by EPA to increase the amount of funds available for cash draw through the ACH. A payment is not a transfer of cash to the State, but an authorization by EPA to make capitalization grant funds available for transfer to a State after the State submits a cash draw request.

Public water system. A system as defined in 40 CFR 141.2. A public water system is either a "community water system" or a "noncommunity water system" as defined in 40 CFR 141.2.

Regional Administrator (RA). The Administrator of the appropriate Regional Office of the EPA or an authorized representative of the Regional Administrator.

Set-asides. State and local activities identified in sections 1452(g)(2) and (k) of the Act for which a portion of a capitalization grant may be used.

Small system. A public water system that regularly serves 10,000 or fewer persons.

State. Each of the 50 States and the Commonwealth of Puerto Rico, which receive capitalization grants and are authorized to establish a Fund under section 1452 of the Act.

§ 35.3510 Establishment of the DWSRF program.

(a) *General.* To be eligible to receive a capitalization grant, a State must establish a Fund and comply with the other requirements of section 1452 of the Act and this subpart.

(b) *Administration.* Capitalization grants must be awarded to an agency of the State that is authorized to enter into capitalization grant agreements with EPA, accept capitalization grant awards made under section 1452 of the Act, and otherwise manage the Fund in accordance with the requirements and objectives of the Act and this subpart. The State agency that is awarded the capitalization grant (*i.e.*, grantee) is accountable for the use of the funds provided in the capitalization grant agreement under general grant regulations at 40 CFR part 31.

(1) The authority to establish assistance priorities and to carry out oversight and related activities of the

DWSRF program, other than financial administration of the Fund, must reside with the State agency having primary responsibility for administration of the State's public water system supervision (PWSS) program (*i.e.*, primacy) after consultation with other appropriate State agencies.

(2) If a State is eligible to receive a capitalization grant but does not have primacy, the Governor will determine which State agency will have the authority to establish priorities for financial assistance from the Fund. Evidence of the Governor's determination must be included with the capitalization grant application.

(3) If more than one State agency participates in implementation of the DWSRF program, the roles and responsibilities of each agency must be described in a Memorandum of Understanding or interagency agreement.

(c) *Combined financial administration.* A State may combine the financial administration of the Fund with the financial administration of any other revolving fund established by the State if otherwise not prohibited by State law under which the Fund was established. A State must assure that all monies in the Fund, including capitalization grants, State match, net bond proceeds, loan repayments, and interest are separately accounted for and used solely for the purposes specified in section 1452 of the Act and this subpart. Funds available from the administration and technical assistance set-aside may not be used for combined financial administration of any other revolving fund.

(d) *Use of funds.* (1) Assistance provided to a public water system from the DWSRF program may be used only for expenditures that will facilitate compliance with national primary drinking water regulations applicable under section 1412 or otherwise significantly further the public health protection objectives of the Act.

(2) The inability or failure of any public water system to receive assistance from the DWSRF program, or any delay in obtaining assistance, does not alter the obligation of the system to comply in a timely manner with all applicable drinking water standards and requirements of section 1452 of the Act.