

§ 35.3170

40 CFR Ch. I (7-1-07 Edition)

§ 35.3170 Corrective action.

(a) Causes. If the RA determines that the State has not complied with requirements under title VI, the RA will notify the State of such noncompliance and prescribe the necessary corrective action. Failure to satisfy the terms of the capitalization grant agreement, including unmet conditions or assurances or invalid certifications, is grounds for a finding of noncompliance. In addition, if the State does not manage the SRF in a financially sound manner (e.g. allows consistent and substantial failures of loan repayments), the RA may take corrective action as provided under this section.

(b) RA's course of action. In making a determination of noncompliance with the capitalization grant agreement and devising the corrective action, the RA will identify the nature and cause of the problems. The State's corrective action must remedy the specific instance of noncompliance and adjust program management to avoid non-compliance in the future.

(c) Consequences for failure to take corrective action. If within 60 days of receipt of the noncompliance notice, a State fails to take the necessary actions to obtain the results required by the RA, or to provide an acceptable plan to achieve the results required, the RA shall withhold payments to the SRF until the State has taken acceptable actions. If the State fails to take the necessary corrective action deemed adequate by the RA within twelve months of receipt of the original notice, any withheld payments shall be deobligated and reallocated to other States.

(d) Releasing payments. Once the State has taken the corrective action deemed necessary and adequate by the RA, the withheld payments will be released and scheduled payments will recommence.

APPENDIX A TO SUBPART K OF PART 35—
CRITERIA FOR EVALUATING A
STATE'S PROPOSED NEPA-LIKE
PROCESS

The following criteria will be used by the RA to evaluate a proposed SERP.

(A) Legal foundation. Adequate documentation of the legal authority, including legislation, regulations or executive orders and/or

Attorney General certification that authority exists.

(B) Interdisciplinary approach. The availability of expertise either in-house or otherwise accessible to the State Agency.

(C) Decision documentation. A description of a documentation process adequate to explain the basis for decisions to the public.

(D) Public notice and participation. A description of the process, including routes of publication (e.g., local newspapers and project mailing list), and use of established State legal notification systems for notices of intent, and criteria for determining whether a public hearing is required. The adequacy of a rationale where the comment period differs from that under NEPA and is inconsistent with other State review periods.

(E) Consider alternatives. The extent to which the SERP will adequately consider:

- (1) Designation of a study area comparable to the final system;
- (2) A range of feasible alternatives, including the no action alternative;
- (3) Direct and indirect impacts;
- (4) Present and future conditions;
- (5) Land use and other social parameters including recreation and open-space considerations;
- (6) Consistency with population projections used to develop State implementation plans under the Clean Air Act;
- (7) Cumulative impacts including anticipated community growth (residential, commercial, institutional and industrial) within the project study area; and
- (8) Other anticipated public works projects including coordination with such projects.

Subpart L—Drinking Water State
Revolving Funds

AUTHORITY: Section 1452 of the Safe Drinking Water Act, as amended, 42 U.S.C. 300j-12.

SOURCE: 65 FR 48299, Aug. 7, 2000, unless otherwise noted.

§ 35.3500 Purpose, policy, and applicability.

(a) This subpart codifies and implements requirements for the national Drinking Water State Revolving Fund program under section 1452 of the Safe Drinking Water Act, as amended in 1996. It applies to States (i.e., 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. The purpose of this subpart is to ensure that each State's program is designed and operated in such a manner as to

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further the public health protection objectives of the Safe Drinking Water Act, promote the efficient use of all funds, and ensure that the Fund corpus is available in perpetuity for providing financial assistance to public water systems.

(b) This subpart supplements section 1452 of the Safe Drinking Water Act by codifying statutory and program requirements that were published in the Final Guidelines for the Drinking Water State Revolving Fund program (EPA 816-R-97-005) signed by the Assistant Administrator for Water on February 28, 1997, as well as in subsequent policies. This subpart also supplements general grant regulations at 40 CFR part 31 which contain administrative requirements that apply to governmental recipients of Environmental Protection Agency (EPA) grants and subgrants. EPA will not impose additional major program requirements without providing an opportunity for affected parties to comment.

(c) EPA intends to implement the national Drinking Water State Revolving Fund program in a manner that preserves for States a high degree of flexibility to operate their programs in accordance with each State's unique needs and circumstances. To the maximum extent practicable, EPA also intends to administer the financial aspects of the national Drinking Water State Revolving Fund program in a manner that is consistent with the policies and procedures of the national Clean Water State Revolving Fund program established under Title VI of the Clean Water Act, as amended, 33 U.S.C. 1381-1387.

§ 35.3505 Definitions.

The following definitions apply to terms used in this subpart:

Act. The Safe Drinking Water Act (Public Law 93-523), as amended in 1996 (Public Law 104-182). 42 U.S.C. 300f *et seq.*

Administrator. The Administrator of the EPA or an authorized representative.

Allotment. Amount available to a State from funds appropriated by Congress to carry out section 1452 of the Act.

Automated Clearing House (ACH). A Federal payment mechanism that transfers cash to recipients of Federal assistance using electronic transfers from the Treasury through the Federal Reserve System.

Binding commitment. A legal obligation by the State to an assistance recipient that defines the terms for assistance from the Fund.

Capitalization grant. An award by EPA of funds to a State for purposes of capitalizing that State's Fund and for other purposes authorized in section 1452 of the Act.

Cash draw. The transfer of cash from the Treasury through the ACH to the DWSRF program. Upon a State's request for a cash draw, the Treasury will transfer funds to the DWSRF program account established in the State's bank.

CWSRF program. Each State's clean water state revolving fund program authorized under Title VI of the Clean Water Act, as amended, 33 U.S.C. 1381-1387.

Disadvantaged community. The entire service area of a public water system that meets affordability criteria established by the State after public review and comment.

Disbursement. The transfer of cash from the DWSRF program account established in the State's bank to an assistance recipient.

DWSRF program. Each State's drinking water state revolving fund program authorized under section 1452 of the Act, as amended, 42 U.S.C. 300j-12. This term includes the Fund and set-asides.

Fund. A revolving account into which a State deposits DWSRF program funds (e.g., capitalization grants, State match, repayments, net bond proceeds, interest earnings, etc.) for the purposes of providing loans and other types of assistance for drinking water infrastructure projects.

Intended Use Plan (IUP). A document prepared annually by a State, after public review and comment, which identifies intended uses of all DWSRF program funds and describes how those uses support the overall goals of the DWSRF program.

Net bond proceeds. The funds raised from the sale of the bonds minus issuance costs (e.g., the underwriting