

**COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT**  
**WATER QUALITY CONTROL COMMISSION**  
**DRINKING WATER REVOLVING FUND RULES**  
**REGULATION NO. 52**  
**5 CCR 1002-52**

**BOARD OF HEALTH**

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**WATER QUALITY CONTROL COMMISSION**

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**DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT**  
**WATER QUALITY CONTROL COMMISSION**

**5 CCR 1002-52**

**REGULATION NO. 52**

**DRINKING WATER REVOLVING FUND RULES**

**52.1 AUTHORITY**

In Senate Bill 95-083, the Colorado General Assembly created the Drinking Water Revolving Fund to provide financial assistance to certain drinking water projects in the State of Colorado. The fund is held and administered by the Colorado Water Resources and Power Development Authority (Authority), which is authorized to issue bonds to finance the program. Moneys in the fund may be used to provide financial assistance to projects included on a Project Eligibility List, which is part of the annual Intended Use Plan (IUP). Codified at sections 37-95-103 and 37-95-107.8, C.R.S., the statutes direct the Water Quality Control Commission (Commission) to submit additions and modifications to the Project Eligibility List annually for adoption by the General Assembly by Joint Resolution signed by the Governor. This regulation complies with 40 CFR part 35, subpart I, and provides for the Commission's approval of the Intended Use Plan including additions and modifications to the Project Eligibility List and the Projected Loan List.

The 1996 amendments to the federal Safe Drinking Water Act (SDWA) include authorization of a state revolving fund program similar to that included in the Clean Water Act for wastewater projects. The Drinking Water Revolving Fund established by Senate Bill 95-083 meets the requirements of the SDWA concerning revolving fund financing programs and allows for federal funding of Colorado's revolving fund financing program.

Section 25 1.5-203, C.R.S., also provides authority for this regulation.

**52.2 DEFINITIONS**

Section 11.3 of the Colorado Primary Drinking Water Regulations 5 CCR 1002-11, contains additional definitions that apply to this rule.

- (1) "Beneficial Use" - The use of water treatment plant residuals to act as a soil conditioner or low grade fertilizer for the promotion of vegetative growth on land or to be used in commercial construction or industrial applications, and that meet the requirements of the state Biosolids Regulations.
- (2) "Consolidation and Regionalization Project" - A proposed new construction or expansion of a drinking water supply system that will eliminate one or more existing water supply or treatment works. A letter of intent or a resolution adopted by the project participants must be provided to the Water Quality Control Division (Division) to guarantee the facilities will consolidate.
- (3) "Governmental Agencies" - Departments, divisions, or other units of state government, special districts, water conservation districts, metropolitan water districts, conservancy districts, irrigation districts, municipal corporations, counties, cities and other political subdivisions, the United States or any agency thereof, and any agency, commission, or authority established pursuant to an interstate compact or agreement.

- (4) "Health Hazard" - A situation where the Division has identified a waterborne disease outbreak primary maximum contaminant level (MCL) violation, violation of the Surface Water Treatment Rule (SWTR), a treatment technique violation, or significant deficiencies from an approved sanitary survey as defined in the Colorado Primary Drinking Water Regulations. Funding for projects that address an existing or potential health hazard must result in compliance with existing standards and regulations.
- (5) "Pollution" - The man made, man induced, or natural alteration of the physical, chemical, biological, and radiological integrity of water.
- (6) "Private Nonprofit Entity" – A private nonprofit corporation with perpetual duration and in good standing, which is formed and operated in Colorado pursuant to the requirements of the Colorado Revised Nonprofit Corporation Act, and which files federal and state tax returns as a nonprofit corporation.
- (7) "Project Eligibility List" - The list of projects eligible for financial assistance from the Authority through the Drinking Water Revolving Fund (DWRf), as adopted and modified in accordance with Section 37 95 107.8(4), C.R.S.
- (8) "Projected Loan List" – The list of projects that has been partially scored in accordance with the criteria described in the Intended Use Plan. This list represents those projects that are reasonably anticipated to receive a binding commitment for a loan in the DWRf program. Projects may be moved from the Project Eligibility List to the Projected Loan List at any time during the year.
- (9) "Public Water System" (PWS) - A system for the provision to the public of piped water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen service connections or regularly serves at least twenty-five individuals daily at least 60 days per year. Such term includes:
  - (a) Any collection, treatment, storage, and distribution facilities under control of the supplier of such system and used primarily in connection with such system; and
  - (b) Any collection or pretreatment storage facilities not under such control, which are used primarily in connection with such system.
- (10) "Source Water Protection" - Structural or nonstructural source water protection activities done in addition to area delineation and contaminant assessment.
- (11) "Sustainability Projects" - Projects and/or planning methodologies that promote sustainable drinking water systems through effective utility management and capacity development to improve the technical, financial, and managerial capacities of public water systems, as well as those that promote the conservation of natural resources, alternative approaches such as natural or "green" systems, innovative approaches and technologies, and the full life-cycle costs on infrastructure investments.
- (12) "Treatment Facilities" - Any devices or systems used in the collection, storage, treatment, transmission, diversion, or distribution of water intended for drinking water purposes.
- (13) "Water Conservation" - Any structural or nonstructural water conservation measure that achieves a reduction in water consumption for a PWS or a publicly owned treatment works. Structural measures shall include installation of interior low-flow plumbing fixtures that are distributed and/or installed by a governmental agency or private nonprofit entity or that are funded in whole or in part by the governmental agency or private nonprofit entity and water meters that are funded and owned by the governmental agency or private nonprofit entity. Nonstructural measures shall

include but are not necessarily limited to: incentives for previously installed low-flow fixtures, leak detection or infiltration/inflow programs, public awareness, public education, and incentive water service charges.

- (14) "Water Treatment Plant Residuals" - The accumulated solids, sludge, backwash water, and brine resulting from treatment of water for domestic use.
- (15) "Waterborne Disease Outbreak" - The significant occurrence of acute infectious illness, epidemiologically associated with the ingestion of water from a public water system which is deficient in treatment, as determined by the appropriate local or State agency.

### **52.3 PURPOSE AND GENERAL POLICIES**

- (1) The purpose of the DWRF is to provide financial assistance to governmental agencies or private nonprofit entities for the construction of water projects for health and compliance purposes as defined above.
- (2) An annual Intended Use Plan (IUP) is required by the SDWA to provide information about how the state will assist communities with their drinking water needs. Included in the IUP is the Project Eligibility List, which is a comprehensive list identifying governmental agencies and private nonprofit entities with drinking water project needs, and the Projected Loan List, identifying prioritized PWS projects that are eligible for financial assistance from the DWRF. The project priority system is intended to establish priorities for the DWRF to protect and improve the health, safety, quality and reliability of drinking water supplies in Colorado. It is the policy of the Commission to maintain and improve the existing high quality standards for drinking water in the State by providing accessibility to the DWRF.
- (3) It is also the policy of the Commission to encourage consolidation and regionalization of drinking water systems and to promote source water protection and water conservation where practicable.
- (4) It is the policy of the Commission to promote beneficial use of water treatment plant residuals created by treatment processes of a PWS.
- (5) Any applicant for financial assistance from the DWRF must comply with policies and procedures and other requirements of the Authority.
- (6) Each year, after a public notice and comment period, the Commission will schedule a public hearing for approval of the IUP. After considering all pertinent comments, the Commission shall approve the IUP and adopt additions and modifications to the Project Eligibility List no later than December 31st of each year. The Division will establish a date each year for finalizing its proposal to the Commission for the IUP and Projected Loan List. After that date, any requests for changes must be transmitted directly to the Commission.
- (7) The Commission may amend the Project Eligibility List at any time throughout the year to include projects that it determines and declares to be emergency projects needed to prevent or address threats to public health or environment. In cases where the Commission determines the amendments will result in substantial changes to the Project Eligibility List, public notice and opportunity for comment on the proposed inclusion shall be provided.
- (8) All loan project proponents shall submit applications by deadlines established in the annual IUP. If it is determined that the DWRF lacks sufficient funds to cover loans for all eligible projects that are ready to proceed within the funding year, projects will be funded per section 52.6.

### **52.4 INTENDED USE PLAN**

The Division, in cooperation with the Division of Local Government (DLG) and the Authority, shall develop an annual IUP.

The IUP shall include:

- (1) The Project Eligibility List and Projected Loan List of projects.
- (2) Descriptions of:
  - (a) Criteria and method used for distribution of funds
  - (b) Financial status of the DWRF program
  - (c) Short and long term goals of the DWRF program
  - (d) Amounts transferred between the DWRF and the Water Pollution Control Revolving Fund
  - (e) Set-aside activities and the percentage of the capitalization grant to be used
  - (f) How a state disadvantaged community program will be defined and utilized, if applicable; and
- (3) Any other material that may be required by the SDWA.

**52.5 PROCEDURES FOR IDENTIFYING PROJECTS AND ESTABLISHING THE PROJECT ELIGIBILITY LIST**

- (1) The Project Eligibility List is the comprehensive list of projects showing current and future needs of PWS improvements. Each year the Division shall, after consultation with interested persons and entities, including the DLG and Authority, review, update, and compile additions and modifications to the Project Eligibility List.

This Project Eligibility List shall be included in the IUP as an Appendix and, after a public notice and comment period, shall be presented to the Commission for final agency action at a public hearing.

- (2) Eligible Project Criteria

The Project Eligibility List shall be comprised of four project types, which were developed to emphasize public health, drinking water quality, and compliance for Colorado PWSs. Projects on the Project Eligibility List will be classified by type A, B, C, or D below. No consideration will be given to governmental agencies or private nonprofit entities that have violations caused by poor operation and maintenance procedures or are under an administrative order for violating reporting requirements. All loan projects shall submit applications by deadlines established in the annual IUP.

- (a) Type A includes the correction of a documented public health hazard as defined in the DWRF Rules.
- (b) Type B includes those projects where the system is beyond the useful/design life and is in need of equipment replacement, rehabilitation or repair, in order to maintain compliance or further the public health protection goals of the SDWA.

- (c) Type C includes those projects that will prevent or correct inadequate supply, storage and distribution issues. This also includes systems whose existing demand has exceeded current treatment plant design capacity.
- (d) Type D includes those projects that implement source water protection activities or water conservation and efficiency infrastructure applications.

Note: The Project Types are determined based on the annual eligibility survey process to identify and quantify drinking water infrastructure needs across the state. This information is in no way related to project prioritization.

## **52.6 PROCEDURES FOR ESTABLISHING THE PROJECTED LOAN LIST AND DISTRIBUTING FUNDS**

- (1) The Projected Loan List shall be included in the IUP and, after a public notice and comment period, shall be presented to the Commission for final agency action at a public hearing. At minimum, the Projected Loan List shall identify:
  - (a) Name of the public water system
  - (b) Priority points and rank to the assigned project
  - (c) Project title and description
  - (d) Population of the PWS service area
  - (e) Amount of financial assistance requested
  - (f) Subsidy rate index
  - (g) Whether the project is within the fundable range
- (2) The Division shall rank each project on the Projected Loan List based on the priority score of each project, and projects shall be funded in priority order. Detailed scoring mechanisms shall be established in the IUP based on the following parameters:
  - (a) Drinking water quality and public health
  - (b) Affordability
  - (c) Compliance with the Colorado Primary Drinking Water Regulations
  - (d) Source water protection and conservation
  - (e) Sustainability
  - (f) Readiness to proceed
- (3) Projects on the Projected Loan List will be financed in priority order; however, exceptions for funding out of priority order shall be allowed for one or more of the following reasons:
  - (a) Certain governmental agencies or private nonprofit entities are not ready to proceed with the project;

- (b) Certain governmental agencies or private nonprofit entities do not wish to participate in the DWRF, or they have received funding from other sources;
  - (c) Certain governmental agencies or private nonprofit entities had an emergency situation occur during the funding year; or
  - (d) Certain governmental agencies or private nonprofit entities are not approved for funding because of technical, financial, or managerial deficiencies. (The Division will attempt to work with the governmental entity or private nonprofit entity to resolve the issue through the capacity development program.)
- (4) The Division shall identify the subsidy rate (if applicable) for each project on the Projected Loan List as identified in the Intended Use Plan.

**52.7 DISADVANTAGED COMMUNITIES**

- (1) Under the SDWA, states are authorized to provide loans at or below market interest rates, including interest free loans, at terms not to exceed 30 years.
- (2) The DWRF may provide additional loan subsidies for governmental entities or private nonprofit entities that are determined to be “disadvantaged.” The definition/criteria of a disadvantaged community and the nature of the loan subsidies to be made available thereto shall be recommended for inclusion in the IUP by the Division and the Authority in consultation with the DLG.
- (3) While compiling projects on the Projected Loan List (utilizing the procedures listed in Section 52.6 above), the Division will identify the community projects that qualify for assistance under the Disadvantaged Communities Program in accordance with program definition/criteria.

**52.8 PLANNING GRANTS AND DESIGN / ENGINEERING GRANTS**

The Division may provide planning grants and design / engineering assistance as outlined and approved in the IUP, which shall be developed according to Section 52.4.

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**52.15 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE (AUGUST 10, 2015 RULEMAKING; EFFECTIVE DATE SEPTEMBER 30, 2015)**

Sections 25-8-202(1)(g) and (o); and Section 37-95-107.8(4), C.R.S. provide the specific statutory authority for adoption of the attached regulatory amendments. The Commission also adopted, in compliance with section 24-4-103(4) C.R.S. the following statement of basis and purpose.

**BASIS AND PURPOSE**

The Commission took action to modify Regulation #52 by: inserting private nonprofit entities where applicable throughout the document per Senate Bill 15-121; and revising the planning and design grant nomenclature to planning, design and engineering grants to align with the program grant terminology. The Commission adopted these revisions for two principal reasons:

- 1. To provide access to grant and loan funding for private nonprofit entities that is consistent with Senate Bill 15-121; and
- 2. To clarify the grant terminology under the Colorado Drinking Water Revolving Fund (DWRF) loan process.

Specific modifications to Regulation #52 on a section-by-section basis are described below.

Section 52.2 – Definitions – The Commission added definition (6) Private Nonprofit, and re-numbered definitions accordingly.

Section 52.2(7) – Definitions – Project Eligibility List - The Commission deleted “from time to time” to reflect a revision approved at its April 2014 hearing, which was inadvertently not reflected in the published regulation.

Sections 52.2(13); 52.3(1); 52.5(2); 52.6(3)(a),(b),(c), and (d); and 52.7 – Added the phrase “ or private nonprofit entity(ies)” following “governmental agency(ies)”.

Sections 52.3(2) – Added the phrase “ and private nonprofit entities” following “governmental agencies”.

Section 52.4 – Intended Use Plan – Deleted sentence “The Division shall recommend the IUP to the Commission each year for final agency action at a public hearing, and shall also provide for public notice and an opportunity to comment to comply with the SDWA.” This duplicates the information in 52.3 and is not necessary.

Section 52.7 – Disadvantaged Communities Procedures – “Procedures” was deleted from the heading to reflect a revision approved at the Commission’s April 2014 hearing, which was inadvertently not reflected in the published regulation.

Section 52.8 – The Commission renamed and reworded the section to reflect the two grant programs being (1) Planning Grants and (2) Design / Engineering Grants.