

## CHAPTER 633. DRINKING WATER STATE REVOLVING FUND

[Authority: 27A O. S., §§ 1-3-101, 2-2-101, 2-2-201, 2-3-402, 2-6-103, 2-6-303; and 82 O. S., § 1085.76]

[Source: Codified 6-2-97]

### SUBCHAPTER 1. GENERAL PROVISIONS

#### 252:633-1-1. Purpose

The purpose of this subchapter is to implement the administrative and technical management of the Drinking Water Treatment Revolving Loan Account, referred to as the Oklahoma Drinking Water State Revolving Fund (DWSRF) as required by 82 O.S. § 1085.71 *et seq.* These regulations are necessary to determine the eligibility and priority of entities to receive financial assistance under the Federal Safe Drinking Water Act Amendments of 1996.

[Source: Added at 14 Ok Reg 1139, eff 3-18-97 (emergency); Added at 14 Ok Reg 1690, eff 6-2-97; Amended at 15 Ok Reg 1957, eff 6-1-98; Amended at 25 Ok Reg 1140, eff 7-1-08]

#### 252:633-1-2. Introduction [REVOKED]

[Source: Added at 14 Ok Reg 1139, eff 3-18-97 (emergency); Added at 14 Ok Reg 1690, eff 6-2-97; Revoked at 15 Ok Reg 1957, eff 6-1-98]

#### 252:633-1-3. Applicability

These rules apply to all public projects receiving financial assistance from the DWSRF.

[Source: Added at 14 Ok Reg 1139, eff 3-18-97 (emergency); Added at 14 Ok Reg 1690, eff 6-2-97; Amended at 15 Ok Reg 1957, eff 6-1-98]

#### 252:633-1-4. Authority

The DWSRF Regulations are authorized by 82 O.S. §§ 1085.71 and 1085.76 *et seq.* The Water Quality Council is authorized to recommend rules for promulgation to the Environmental Quality Board by 27A O.S. § 2-2-201. The Environmental Quality Board is authorized to adopt rules for DWSRF regulation under 27A O.S. §§ 2-2-201 and 2-6-303.

[Source: Added at 14 Ok Reg 1139, eff 3-18-97 (emergency); Added at 14 Ok Reg 1690, eff 6-2-97; Amended at 15 Ok Reg 1957, eff 6-1-98; Amended at 25 Ok Reg 1140, eff 7-1-08]

#### 252:633-1-5. Definitions

The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

**"Applicant"** means the entity applying or having applied to the DEQ for financial assistance under the provisions of this Chapter and 82 O.S. §§ 1085.71-1085.84.

**"Application"** means the application process or procedure through which an applicant applies for financial assistance. In context, this word shall also be understood to refer to the written application document(s), with attachments, through which application for financial assistance is made.

**"Binding commitment"** means legal obligations by the State to the local recipient that define the terms and the timing for assistance under the DWSRF.

**"Building"** means the erection, acquisition, alteration, remodeling, improvement or extension of drinking water systems.

**"Capitalization grant"** means an agreement between EPA and State by which federal dollars are made available to partially fund a Drinking Water State Revolving Fund (DWSRF).

**"Comprehensive Project Priority List (Project Priority List)"** means a list of all projects requesting funds from the DWSRF, ranked in order of priority for funding for which DWSRF assistance is expected during a five-year planning period.

**"Construction"** means any one or more of the following: Preliminary planning to determine the feasibility of drinking water systems, engineering, architectural, legal, fiscal, or economic investigations or studies, surveys, designs, plans, working drawings, specifications, procedures, or other necessary actions, building, or the inspection or supervision of any of these items.

**"Contingency section"** means that portion of the fundable list consisting of projects which may receive loans due to bypass provision or due to additional funds becoming available.

**"DBE"** means disadvantaged business enterprise.

**"DEQ"** means Department of Environmental Quality.

**"Drinking Water Treatment Project"** means:

(A) any engineering undertaking or work to control or develop drinking water treatment facilities of eligible entities,

(B) any system necessary to improve or develop drinking water supply, treatment or distribution capabilities, or

(C) any implementation of water source protection programs as authorized by the federal Safe Drinking Water Act.

**"DWSRF"** means Drinking Water State Revolving Fund, sometimes referred to as the Fund.

**"Eligible entity"** means those applicants determined by the DEQ and OWRB to be eligible for financial assistance from OWRB to finance approved projects.

**"Engineering services"** means consultation, investigations, reports, or services for design-type projects within the scope of the practice of architecture or professional engineering.

**"EPA"** means the Environmental Protection Agency.

**"Equivalency projects"** means those projects, selected by the DEQ as meeting the requirements of the federal capitalization grant.

**"Financial assistance"** means the act, process or program of DEQ or OWRB participation in the loaning, granting of, or contracting for, financial assistance funds to an applicant for the financing of a DEQ approved project.

**"Fundable List"** means projects listed on the Project Priority List which have met all the requirements for funding and includes projects scheduled for financial assistance during the funding year.

**"Funding year"** means the first year of the planning period represented by a project priority list.

**"Initiation of operation"** means the date specified by the recipient on which use of the project begins.

**"Intended Use Plan"** (IUP) means a document prepared each year by the DEQ, which identifies the intended uses of the funds in the DWSRF and program set-asides and describes how those uses support the goals of the DWSRF.

**"Loan"** means an agreement between the OWRB and the local recipient through which the DWSRF provides funds for eligible assistance, and the recipient promises to repay the principal sum to the DWSRF over a period not to exceed the length of the loan at an interest rate established at or below market rates (may be interest free).

**"MBE"** means minority business enterprise.

**"MBE/WBE participation"** means the federal requirement for negotiation of a "fair share" objective for minority and women owned businesses (MBE/WBE).

**"MGD"** means million of gallons per day.

**"OAC"** means the Oklahoma Administrative Code.

**"Operation and maintenance"** means activities required to assure the dependable and economical function of water systems.

(A) **"Maintenance"** means preservation of functional integrity and efficiency of equipment and structures. This includes preventive activities, corrective actions and replacement of equipment.

(B) **"Operation"** means control of the unit processes and equipment that make up the drinking water system. This includes financial and personnel management, records, laboratory control, process control, safety and emergency operation planning.

**"O.S."** means Oklahoma Statutes.

**"OWRB"** means Oklahoma Water Resources Board.

**"Planning"** means the process of evaluating alternative solutions to drinking water system problems, and through a systematic screening procedure, selecting the most cost effective alternative.

**"Pledge"** means the act or process through which an applicant commits, obligates and encumbers its property, real or personal, or its revenues, existing or anticipated, all being of or from the projects or otherwise, to the OWRB as security and means for repayment of the loan made to the applicant by the OWRB.

**"Project"** means the scope of work for which DWSRF assistance is provided.

**"Project completion"** means the date of the final inspection of the project, certifying that the construction of the project is complete and that the constructed system is considered fully operational.

**"Project cost"** means applicant's direct and incidental costs of acquiring, constructing and furnishing the project.

**"Project priority points"** means the total number of points assigned to a project by using the priority ranking formula.

**"Recipient"** means a municipality or other entity that receives assistance under the DWSRF program.

**"Revenue programs"** means a formally documented determination of water use charges which is designed to provide revenues for operation and maintenance (including replacement) cost, and/or any combination of revenue generating programs necessary to meet local debt service requirements.

**"State match"** means funds equaling at least 20% of the amount of the capitalization grant which the State must deposit into the DWSRF.

**"User charge"** means a charge levied on users of a water supply for the user's share of the cost of operation and maintenance (including replacement) of such works.

**"Water System"** means a water treatment plant, water wells, intake structures, raw water lines and all related pipelines or conduits, pumping stations and mains and all other appurtenances and devices used for distributing drinking water to the public.

**"WBE"** means women business enterprise.

[Source: Added at 14 Ok Reg 1139, eff 3-18-97 (emergency); Added at 14 Ok Reg 1690, eff 6-2-97; Amended at 15 Ok Reg 1957, eff 6-1-98; Amended at 25 Ok Reg 1140, eff 7-1-08]

### **SUBCHAPTER 3. GENERAL PROGRAM REQUIREMENTS**

#### **252:633-3-1. Program requirements**

Projects which are funded in whole or in part with assistance from the DWSRF must comply with this Subchapter.

[Source: Added at 14 Ok Reg 1139, eff 3-18-97 (emergency); Added at 14 Ok Reg 1690, eff 6-2-97; Amended at 15 Ok Reg 1957, eff 6-1-98]

#### **252:633-3-2. Eligible project categories of need**

##### **(a) Categories**

(1) Categories of drinking water projects eligible for assistance are as follows:

- (A) Treatment;
- (B) Major Distribution/Storage System Rehabilitation;
- (C) New Transmission/Distribution Systems;
- (D) New Well/Well rehabilitation;
- (E) New Intake/Well/Raw water Lines; and/or
- (F) New Storage.

(2) A project may include any combination, or all eligible categories of need.

(b) **Project Priority List.** DEQ will determine each fiscal year the amount of funding necessary and the project category that will be placed on the fundable portion of the Project Priority List.

(c) **Eligible Costs.** Costs for planning, design and construction of the eligible categories of drinking water projects are allowed. Eligible construction costs will be based on the lowest responsible bidder.

(d) **Eligibility.** Eligibility for equivalency projects is subject to the requirements of this Subchapter.

- (1) **Capacity funding limitations.** The eligible capacity shall be determined using average daily flow and peak flows according to population and per capita flow estimates provided by the applicant. Project capacity must be consistent with environmental constraints and affordability.
- (A) Eligible design capacity for treatment plants will be up to a period of 20 years from the estimated date of initiation of construction.
  - (B) Eligible design capacity for lines will be based on flow for a maximum of 40 years from the estimated date of initiation of construction.
  - (C) Eligible design capacity shall be based on the local population projection for the design year and the appropriate local per capita flow.
  - (D) The applicant shall provide flow data to document the peak design flow.
  - (E) Eligible design capacity will be determined in the planning documents and as approved by DEQ.
- (2) **Distribution systems.** The eligible portions of distribution systems are the common lines, within a publicly owned treatment system, which are primarily installed to distribute water directly from treatment facilities.

[Source: Added at 14 Ok Reg 1139, eff 3-18-97 (emergency); Added at 14 Ok Reg 1690, eff 6-2-97; Amended at 15 Ok Reg 1957, eff 6-1-98]

### **252:633-3-3. Revenue program**

To be eligible for the DWSRF the applicant will be required to demonstrate that it has technical, managerial and financial capability to construct, operate and maintain the water system pursuant to requirements of the Safe Drinking Water Act Amendments of 1996.

[Source: Added at 14 Ok Reg 1139, eff 3-18-97 (emergency); Added at 14 Ok Reg 1690, eff 6-2-97; Amended at 15 Ok Reg 1957, eff 6-1-98; Amended at 25 Ok Reg 1140, eff 7-1-08]

### **252:633-3-4. DWSRF Project Priority System**

(a) **Preparation.** The DEQ shall prepare and maintain a current Project Priority List which ranks projects according to this priority ranking system.

- (1) Priority for the use of the DWSRF funds shall be given to projects that:
  - (A) address the most serious risk to human health;
  - (B) are necessary to ensure compliance with the requirements of the Safe Drinking Water Act Amendments of 1996; and
  - (C) assist systems most in need, on a per household basis.
- (2) Applicants shall be ranked according to the system in Appendix A of these rules with the projects ranked by points (the project with the most points) shall be first on the Project Priority List; the project with the least points shall be last.

(b) **Public participation.** The DEQ shall ensure that there is adequate public participation on the DWSRF Priority Ranking System and the Project Priority List. A public meeting shall be held to discuss the DWSRF IUP, the Project Priority List and any revisions that were made to the DWSRF Project Priority System. These public participation procedures shall follow the Oklahoma Administrative Procedures Act. The notice of public meeting shall precede the public meeting by 30 days and shall be published in a statewide publication. At the time of the publication of the notice, the DEQ shall circulate information about the IUP and the Project Priority List including a description of each proposed project. Attendees of the public meeting will be allowed to express their views concerning the Project Priority List and the priority ranking system. A 30-day public comment period shall follow the meeting.

(c) **Project Priority List.** A Project Priority List shall become effective and supersede all previous lists upon completion of the public participation procedures. A Project Priority List, as updated during the funding year, shall remain effective until such time as it is superseded by a new list.

- (1) **Additional allotments.** Any sum made available to the DEQ by reallotment or the release of funds that were previously obligated shall follow these procedures.
- (2) **Project removal.** The DEQ may remove a project from the Project Priority List when the project has been funded, is found to be ineligible, the applicant does not intend to continue in the DWSRF, or the OWRB has determined that the applicant does not have financial capability to

qualify for funding. The applicant whose project is affected shall be given a written notice that the project is to be removed from the list.

(3) **Amount of financial assistance.** The amount of financial assistance shall be the sum of the total eligible costs related to construction. The amount is contingent upon the availability of funds for this purpose.

(4) **Addition of new projects to the Project Priority List.** The applicant must submit a request to the DEQ, including project description, estimated funds to be requested and a schedule for the proposed project to be included on the Project Priority List. The DEQ will evaluate the request for eligibility, and if it is determined that a project is inconformance with DWSRF requirements, the potential project will be ranked and added to the Project Priority List.

[Source: Added at 14 Ok Reg 1139, eff 3-18-97 (emergency); Added at 14 Ok Reg 1690, eff 6-2-97; Amended at 15 Ok Reg 1957, eff 6-1-98; Amended at 25 Ok Reg 1140, eff 7-1-08]

### **252:633-3-5. Intended use plan [REVOKED]**

[Source: Added at 14 Ok Reg 1139, eff 3-18-97 (emergency); Added at 14 Ok Reg 1690, eff 6-2-97; Revoked at 15 Ok Reg 1957, eff 6-1-98]

### **252:633-3-6. Legislative report [REVOKED]**

[Source: Revoked at 15 Ok Reg 1957, eff 6-1-98; Added at 14 Ok Reg 1690, eff 6-2-97; Added at 14 Ok Reg 1139, eff 3-18-97 (emergency)]

### **252:633-3-7. EPA biennial report [REVOKED]**

[Source: Added at 14 Ok Reg 1139, eff 3-18-97 (emergency); Added at 14 Ok Reg 1690, eff 6-2-97; Revoked at 15 Ok Reg 1957, eff 6-1-98]

### **252:633-3-8. Types of assistance**

(a) **Conditions.** The DWSRF may be used for the following purposes if:

- (1) The applicant is the approved legal management agency;
- (2) The project is included on the state's inventory of public water supplies, or meets the definition of a public water supply as defined in 27A O.S. §2-6-101;
- (3) The project is listed on the Project Priority List following a request to the DEQ for placement on the list;
- (4) The applicant has complied with these rules and the project has been approved by the DEQ; and
- (5) The project has approved plans and specifications and a construction permit has been issued by the DEQ.

(b) **Loans.** The DWSRF may be used to make loans if:

- (1) Loans are made at or below market interest rates, including interest free loans at terms not to exceed the federal requirement;
- (2) Principal and interest payments will commence not later than one year after project completion and all loans will be fully amortized for the length of the loan after project completion; and
- (3) The recipient of a loan will establish a dedicated source of revenue for repayment of loans.

(c) **Refinance.** The DWSRF may be used to buy or refinance the debt obligation of eligible applicants at or below market rates, when such debt obligations were incurred and construction started after July 1, 1993.

(d) **Insurance.** The DWSRF may be used to guarantee or purchase insurance for the applicant's local debt.

(e) **Revenue.** The DWSRF may be used as a source of revenue or security for payment of DWSRF debt obligations.

(f) **Interest.** The DWSRF may be used to earn interest on fund accounts.

(g) **Appropriate uses.** The DWSRF may be used for other purposes or in a manner as is determined by OWRB to be an appropriate use of the DWSRF and has been specifically approved by EPA pursuant to the federal Safe Drinking Water Act Amendments of 1996.

[Source: Added at 14 Ok Reg 1139, eff 3-18-97 (emergency); Added at 14 Ok Reg 1690, eff 6-2-97; Amended at 15 Ok Reg 1957, eff 6-1-98; Amended at 25 Ok Reg 1140, eff 7-1-08]

### **252:633-3-9. Pre-application for funding**

To be eligible for a loan from the DWSRF the applicant must submit the pre-application for funding to the OWRB. The applicant must demonstrate that it has the technical, managerial and financial capacity to assure adequate construction, operation, and maintenance of the water system pursuant to the Safe Drinking Water Act Amendments of 1996.

[Source: Added at 14 Ok Reg 1139, eff 3-18-97 (emergency); Added at 14 Ok Reg 1690, eff 6-2-97; Amended at 15 Ok Reg 1957, eff 6-1-98; Amended at 25 Ok Reg 1140, eff 7-1-08]

### **252:633-3-10. Pre-planning conference [REVOKED]**

[Source: Added at 14 Ok Reg 1139, eff 3-18-97 (emergency); Added at 14 Ok Reg 1690, eff 6-2-97; Revoked at 15 Ok Reg 1957, eff 6-1-98]

### **252:633-3-11. Planning documents**

A planning document must be submitted to DEQ by the applicant. The document shall contain the following information:

- (1) Identification of the planning area boundaries and characteristics, the existing problems and needs related to water treatment, and the projected needs and problems up to the next 20 years;
- (2) Cost-effective analysis of feasible water systems or alternatives capable of meeting state and federal requirements;
- (3) All information necessary for the design of the system;
- (4) A resolution passed by the applicant which accepts the planning documents and provides a commitment to build the proposed project and a copy of the minutes of the open meeting in which the resolution was passed;
- (5) Environmental Information as required Subchapter 7;
- (6) A statement of the project engineer's most current estimate of project cost itemized for major facilities and items including land and right-of-way costs, engineering fees, legal fees, financial advisor fees and/or consultant fees, contingencies (10%), and interest during construction; and
- (7) A statement of the legal, technical, managerial, and financial capacity to construct, operate and maintain the water system.

[Source: Added at 14 Ok Reg 1139, eff 3-18-97 (emergency); Added at 14 Ok Reg 1690, eff 6-2-97; Amended at 15 Ok Reg 1957, eff 6-1-98]

### **252:633-3-12. Pre-application conference [REVOKED]**

[Source: Added at 14 Ok Reg 1139, eff 3-18-97 (emergency); Added at 14 Ok Reg 1690, eff 6-2-97; Revoked at 15 Ok Reg 1957, eff 6-1-98]

### **252:633-3-13. Submittals**

The applicant shall prepare plans and specifications and a final engineering report on all significant elements of the project. These documents shall conform to OAC 252:626 Public Water Supply Construction Standards. This review will also include a review to ensure that the plans and specifications are ready to be advertised. A permit to construct must be obtained from the DEQ.

The plans and specifications shall contain the following:

- (1) Provisions assuring compliance with DEQ rules and a letter from an attorney certifying compliance with the Oklahoma Bidding Laws.
- (2) Forms by which the bid, statutory, performance and maintenance bonds can be provided.
- (3) Provisions requiring the contractor to obtain and maintain the appropriate insurance coverage.
- (4) Provisions giving authorized representatives of the DEQ access to all such construction activities, books, records, documents, and other evidence of the contractor for inspection, audit and copying during normal business hours.
- (5) Those conditions, specifications, and other provisions provided by or requested by the DEQ to comply with State and Federal law.
- (6) Bid proposal that separates eligible construction from ineligible construction.

### **252:633-3-14. Application for financial assistance**

(a) **Filing.** The applicant shall file an application for financial assistance with the OWRB which meets the requirements of DEQ and OWRB rules. Applications will only be accepted from applicants listed on the fundable portion of the Project Priority List.

(b) **Action on application.**

(1) After a preliminary recommendation for approval of a pre-application is made as provided in 252:633-3-9 and an application is filed as provided in (a) of this section, the OWRB shall conduct an in-depth review and evaluation of the application.

(2) The DEQ shall consider the following general and nonexclusive criteria for application approval:

(A) **Compliance with laws.** The application and proposed water project must be in compliance with applicable and relevant federal, state and local laws and regulations, and applicant must possess all necessary and incidental legal rights and privileges necessary to project commencement and operation.

(B) **Eligibility.** The applicant and proposed water project must be determined to be eligible for the assistance sought.

(C) **Availability of funds.** The DEQ shall consider the current and anticipated availability of funds needed to provide the financial assistance requested.

(c) **Continuing review after approval of application.** After final approval, the OWRB, the DEQ, and the applicant will set a time and place for the loan closing.

### **252:633-3-15. Binding commitment [REVOKED]**

### **252:633-3-16. Loan closing**

(a) **Documentation to be submitted before loan closing.** The applicant will submit to the DEQ the following bid and contract documents:

(1) Bidding documents, including all addenda, approved in accordance with OAC 252:633-3-20;

(2) A tabulation of all bids received and an explanation for any rejected bids or otherwise disqualified bidders;

(3) An executed construction contract contingent upon DEQ approval containing the appropriately executed bonds, insurance certificates, assurances, and other documents required by this Chapter;

(4) Other engineering data and information, as requested by DEQ staff;

(5) A certification that all required acquisitions, leases, easements, rights-of-way, relocations, (both voluntary and involuntary) have been obtained for the project to be built;

(6) Documentation that the applicant has obtained required permits and other financing, if any, to construct the project;

(7) Information requested by the OWRB regarding loan closing documents;

(8) When there are bid protests, a certification from the applicant that all bid protests have been resolved;

(9) A detailed project budget which limits the contingency to 5% of contracted amounts; and

(10) Copies of all legal, financial, engineering, and inspection contracts that will be paid from the loan proceeds.

(b) **Evidence of indebtedness.** The financial assistance loans shall be provided by the OWRB for approved water projects pursuant to such notes, bonds, revenue bonds or other appropriate form of evidence of indebtedness from the applicant as the OWRB may require.

(c) **Security for a water project loan.**

- (1) As security for the assistance loan provided by the OWRB to an approved applicant, the applicant must provide if required by the OWRB, a mortgage on any or all facilities of the water project for which application is made.
- (2) The OWRB shall require a pledge and lien on revenues to be derived from the operation of the water project.
- (3) If the specific water project is not a revenue producing unit, then a pledge of a lien on other revenue sources or systems which may be pledged by the applicant to satisfy the loan security requirements necessary to obtain assistance from the OWRB.
- (4) The OWRB may require additional security that the OWRB deems necessary. Additional security may include such pledges, liens, revenues and/or mortgages on additional facilities or systems.

**(d) Conditions for disbursement of funds.** At or following the loan closing, the following conditions and requirements must be met before funds are released:

- (1) Applicant, the OWRB, and all other necessary parties shall have executed all necessary and incidental instruments and documents for loan closing, including all mortgages, notes, financing statements and pledges of project security and revenues.
- (2) Recipient must send disbursement requests based on costs incurred to the DEQ for review and appropriate action.

[Source: Added at 14 Ok Reg 1139, eff 3-18-97 (emergency); Added at 14 Ok Reg 1690, eff 6-2-97; Amended at 15 Ok Reg 1957, eff 6-1-98; Amended at 25 Ok Reg 1140, eff 7-1-08]

### **252:633-3-17. Refinancing construction loans**

If the project includes the refinancing of a loan, the applicant shall submit all of the items specified in 252:633-3-14 and any records, assurances, or appraisals concerning the construction of the project that was commenced after July 1, 1993 and meets the requirements of OAC 252:633-7-1 and the requirements of the Safe Drinking Water Act Amendments of 1996. A DEQ final construction inspection must verify that the project was constructed in accordance with the DEQ approved plans and specifications for the project to be eligible.

[Source: Added at 14 Ok Reg 1139, eff 3-18-97 (emergency); Added at 14 Ok Reg 1690, eff 6-2-97; Amended at 15 Ok Reg 1957, eff 6-1-98; Amended at 25 Ok Reg 1140, eff 7-1-08]

### **252:633-3-18. Minimum assistance agreement conditions**

The applicant shall comply with conditions in the loan agreement.

[Source: Added at 14 Ok Reg 1139, eff 3-18-97 (emergency); Added at 14 Ok Reg 1690, eff 6-2-97; Amended at 15 Ok Reg 1957, eff 6-1-98]

### **252:633-3-19. Construction phase**

**(a) Awarding construction contracts.** The recipient shall be responsible for assuring that every appropriate procedure and incidental legal requirement is observed in advertising for bids and awarding the construction contract. The text of the construction contract shall not vary from the text of the DEQ approved plans and specifications and addenda to the plans and specifications for which the Permit to Construct has been issued.

**(b) Engineering during construction.** During the building phase of the project, the recipient shall provide engineering services necessary to assure completion of the project according to the loan agreement and the approved plans and specifications.

**(c) Resident inspection.** After the construction contract is awarded, the recipient shall provide for adequate full-time resident inspection of the project and require assurance that the work is being performed in a satisfactory manner according to the approved plans and specifications, approved alterations, and sound engineering principles and building practices. The DEQ shall, to the extent practicable, alert the recipient and the project engineer of any variances from the approved plans and specifications. The recipient and the project engineer shall immediately initiate necessary action rectifying construction deficiencies.



(d) **Quality of materials.** The applicant shall ensure that materials used by their contractors meet or exceed the requirements of the approved specifications.

[Source: Added at 14 Ok Reg 1139, eff 3-18-97 (emergency); Added at 14 Ok Reg 1690, eff 6-2-97; Amended at 15 Ok Reg 1957, eff 6-1-98; Amended at 25 Ok Reg 1140, eff 7-1-08]

#### **252:633-3-20. Project changes**

(a) After an application for financial assistance has been approved by the OWRB and the DEQ has approved the plans and specifications for the project, no change from the approved plans and specifications which would materially or significantly affect total project or cost, estimated revenues, or design shall be made without the prior written approval. Additionally, the amount of the funding provided may only be increased through an amended application for financial assistance.

(b) The recipient must receive approval from the DEQ before implementing changes which:

- (1) Alter the project performance standards;
- (2) Alter the type of water treatment provided by the project;
- (3) Significantly delay or accelerate the project schedule; or,
- (4) Substantially alter the design drawings and specifications, or the location, size, capacity, or quality of any major part of the project.

[Source: Added at 14 Ok Reg 1139, eff 3-18-97 (emergency); Added at 14 Ok Reg 1690, eff 6-2-97; Amended at 15 Ok Reg 1957, eff 6-1-98; Amended at 25 Ok Reg 1140, eff 7-1-08]

#### **252:633-3-21. Building phase submittals**

The following submittal and accompanying actions by the recipient are required during and upon the completion of the construction of the project;

- (1) Any change order shall be submitted to the DEQ for approval;
- (2) Once construction is completed, notice shall be submitted to the DEQ; and
- (3) A complete set of as-built drawings shall be submitted to the DEQ upon completion of construction.

[Source: Added at 14 Ok Reg 1139, eff 3-18-97 (emergency); Added at 14 Ok Reg 1690, eff 6-2-97; Amended at 15 Ok Reg 1957, eff 6-1-98; Amended at 25 Ok Reg 1140, eff 7-1-08]

#### **252:633-3-22. Progress payments**

Certified requests for payment and documentation shall be submitted to the DEQ monthly.

[Source: Added at 14 Ok Reg 1139, eff 3-18-97 (emergency); Added at 14 Ok Reg 1690, eff 6-2-97; Amended at 15 Ok Reg 1957, eff 6-1-98; Amended at 25 Ok Reg 1140, eff 7-1-08]

#### **252:633-3-23. Retainage [REVOKED]**

[Source: Added at 14 Ok Reg 1139, eff 3-18-97 (emergency); Added at 14 Ok Reg 1690, eff 6-2-97; Revoked at 15 Ok Reg 1957, eff 6-1-98]

#### **252:633-3-24. Post building phase responsibilities of the recipient [REVOKED]**

[Source: Added at 14 Ok Reg 1139, eff 3-18-97 (emergency); Added at 14 Ok Reg 1690, eff 6-2-97; Revoked at 15 Ok Reg 1957, eff 6-1-98]

#### **252:633-3-25. Accounting**

(a) **Instrument.** The recipient shall agree to the following:

- (1) That project accounts shall be maintained in accordance with standards set forth by the Governmental Accounting Standards, the OWRB and the DEQ;
- (2) A fund in the project account shall be secured in the manner provided by law for the security of county funds or city funds, as appropriate;

- (3) All proceeds acquired by the recipient to plan, design and construct the project shall be placed in the project account;
- (4) All proceeds in the project account shall be used for the sole purpose of planning, designing and building the project as approved by the OWRB and the DEQ;
- (5) That an annual audit of the recipient, prepared by a certified public accountant, be provided to the OWRB;
- (6) That the recipient shall maintain adequate insurance coverage on the project in an amount adequate to protect the State's interest;
- (7) That the recipient will comply with any special conditions specified by the DEQ environmental determination, required pursuant to OAC 252:633-7-1, until all financial obligations to the State have been discharged; and
- (8) That the recipient covenants to continually abide by the terms of the financial assistance agreement and relevant State statutes and regulations for operation and maintenance of the facility.

(b) **Final accounting.** The applicant shall make a final accounting to the DEQ of the total cost of the project. If the project is completed at a total cost less than the amount of available funds for building the project the recipient shall immediately, with filing the final accounting, return to the DWSRF the amount of any such excess. If the DEQ disapproves construction of any portion of the project as not being in accordance with the plans and specifications, the recipient shall immediately return to the DWSRF the ineligible amount.

[Source: Added at 14 Ok Reg 1139, eff 3-18-97 (emergency); Added at 14 Ok Reg 1690, eff 6-2-97; Amended at 15 Ok Reg 1957, eff 6-1-98; Amended at 25 Ok Reg 1140, eff 7-1-08]

## SUBCHAPTER 5. MISCELLANEOUS PROVISIONS

### **252:633-5-1. Inspection of works, books and records [REVOKED]**

[Source: Added at 14 Ok Reg 1139, eff 3-18-97 (emergency); Added at 14 Ok Reg 1690, eff 6-2-97; Revoked at 15 Ok Reg 1957, eff 6-1-98]

### **252:633-5-2. Project modifications [REVOKED]**

[Source: Revoked at 15 Ok Reg 1957, eff 6-1-98; Added at 14 Ok Reg 1690, eff 6-2-97; Added at 14 Ok Reg 1139, eff 3-18-97 (emergency)]

### **252:633-5-3. Public records [REVOKED]**

[Source: Added at 14 Ok Reg 1139, eff 3-18-97 (emergency); Added at 14 Ok Reg 1690, eff 6-2-97; Revoked at 15 Ok Reg 1957, eff 6-1-98]

### **252:633-5-4. Application fees**

Loan applications are subject to an OWRB filing, review and processing fee at the time of filing the application. All application fees charged by OWRB are eligible and may be included in the eligible project costs.

[Source: Added at 14 Ok Reg 1139, eff 3-18-97 (emergency); Added at 14 Ok Reg 1690, eff 6-2-97; Amended at 15 Ok Reg 1957, eff 6-1-98]

### **252:633-5-5. Project or water project completion, inspection and audit**

(a) **Notification.** Upon completion of any project, the applicant shall notify the DEQ in writing.

(b) **Final inspection.** Upon receipt of such notification, the DEQ shall conduct a final on-site inspection of the project and may conduct an audit of all financial assistance funds furnished to the applicant.

[Source: Added at 14 Ok Reg 1139, eff 3-18-97 (emergency); Added at 14 Ok Reg 1690, eff 6-2-97; Amended at 15 Ok Reg 1957, eff 6-1-98; Amended at 25 Ok Reg 1140, eff 7-1-08]

### **252:633-5-6. Return of funds to the Board [REVOKED]**

## **252:633-5-7. Approval and notification regardin certain proposed action of an eligible entity [REVOKED]**

[Source: Added at 14 Ok Reg 1139, eff 3-18-97 (emergency); Added at 14 Ok Reg 1690, eff 6-2-97; Revoked at 15 Ok Reg 1957, eff 6-1-98]

## **SUBCHAPTER 7. ENVIRONMENTAL REVIEW PROCESS**

### **252:633-7-1. Requirement of environmental review**

The DEQ Water Quality Division Director shall conduct an interdisciplinary environmental review consistent with the National Environmental Policy Act of the project proposed for funding through the Drinking Water Treatment Revolving Loan Account (DWTRLA). This review will ensure that the project will comply with the applicable local, state and federal laws and DEQ regulations and procedures relating to the protection and enhancement of the environment. As necessary, the determination will include mitigative provisions as a condition of financial assistance for building and no financial assistance will be provided until a final environmental determination has been made. The DEQ will establish procedures for the environmental review process. Nothing in this Part shall prohibit any public, private or governmental party from seeking administrative or legal relief from the determinations of the DEQ.

(1) **Basic environmental determination.** There are three (3) basic environmental determinations that will apply to projects proposed to be implemented with assistance from the Drinking Water Treatment Revolving Loan Account. These are:

- (A) a determination to categorically exclude a project from a formal environmental review;
- (B) a Finding of No Significant Impact (FNSI) based upon a formal environmental review supported by an Environmental Information Document (EID); and
- (C) a determination to provide or not to provide financial assistance based upon a Record of Decision following the preparation of an Environmental Impact Statement (EIS).

(2) **Other determinations that are available to the Water Quality Division Director.** An applicant may request advance authority to construct part of the proposed water treatment project before completion of the necessary environmental review when the part of the project will:

- (A) immediately remedy a severe public health problem where violations of primary drinking water standards threaten health of the public,
- (B) not preclude any reasonable alternatives identified for the complete system,
- (C) not cause significant or indirect environmental impacts including those which cannot be acceptably mitigated without completing the entire project, and
- (D) not be highly controversial.

[Source: Added at 14 Ok Reg 1139, eff 3-18-97 (emergency); Added at 14 Ok Reg 1690, eff 6-2-97; Amended at 15 Ok Reg 1957, eff 6-1-98; Amended at 25 Ok Reg 1140, eff 7-1-08]

### **252:633-7-2. Environmental information required by the Department [REVOKED]**

[Source: Added at 14 Ok Reg 1139, eff 3-18-97 (emergency); Added at 14 Ok Reg 1690, eff 6-2-97; Revoked at 15 Ok Reg 1957, eff 6-1-98]

### **252:633-7-3. Environmental review by the Department [REVOKED]**

[Source: Added at 14 Ok Reg 1139, eff 3-18-97 (emergency); Added at 14 Ok Reg 1690, eff 6-2-97; Revoked at 15 Ok Reg 1957, eff 6-1-98]

## **APPENDIX A. Funding Priority Formula**

Figure 1

## PART I: DWSRF PROJECT PRIORITY SYSTEM

- A. **Projects included.** The comprehensive Project Priority List shall consist of all eligible projects requesting placement on the Project Priority List. Projects which meet all requirements for funding shall be placed on a Fundable List and included in the current Intended Use Plan (IUP). Projects which rank below the available funding level shall be considered the contingency section of the Fundable List. Projects in this part of the list may receive loans due to bypass provision or due to additional funds becoming available.
- B. **Project ranking.** The ranking factors are based on the relative impact of the project in achieving the objectives of the Safe Drinking Water Act Amendments of 1996. The ranking factors are listed in Part II of this Appendix.
- C. **Management of the Project Priority List.**
1. **Tie breaking procedure.** A tie breaking procedure shall be used when two or more projects have equal points under the Project Priority System and are in competition for funds. Tied projects will be ranked with the first project which has the greatest value for the ranking factor for Violations of Maximum Contaminant Levels (Primary Standards).
  2. **Project bypass.** A project on the fundable portion of the Project Priority List may be bypassed for one year if it is not on schedule as indicated in the IUP or the project's specific consent/administrative order. The applicant whose project is affected shall be given a written notice that the project is to be bypassed. Bypassed projects may be reinstated on the funded portion of the list if sufficient funds are available, and the applicant completes the necessary tasks to proceed. Funds which become available due to the utilization of these bypass procedures will be applied to the next ranked project on the project priority list.
  3. **Project Priority List update.** The priority list shall be periodically reviewed by the DEQ Water Quality Division Director and changes (i.e., loan award dates, estimated construction assistance amounts, project bypass, addition of new projects, etc.) will be made as necessary.

## PART II: RANKING SYSTEM

A. **Formula.** The project priority points (P) are derived from the formula:  $P = A + B + C + D + E + F + G + H + I$  where the factors are defined as:

1. A = Violations of Maximum Contaminant Levels (Primary Standards).
2. B = Quantity Deficiencies.
3. C = Design Deficiencies.
4. D = Vulnerability to Potential Pollution.
5. E = Violation of Recommended Maximum Levels (Secondary Levels).
6. F = Consolidation.
7. G = Compliance Orders.
8. H = Source Water Protection.
9. I = Affordability.

Ranking factors one through eight are to address the risks to human health and the compliance with the Safe Drinking Water Act Amendments of 1996 requirements. Ranking factor nine addresses the affordability requirements of the Safe Drinking Water Act Amendments of 1996. B. **Factors Descriptions.**

1. **Violations of Maximum Contaminant Levels (Primary Standards) (A).**

Maximum contaminant levels are established for those parameters which may be detrimental to public health. Severity point values will be the sum of points for the violations of a contaminant during a 24 month period from the date of the request. Contaminants reported quarterly, such as nitrate, may include up to eight violations during this 24 month period. Those contaminants reported

monthly, such as fecal coliform, may include up to twenty-four violations during this 24 month period. Violations of standards of contaminants based on a running annual average, such as total trihalomethanes, will be based on a 12 month reporting period and will include only severity value. Violations of more than one contaminant are additive. These violations are documented by inclusion in the Safe Drinking Water Information System (SDWIS). These values may be increased quarterly in the event that there are repeated violations.

| <b>Contaminant</b>                        | <b>Severity</b><br>(points per violation) |
|---|---|
| Antimony                                  | 10  |
| Arsenic                                   | 10  |
| Asbestos                                  | 10  |
| Barium                                    | 2   |
| Beryllium                                 | 10  |
| Bromate                                   | 10  |
| Cadmium                                   | 10  |
| Chlorates                                 | 10  |
| Chlorine Dioxide                          | 10  |
| Chromium                                  | 10  |
| Copper >1.3                               | 5   |
| Fecal Coliform                            | 20  |
| Fluoride > 4                              | 5   |
| Gross Alpha Radioactivity                 | 5   |
| Gross Beta Radioactivity                  | 5   |
| Lead                                      | 30  |
| Mercury                                   | 10  |
| Nitrate                                   | 30  |
| Pesticides and other SOC's                | 10  |
| Radium                                    | 10  |
| Selenium                                  | 5   |
| Thallium                                  | 10  |
| Total Coliform (Significant Non-complier) | 10  |
| Total Haloacetic Acids                    | 30  |
| Total Organic Carbon                      | 10  |
| Total Trihalomethanes                     | 30  |
| Turbidity (Significant Non-complier)      | 10  |
| Uranium                                   | 10  |
| Volatile Organic Contaminants             | 10  |

2. **Quantity Deficiencies (B).** Quantity deficiencies are shortages of water due to source, treatment, or distribution problems. Deficiencies of only one condition will be allowed. These conditions are documented by inspection records, a comprehensive performance evaluation, or another system evaluation.

|                                     |                 |
|-------------------------------------|-----------------|
| <b>Condition</b>                    | <b>Severity</b> |
| Continual shortage                  | 60              |
| Shortage during high use (seasonal) | 60              |

3. **Design Deficiencies (C).** Design deficiencies are those which could be corrected by enlargement, repair, or replacement of a portion of the system. Deficiencies of more than one condition are additive. These conditions are documented by inspection records, a comprehensive performance evaluation, or another system evaluation.

Figure 3

| Condition  | Severity |
|--|----------|
| Demand exceeds design capacity                   | 30       |
| Groundwater under the influence of surface water | 120      |
| Improper well construction                       | 30       |
| Inadequate chemical feed                         | 25       |
| Inadequate disinfection                          | 30       |
| Inadequate distribution (area not served)        | 25       |
| Inadequate distribution (deterioration)          | 25       |
| Inadequate distribution (low pressure)           | 25       |
| Inadequate filtration (surface)                  | 30       |
| Inadequate intake structure                      | 25       |
| Inadequate laboratory equipment                  | 20       |
| Inadequate mixing                                | 25       |
| Inadequate settling                              | 25       |
| Inadequate storage                               | 25       |
| Inadequate water treatment wastewater disposal   | 10       |
| Lack of generator                                | 120      |

4. **Vulnerability to Potential Pollution (D).** Vulnerability describes a condition in which the source of supply for a system could potentially be contaminated and for which the project will address. Vulnerabilities to more than one condition are additive. These conditions are documented by vulnerability assessments for monitoring waivers or source water protection area assessments.

| Condition                                  | Severity |
|--|----------|
| Point source discharge in delineated area  | 10       |
| Subject to agricultural chemicals          | 5        |
| Subject to industrial spills               | 5        |
| Subject to oil/gas/coal/mineral operations | 5        |
| Unprotected watershed                      | 3        |

5. **Violation of Recommended Maximum Levels (Secondary Standards)(E).** Recommended maximum levels are set for parameters which are not harmful to health, but make the water undesirable for use. Deficiencies of more than one condition are additive. These conditions are documented in the State Environmental Laboratory data base.

| Contaminant    | Severity |
|----------------|----------|
| Chloride       | 3        |
| Color          | 3        |
| Corrosivity    | 3        |
| Foaming Agents | 3        |
| Iron           | 20       |
| Manganese      | 20       |
| Odor 3 pH 3    | 3        |
| Sulfate        | 3        |
| TDS            | 3        |
| Zinc           | 3        |

6. **Consolidation (F).** Projects which result in the consolidation, interconnection, or improvement of services for two or more water systems shall add twenty (20) for consolidation, ten (10) for interconnection, and ten (10) for improvement of services such as back-up or emergency supply. Projects may meet more than one of these conditions. The points awarded for this category are documented in the engineering report.

Figure 4

7. **Compliance Orders (G).** Projects that will result in the compliance with a formal enforcement action will receive one hundred fifty (150) points.
8. **Source water protection (H).** Water supply systems which have implemented source water protection programs such as watershed protection programs or wellhead protection programs will add one hundred (100) points to their total.
9. **Affordability (I).** This element is to assist systems most in need, on a per household basis. The points awarded for this category are documented by the latest census information.