



ADMINISTRATIVE RULES OF MONTANA

36.23.102 DEFINITIONS

In this subchapter, the following terms have the meanings indicated below and certain of the terms are supplemental to the definitions contained in Title 75, chapter 6, parts 1 and 2, MCA; sections 300f through 300j-26 of the Federal Safe Drinking Water Act, 42 USC, as amended, and ARM 17.38.101, et seq. and 17.38.201, et seq. Terms used but not defined herein have the meanings prescribed in ARM 17.38.101, et seq. and 17.38.201, et seq. or the indenture of trust. (Definitions (2) , (16) , (23) , (28) , (29) , (30) , (33) , (35) , (36) , (40) , (41) , (42) , (43) and (52) are statutory definitions.)

- (1) "Act" means Drinking Water State Revolving Fund Act, Title 75, chapter 6, part 2, MCA.
- (2) "Administrative costs" means costs incurred by the department and the department of environmental quality in the administration of the program, including but not limited to:
 - (a) costs of servicing loans and issuing debt;
 - (b) program startup costs;
 - (c) financial, management, and legal consulting fees; and
 - (d) reimbursement costs for support services from other state agencies.
- (3) "Administrative expense surcharge" means a surcharge on each loan charged by the department to the borrower expressed as a percentage per annum on the outstanding principal amount of the loan, payable by the borrower on the same dates that payments of principal and interest on the loan are due, calculated in accordance with these rules.
- (4) "Administrative fee" means the fee expressed as a percentage of the initial committed amount of the loan retained by the department from the proceeds of the loan at closing, calculated in accordance with these rules.
- (5) "Application" means the form of application provided by the department and the department of environmental quality which must be completed and submitted in order to request a loan.
- (6) "Binding commitment" means an executed commitment agreement.
- (7) "Bond" means an obligation issued by a municipality pursuant to the provisions of Montana law and the code.
- (8) "Bond anticipation note" means a note issued by a municipality under the provisions of 7-7-109, MCA, in anticipation of the issuance of long-term indebtedness for a project.
- (9) "Borrower resolution" means a resolution of a municipality authorizing the issuance of bonds and establishing the terms and conditions and providing security therefor.

- (10) "Borrower" means an entity to whom a loan is made.
- (11) "Borrower obligation" means a bond or a loan agreement.
- (12) "Closing" means, with respect to a loan, the date of delivery of the borrower resolution and the borrower obligation to the department.
- (13) "Code" means the Internal Revenue Code of 1986, as amended.
- (14) "Commitment agreement" means a written agreement between the borrower and the department pursuant to which the department agrees to make a loan to the borrower in a specified principal amount on or before the date and subject to the terms and conditions specified in the agreement.
- (15) "Community water system" means a public water system that is owned by a private person or a municipality and that serves at least 15 service connections used by year-round residents of the area served by the system or regularly serves at least 25 year-round residents. The term does not include a public water system that is owned by the federal government.
- (16) "Cost" means, with reference to a project, all capital costs incurred or to be incurred for a public water system, including but not limited to:
 - (a) engineering, financing, and other fees;
 - (b) interest during construction;
 - (c) construction; and
 - (d) a reasonable allowance for contingencies to the extent permitted by the federal act and rules promulgated under the federal act.
- (17) "Debt" means debt incurred to acquire, construct, extend, improve, add to, or otherwise pay expenses related to the system, without regard to the source of payment and security for such debt.
- (18) "Department" means the Montana department of natural resources and conservation.
- (19) "Department of environmental quality" means the Montana department of environmental quality.
- (20) "Disadvantaged municipality" means one in which the service area of a public water system meets the affordability criteria established in these rules.
- (21) "EPA" means the United States environmental protection agency.
- (22) "EPA agreement" means the operating agreement between the state and the EPA.
- (23) "Federal act" means the Federal Safe Drinking Water Act, 42 USC sections 300f through 300j-26, as that act read on May 5, 1997.
- (24) "General obligation" means an obligation of a municipality pledging the full faith and credit of and unlimited taxing power of the municipality.
- (25) "Governing body" means the duly elected or appointed board, council, or commission or other body authorized by law to govern the affairs of the municipality.
- (26) "Gross revenues" means with respect to revenue bonds, all revenues derived from the operation of the system, including but not limited to rates, fees, charges, and rentals imposed for connections with and for the availability, benefit, and use of the system as now constituted and of

all replacements and improvements thereof and additions thereto, and from penalties and interest thereon, and from any sales of property acquired for the system and all income received from the investment of all moneys on deposit in system accounts.

- (27) "Indenture of trust" means the indenture of trust between the board of examiners and a trustee establishing and implementing the program, establishing certain terms and conditions for the sale and issuance of the state's bonds to fund the program, providing for the application of the proceeds of the state's bonds and the repayments of the state's bonds and establishing the funds and accounts for the program as amended or supplemented from time to time.
- (28) "Indian tribe" means an Indian tribe that has a federally recognized governing body carrying out substantial governmental duties and powers over any area.
- (29) "Intended use plan" means the annual plan adopted by the department of environmental quality and submitted to the EPA that describes how the state intends to use the money in the state revolving fund.
- (30) "Loan" means a loan of money from the state revolving fund for project costs.
- (31) "Loan agreement" means an agreement entered into between a borrower other than a municipality and the department evidencing a loan.
- (32) "Loan loss reserve surcharge" means a surcharge expressed as percentage per annum on the outstanding principal amount of the loan at the rate determined in these rules and imposed on all borrowers unless waived in accordance with the provisions of these rules.
- (33) "Municipality" has the meaning set forth in 75-6-202, MCA.
- (34) "Net revenues" means the entire amount of gross revenues of the system less the actual operation and maintenance cost plus additional annual costs of operation and maintenance estimated to be incurred, including sums to be deposited in an operating reserve.
- (35) "Noncommunity water system" means a public water system that is not a community water system.
- (36) "Nonprofit noncommunity water system" means a noncommunity water system owned by an organization that is organized under Montana law and that qualifies as a tax-exempt organization under the provisions of section 501(c) (3) of the Internal Revenue Code.
- (37) "Origination fee" means a fee in an amount equal to a percentage of the committed amount of the loan, as specified by the department, payable by the borrower at closing to the department either from proceeds of the loan or other funds of the borrower.
- (38) "Outstanding indebtedness bond" means with respect to a municipality any bonds currently outstanding payable from gross or net system revenues and with respect to a private person, any loan payable in whole or in part from the same source as a proposed loan.
- (39) "Priority list" means the list of projects expected to receive financial assistance under the program, ranked in accordance with a priority system developed under Section 216 of the act.
- (40) "Private person" means an individual, corporation, partnership, or other nongovernmental legal entity.
- (41) "Program" means the drinking water state revolving fund program established by the act.
- (42) "Project" means improvements or activities that are:

- (a) to be undertaken for a public water system and that are of a type that will facilitate compliance with the national primary drinking water regulations applicable to the system; or
 - (b) to further the health protection objectives of the federal act.
- (43) "Public water system" means a system for the provision to the public of water for human consumption, through pipes or other constructed conveyances, if that system has at least 15 service connections or regularly serves at least 25 individuals. The term includes any collection, treatment, storage, and distribution facilities under control of an operator of a system that are used primarily in connection with a system and any collection or pretreatment storage facilities not under control of an operator and that are used primarily in connection with a system.
- (44) "Reserve requirement" means the amount required to be maintained in a reserve fund securing the payment of a bond as set forth in the commitment agreement, which amount shall be the:
- (a) maximum annual debt service on the bond in the then current or any future fiscal year during the term of the bond; or
 - (b) if other bonds payable from the revenues of the system are then outstanding, the maximum aggregate annual debt service on all outstanding bonds and the additional bond proposed to be issued in the then current or any future fiscal year during the term of the outstanding bonds and the additional bond proposed to be issued.
- (45) "Revenue" means revenues (gross or net) received by the municipality from or in connection with the operation of the system or project.
- (46) "Revenue bonds" means bonds payable from the net revenues derived from the system.
- (47) "Security agreements" means agreements entered into by borrowers to provide additional security for loans, including letters of credit and mortgage, personal or corporate guarantee pledge agreements.
- (48) "Special assessments" means assessments imposed on a property benefited from the construction or operation of a project in accordance with Title 7, chapter 7, parts 21, 41 and 42, MCA.
- (49) "Special improvement district bonds" means bonds payable from special assessments.
- (50) "State allocation account" means the account in which state monies received through the sale of the state's bonds are deposited.
- (51) "State bonds" means the state's general obligation drinking water state revolving fund program bonds.
- (52) "State revolving fund" means the drinking water state revolving fund established by 75-6-211 , MCA.
- (53) "System" means the public water system and all extensions, improvements, and betterments thereof.
- (54) "Tax-backed revenue bonds" means bonds issued by county water and sewer districts pursuant to 7-13-2324 and 7-13-2302 , MCA.
- (55) "Tax increment revenue bond" means a tax increment urban renewal revenue bond issued by a municipality pursuant to Title 7, chapter 15, parts 42 and 43, MCA, or other applicable law.

Authorizing statute(s): 75-6-205, MCA

Implementing statute(s): 75-6-202 and 75-6-224, MCA

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