

# Form #1

## Petition to Adopt, Amend, or Repeal Commission Regulations

Approved 10-3-1995



NEVADA  
STATE ENVIRONMENTAL  
COMMISSION

**1. Name, address, telephone number, and signature:**

Name: Nevada Division of Environmental Protection

Address: 901 South Stewart Street, Suite 4001

E-mail Address: j.cooper@ndep.nv.gov

Telephone Number: 775-687-9531

Date of Petition: 06/24/2022

Representative capacity and signature of petitioner, authorized individual, officer or attorney:

*Jason Cooper*

6/24/2022 | 8:20 AM PDT

**2. Specific type of petitioner (individual, partnership, corporation, government agency, or other) and the exact occupation or business, including a description of the occupation or business if necessary:**

The Nevada Division of Environmental Protection (NDEP), which is a division of the Nevada Department of Conservation and Natural Resources (NDCNR) of the State of Nevada. The Office of Financial Assistance (OFA) administers the Safe Drinking Water and Clean Water State Revolving Funds. These programs provide U.S. Environmental Protection Agency (EPA)-mandated support to entities within Nevada that provide safe drinking water, manage wastewater, oversee stormwater, and protect non-point source waters. To that end, these programs operate similarly to lending institutions, providing both low-cost loans and principal-forgiveness loans to water systems throughout the state. This program also administers the Nevada Capital Improvements Grant Program.

**3. Exact and specific nature of changes sought, including delineation of the regulations, statutory provisions of Commission decisions involved. May include a statement of the written term or substance of the proposed regulatory action, or a description of the subjects and issues involved:**

Please see the attached supplemental Form 1.

**4. A statement of the need for and purpose of the proposed regulations:**

Please see the attached supplemental Form 1.

**5. A statement of the:**

(a) Estimated economic effect of the regulation on the business which it is to regulate:

Please see the attached supplemental Form 1.

(1) Both adverse and beneficial effects:

Please see the attached supplemental Form 1.

(2) Both immediate and long-term effects:

Please see the attached supplemental Form 1.

(b) Estimated economic effect on the public:

Please see the attached supplemental Form 1.

(1) Both adverse and beneficial effects:

Please see the attached supplemental Form 1.

(2) Both immediate and long-term effects:

Please see the attached supplemental Form 1.

(c) Estimated cost by the agency for enforcement of the proposed regulation:

The proposed changes would not have a significant impact on OFA's ability to enforce program requirements. Service fees would be collected as part of our routine semi-annual debt service collections.

**6. A description of any regulations for other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency:**

The proposed regulations do not overlap or duplicate other state or Federal Regulations.

**7. If the regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions. The statement must include the specific citation of the federal statute or regulation requiring such adoption:**

The proposed regulations are not more stringent than federal regulations.

**8. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used:**

Please see the attached supplemental Form 1.

### Supporting Documents




When submitting this form, attach a second document to your email with your proposed regulatory language. Include other supporting documents as needed.

## SUPPLEMENTAL FORM #1

### FORM FOR PETITIONING THE STATE ENVIRONMENTAL COMMISSION FOR ADOPTION, FILING AMENDMENTS OR REPEAL OF COMMISSION REGULATIONS

**1. Name, address, telephone number, and signature:**

Nevada Department of Conservation and Natural Resources  
Division of Environmental Protection  
901 South Stewart Street, Suite 4001  
Carson City, Nevada 89701-5249  
(775) 687-4670

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 6/24/2022 | 8:20 AM PDT  
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Jason B. Cooper, Administrative Services Officer 3  
Office of Financial Assistance  
(775) 687-9531  
[j.cooper@ndep.nv.gov](mailto:j.cooper@ndep.nv.gov)

**2. Specific type of petitioner (individual, partnership, corporation, government agency, or other) and the exact occupation or business, including a description of the occupation or business if necessary:**

- a. The Nevada Division of Environmental Protection (NDEP), which is a division of the Nevada Department of Conservation and Natural Resources (NDCNR) of the State of Nevada. The Office of Financial Assistance (OFA) administers the Safe Drinking Water and Clean Water State Revolving Funds. These programs provide U.S. Environmental Protection Agency (EPA)-mandated support to entities within Nevada that provide safe drinking water, manage wastewater, oversee stormwater, and protect non-point source waters. To that end, these programs operate similarly to lending institutions, providing both low-cost loans and principal-forgiveness loans to water systems throughout the state. This program also administers the Nevada Capital Improvements Grant Program.

**3. Exact and specific nature of changes sought, including delineation of the regulations, statutory provisions of Commission decisions involved. May include a statement of the written term or substance of the proposed regulatory action, or a description of the subjects and issues involved:**

Nevada Revised Statutes (NRS) 445A.200-295 established the Nevada Drinking Water State Revolving Fund program (DWSRF). The Federal Safe Drinking Water Act was amended to establish these programs within each state for the sole purpose of providing loans to water systems to help provide safe drinking water for our communities. NRS 445A.255 requires Nevada's program to manage the funds as set forth in the Safe Drinking Water Act. The State Environmental Commission may adopt regulations to carry out the provisions of this section per NRS 445A.270.

The proposed changes address key areas of the regulations. Specifically, the proposed changes:

- (a) Define the term "disadvantaged,"
- (b) Streamline the process for funding drinking water systems under emergency situations,
- (c) Amend the environmental review process,
- (d) Add an administrative fee for loans,
- (e) Align state regulations with federal changes and direction, and
- (f) Make a few housekeeping amendments.

#### **4. A statement of the need for and purpose of the proposed regulations:**

Recent federal changes to the Safe Drinking Water Act, direction from the (EPA) to find ways of streamlining processes to provide financial assistance to more water systems, and the significant increase in federal funding through the Bipartisan Infrastructure Law (BIL) of 2021, has prompted the Division to request these revisions to the regulations.

- (a) Definition of "disadvantaged"
  - (i) Current regulations define a community as "disadvantaged" using only one census data metric, median household income., There are many other data sets that can help provide more insight into whether a community or part of a community is truly "disadvantaged." This change would expand the metrics used in defining an area as "disadvantaged" and allow the Division to modify that definition, with public input, should federal guidelines change.
  - (ii) Sections: 1, 17, 19, 23
- (b) Emergency situations for drinking water systems
  - (i) The DWSRF can fund communities facing emergency situations that directly impact the system's ability to provide safe drinking water. However, current regulations require systems facing an emergency to follow the same procedure as other borrowers from the program, which can take several months to review paperwork and seek public comment. Federal requirements allow for a more streamlined process under emergency situations. This proposed change would streamline the state process for projects experiencing an emergency and allow the

DWSRF to provide assistance in a more timely and expeditious manner.

- (ii) Sections: 1, 7, 18, 20, 22
- (c) State environmental review process changes
  - (i) Federal changes to the National Environmental Policy Act (NEPA) were enacted in September 2020 to allow more flexibility in the process. These changes are to update Nevada's regulations for environmental reviews as they specifically relate to DWSRF projects, to align with the federal process more closely. It also adds clarifying language to the regulations over a state environmental review process that is equivalent to the National Environmental Policy Act (NEPA).
  - (ii) Sections: 2, 12, 26, 27
- (d) Adding an administrative fee for loans
  - (i) The DWSRF must remain sustainable into the future as DWSRF funding is meant to revolve in perpetuity for Nevada's water systems. Currently, the Division relies solely on federal grants to support the administration of the SRF programs. If the grants were no longer available, the program does not have another funding source to rely upon for administration. These fees will provide enough resources to allow the SRF programs to remain viable in the event that federal grants become unavailable. Additionally, although the incremental increase in fees over several years will result in more time required to build a sustainable reserve, this approach will also minimize the potential financial impact on our borrowers.
  - (ii) Section: 3
- (e) Aligning state regulations with federal changes and direction
  - (i) The federal Safe Drinking Water Act was amended over the last 10 years to include programmatic changes to the DWSRF. Proposed NAC changes include extending loan terms to 30 years (40 years for disadvantaged systems), allowing more flexibility for ineligible projects when changes are made at the federal level, and encouraging systems to address asset management and to strengthen their fiscal sustainability.
  - (ii) Sections: 8, 15, 16, 19, 29
- (f) Housekeeping
  - (i) Proposed changes include removal of redundant language, updating flow of process, and ensuring consistency with other NAC sections that relate to the DWSRF.
  - (ii) Sections: 4, 5, 6, 9, 10, 11, 13, 14, 15, 17, 19, 21, 24, 25, 28, 30, 31, 32, 33, 34
- (g) Section 26 (NAC 445A.67584) language is pursuant to R186-18 that became effective January 30, 2019, and codified in the permanent regulations May 10, 2022. These codifications are pending update on the website.

5. A Statement of the:

a. **Estimated economic effect of the regulation on the business which it is to regulate:**

The DWSRF can fund community water systems that are publicly or privately owned, and noncommunity water systems that are also nonprofit. Therefore, private, for profit, water systems are eligible to receive funding from the DWSRF. However, only 28 loans have been awarded to private water systems in the program's 23-year history. While there are not currently any pending loans to private systems, there is the potential to provide loans to private entities in the future. Private entities would be subject to the same new regulations as public entities, and therefore may experience adverse impacts from the addition of service fees. However, one benefit of obtaining a loan from the DWSRF includes a below market interest rate that they would not be able to otherwise obtain from another financial institution. This benefit would at least partially offset the adverse effects of the service fees. Therefore, the long-term impact of these changes is anticipated to be minimal, if any.

b. **Estimated economic effect on the public:**

The public receives a benefit when a drinking water system takes out a loan from the DWSRF versus from the public market. The DWSRF is required to offer below market interest rates in order to make expensive infrastructure projects more affordable. This helps keep user rates lower than they would be if another financing option were used by the water system.

Additionally, the SRFs are required to distribute a portion of the grant as principal forgiveness loans (i.e., loans that are not repaid). This further supports our communities that would not otherwise have funding to improve their infrastructure. The proposed changes will increase the number of communities eligible for principal forgiveness funding. This will be an immediate effect and will have long-term positive benefits for Nevada visitors and residents.

The service fee and reserve accounts may have an adverse impact on the community if the water system has not been keeping up with rate changes that support their basic operations. The DWSRF program, along with our funding partners, require a water system to maintain financial capacity over their system. This means that water rates must be sufficient to ensure long-term sustainability, should federal funding terminate. The program already requires reserve accounts for principal forgiveness loans so the impact of this change will be minimal.

c. **Estimated cost by the agency for enforcement of the proposed regulation:**

The proposed changes would not have a significant impact on OFA's ability to enforce program requirements. Service fees would be collected as part of our routine semi-annual debt service collections.

6. **A description of any regulations for other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency:**

The proposed regulations do not overlap or duplicate other state or Federal Regulations.

7. **If the regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions. The statement must include the specific citation of the federal statute or regulation requiring such adoption:**

The proposed regulations are not more stringent than federal regulations.

8. **If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used:**

The proposed fee structure is dependent upon the number of loans initiated within a year, and the number of open loans from previous years that have the service fee requirement. It is not possible to determine the revenue from potential future loans. However, NDEP has looked at the previous five years to see how much the Division would have received, if these fees had been implemented:

Prior Fiscal Year Balances	Origination Fee	Service Fee	Annual Total
FY 2021	\$81,250.00	\$312,053.89	\$393,303.89
FY 2020	11,000.00	233,203.43	244,203.43
FY 2019	171,682.42	145,007.17	316,689.59
FY 2018	65,300.00	50,341.58	115,641.58
FY 2017	185,630.69	2,274.10	187,904.79
<b>Totals</b>	<b>\$514,863.11</b>	<b>\$742,880.16</b>	<b>\$1,257,743.28</b>

All funds collected will be used to offset expenses for administering the DWSRF. The amounts collected in the beginning years are not enough to cover 100% of the administrative costs. The fee structure proposal will establish a revenue source that will eventually build up reserves to a sustainable level.