

Stricken language would be deleted from and underlined language would be added to the Code of Arkansas Rules.

# Proposed Rulemaking

Title

Promulgated by:  
Arkansas Natural Resources Commission

**Title 15. Natural Resources and Economic Development**  
**Chapter I. Arkansas Natural Resources Commission, Department of Agriculture**  
**Subchapter A. Generally**  
**Part 2. Financial Assistance**  
**Subpart 1. Introductory Provisions**

**15 CAR § 2-101. Scope.**

This part ~~has been~~is enacted for the purpose of implementing and administering the powers, duties, and responsibilities of the Department of Agriculture and the Arkansas Natural Resources Commission ~~as provided by the acts, which provide generally for commission approved to provide~~ approved by the commission with respect to certain works and projects for the development and utilization of water resources, water, sewer, and solid waste management systems, and waste disposal and pollution abatement facilities within the state as authorized by the laws of the state and as follows:-

(1) The Water, Sewer, and Solid Waste Management Systems Finance Act of 1975, Arkansas Code § 14-230-101 et seq.;

(2) Arkansas Code §§ 15-5-901—910;

(3) Arkansas Water, Waste Disposal and Pollution Abatement Facilities Financing Act of 1997 and Arkansas Water, Waste Disposal, and Pollution Abatement Facilities Financing Act of 2007, Arkansas Code § 15-20-1301 et seq.;

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(4) Arkansas Water, Waste Disposal, and Pollution Abatement Facilities Financing Act of 2025, Arkansas Code § 15-20-1501 et seq.;

(5) Arkansas Code § 15-22-223;

(6) Arkansas Code § 15-22-503;

(7) Arkansas Code § 15-22-507;

(8) Arkansas Water Resources Development Act of 1981, Arkansas Code § 15-22-601 et seq.;

(9) Arkansas Waste Disposal and Pollution Abatement Facilities Financing Act of 1987, Arkansas Code § 15-22-701 et seq.;

(10) Arkansas Water Resources Cost Share Finance Act, Arkansas Code § 15-22-801 et seq.;

(11) Arkansas Code § 25-43-203;

(12) 33 U.S.C. §§ 1251–1389;

(13) 33 U.S.C. §§ 2201–2357;

(14) 42 U.S.C. 300f et seq.; and

(15) 40 C.F.R. §§ 35.3100–35.3170.

**15 CAR § 2-102. Policy statement, interpretation, and application of rules.**

(a)(1) It is the duty and policy of the Department of Agriculture and the Arkansas Natural Resources Commission to fully and expeditiously implement and administer the objectives, purposes, and intent of the Water Resources Development General Obligation Bond Program, the Arkansas Water Development Fund Program, the Water, Sewer, and Solid Waste Management Systems Fund Program, the Waste Disposal and Pollution Abatement Facilities General Obligation Bond Program, the Arkansas Water Resources Cost Share Revolving Fund Program, and the Water, Waste Disposal, and Pollution Abatement Facilities General Obligation Bond Program, the Water and Sewer Treatment Facilities Grant Program, the Clean Water State Revolving Fund Program, the Drinking Water State Revolving Fund Program, and related programs administered by

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~~the department (collectively, the "programs") authorized under the provisions of the acts.~~

~~(2) The instant rules are accordingly. This part is~~ adopted to assist in the effectuation and implementation of this duty and policy.

(b) Due to the very specialized nature and complexity of administration of the financial assistance programs, the rules, modes of procedure, ~~commission policies,~~ and guidelines herein provided ~~shall are,~~ in all instances, ~~be~~ subject to and given a liberal, reasonable, fair, and impartial construction, interpretation, and application to the end that the intent and purposes hereof ~~may be are~~ obtained in compliance with the:

- (1) Laws of the state; and
- (2) Public purposes sought to be served thereby.

### **15 CAR § 2-103. Definitions.**

Unless the context otherwise requires, the ~~use meaning~~ of certain capitalized words and terms herein ~~which that~~ are not otherwise defined ~~shall refer to the meanings of such words and terms is~~ as provided ~~for the words or terms~~ in the applicable ~~act or acts~~law.

~~(1) "ACS" means the U.S. Census Bureau's American Community Survey 5-year estimates of demographic, social, economic, and housing information.~~

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~~(2) "Applicant" means the eligible entity requesting project funds, subject to underwriting, and responsible for debt service, if applicable.~~

~~(3) "Application" means all documents submitted by an applicant and required by this part prior to a funding recommendation and award.~~

~~(4) "Clean Water Act" means 33 U.S.C. § 1251—1389.~~

~~(5) "Clean Water State Revolving Fund" and "CWSRF" mean the Construction Assistance Revolving Loan Fund created by Ark. Code Ann. § 15-5-901(a)(1)(A).~~

~~(6) "Drinking Water State Revolving Fund" and "DWSRF" means the Safe Drinking Water Fund created by Ark. Code Ann. § 15-22-1102(a)(1).~~

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~~(7) "Leaking Underground Storage Tank (LUST)" means an underground storage tank system from which a release, including spilling, leaking, emitting, discharging,~~

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escaping, leaching, or disposing, of a regulated substance into groundwater, surface water, or subsurface soils occurred, when the release was not permitted or authorized by the Arkansas Division of Environmental Quality or federal law.

(8) "Safe Drinking Water Act" means 42 U.S.C. 300f et seq.

(9) "Sewer" means all components of a sewer or wastewater system including collection, treatment, and discharge.

(10) "Solid Waste" means any garbage or refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material resulting from industrial, commercial, mining, and agricultural operations, and from community activities.

(11) "Storm Water" means rainwater or melted snow that runs off streets, lawns, and other sites.

(12) "Wastewater" means water that originates from homes, businesses, industries, or storm runoff and contains contaminants such as human waste, food scraps, oils, chemicals, and other pollutants.

(13) "Water and Wastewater Advisory Committee" means a committee composed of representatives from state agencies, federal agencies, and non-profit organizations that reviews project pre-applications and provides recommendations regarding the funding sources for which the project is eligible to apply.

(14) "Water plan approval" and "water plan compliance" mean authorization from the Arkansas Natural Resources Commission to construct, operate, manage, or maintain a water development project.

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## **Subpart 2. Procedure**

### **15 CAR § 2-201. General procedure.**

The general procedure ~~to be followed in for~~ the financial assistance application, review, and consideration process shall be as follows:

(1) **Preapplication.**

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~~(A) While not specifically required, all potential applicants are encouraged to initially contact the Arkansas Natural Resources Commission for purposes of making arrangements for participating in a preapplication conference between:~~

- ~~(i) Commission staff;~~
- ~~(ii) Applicant (or representative);~~
- ~~(iii) Applicant's legal, financial, and engineering advisors; and~~
- ~~(iv) Such other persons whose attendance and participation may be deemed appropriate and beneficial.~~

~~(B) At the preapplication conference, preliminary matters respecting the applicant, the proposed project, and the application for assistance may be generally discussed in an effort to familiarize all concerned parties with the:~~

- ~~(i) Applicable program; and~~
- ~~(ii) Specific application requirements and procedures;~~

~~(2) **Water and wastewater sewer projects.**~~

~~(A) Prior to submission of a formal application for water, sewer, solid waste, and wastewater stormwater projects, the applicant must ~~comply with the procedures established by the~~ submit a completed Water/ and Wastewater Advisory Committee pre-application on a form provided by the Department of Agriculture (WWAC), including submission of seven (7) copies of a preapplication to the WWAC.~~

~~(B) This procedure Pre-application is not required for emergency projects as defined in 15 CAR § 2-202(b);.~~

~~(3) **Application.**~~

~~(A) Applicant ~~shall~~ must submit an application for financial assistance to the department to initiate application review and consideration ~~by submission to the commission of an application~~ for financial assistance.~~

~~(B)(i) In all instances, applications must be written in the form and ~~must~~ include substantive content ~~meeting the requirements of~~ required by Subpart 3, Applications for Financial Assistance of this part.~~

~~\_\_\_\_\_ (C)(i) If the applicant is requesting commission funds from more than one (1) program, separate applications must be made with respect to the funds requested from each program.~~

~~\_\_\_\_\_ (ii) However, e~~Every application for funds under a particular program may be considered by the Arkansas Natural Resources Commission at its discretion as a request for financial assistance under any ~~other~~ available program~~;~~.

~~(43) Preliminary review.~~ Upon receipt ~~of the application by the commission,~~ the application ~~shall be given preliminary~~ is reviewed by commission department staff for an initial determination of:

- (A) Project eligibility;
- (B) Applicant eligibility; and
- (C) Completeness and accuracy of all required and necessary information~~;~~.

~~(54) Final review.~~

~~(A) Subsequent to preliminary review and b~~Based upon the determination of eligibility and adequacy of information submitted, the application ~~shall~~ is thereafter ~~be~~ reviewed by commission department staff for recommendation to the commission.

~~(B) In this endeavor, commission staff shall~~ the department reviews and investigates the application for the purpose of determining project compliance with:

- (i) The approval criteria set forth in Subpart ~~4 of this part, Approval Standards and Criteria;~~ and
- (ii) Such other considerations and factors deemed relevant and necessary for staff recommendation purposes.

~~(C) In addition, the applicant's history of the applicant~~ with respect to the achievement of objectives in previous commission grants, loans, and leases may be examined.

~~(D) Where applicable, commission department~~ staff may contact state and federal government entities ~~who that~~ have responsibilities associated with the project~~;~~.

~~(6) Public hearing.~~

~~(A) If the Director of the Arkansas Natural Resources Commission determines that a public hearing would be beneficial in considering an application, he or~~

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she may schedule and conduct a hearing in the locality to be served by the project proposed in the application.

~~\_\_\_\_\_ (B) The purpose of the public hearing is to obtain written and/or oral statements expressing public views concerning the applicant's request for financial assistance.~~

~~\_\_\_\_\_ (C) Verbatim transcripts of such hearings will not be made.~~

~~\_\_\_\_\_ (D) Persons wishing to make extensive comments should provide a written copy thereof to the commission.~~

~~\_\_\_\_\_ (E)(i) The date, time, and place of the public hearing will:~~

~~\_\_\_\_\_ (a) Be furnished to all concerned parties; and~~

~~\_\_\_\_\_ (b) Also be published in a newspaper of statewide circulation for a reasonable amount of time.~~

~~\_\_\_\_\_ (ii) It is the policy of the commission that a "reasonable amount of time" shall normally mean that the publication of the notice of public hearing shall be for two (2) consecutive weeks by two (2) insertions seven (7) days apart before the date of the hearing;~~

~~(75) **Commission review and consideration.** Upon completion of department staff review, the submitted application with staff and department recommendations, if any, shall be:~~

~~(A) Placed upon the commission's meeting agenda as promptly as practicable; and~~

~~(B) Thereby submitted to the commission for commission:~~

~~(i) Review;~~

~~(ii) Consideration; and~~

~~(iii) Action; and.~~

~~(86) **Memorandum of agreement.** The applicant funded by the Water, Waste Disposal, and Pollution Abatement Facilities General Obligation Bond Program will awarded funding must enter into an joint memorandum of agreement (MOA) with the commission department for scheduling the financial assistance, planning and design, and construction phases.~~

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**15 CAR § 2-202. Commission action.**

(a) After reviewing and considering the submitted application, the Arkansas Natural Resources Commission may ~~proceed to~~ take one (1) of the following ~~alternative~~ forms of ~~commission~~ action on the application:

(1) ~~The commission may a~~Approve and grant the application as submitted, in whole or in part, and thereby authorize such further action as may be necessary to effectuate project closing ~~and/or~~ the disbursement of funds;

(2) ~~The commission may:~~

—————~~(A)~~ Retain the application under advisement for further consideration or continue the hearing on the same for later ruling and disposition; ~~and~~

—————~~(B)~~ Withhold ruling on the application pending submission of additional information required by the commission or Department of Agriculture for consideration, an additional further hearing before the commission on the application, and/or both additional submission and hearing to the commission of such further or additional information as the commission may require for application consideration purposes;

~~(3)~~ ~~The commission may r~~Reject and deny the application, in whole or in part;

~~(4)~~ ~~The commission may a~~Approve and grant the application, in whole or in part, contingent upon the:

(A) Applicant taking certain actions;

(B) Existence of adequate and available program funds; or

(C) Receipt and approval by ~~commission department~~ staff of any

outstanding and necessary:

(i) Material;

(ii) Information;

(iii) Documents;

(iv) Verifications; or

(v) Other authorization; or

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(56)(A) ~~The commission may p~~Place an application on a priority list pending the availability of program funds.

(B) Applications on a priority list will be given further consideration regarding approval or denial when adequate funds become available;

—(6b)(1) The commission will act on an application based on:

(A) The information contained therein; and

(B) ~~Testimony given at the public hearing; and~~

—(C) ~~The Department~~ staff's recommendations;.

(72)(A) The commission will take Aaction on an application, when practical, will normally be taken by the commission within one (1) calendar year six (6) months of the time date the application was submitted to the department for financial assistance is made.

(B) Action may be delayed on certain applications for projects dependent on other financing sources; and.

(83) ~~The Director of the Arkansas Natural Resources Commission shall~~department will, within ~~ten-thirty (1030) business days of the commission's action,~~ notify the applicant of the final action of the commission in accepting, modifying, or rejecting the application.

(bc)(1) Emergency applications may be submitted at any time.

(2) An emergency exists when there is an interruption of normal service that:

(A) Threatens life or health; and

(B) Cannot be resolved within a reasonable period-amount of time-; and

(C) Result in the applicant declaring an emergency.

(3) The commission or ~~director~~ department may require documentation of such emergency by:

(A) The Engineering Section of the Department of Health;

(B) The Department of Energy and Environment, Division of Environmental Quality; or

(C) Other appropriate state and federal agencies.

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(4)(A) The ~~director shall have~~ Department of Agriculture has the discretionary authority to disburse up to ~~one-three~~ hundred thousand dollars (~~\$100~~300,000) in program funds in an emergency situation without requiring the applicant to follow the normal application review and consideration process.

(B) ~~Such~~ Any emergency disbursement ~~shall be made~~ may only be made after consultation with and concurrence of the Chair of the ~~Arkansas Natural Resources~~ Commission.

(C) Any emergency disbursements made ~~pursuant to~~ under this provision ~~shall~~ must be reported to the commission ~~as a whole~~ at its next regularly scheduled meeting.

(~~ed~~) Upon approval and grant of an application, the commission may:

(1) Authorize loan closing and the execution of all necessary closing documents and instruments by the ~~chair~~ Chair of the commission or other designated commission representative or representatives;

(2) ~~Accordingly~~ Authorize and provide for disbursements; and

(3) Authorize such further or additional action ~~as may be~~ necessary to complete and implement the approved transaction, including the imposition and collection of ~~such~~ fees and charges ~~as may be~~ fixed by the commission to be paid by an applicant with respect to the commission's assistance for a specific project.

(~~de~~) (1) The ~~director shall have~~ department has the discretionary authority to extend the time granted by the commission to an applicant to comply with specific terms and conditions when, in the ~~director's department's~~ judgment, the applicant achieved substantial compliance ~~has been achieved by the applicant~~.

(2) Any such extension granted pursuant to this provision ~~shall~~ may:

(A) Not exceed ninety (90) days; and

(B) Be granted only after consultation with the Chair of the commission ~~chair~~.

(3) Any extensions granted ~~pursuant to~~ under this section ~~shall~~ must be reported to the commission ~~as a whole~~ at its next regularly scheduled meeting.

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### Subpart 3. Applications for Financial Assistance

#### 15 CAR § 2-301. Application content.

All applications must be submitted in writing on a form designated by the Department of Agriculture and fully comply with the requirements stated in the form.

~~(a) The Arkansas Natural Resources Commission provides application forms for financial assistance except for the Arkansas Water Resources Cost Share Revolving Fund Program.~~

~~(b) All applications must be written and consistent with the requirements stated under this subpart.~~

~~(c) One (1) copy of the application must be submitted to the commission for water and wastewater projects.~~

~~(d) Four (4) copies of the application are required for types of projects other than water or wastewater.~~

#### 15 CAR § 2-302. Required general information.

The following general information, where deemed applicable by the Arkansas Natural Resources Commission to be applicable Department of Agriculture to the applicant and project under consideration, or where required with respect to for the specific program funds for which application is made, ~~must be submitted by applicant~~ within are required for each application unless waived by the department:

(1) Applicant's:

- (A) Full, true, and correct legal name;
- (B) Office address;
- (C) Mailing address, if different from office address;
- (D) Telephone number;
- (E) Fax number; ~~and~~
- (F) Email address, if available;

(G) Federal Employer Identification Number; and

(H) Federal Unique Entity Identifier.

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(2)(A) ~~Authority~~ Legal authority of law under which applicant was created and nature of its legal identity; and established and the independent

~~(B) legal~~ Legal authority, including supporting documents ~~sary evidence~~ as requested by the ~~commission~~ department, under which application is made.

~~(B) Applicant must identify and describe the nature of its legal identity.~~

~~(C) See Subpart 7 of this part;~~

(3) Certified copy of the ordinance, resolution, or other specific authorizing instrument or action reflecting applicant's authority ~~for making~~ to make the application to the Arkansas Natural Resources eCommission;.

(4) Name, address, telephone number, email address, and fax number, ~~and email address~~, if available, of the applicant's:

~~(A) p~~ Project engineer;

~~(5) Name, address, telephone number, fax number, and email address, if available, of:~~

~~(A) B~~ Project legal counsel; and

~~(B) C~~ Bond counsel, if applicable;

~~(D) If applicable, f~~ Financial consultant, if applicable; and

~~(E) -or~~ Assessor, if assessment-based repayment is proposed, assessor;

~~(6) S~~ Total amount of funds requested for project assistance from the commission, including .:

~~(A) A a~~ statement of the specific uses and purposes for which such funds are intended to be applied; and .

~~(B) The program under which financial assistance from the commission is sought;~~

~~(7) A brief but adequate d~~ Description of the proposed project for which application is made, including but not limited to the following:

(A) Project location;

(B) ~~Nature~~ Purpose of project;

(C) ~~(+) Comprehensive statement clearly~~ project description with sufficient detail to support and justify the project; .:

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~~\_\_\_\_\_ (a) Delineating the customer service area;~~  
~~\_\_\_\_\_ (b) Demonstrating project need; and~~  
~~\_\_\_\_\_ (c) Demonstrating the degree and extent of local support for the project.~~

~~\_\_\_\_\_ (ii) Such statement:~~  
~~\_\_\_\_\_ (a) Must be in sufficient detail to support and justify the project;~~  
~~and~~  
~~\_\_\_\_\_ (b) Should describe all aspects of present local support and approval for the project.~~

~~\_\_\_\_\_ (iii) Applicant may include letters or statements of support from any interested persons or agencies;~~

(D) Anticipated total project cost;

(E) Listing of all financing institutions, lenders, or other funding sources, if any, ~~participating in financing the project or other projects related to the project; and,~~ including, where applicable, the following information:

~~\_\_\_\_\_ (i) Statement by each such participating entity reflecting the relative interest, support, and commitment of the participating lender or other funding source in and to the project;~~

~~\_\_\_\_\_ (ii) Statement reflecting total project cost allocation between lenders or other funding sources;~~

~~\_\_\_\_\_ (iii) Statement and description of all project service areas, project security, or project revenues already pledged or to be pledged to other participating lenders or fund sources; and~~

~~\_\_\_\_\_ (iv) Statement and description of other projects or service areas, if any, related to the project and information satisfying the requirements of subdivisions (a)(7)(E)(i) – (iii) above with respect to each such other related project, if any; and~~

(F) Preliminary project plans and specifications as may be necessary to reflect general engineering feasibility of the project;

~~(8) Anticipated project timetable, including:~~

~~\_\_\_\_\_ (A) Anticipated dates for completion of plans and specifications;~~

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~~—————(B) Arkansas Water Plan compliance review, if required;~~  
~~—————(C) Department of Health and/or Division of Environmental Quality approvals;~~  
~~—————(D) Expected award of bids; and~~  
~~—————(E) Project construction commencement and completion dates;~~  
~~—————(9)(A) Nature and amount of security to be pledged to secure the applicant's repayment obligations to the commission for the financial assistance requested.~~  
~~—————(B) If real or personal property, or any interest therein, other than or in addition to the project itself is to be pledged by applicant to secure the applicant's repayment obligations, applicant must submit a current statement of the nature and extent of all outstanding liabilities or indebtedness against such property, if any.~~  
~~—————(C) If applicant is not the owner of such real or personal property to be pledged, applicant must:~~  
~~—————(i) State and describe the nature and extent of applicant's legal or equitable interest in such property; and~~  
~~—————(ii) Provide a statement setting forth who or what entity owns such property including details of all outstanding liabilities or indebtedness against such property;~~  
~~—————(10) A firm estimate of annual (or other interval) revenues to be derived from the project or other sources of revenue available to be paid to the commission for project cost repayment, with supporting detail and assumptions expressed, and such additional financial information as may be necessary to evaluate general economic feasibility of the project, including the ability of the project to generate sufficient revenues to repay the commission the cost of providing financial assistance for the project, together with such fees and charges as may be imposed by the commission;~~  
~~—————(11) A statement of the:~~  
~~—————(A) Specific manner and means and projected timetable within which applicant proposes to finance the project, considering all sources of financing; and~~  
~~—————(B) Timetable to commence making repayments to the commission;~~

~~\_\_\_\_\_ (12)(A) Information reflecting the availability to applicant of reserve or contingency funds that could and, if necessary, would be used to meet actual project costs that exceed applicant's original total estimated cost of the project.~~

~~\_\_\_\_\_ (B) Such information should include the:~~

~~\_\_\_\_\_ (i) Nature, source, amount, and liquidity of such reserve or contingency fund; and~~

~~\_\_\_\_\_ (ii) Applicant's commitment and ability to utilize such funds when and if necessary for such purposes;~~

~~\_\_\_\_\_ (137)(A) Certified copies of applicant's previous three-two (32) years of annual audited financial statements required by Arkansas Code § 14-234-119(a)(1), if available, and a statement of applicant's financial condition, including a current statement of all outstanding indebtedness of applicant or related entities, including but not limited to all outstanding general obligation or revenue debt that might affect applicant's overall financial condition:~~

~~\_\_\_\_\_ (B) In connection with such statement of indebtedness, applicant must list, and the security given for all such indebtedness;.~~

~~(148) Description of the nature and division of all applicants' equitable interests in the project if more than one (1) eligible entity will participate in the project;.~~

~~(15)(A) A statement reflecting the relevant history or current status of applicant's efforts toward obtaining all necessary and incidental rights and privileges needed for project:~~

~~\_\_\_\_\_ (i) Commencement;~~

~~\_\_\_\_\_ (ii) Completion; and~~

~~\_\_\_\_\_ (iii) Operation.~~

~~\_\_\_\_\_ (B) This requirement includes, but is not limited to:~~

~~\_\_\_\_\_ (i) All necessary legal rights, including water rights;~~

~~\_\_\_\_\_ (ii) Licenses;~~

~~\_\_\_\_\_ (iii) Easements or permits, whether existing under federal, state, or local law or regulation;~~

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~~\_\_\_\_\_ (iv) The relative status of secured or outstanding contracting arrangements; and~~

~~\_\_\_\_\_ (v) The status of any incidental legal or governmental proceedings, including, but not limited to:~~

~~\_\_\_\_\_ (a) The need for environmental impact studies, if not already prepared; and~~

~~\_\_\_\_\_ (b) Any future authorizations or approvals required by electors, residents, members, and/or the governing body of the applicant;~~

~~\_\_\_\_\_ (16) All applicants should submit future capital improvement plans as they may relate to the proposed project or the applicant generally;~~

~~\_\_\_\_\_ (17) A copy of the current user charge (rate) ordinance/resolution and sewer use ordinance (sewer only), as applicable; and~~

~~(18) Any other information required by law or regulation including without limitation disclosures required by Ark. Exec. Order No. 98-04 (Feb. 27, 1998) and laws implementing the requirements of the order.~~

### **15 CAR § 2-303. Additional information for reservoir projects.**

Where financial assistance is sought in connection with an existing or proposed reservoir, the following additional information ~~must be submitted~~ is required with the application:

(1) ~~The application should contain a~~ A description of all:

(A) Estimated firm annual yields; and

(B) Proposed reservoir storage capacities;

(2) A statement containing the:

(A) Proposed purposes for which water will be stored or used; and

(B) Places of use or potential use for such water;

(3) A statement of the relative allocation of project costs to each project purpose if for more than one (1) purpose; and

(4) A brief description of existing or proposed improvements in the project or project area and a description of all such improvements that may require relocation.

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**15 CAR § 2-304. Supplemental information.**

The ~~Arkansas Natural Resources Commission~~ Department of Agriculture reserves the right to require of the applicant ~~to submit such further or any~~ additional project information ~~as may be~~ deemed necessary for project application review under the particular facts and circumstances of any specific project proposal.

**15 CAR § 2-305. Application verification and certification approval as to legality.**

(a) All applications for financial assistance must be certified for accuracy by an authorized signatory and include: ~~shall contain the following statement signed by the chief executive officer of the applicant: "To the best of my knowledge, all statements of fact contained herein are true and correct as of the date hereof."~~

(1) Acknowledgement that the Arkansas Natural Resources Commission:

(A) Is not a party and has no legal relationship, including but not limited to partner, joint venturer, or owner, to the project; and

(B) Is not liable or responsible for the payment of any claims or cost overruns concerning the project that is the subject of the application.

(2) An estimated disbursement schedule to be modified as necessary during the construction period.

(b)(1) ~~Additionally, e~~Each application may~~shall, at the time of submission,~~ be approved as to legality by applicant's legal counsel, if deemed necessary by the Department of Agriculture.

(2) Such opinion shall normally reflect the:

(A) Valid formation and existence of the applicant;

(B) Due authority of the person or persons signing the application; and

(C) Legality of the means proposed to finance the project.

(c) ~~In addition, t~~The application ~~shall be is~~ subject to approval by the ~~Arkansas Natural Resources Commission's department's~~ legal counsel, if deemed ~~advisable~~necessary.

#### **Subpart 4. Approval Standards and Criteria**

##### **15 CAR § 2-401. General approval standards and criteria.**

In the review and consideration of applications for financial assistance, the Arkansas Natural Resources Commission ~~shall give consideration to~~will consider the following general and nonexclusive criteria for application approval:

**(1) Compliance with laws.**

~~\_\_\_\_\_ (A) The applicant and proposed project must be found to be in compliance~~comply with all applicable and relevant federal, state, and local laws and regulations ~~(, including, if applicable, the Arkansas Water Plan, 15 CAR pt. 29, and Oversight of Retail Water, Wastewater and Sewer Providers, 14 CAR pt. 2 where applicable), and the applicant must possess~~es all necessary and incidental legal rights and privileges necessary to ~~project commencement and operation~~the project.

~~\_\_\_\_\_ (B) The appropriate state agencies must have had adequate opportunity to review and comment on the proposed project;~~

**(2) Eligibility.** The applicant and proposed project ~~must be determined to~~bear eligible for ~~the assistance sought, as determined by the Department of Agriculture and consistent with 15 CAR § 2-701.~~;

**(3) ~~Local need, support, and p~~Priority.**

(A) The project must be found to be:

~~\_\_\_\_\_ (i) Needed in the area to be served; and~~

~~\_\_\_\_\_ (ii) Sufficient, as proposed, or reflect satisfactory progress toward serving such needs. Water, sewer, solid waste, and stormwater projects are on the relevant state revolving fund project priority list published by the department.~~

(B) ~~The commission shall additionally consider the project's relative benefit and priority in relation to the needs of other proposed projects and applicants, including whether the project is:~~

- ~~(i) Meetsing known health needs and environmental regulations; and~~
- ~~(ii) Is in an economically depressed or disadvantaged area; and~~
- ~~(iii) Meets the readiness conditions defined in 15 CAR § 2-410(b)(1).~~

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~~(C) The commission shall also consider the extent and degree of local support, interest, and commitment in and to the proposed project.~~

~~(D)(i) No financial assistance will be given to an applicant for use in funding a project that would constitute a duplication of services where adequate services are currently being provided unless approval for such activity has been given by the commission.~~

~~(ii) As a condition of its approval, the commission may require the payment of an equitable portion of the outstanding financial assistance provided;~~

~~(1) **Availability of or combination with other assistance.**~~

~~(A) The commission shall consider the feasibility and availability of alternative or additional sources of revenue that could be obtained and utilized by applicant for project financing either apart from or in conjunction with commission financial assistance.~~

~~(B) In particular, with respect to the following types of projects, tThe following special actions for specific project types must have been accomplished:~~

~~(i) **Municipal and industrial water supply or sewer systems.**~~

~~(a) Applicant must have used or be prepared to use as much of the allotted ten (10) mills for municipal improvements as deemed necessary or feasible.~~

~~(b) This requirement is not applicable to:~~

~~(1) Regional water districts;~~

~~(2) Associations; or~~

~~(3) Counties;~~

~~(ii) **Flood control, levee, and drainage projects.** Applicant must have taxed collects a tax in a practical amount from the benefited area to the maximum~~

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~~practical amount to~~ pay the local share based on comparison with other similar projects; and

(iii) **Engineering feasibility studies.** Local interest ~~should be~~ is adequate to ensure that the project will be constructed, provided ~~ed~~ ing the:

(a) Feasibility study points out a need; and

(b) Project is feasible~~z~~.

~~(5)~~ **Project capacity development feasibility.**

~~\_\_\_\_\_ (A) The commission shall consider the project's capacity to meet financial, managerial, and technical standards.~~

~~\_\_\_\_\_ (B) The project's technical feasibility will be addressed in the engineering data submitted.~~

~~\_\_\_\_\_ (C) New water systems must comply with the capacity development requirements of the Safe Drinking Water Act;~~

~~\_\_\_\_\_ (64)~~ **Economic feasibility.** The ~~commission shall consider the~~ apparent economic viability and feasibility of the project as a whole, including:

(A) Proposed or projected costs per customer;

(B) Estimated revenues from the project; ~~and~~

(C) The adequacy and reliability of estimated revenues necessary for project cost repayment when indicated;

(D)(i) The rate burden on the customers of the project using the following calculations:

(a) The current utility rates or proposed utility rates for four thousand (4,000) gallons of water on an annual basis (water rates) are at least one and one-half percent (1.5%) of the Median Household Income (MHI) for the project area; or

(b) The water rates are equal to or greater than one and one-quarter percent (1.25%) of MHI if fifty-one percent (51%) of the customers who benefit from the project are either low or moderate income as defined by the U.S. Department of Housing and Urban Developments' Community Development Block Grant (CDBG) Program.

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(ii) Project area MHI is the average of the most recent three (3) years of available data on the ACS five (5) year estimates for Arkansas.

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**(75) State and regional needs and public interest.**

(A) The ~~commission shall give consideration to the~~ relationship between the proposed project and the state and regional water resource development needs, ~~as well as to and~~ whether the proposed project, if constructed, will serve the public interest and welfare.

(B) In particular, ~~such review will take into account~~ whether a project:

- (i) Encourages conservation of water resources;
- (ii) Encompasses use of less stressed water resources;
- (iii) Seeks a more efficient use of existing resources; or
- (iv) Possesses similar features providing a benefit to the public

interest in the state as a whole; ~~and.~~

**(86) Availability of funds.** The ~~commission shall take into consideration the~~ current and anticipated availability of ~~assistance~~ funds needed to provide the financial assistance requested.

**15 CAR § 2-402. Criteria applicability.**

(a) The ~~general~~ criteria set forth in this subpart ~~are intended to constitute and shall~~ constitute general guidelines and standards for application review and consideration by the Arkansas Natural Resources Commission.

(b) Such criteria ~~will not be strictly applied or interpreted or shall not be deemed appropriate for strict application or interpretation, nor shall such criteria be~~ deemed exclusive.

(c) In all instances, each individual application and project ~~must be~~ reviewed and considered on its own individual merits.

(d) The criteria and standards set forth in this subpart ~~shall accordingly be~~ interpreted and applied ~~so as~~ to allow sufficient flexibility in the ultimate exercise of the commission's judgment and discretion.

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~~15 CAR § 2-403. Specific criteria applicable to Water Resources Development General Obligation Bond Program applications.~~

~~—[Reserved.]~~

~~15 CAR § 2-404. Specific criteria applicable to Arkansas Water Development Fund applications.~~

(a)(1) In addition to the approval standards and criteria set out in 15 CAR § 2-401, the Arkansas Natural Resources Commission ~~has established~~ applies the following rankings for prioritizing Arkansas Water Development Fund applications:

<u>Type of project</u>	<u>Ranking</u>
Public Water Supply	1
<u>Sewer</u>	<u>2</u>
Irrigation (water conservation)	<u>23</u>
Flood Control and/or Drainage	<u>34</u>
Erosion and Sediment Control	<u>45</u>
Streambank Stabilization	<u>56</u>
Recreation and/or Fish and Wildlife	<u>67</u>
Hydro-electric Power	<u>78</u>
Navigation	<u>89</u>

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(2) The above rankings ~~will beare~~ used as a general guide, and priority ~~will beis~~ based on individual project merits.

~~(b)(1) Eligible applicants with special needs as determined by the commission will receive priority consideration.~~

~~(2) "Special needs" are defined as:~~

~~(A) **Elderly.** The applicant has a percentage of elderly residents higher than the average of all Arkansas counties for the sixty five (65) and over age category as reported in the latest federal decennial census data;~~

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~~\_\_\_\_\_ (B) **Low income.** The applicant's residents' per capita income is less than the state's per capita income as reported in the most current federal decennial census data; or~~

~~\_\_\_\_\_ (C) **Unemployed.** The applicant has a percentage of unemployed residents higher than the average percentage for all Arkansas counties according to the latest data published by the Division of Workforce Services.~~

**15 CAR § 2-405. Specific criteria applicable to Water, Sewer, and Solid Waste Management Systems Fund applications.**

(a)(1) In addition to the approval standards and criteria set out in 15 CAR § 2-401, the Arkansas Natural Resources Commission ~~has established~~applies the following rankings for prioritizing Water, Sewer, and Solid Waste Systems Revolving Fund applications:

<u>Type of project</u>	<u>Ranking</u>
Public Water Supply	1
Sewage Systems	2
Solid Waste Collection / Disposal	3

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(2) The above rankings ~~will be~~are used as a general guide, and priority ~~will be~~is based on individual project merits.

~~(b)(1) Solid waste collection and disposal system applications will be judged individually based on the highest potential for protection of the public health and environment.~~

~~\_\_\_\_\_ (2) Such judgment will not exclude lightly populated areas having solid waste problems without the necessary funds to begin a collection and disposal system.~~

**15 CAR § 2-406. Specific criteria applicable to Waste Disposal and Pollution Abatement Facilities General Obligation Bond Program applications.**

[Reserved.]

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**~~15 CAR § 2-407. Specific criteria applicable to Arkansas Water Resources Cost Share Revolving Fund Program applications.~~**

~~—(a) From each year's applications for grants and loans, the Arkansas Natural Resources Commission shall develop a list of water resources development projects that ranks each project in order of its priority.~~

~~—(b) The priority ranking of water resources development projects shall be based generally on the approval standards set out in 15 CAR § 2-401 and specifically on the following factors:~~

~~——(1) The overall cost of the project compared to its potential or predicted benefits;~~

~~——(2) The potential for the project to provide economic development in the area; and~~

~~——(3) The commitment of any state or local government funds to the project to contribute to the applicant's nonfederal share of the cost of the overall project.~~

~~—(c) In selecting the applicants to receive grants under the Arkansas Water Resources Cost Share Revolving Fund Program, the following factors shall be taken into consideration by the commission:~~

~~——(1) The financial ability of the local government applicant to provide the cost sharing funds for the proposed water resources development project including all available tax sources or assessments;~~

~~——(2) The burden placed on low income, elderly, and unemployed persons if the local government applicant participates in a cost sharing project and pays for the nonfederal share through a user fee or property tax; and~~

~~——(3) The amount of fair user fees or other revenues that the proposed water resources development project may reasonably be expected to generate in excess of those that would:~~

~~——(A) Amortize the local share of the initial cost; and~~

~~——(B) Provide for its successful operation and maintenance, including depreciation.~~

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~~—(d) No grant under the Arkansas Water Resources Cost Share Revolving Fund Program shall be awarded until the local government applicant has:~~

~~——(1) Furnished the commission with sufficient proof of the exhaustion of all other funding sources; and~~

~~——(2) Established that a deficiency exists in the amount of local funds available to finance the nonfederal share of the project.~~

~~—(e) The final award of a loan or grant for cost sharing purposes shall be made contingent upon actual receipt of federal funding for the federal share of the water resources development project.~~

**—15 CAR § 2-408. Criteria applicable to establishment of terms and conditions for financial assistance.**

In establishing the debt service reserve fund, depreciation reserve fund, or other terms and conditions, the Arkansas Natural Resources Commission may consider the following:

- (1) Health, safety, environmental, and other special needs;
- (2) Overall financial burden on applicant;
- (3) Type of system and system's operation and maintenance costs;
- (4) Applicant's legal, organizational, management, and financial history;
- (5) Type of dedicated revenue or revenues to be used for repayment;
- (6) Debt service coverage from dedicated revenues;
- (7) History of revenue collections and past due accounts; ~~and~~
- (8) Rate study and fiscal distress status; and
- (9) Other criteria, as applicable.

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**15 CAR § 2-409. Specific criteria applicable to Water, Waste Disposal, and Pollution Abatement Facilities General Obligation Bond Program applications.**

[Reserved.]

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## Subpart 5. Disbursement of Funds

### 15 CAR § 2-501. Conditions for disbursements.

(a) After ~~the Arkansas Natural Resources Commission approves~~ an application ~~for assistance has been approved by the Arkansas Natural Resources Commission~~, the ~~applicant must complete the~~ following conditions and requirements ~~shall be met~~ prior to ~~the any~~ release ~~and or~~ disbursement of ~~any assistance~~ funds:

(1) ~~Submit to the Department of Agriculture, Unless unless~~ otherwise provided and approved by the ~~Director of the Arkansas Natural Resources Commission department~~, ~~applicant must submit to the commission~~ all plans, specifications, and engineering reports for the project, ~~all of which shall be in~~ complete and ~~in~~ sufficient detail as ~~would be~~ required for submission ~~of the project~~ to a contractor for bidding or contracting ~~the project~~;

(2)(A) ~~Applicant, commission, and all other~~ ~~Along with any~~ necessary parties, ~~shall have executed~~ ~~execute~~ all instruments and documents, in form and content acceptable to the ~~commission~~ ~~department~~, necessary for closing including, ~~but not limited to~~, loan documents, ordinances or resolutions, construction contracts, closing certificates, legal opinions, corresponding pledges of project security and revenues where appropriate, and all other relevant documents (~~herein collectively, referred to as~~ "project documents").

(B) Closing procedures and schedule ~~shall~~ ~~must~~ conform to the ~~department's~~ requirements ~~of the commission~~, including ~~without limitation~~ execution and delivery of the specific project documents with ~~such any applicable~~ insertions, corrections, modifications, or amendments ~~as may be required and~~ approved by the ~~commission in a specific instance~~ ~~department~~;

~~(C)(i) The loan is considered closed only after the department certifies that the application is complete under the specific funding program requirements.~~

~~(ii) The department may execute a bond purchase agreement, if required by 15 CAR § 2-604, and close the loan before all programmatic and technical~~

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requirements are met, provided that reimbursement for eligible construction invoices will not be disbursed until all programmatic and technical requirements are met.

(3) Provide to the department, If not previously provided, applicant shall provide the commission with written and verified statements setting forth:

(A) Information reflecting the reasonable availability of funds and/or a commitment from all other revenue or funding sources needed to finance and complete the project; and

(B) A timetable for transfer of funds from the commission department to the applicant; and

(4) Applicant shall have complied Comply with all other applicable requirements of this part.

(b) The department may require the applicant to submit the following prior to any release or disbursement of funds:

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(1) Invoices;

(2) Receipts;

(3) Contracts;

(4) Lien waivers;

(5) Verifications;

(6) Evidence of expenditures or encumbrances;

(7) Construction status and progress reports; or

(8) Other information as the department may require.

(bc) At the time of and uUpon compliance with the above requirements, the commission department may release, advance, and or disburse financial assistance funds to the applicant for the approved project.

**15-CAR § 2-502. Disbursement procedures for Water Resources Development General Obligation Bond Program.**

(a) Unless otherwise provided and approved by the Director of the Arkansas Natural Resources Commission, the total amount of financial assistance funds authorized for disbursement to the applicant shall not be released and disbursed to

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applicant in a total lump sum but instead shall be disbursed to applicant in partial amounts at agreed upon intervals and stages of construction, all as provided within the contract documents and the drawdown schedule approved by the Arkansas Natural Resources Commission.

—(b) The director may require the applicant to submit to the commission prior to any release or disbursement of funds such:

- (1) Invoices;
- (2) Receipts;
- (3) Contracts;
- (4) Lien waivers;
- (5) Verifications;
- (6) Evidence of expenditures or encumbrances;
- (7) Construction status and progress reports; or
- (8) Other information as the director may require.

**~~—15 CAR § 2-503. Disbursement procedures for Waste Disposal and Pollution Abatement Facilities General Obligation Bond Program.~~**

—(a) Unless otherwise provided and approved by the Director of the Arkansas Natural Resources Commission, the total amount of financial assistance funds authorized for disbursement to the applicant shall be released and disbursed to the trustee upon loan closing.

—(b) The director may require the applicant to submit to the Arkansas Natural Resources Commission prior to any release or disbursement of funds by the trustee such:

- (1) Invoices;
- (2) Receipts;
- (3) Contracts;
- (4) Lien waivers;
- (5) Verifications;
- (6) Requisitions;

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- ~~———— (7) Evidence of expenditures or encumbrances;~~
- ~~———— (8) Construction status and progress reports; or~~
- ~~———— (9) Other information as the director may require.~~

~~———— **15 CAR § 2-504. Disbursement procedures for Water, Waste Disposal, and Pollution Abatement Facilities General Obligation Bond Program.**~~

~~———— (a) Unless otherwise provided and approved by the Director of the Arkansas Natural Resources Commission, the total amount of financial assistance funds authorized for disbursement to the applicant shall be released and disbursed to the trustee upon loan closing.~~

~~———— (b) The director may require the applicant to submit to the Arkansas Natural Resources Commission prior to any release or disbursement of funds by the trustee such:~~

- ~~———— (1) Invoices;~~
- ~~———— (2) Receipts;~~
- ~~———— (3) Contracts;~~
- ~~———— (4) Lien waivers;~~
- ~~———— (5) Verifications;~~
- ~~———— (6) Requisitions;~~
- ~~———— (7) Evidence of expenditures or encumbrances;~~
- ~~———— (8) Construction status and progress reports; or~~
- ~~———— (9) Other information as the director may require.~~

~~———— **15 CAR § 2-505. Increases in financial assistance.**~~

~~(a) With respect to approved applications for financial assistance under this part, the Director of the Arkansas Natural Resources Commission shall have the Department of Agriculture has the discretionary authority to increase the amount of financial assistance to the applicant for bid overruns in an amount not to exceed twenty percent (20%) of approved funding without returning to requesting approval from the Arkansas Natural Resources Commission ~~for approval.~~~~

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(b)(1) ~~Such~~ Any increase in financial assistance that exceeds twenty percent (20%) of the approved funding amount will shall be granted only after consultation with the Chair of the ~~Arkansas Natural Resources Commission~~.

\_\_\_\_(e2) Any financial assistance increases that exceeds twenty percent (20%) of the approved funding amount must pursuant to this section shall be reported to the commission ~~as a whole at the its~~ next regularly scheduled ~~commission~~ meeting.

### **15 CAR § 2-506. Deobligation.**

(a) The ~~Director of the Arkansas Natural Resources Commission shall~~ Department of Agriculture has the discretionary authority to deobligate funds approved by the Arkansas Natural Resources Commission under this part for financial assistance to an applicant without ~~returning to the requesting~~ commission for its approval only in the following ~~eases~~ circumstances:

(1) ~~Financial assistance was a~~ Approved financial assistance by the commission in an amount in excess of that exceeded the amount needed for completion of to complete a project;

(2) An applicant requests that funds be deobligated; or

(3)(A) In the department's judgment ~~of the director~~, an applicant ~~has~~ failed to comply with the requirements of this part.

\_\_\_\_(b)(1B) ~~Any D~~ deobligations, if made under ~~subdivision subsection~~ (a)(3) of this section, shall be made only after requires consultation with and concurrence of the Chair of the ~~Arkansas Natural Resources Commission~~.

\_\_\_\_(2b) Any deobligations ~~pursuant to~~ made under this section shall must be reported to the commission ~~as a whole at the its~~ next regularly scheduled ~~commission~~ meeting.

### **Subpart 6. Miscellaneous Provisions**

#### **15 CAR § 2-601. Inspection of works, technical and financial records.**

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By making application to the Arkansas Natural Resources Commission, the applicant ~~will be deemed to consent~~ and agrees that from the time of application, through construction, and at all times while any assistance from the commission is outstanding to the following:

(1) **Facility inspection.** ~~From time of application throughout construction and at all times while any assistance from the commission to the applicant is outstanding, the commission shall have~~ The Department of Agriculture has the right to inspect any and all of the projects and all incidental works, areas, facilities, and premises otherwise pertaining thereto;

(2) **Record inspection.** ~~From time of application throughout construction and at all times while any assistance from the commission to the applicant is outstanding, the commission shall~~ The department has at all reasonable times ~~have~~ the right to inspect, review, or copy all contracts, documents, records, or other information related to the application, the project or projects, and the operation of the applicant's system, including financial records possessed by the applicant or its:

- (A) Contractors;
- (B) Agents;
- (C) Employees; or
- (D) Representatives;

(3) **Audits.** ~~From time of application throughout construction and at all times while any assistance from the commission to the applicant is outstanding, t~~ The applicant shall will provide to the department, unless otherwise agreed to by the ~~Director of the Arkansas Natural Resources Commission~~ department, ~~provide~~ the following:

(A) **Construction audit.** Upon completion of the project, ~~the applicant shall provide~~ an audit by an independent certified public accountant of the expenditure of construction funds, including the financial assistance provided by the commission; and

(B)(i) **Annual audit.** ~~The applicant shall furnish to the commission annually, within one hundred twenty (120) days after close of applicant's fiscal year,~~

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~~audited financial statements prepared by an independent certified public accountant, accompanied by such accountant's report thereon, reflecting The applicant's audit or report required by law or agreement within thirty (30) days after completion and include:~~

~~\_\_\_\_\_ (i) The financial condition of applicant at the end of such fiscal year;~~

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~~\_\_\_\_\_ (ii) The results of operations and changes in fund balances with respect to applicant;~~

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~~\_\_\_\_\_ (iii) Applicant's compliance with the terms and conditions of financial assistance documents and this part; and~~

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~~\_\_\_\_\_ (iv) Other management or financial criteria established by the director/department; and.~~

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~~\_\_\_\_\_ (ii) When the applicant receives financial assistance from a federal funding source or federal program, the annual audit must comply with the provisions of the United States Office of Management and Budget's Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."~~

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~~\_\_\_\_\_ (iii) Applicants receiving grants from the commission must submit an annual audit if requested by the department.~~

~~(4)(A) In addition, a All federal and state reviews and/or audits of project funds must be forwarded to the commission as long as the applicant has an outstanding loan.~~

~~\_\_\_\_\_ (B) Applicants receiving grants from the commission must submit an annual audit if requested by the director.~~

**15 CAR § 2-602. Project modifications.**

~~(a) After an application for financial assistance has been approved by the Arkansas Natural Resources Commission and after the Director of the Arkansas Natural Resources Commission has Department of Agriculture reviewed and approved an applicant's plans and specifications for the project, no change, modification, amendments, or departure otherwise to or from the approved plans and specifications~~

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that would materially or significantly affect total project cost, estimated revenues, or design ~~shall be made, is allowed,~~ or authorized without the prior written approval thereof by the ~~director~~department.

~~—(b) During the period of construction, all material changes of any nature, delays in construction, and changes in contract times must be reported to the commission.~~

### **15 CAR § 2-603. Records public.**

All records of the Arkansas Natural Resources Commission ~~and Department of Agriculture~~ relating to the financial assistance programs ~~contemplated within~~under this part ~~shall bear~~ public records ~~within the meaning of the Freedom of Information Act of 1967, Arkansas Code § 25-19-101 et seq~~available for public inspection by any interested person at reasonable times and in a reasonable manner.

### **15 CAR § 2-604. Continuing responsibilities — Repayments and other responsibilities.**

(a) Unless otherwise provided or approved by the Arkansas Natural Resources Commission, or unless reduced or waived in whole or part by the commission for cause, each applicant ~~will be~~is expected to repay and reimburse ~~to~~the commission over a period ~~of time~~ not ~~in excess of~~to ~~exceed~~ the expected useful life of the project, ~~and the~~

~~(b) project~~Project agreements will provide for repayment of all amounts of financial assistance provided by the commission, ~~and including~~:

(1) ~~The repayment period;~~

(2) ~~The commission's cost of funds provided; and~~

(23) A proportionate and equitable share of the expense of administration of the applicable commission program.

~~(b)c~~ Each applicant ~~shall must~~ comply with the terms and conditions established by the commission or ~~Director of the Arkansas Natural Resources Commission the Department of Agriculture~~ prior to disbursements ~~of funds~~ and ~~during the time period when that all times while any~~ financial assistance provided by the commission is outstanding, including without limitation the following:

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- (1) Amount of financial assistance;
- (2) Source, type, and form of funding;
- (3) Interest rate;
- (4) Revenues;
- (5) Debt service reserve;
- (6) Depreciation reserve;
- (7) Audits;
- (8) Financial statements;
- (9) Management letters;
- (10) Letters of conditions or notification; and
- (11) Applicable state and federal laws.

(d) In the event of default on a loan, the department is entitled to pursue all available remedies allowed by law, including without limitation, seeking the withholding of general revenue turnback under Arkansas Code §§ 15-5-908, 15-22-1110, and 15-22-1313.

(e) When required by the department, the applicant must execute a bond purchase agreement as follows:

(1) The bond purchase agreement must:

(A) Be prepared by the applicant's bond counsel according to the term sheet provided by the department;

(B) Set forth the terms and conditions required for the applicant to obtain funding; and

(C) Be executed prior to fund disbursement.

(2)(A) According to the terms of the bond purchase agreement, the department may withdraw approval for financial assistance if closing does not take place within six (6) months after the applicant executes the bond purchase agreement.

(B) In the event of withdrawal under subsection (A), the applicant may submit a new application for financial assistance in the manner and subject to the requirements described in this part.

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~~15 CAR § 2-605. Fees for general obligation bond programs.~~

~~(a) Application fees.~~

~~(1) Upon the Arkansas Natural Resources Commission approving a project's funding from the general obligation bond program funds, the applicant shall be obligated to pay an application fee, as determined by the commission, up to three percent (3%) of the total amount of financial assistance requested under these programs.~~

~~(2) The application fee will immediately be due and payable when and if:~~

~~(A) The applicant has secured other funding to replace the commission's obligated funds;~~

~~(B) The applicant fails to proceed in a timely manner through project completion, after the commission has obligated the project's funds;~~

~~(C) The applicant is not in compliance with all of the commission's rules;~~

~~or~~

~~(D) Directed by the commission in the terms and conditions.~~

~~(3) The application fee shall automatically be part of the servicing fees collected at loan closing, unless previously due and payable per subdivision (a)(2) of this section.~~

~~(4) The commission may waive the application fee to an applicant that for reasons outside the applicant's control cannot undertake the approved project.~~

~~(b) Servicing fees.~~

~~(1) All applicants for the Water, Waste Disposal, and Pollution Abatement Facilities General Obligation Bond Program, the Water Resources Development General Obligation Bond Program, and the Waste Disposal and Pollution Abatement Facilities General Obligation Bond Program shall pay a servicing fee at loan closing of up to three percent (3%) of the total amount of the financial assistance provided under these programs for application, issuance, and administrative costs of the programs as determined by the commission.~~

~~\_\_\_\_\_ (2)(A) A loan servicing fee rate may be charged to the borrower's loan repayments.~~

~~\_\_\_\_\_ (B) The servicing fee rate is part of the combined loan rate.~~

~~\_\_\_\_\_ (C) The servicing fee rate and the combined loan rate will be determined by the commission.~~

~~\_\_\_\_\_ (3)(A) These servicing fees will be deposited in the accounts of the commission and applied to defray the cost of the applicable programs.~~

~~\_\_\_\_\_ (B) Upon return of any unneeded funds, the servicing fee associated with those funds will not be refunded.~~

**15 CAR § 2-606. Servicing fees ~~for Arkansas Water Development Fund, Water, Sewer, and Solid Waste Systems Revolving Fund, and Arkansas Water Resources Cost Share Revolving Fund.~~**

~~(a)(1) Applicants for financial assistance under this part the Arkansas Water Development Fund Program, Arkansas Water Resources Cost Share Revolving Fund Program, or the Water, Sewer, and Solid Waste Management Systems Program shall must pay ~~to the Arkansas Natural Resources Commission~~ a servicing fee of three percent (3%) of the total amount of financial assistance provided ~~under these programs~~ by the commission.~~

~~\_\_\_\_\_ (2) The commission may waive any servicing fee.~~

~~\_\_\_\_\_ (3) Servicing fees are not collected when the funding provided by the commission is in the form of a grant.~~

~~(b) This ~~The servicing fee shall~~ must be paid at the time of the first disbursement of funds, ~~are disbursed unless otherwise approved by the Director of the Arkansas Natural Resources Commission designated by the Department of Agriculture.~~~~

~~(c) This ~~The servicing fee shall~~ must be:~~

- ~~(1) Deposited into the Arkansas Water Development Fund; and~~
- ~~(2) Used for the general operation of the ~~commission~~ department.~~

(d) ~~Upon return of any unneeded funds, the servicing fee associated with those funds will not be refunded.~~ The servicing fee paid on any funds that are returned by the applicant as unneeded is not refundable.

**15 CAR § 2-607. Sanctions.**

(a) The Arkansas Natural Resources Commission may, upon written recommendation of the ~~Director of the Arkansas Natural Resources Commission~~ Department of Agriculture, penalize applicants who:

———(1) ~~Voluntarily withdraw from either the Water, Waste Disposal, and Pollution Abatement Facilities General Obligation Bond Program, the Water Resources Development General Obligation Bond Program, or the Waste Disposal and Pollution Abatement Facilities General Obligation Bond Program subsequent to commission review and approval of an application; or~~

———(2) ~~Otherwise fail to demonstrate good faith in dealing with the commission and its staff for the department.~~

(b) Sanctions may include a prohibition from participation in any commission financial assistance program.

**15 CAR § 2-608. Project completion, inspection, and audit.**

(a) Upon completion of any project for which financial assistance ~~has been~~ is provided, the applicant or its engineer ~~shall~~ must furnish to the ~~Arkansas Natural Resources Commission~~ Department of Agriculture written notification of completion.

(b) Upon receipt of such notification, or upon project completion should notification not be furnished as required herein, the department may:

(1) ~~The commission may~~ conduct a final on-site inspection of the project; and

(2) ~~An audit of any and all~~ Audit any financial assistance funds ~~furnished disbursed~~ to the applicant ~~may be required as contained~~ provided in 15 CAR § 2-601.

**15 CAR § 2-609. Return of funds to commission.**

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(a)(1) Financial assistance funds ~~made available~~provided to an applicant by the Arkansas Natural Resources Commission ~~shall~~must be utilized and expended by the applicant solely and exclusively for the payment of authorized and allowable costs and expenses of the project for which assistance was approved.

(2) Any remaining funds after project completion must~~shall~~ be promptly returned to the commission upon request.

(b) In the event funds ~~furnished~~provided to an applicant by the commission are not utilized and expended by the applicant for the specific project for which such funds were ~~furnished~~approved within a reasonable period of time after disbursement to the applicant, or in the event the commission or department determines, at any time, that funds ~~furnished~~ were utilized and expended for any unauthorized or unallowable purpose, the applicant ~~shall~~must upon demand return or otherwise pay or reimburse to the commission:

(1) Any and all such unused funds; or

(2) Any amounts of funds used and expended for unauthorized or unallowable purposes.

#### **15 CAR § 2-610. Late payments.**

(a)(1) Payments for any loan provided as part of any Arkansas Natural Resources Commission financial assistance program are~~Loans from the Arkansas Water Development Fund, the Arkansas Water Resources Cost Share Revolving Fund, and the Water, Sewer, and Solid Waste Systems Revolving Fund will be~~ given a ~~seven~~fourteen (14) day grace period after the date a loan payment is due.

(2) After ~~the~~ expiration of the grace period, interest at a rate of five percent (5%) of the payment amount due ~~will be~~is charged on the amount due from the due date until the date payment is received.

(b)(1) As provided in all loan and lease-purchase agreements entered into ~~with respect to as part of~~ commission financial assistance ~~from the Water, Waste Disposal, and Pollution Abatement Facilities General Obligation Bond Program, the Water Resources Development General Obligation Bond Program, and Waste Disposal and~~

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~~Pollution Abatement Facilities General Obligation Bond Fund Program, there is programs,~~  
~~lease or loan payments are given a seven- (7) day grace period after the date a~~  
~~payment is due for lease or loan payments due.~~

(2) After ~~the~~ expiration of the grace period, interest at the rate stated in the project documents ~~will be~~ charged on the amount due from the due date until the date payment is received.

**15 CAR § 2-611. Conveyance to eligible entity when project costs repaid.**

Upon repayment to the Arkansas Natural Resources Commission of all project costs, ~~and/or such other~~ payments, fees, and charges ~~as may be required to be paid to the commission pursuant to under~~ the project agreements in full satisfaction of the applicant's obligations, the commission will:

(1) ~~Will~~ convey any ownership interest it has in the project or cause such interest to be conveyed to the proper applicant, ~~or, if applicable, to a group of applicants as their interests may appear; and~~

(2) ~~Shall~~ return control over the operation and maintenance of the project to the applicant or applicants, as ~~the case may be applicable.~~

**15 CAR § 2-612. Debt service reserve fund, when requested.**

(a)(1) A debt service reserve fund, when required ~~to be funded~~ by the Arkansas Natural Resources Commission, ~~will~~ must be a restricted account established and maintained by a third-party trustee or the applicant, as approved by the ~~Director of the Arkansas Natural Resources Commission~~ Department of Agriculture.

(2) ~~This~~ The debt service reserve fund is solely for the benefit and protection of the commission and ~~shall~~ may not be used or pledged for any other purpose without prior written approval of the ~~director~~ department.

(b) The debt service reserve fund:

(1) Will be funded in whole at closing of the project ~~financing of the project,~~ unless otherwise approved by the ~~commission~~ department; and

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(2) May be funded from the amounts financed by the commission as part of the overall project cost.

**15 CAR § 2-613. Depreciation reserve fund.**

(a) The depreciation reserve fund ~~will~~must be a restricted account, established and maintained by a third-party trustee or by the applicant, as approved by the ~~Director of the Arkansas Natural Resources Commission~~Department of Agriculture.

(b)(1) ~~This~~The depreciation reserve fund is for the replacement of the financed project and ~~shall~~may not be used for any other purpose without the written approval of the ~~Arkansas Natural Resources Commission~~department.

(2) ~~The depreciation reserve fund~~ will be accumulated at a rate and amount established by the ~~director~~department.

**Subpart 7. Eligible Entities**

**15 CAR § 2-701. Eligible entities — Generally.**

~~(a) All of the entities set out stated in this subpart subsection (b)~~ are collectively referred to in this part as "eligible entities,":

~~(b) Entities eligible to apply for and receive financial assistance from the Arkansas Natural Resources Commission include any governmental authority, municipal nonprofit entity, municipal authority, public water authority, investor-owned water or sewer utility, improvement district, levee board, conservation nonprofit, rural development authority, public facilities board, irrigation district, regional water distribution district, any duly qualified and existing public trust or authority, or rural waterworks facilities board, individually or as agent, representative, or instrumentality of any political subdivision or other eligible entity described above.~~

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~~**15 CAR § 2-702. Entities eligible for assistance under the Water Resources Development General Obligation Bond Program.**~~

~~—The financial assistance made available under the Arkansas Natural Resources Commission's Water Resources Development General Obligation Bond Program may be obtained for an eligible project by any duly constituted and existing political subdivision of the state, including but not limited to counties, cities, towns, and municipalities, and by any duly constituted special purpose improvement district, rural development authority, public facilities board, irrigation district, or regional water distribution district, and by any duly qualified and existing public trust or authority, or rural waterworks facilities boards, individually or as agent, representative, or instrumentality of any political subdivision or other eligible entity described above.~~

**15 CAR § 2-703. Entities eligible for assistance under the Arkansas Water Development Fund Program.**

~~The f~~Financial assistance ~~made~~ available under the Arkansas Natural Resources Commission's Arkansas Water Development Fund Program may be obtained for an eligible project by any:

- (1) Duly constituted entity listed in 15 CAR § 2-~~702-701~~ that is engaged as a local sponsor of any water development project that is an integral part of the Arkansas Water Plan; and
- (2) Nonprofit corporation ~~that was~~ in existence before August 1, 1997, with sponsorship of such an entity.

**15 CAR § 2-704. Entities eligible for assistance under the Water, Sewer, and Solid Waste Management Systems Program.**

~~The f~~Financial assistance ~~made~~ available under the Arkansas Natural Resources Commission's Water, Sewer, and Solid Waste Management Systems Program may be obtained for an eligible project by any:

- (1) ~~Any d~~Duly constituted entity listed in 15 CAR § 2-~~702701~~; and
- (2) Nonprofit corporations ~~that were~~ in existence before August 1, 1997, and that provides water, sewer, or solid waste services to one (1) or more:
  - (A) CitiesCity;

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- (B) Towns; or
- (C) ~~Counties~~County.

**15 CAR § 2-705. Entities eligible for assistance under the ~~Waste Disposal and Pollution Abatement Facilities General Obligation Bond~~ Water and Sewer Treatment Facilities Grant Program.**

The ~~f~~Financial assistance ~~made~~ available under the Arkansas Natural Resources Commission's ~~Waste Disposal and Pollution Abatement Facilities General Obligation Bond~~Water and Sewer Treatment Facilities Grant Program may be obtained for an eligible project by any ~~duly constituted entity listed in 15 CAR § 2-702.;~~

- (1) City of the first class;
- (2) City of the second class;
- (3) Incorporated towns;
- (4) Rural water systems; and
- (5) Rural wastewater systems.

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**~~15 CAR § 2-706. Entities eligible for assistance under the Water Resources Cost Share Revolving Fund Program.~~**

~~—The financial assistance made available under the Arkansas Natural Resources Commission's Arkansas Water Resources Cost Share Revolving Fund Program may be obtained for an eligible project by any duly constituted entity listed in 15 CAR § 2-702 that has entered into or is attempting to enter into a cooperative agreement for cost sharing with the federal government to finance a water resource development project.~~

**15 CAR § 2-707. Entities eligible for assistance under the Water, Waste Disposal, and Pollution Abatement Facilities General Obligation Bond Program.**

The ~~f~~Financial assistance ~~made~~ available under the Arkansas Natural Resources Commission's Water, Waste Disposal, and Pollution Abatement Facilities General Obligation Bond Program may be obtained for an eligible project by any ~~duly constituted entity listed in 15 CAR § 2-702.;~~

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(1) Nonprofit corporation;

(2) County, municipality, conservation district, improvement district, drainage district, irrigation district, levee district, regional water distribution district, public facilities board, public water authority, rural development authority, solid waste authority, regional wastewater treatment district, regional solid waste management district, rural water association, or school district in the state;

(3) Agency or instrumentality of the state, including without limitation the commission; and

(4) Individual cooperation, trust, limited liability company, or partnership.

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#### **15 CAR § 2-708. Combination of eligible entities.**

(a) For purposes of qualifying for and obtaining the financial assistance contemplated herein under this part, any group of eligible entities may combine and join in making application for project assistance, provided each separate entity within the group is an eligible entity with respect to the particular program for which such application is made.

(b) Entities that intend to combine or join for the purpose of applying for financial assistance under this part are subject to approval by the Department of Agriculture.

(c) Eligible entities forming a new entity for the purpose of applying for financial assistance under this part must obtain prior approval from the department.

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#### **Subpart 8. Special Rules Applicable to the Water Resources Development General Obligation Bond Program**

##### **~~15 CAR § 2-801. Projects for which assistance may be obtained.~~**

~~(a) In keeping with the purposes of the Water Resources Development General Obligation Bond Program described in the introduction, financial assistance may be obtained for any project within the state in whole or part where benefits of the project may be expected to accrue to the inhabitants and residents of the state, which project qualifies as any undertaking or work to conserve and develop surface or subsurface~~

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water resources or to control or develop water treatment facilities of the state for domestic, agricultural, industrial, or other essential purposes by the acquisition, improvement, extension, or construction of dams, reservoirs, and other water storage projects, including but not limited to:

—— (1) Underground storage projects and filtration and water treatment plants, including any system necessary to distribute water from storage or filtration plants to points of distribution or from storage to filtration and treatment plants;

—— (2) Facilities for distributing water therefrom to wholesale or retail purchasers; and

—— (3) Any system necessary to improve, develop, or extend water storage, treatment, or distribution capabilities of any area of the state.

—— (b) Such qualified projects are additionally understood to include financial assistance to:

—— (1) Acquire and own the lands required for the project;

—— (2) Obtain the water supply; and

—— (3) Construct appropriate treatment facilities.

—— (c) As more specifically provided in 15-CAR § 2-802, in order for projects to be qualified for participation in the Water Resources Development General Obligation Bond Program, all interests in land, buildings, equipment, and other facilities being financed with state assistance under Arkansas Code § 15-22-601 et seq., must be capable of being conveyed to the state for the duration of the period of financial assistance.

—— **15-CAR § 2-802. Nature of project ownership.**

—— (a) Under the Arkansas Water Resources Development Act of 1981, Arkansas Code § 15-22-601 et seq., the Arkansas Natural Resources Commission is required to own all projects developed pursuant to the Water Resources Development General Obligation Bond Program.

—— (b) Accordingly, and as more specifically provided in 15-CAR § 2-804, as a condition of obtaining financial assistance in connection with any project:

~~———— (1) The applicant will be required to convey to the commission legal title to all interests in land, buildings, improvements, equipment, and other facilities that:~~

~~———— (A) Are financially assisted by the commission's Water Resources Development General Obligation Bond Program; and~~

~~———— (B) Will comprise a project; and~~

~~———— (2) The commission must be the lawful owner of all facilities constituting the project until all project costs and other fees and charges as may be imposed by the commission have been paid or reimbursed to the commission.~~

~~———— **15 CAR § 2-803. Project costs for which assistance funds may be expended.**~~

~~———— (a) Funds made available by the Arkansas Natural Resources Commission to an applicant for an approved project shall be utilized and expended only toward payment and financing of project costs, as approved by the commission.~~

~~———— (b) For purposes of this section, project costs include the following items:~~

~~———— (1) Costs of acquiring the facilities comprising the project;~~

~~———— (2) Costs of acquiring and constructing other items included in the facilities, including obligations incurred for labor and materials by:~~

~~———— (A) Contractors;~~

~~———— (B) Builders; and~~

~~———— (C) Material suppliers;~~

~~———— (3) Costs of restoration or relocation of property damaged or destroyed in connection with any construction;~~

~~———— (4) Contractors' performance, payment, and completion bond premiums;~~

~~———— (5) Title insurance premiums;~~

~~———— (6) Costs of machinery, equipment, and related facilities acquired or purchased for inclusion in the facilities and the cost of shipping, transportation, and installation thereof;~~

~~———— (7) Taxes or other municipal or governmental charges levied or lawfully assessed against the facilities acquired during the period of acquisition;~~

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- ~~———— (8) Insurance premiums in connection with acquisition of the facilities;~~
- ~~———— (9) Architectural and engineering fees for services related to the project prior to and during the period of acquisition;~~
- ~~———— (10) Payment or reimbursement to the applicant for interim financing and advances and all costs thereof;~~
- ~~———— (11) Abstract and title opinion costs;~~
- ~~———— (12) Reasonable project legal fees and expenses of counsel for the applicant;~~
- ~~———— (13) Costs of fees of other consultants of the applicant;~~
- ~~———— (14) Recording fees;~~
- ~~———— (15) Costs of publishing and printing proceedings incident to the project and any local hearings or approvals required in connection therewith; and~~
- ~~———— (16) Such other reasonable and necessary expenses as may be:~~
  - ~~———— (A) Required to complete the project; and~~
  - ~~———— (B) Approved by the commission.~~

~~———— **15 CAR § 2-804. Transfer of ownership.**~~

- ~~———— (a) For an approved application and project, the Arkansas Natural Resources Commission is authorized to advance funds in the form of purchase payments for the project.~~
- ~~———— (b) Payment requests must be accompanied by appropriate documentation from project applicants satisfying the conditions for disbursements set forth in Subpart 5 of this part.~~

~~———— **15 CAR § 2-805. Assets to be conveyed.**~~

- ~~———— (a) All assets constituting part of a water resource project financed with Arkansas Natural Resources Commission Water Resources Development General Obligation Bond Program funds must be transferred and assigned to the commission at the time of disbursement of such funds.~~
- ~~———— (b) In addition, an applicant may be required, in the sole discretion of the commission, to enter into a ground lease with the commission covering any real~~

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property owned by the applicant but not conveyed to the commission in relation to which the commission is required to have access or control in order to effect the intents and purposes of Acts 1981, No. 496.

— (c) A project may be transferred to the commission in whole or in part from time to time as portions of the project:

— (1) Are completed; and

— (2) Become the subject of requests for disbursement of funds.

~~— **15 CAR § 2-806. Applicant to act as a commission agent.**~~

~~— (a) At all times during project construction and operation and in the absence of default by a project applicant, the applicant will be required, pursuant to the project documents, to function and act as the contracting and operating agent of the Arkansas Natural Resources Commission.~~

~~— (b) The commission will:~~

~~— (1) Appoint the applicant to serve in such agency capacity during the term of financial assistance; and~~

~~— (2) Require the applicant to indemnify and hold the commission, its members, officers, agents, employees, and consultants harmless against loss or damage in connection with the construction and operation of the project during such term of financial assistance.~~

~~— **15 CAR § 2-807. Commission control over project.**~~

~~— (a) During any time that the eligible entity is in default of the terms of any project document, the Arkansas Natural Resources Commission may, if it so chooses, take control of the project, including but not limited to:~~

~~— (1) Management and operation of the project;~~

~~— (2) Establishment of user rates; or~~

~~— (3) Any similar function.~~

~~— (b) Control will generally be returned to the applicant upon cure of defaults unless such defaults:~~

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- \_\_\_\_\_ (1) Are repeated; and
- \_\_\_\_\_ (2) Form a pattern of consistent failure to adhere to project documents.

**Subpart 9. Special Rules Applicable to the Water, Waste Disposal, and Pollution Abatement Facilities General Obligation Bond Program**

**15 CAR § 2-901 Projects eligible for financial assistance.**

\_\_\_\_\_ (a) To be eligible for financial assistance under the Water, Waste Disposal, and Pollution Abatement Facilities General Obligation Bond Program, projects must meet one of the following criteria:

- \_\_\_\_\_ (1) A pollution abatement project to reduce, prevent, recycle, control, or eliminate contamination or pollution from the lands, waters, and air of the state that may cause harm to public health, livestock, wild animals, birds, fish, or other aquatic life;
- \_\_\_\_\_ (2) A water project including without limitation production, impoundment, and disposition of water;
- \_\_\_\_\_ (3) Drainage or flood control project;
- \_\_\_\_\_ (4) Irrigation facilities;
- \_\_\_\_\_ (5) Preservation and development of wetlands and aquatic resources;
- \_\_\_\_\_ (6) Projects for agricultural, administrative, research, residential, recreational, commercial, or industrial purposes to be used and benefited by eligible entities as defined by 15 CAR § 2-705; or
- \_\_\_\_\_ (7) For use by the Arkansas Natural Resources Commission or Department of Agriculture for water, waste disposal, and pollution abatement project costs, including issuance expenses, matching, repayment of indebtedness, consulting services, and refunding of bonds.

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**Subpart 10. Special Rules Applicable to the Arkansas Water Development Fund Program and the Water, Sewer, and Solid Waste Management Systems Program**

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**15 CAR § 2-1001. Forms of assistance.**

~~(a)~~The Arkansas Natural Resources Commission, after duly acting upon an application, may ~~decide to participate in~~provide financial assistance to a qualifying water development project or water, sewer, or solid waste management systems project in any of the following ways:

—~~(1a)~~ **Loans.**

—~~(A1)(iA)~~ The commission will, f~~r~~ those ~~projects~~ in need of urgent financing, the commission will make temporary, short-term or long-term loans at ~~low~~ interest rates established by the Department of Agriculture.

—~~(#B)~~ Short-term loans may be made pending acquisition of long-term financing by the applicant.

—~~(iiiC)~~ The applicant will ~~enter into~~execute loan documents with the commission setting forth the terms of the loan.

—~~(B2)(iA)~~ The interest rate for long-term or short-term loans by the commission ~~shall not exceed five percent (5%) per annum~~are established by the department with consultation of the financial advisor.

—~~(#B)~~ If the commission is convinced that an applicant is financially unable to pay any interest, ~~then~~ the commission may approve a loan ~~with no~~for which the interest charge is deferred or forgiven.

—~~(C3)~~ The date that interest ~~will~~begins to accrue on the unpaid balance of a loan ~~will be set~~is determined by the ~~commission~~department.

—~~(D4)~~ The loan documents will ~~provide~~include the terms and conditions of the loan, including but not limited to, the:

- (iA) Rate;
- (#B) Principal amount of the loan; and
- (iiiC) Dates and amounts of payments;

—~~(2b)~~ **Grant-in-aid.**

—~~(A1)~~ The commission will, f~~r~~ ~~these~~ projects demonstrating an exceptional benefit to the state so general in nature that any method of payment of

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project costs by the local people would prove inequitable, the commission will make a grant to the eligible entity for the payment of such costs.

—(B2) Grants may also be approved when the eligible entity cannot, in the commission’s judgment, repay a loan ~~or~~.

(3) Grants are subject to availability of funds.

—(3C) **Joint venture (water development fund projects only).**

—(A1) For any project ~~which would~~that provides exceptional benefits, or when it is determined to be in the best interests of the state, the commission may join with the applicant as a co-owner and sponsor ~~in order to provide for that purpose of the project.~~

—(B2) ~~This~~Any action under this subsection may consist of the acquisition of real property purchases of land or joint ownership of the entire project.

—(C3) Execution of a joint venture agreement between the applicant and the commission ~~will be~~is required.

—(b)(1)(A) ~~Decisions on the type of financial assistance to be conferred by the commission for water or wastewater projects will be based upon the system’s rate burden factor (RBF):~~

—(B) ~~The RBF is the cost of four thousand (4,000) gallons per month for one (1) year, assuming proposed rates, expressed as a percentage of annual median household income (MHI) in the applicant’s locality.~~

—(2) ~~In addition, consideration will be given to applicants with percentages of low income, elderly, or unemployed residents higher than the average state incidence of such persons.~~

—(3) ~~The example and table set out below indicate the manner in which the above RBF factor criteria will be utilized:~~

**Example:**

MHI from the most recent census = \$11,000

Cost of 4,000 gallons/month = \$15.00

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$$\frac{\frac{(\text{cost } 4,000 \text{ gal/mo.} * 12 \text{ mo.})}{\text{MHI}}}{\$11,000} * 100 = \text{RBF} = 1.64\%$$

**System's Rate Burden Factor (RBF) Chart**

<b>RBF</b>	<b>Types of financial assistance</b>
0.0 — 0.49	None.
0.50 — up	Interim financing; 5 % interest; maximum 3 years payback.
1.00 — 1.49	5% interest; 10 year payback.
1.50 — 1.99	5% interest; 20 year payback.
1.50 — up	Grant; must also have two or more of the following: greater than average State incidence of elderly, low income, or unemployed persons.
2.00 — 2.99	5% interest; 10 years deferred interest and principal payment; 20 year payback after 10 year deferral.
2.50 — up	Grant; must also have one or more of the following: greater than average State incidence of elderly, low income, or unemployed persons.
3.00 — up	Grant.

~~—(c)(1) Calculation of the RBF is intended to provide general guidelines and standards for application and review by the commission.~~

~~—(2) Special consideration may also be given to such factors as:~~

~~—(A) Documented health hazards; and~~

~~—(B) Unusual economic impacts.~~

~~—(3) In all instances, each individual application must be reviewed and considered on its own merits.~~

~~—(4) The standards set forth above shall accordingly be interpreted and applied so as to allow sufficient flexibility in the ultimate exercise of the commission's judgment and discretion.~~

~~**15 CAR § 2-1002. Last funds used — Return of unneeded funds.**~~

~~—(a)(1) When funds provided from the Water Development Fund programs or Water, Sewer, and Solid Waste Systems programs are used in conjunction with other funds provided by the Arkansas Natural Resources Commission's other programs except the Water Development Fund program, other state programs, federal programs, or local sources, the Water, Sewer, and Solid Waste Management Systems Program funds shall be the last funds expended.~~

~~—(2) The Director of the Arkansas Natural Resources Commission may waive this requirement.~~

~~—(b) Any unneeded funds shall be promptly returned to the commission.~~

**Subpart 11. Special Rules Applicable to the Waste Disposal and Pollution Abatement Facilities General Obligation Bond Program**

**Subpart 12. Special Rules Applicable to the Arkansas Water Resources Cost Share Revolving Fund Program**

~~**15 CAR § 2-1201. Projects for which assistance may be obtained.**~~

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~~—(a) In keeping with the purposes of the Arkansas Water Resources Cost Share Revolving Fund Program ("cost share program") described in the Introduction, financial assistance may be requested for any project that qualifies as a "water resources development project":~~

~~—(b) For the purposes of the cost share program, "water resources development project" means the construction, acquisition, ownership, replacement, operation, and maintenance of facilities, including land, easements, and works of improvement, for the protection, conservation, preservation, development, utilization, and proper disposal of the state's water resources and related land resources in order to:~~

~~———(1) Provide for the people of the state:~~

~~———(A) Adequate supplies of quality water for municipal, industrial, agricultural, recreational, and domestic purposes;~~

~~———(B) Water for navigation; and~~

~~———(C) Access to:~~

~~———(i) The state's lakes and streams; and~~

~~———(ii) Parks and other recreational sites along their shores; and~~

~~———(2) Reclaim, preserve, and protect the state's land resources and adequately protect the wealth of the state from disastrous floods.~~

~~—— **15 CAR § 2-1202. Forms of assistance.**~~

~~—(a) The Arkansas Natural Resources Commission is authorized to make either loans or grants to eligible entities with limited financial capacity to provide them with the nonfederal share of the cost for a water resources development project.~~

~~—(b) The commission may provide financial assistance to an eligible entity in the form of loans or grants for a project without the requirement of a cooperative agreement between the entity and the federal government if the commission determines that:~~

~~———(1) The project is of such type or size that cost sharing is not efficient or effective; or~~

~~——(2) Current conditions make the financing of the project through cooperative agreement with the federal government within a reasonable time unlikely.~~

~~——(c) Loans from the Arkansas Water Resources Cost Share Revolving Fund shall be repaid in full at an interest rate up to the maximum allowed under Arkansas Constitution, Article 19, § 13, as amended by Ark. Const. Amend. 60.~~

~~——**15 CAR § 2-1203. Maximum participation.**~~

~~——The Arkansas Natural Resources Commission shall not make a loan or a grant to an eligible entity in an amount greater than fifty percent (50%) of the total water resource development project cost unless there is no requirement for a cooperative agreement, in which case the commission may provide up to sixty five percent (65%) of the total project cost in the form of a loan or grant.~~

~~——**15 CAR § 2-1204. Application.**~~

~~——(a)(1) Each January 1, the Arkansas Natural Resources Commission shall take applications from eligible entities for assistance to be awarded for water resource development projects for the next fiscal year.~~

~~——(2) The annual deadline for applications shall be March 31 of each year.~~

~~——(b) The commission shall award grants and loans for water resource development projects, contingent on the availability of funds, by June 30 of each year.~~

~~——**15 CAR § 2-1205. Priority ranking for water projects.**~~

~~——[Reserved.]~~

**Subpart 13. Special Rules Applicable to the Water and Sewer Treatment Facilities Grant Program**

**15 CAR § 2-1301. Specific criteria applicable to the Arkansas Water and Sewer Treatment Facilities Grant Program applications.**

(a) In addition to the approval standards and criteria set out in 15 CAR § 2-401, the Arkansas Natural Resources Commission establishes the following requirements and

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additional ranking information for prioritizing Water and Sewer Treatment Facilities Grant Program applications:

(b)(1) Eligible projects must be "shovel-ready," as defined in subsection (b)(2) herein, and able to start construction within one (1) year of the grant award.

(2) To be considered "shovel-ready," the project must:

(A) Have a complete project design stamped by an engineer licensed in the State of Arkansas;

(B) Have the required state and federal permits or can demonstrate that the permits were requested and will be obtained within six (6) months of the grant award; or

(C) Demonstrate the ability to award a bid and begin construction within one (1) year of the grant award.

(c)(1) Each applicant must submit a project priority list application provided by the Department of Agriculture for drinking water projects and clean water projects at least sixty (60) days prior to submitting a funding application.

(2) Project priority list applications are scored to determine ranking for funding consideration. The scoring criteria are provided in the Clean Water and Drinking Water Intended Use Plans annually.

(d)(1) In addition to the criteria used for project priority list rankings, applications are scored on the following selection criteria:

(A) Project located in a county that has increased or decreased more than ten percent (10%) in population, based on the most recent three (3) years of available data on the ACS five (5) year estimates for Arkansas, in the past ten (10) years receives five (5) points;

(B) Applicant who has not received funding from the program in the last (2) two years receives ten (10) points;

(C) Project that supports the continuation, expansion, or creation of economic development receives five (5) points;

(D) Project that specifically addresses inflow and infiltration into a wastewater system receives ten (10) points;

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(E) Project that reduces unaccounted water loss in a drinking water system having greater than thirty percent (30%) water loss documented by the Arkansas Department of Health receives ten (10) points; and

(F) Project that includes cooperation between more than one (1) water or wastewater system to improve system function, establish emergency connections, increase water supply, or improve wastewater treatment or other cooperative project approved by the Department of Agriculture receives ten (10) points.

(2) Each application receives a total sum score by combining the project priority list criteria with the selection criteria for funding awards.

(e) Funding awarded under the program must be in accordance with the following:

(1)(A) Funding may be awarded for construction or planning and design.

(B) No more than five percent (5%) of the total funding appropriated each state fiscal year to the program may be awarded for planning and design grants to assist cities, towns, and rural water and wastewater systems with a population of ten thousand (10,000) or less with project designs.

(C) Planning and design projects must be completed within one (1) year of the award and require a ten percent (10%) match from the awardee.

(D) Planning and design grants under this section may not exceed one hundred thousand dollars (\$100,000) per applicant.

(2)(A) Eighty percent (80%) of construction funds appropriated in each state fiscal year for the program will be awarded for shovel-ready projects in cities of the first class, cities of the second class, or rural water and wastewater systems with a population of more than one thousand two hundred (1,200);

(B) Funding under the program requires a thirty percent (30%) project match from the awardee; and

(C) Funding awards for construction projects under the program may not exceed five million dollars (\$5,000,000) per award.

(3)(A) Twenty percent (20%) of the construction funds appropriated in each state fiscal year for the program will be awarded for shovel-ready projects in

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incorporated towns, cities of the second class, or rural water and wastewater systems with a population of one thousand two hundred (1,200) or less;

(B) Funding under the program requires a twenty-five percent (25%) project match from the awardee; and

(C) Funding for construction projects under the program may not exceed one million dollars (\$1,000,000) per award.

(4)(A) Funding recipients are not eligible for another grant under the program until the awarded grant is closed out.

(B) A grant is considered "closed out" when:

(i) Construction is complete, retainage is released, and the owner accepted the project; or

(ii) Construction is not complete, and all grant funds are fully expended, in which event the awardee must agree in writing to the department that it will not release retainage until the project is complete, and owner acceptance is issued.

#### **Subpart 14. Special Rules Applicable to the Clean Water State Revolving Fund Program and the Drinking Water State Revolving Fund Program**

#### **15 CAR § 2-1401. General criteria applicable to the Clean Water State Revolving Fund Program and the Drinking Water State Revolving Fund Program.**

(a)(1) In addition to the approval standards and criteria set out in 15 CAR § 2-401, the Arkansas Natural Resources Commission establishes the following requirements for the Clean Water State Revolving Fund and Drinking Water State Revolving Fund.

(2) Due to the specialized nature and complexity of administration of the CWSRF and DWSRF programs, the commission's rules are subject to and given liberal, reasonable, fair, and impartial interpretation and application to achieve compliance with state and federal laws and the public policy to be served thereby.

(b) The applicant and proposed project must:

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(1) Be eligible for a loan from the CWSRF or DWSRF programs under the criteria set forth in this part;

(2) Be included on the applicable project priority list in accordance with the Department of Agriculture's published intended use plans and applicable law and federal requirements;

(A) Intended use plans are published each fiscal year before the state receives federal funding for the CWSRF and DWSRF and are subject to public notice;

(B)(i) Intended use plans must include the project priority list for the CWSRF and DWSRF programs and describe the ranking criteria for the project priority list;

(ii) The project priority list for each program is used to rank priority projects and determine funding allocation;

(C) Intended use plans must comply with the Clean Water Act and Safe Drinking Water Act as applicable to the funding program;

(3) Comply with applicable provisions of the Clean Water Act, Safe Drinking Water Act, and other federal laws and requirements; and

(4)(A) Retain or obtain the services of:

(i) A consulting engineer;

(ii) Bond counsel; and

(iii) Construction contractor or contractors.

(B) All procurement transactions must be conducted in a manner that provides maximum open and free competition.

(c)(1) The department must conduct an environmental review of any project for which an application for CWSRF or DWSRF funding is made, unless exempt from review.

(2) The environmental review must comply with the National Environmental Policy Act of 1969, 42 U.S.C. § 4321 et seq., and 40 C.F.R. Part 35.

**15 CAR § 2-1402 Priority and availability of funds.**

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(a) The Arkansas Natural Resources Commission must give maximum priority to projects that:

(1) Are needed for compliance with the Clean Water Act or Safe Drinking Water Act;

(2) Provide the greatest protection to public health; and

(3) Assist systems most in need on a per household basis.

(b) Projects are considered in the order established by the relevant project priority list;

(c) If a project is determined to be eligible, it will thereafter be prioritized for funding.

**15 CAR § 2-1403. Specific Criteria for the Drinking Water State Revolving Fund.**

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(a) All funds within the DWSRF must be used solely to provide loans and other forms of assistance as authorized by the Safe Drinking Water Act for eligible activities to further the public health protection objectives of the Safe Drinking Water Act.

(b) Eligibility.

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(1)(A) Eligible projects include but are not limited to the following:

(i) Projects needed for compliance and public health, except monitoring, operation, and maintenance expenditures;

(ii) Replacement of aging infrastructure if needed to maintain compliance or further public health protection goals;

(iii) Consolidation of water supplies;

(iv)(a) Acquisition of land, only if integral to the project and needed to meet or maintain compliance and further public health protection.

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(b) Under 40 CFR § 35.3520(c), costs for acquiring land are eligible for funding through the DWSRF, regardless of equivalency, only if the land is required to locate eligible project components and is purchased from a willing seller;

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(v) Planning and design of a project; and

(vi)(a) Restructuring systems that are noncompliant or lack the technical, managerial, and financial capacity to maintain the system.

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(b) The project described in the previous subsection is eligible only if the loan will ensure compliance or if the owner or operator agrees to undertake appropriate changes in operations.

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(B) Unless approved by the U.S. Environmental Protection Agency, loans under the DWSRF program may not be made for:

(i) Dams or rehabilitation of dams;

(ii) Water rights, except if the water rights are owned by a system that is being purchased through consolidation as part of a capacity development strategy;

(iii) Reservoirs, except for finished water reservoirs and those reservoirs that are part of the treatment process and are located on the property where the treatment facility is located;

(iv) Laboratory fees for monitoring;

(v) Operation and maintenance expenses;

(vi) Projects needed mainly for fire protection;

(vii) Projects for systems that lack adequate technical, managerial, and financial capability, unless assistance will ensure compliance;

(viii) Projects for systems in significant noncompliance, unless funding will ensure compliance; or

(ix) Projects primarily intended to serve future growth.

(2) Eligible entities:

(A) Must meet the requirements of 40 CFR § 35.3520;

(A) May be privately-owned and publicly-owned community water systems and non-profit water systems;

(B) Must meet the technical, managerial technical capacity required under Section 1452 of the Safe Drinking Water Act and further defined in 20 CAR § 140-102; and

(3) Eligibility is determined at the time of application.

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**(c) DWSRF equivalency projects.**

(1)(A) Federal crosscutter requirements, which include environmental review requirements, must be applied to projects and activities receiving federal dollars.

(B) Because DWSRF consists of an indistinguishable combination of federal, state, and recycled monies, the EPA determined that federal crosscutter requirements must be applied to projects identified by the state whose cumulative funding is equivalent to the amount of the capitalization grant and designated as equivalency projects.

(2)(A) The Department of Agriculture must designate certain projects as equivalency projects.

(B) Equivalency projects are subject to the equivalency requirements defined in the Safe Drinking Water Act, 40 C.F.R. Part 35, and EPA guidance.

**15 CAR § 2-1404. Specific Criteria for the Clean Water State Revolving Fund.**

(a) All funds within the CWSRF must be used solely to provide loans and other forms of assistance as authorized by the Clean Water Act for the construction of publicly owned wastewater facilities or any other activity associated with water quality.

(b) **Eligibility.** Projects eligible for CWSRF assistance must meet the criteria provided in 33 U.S.C. § 1383 and be for:

(1) Any municipality, intermunicipal, interstate, or State agency to construct publicly owned treatment works, as defined in 33 U.S.C. § 1292;

(2) Implementation of a management program established under section 319 of the Clean Water Act;

(3) Development and implementation of a conservation and management plan under section 320 of the Clean Water Act;

(4) Construction, repair, or replacement of decentralized wastewater treatment systems that treat municipal wastewater or domestic sewage;

(5) Measures to manage, reduce, treat, or recapture stormwater or subsurface drainage water;

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(6) Any municipality, intermunicipal, interstate, or State agency to reduce the demand for publicly owned treatment works capacity through water conservation, efficiency, or reuse;

(7) Development and implementation of watershed projects meeting the criteria set forth in 33 U.S.C. § 1274;

(8) Any municipality, intermunicipal, interstate, or State agency to reduce the energy consumption needs for publicly owned treatment works;

(9) Reusing or recycling wastewater, stormwater, or subsurface drainage water;

(10) Measures to increase the security of publicly owned treatment works;

(11) Any qualified nonprofit entity, as determined by the Administrator of the U.S. Environmental Protection Agency, to provide assistance to owners and operators of small and medium sized publicly owned treatment works to:

(A) Plan, develop, and obtain financing for eligible projects under this section, including planning, design, and associated preconstruction activities; and

(B) Assist such treatment works in achieving compliance with the Clean Water Act.

(c) **Nonpoint source projects.**

(1)(A) Funds in the CWSRF may be used to finance nonpoint source management projects in accordance with the following criteria.

(B) CWSRF nonpoint source funding is designed to offer eligible borrowers a source of funding for a nonpoint source management project with below-market interest rates and a reasonable repayment period.

(C) This subsection does not apply to nonpoint source projects funded through Nonpoint Source Pollution Grants in accordance with 40 C.F.R. §§ 35.260—35.268.

(2) CWSRF funding for nonpoint source projects is available to any of the following:

(A) Homeowners;

(B) Small businesses;

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\_\_\_\_\_ (C) Farmers;

\_\_\_\_\_ (D) Growers;

\_\_\_\_\_ (E) Dairy farmers;

\_\_\_\_\_ (F) Cooperatives; and

\_\_\_\_\_ (G) Nonprofit entities.

\_\_\_\_\_ (3)(A) To be eligible for CWSRF nonpoint source funding, a project must be included in an approved nonpoint source management plan.

\_\_\_\_\_ (B) Project types eligible for assistance from the CWSRF nonpoint source program include but are not limited to:

\_\_\_\_\_ (i) Construction of leachate collection and treatment systems, the closing and capping of landfills, or the reclamation of old landfills;

\_\_\_\_\_ (ii) Remediation of groundwater contamination from Leaking Underground Storage Tanks;

\_\_\_\_\_ (iii) Remediation or protection of the groundwater from oil wells or injection wells or other well fields;

\_\_\_\_\_ (iv) On-site septic tank repair or replacement to protect:

\_\_\_\_\_ (a) Groundwater;

\_\_\_\_\_ (b) Drinking water supplies; and

\_\_\_\_\_ (c) Public health;

\_\_\_\_\_ (v) Stormwater management facilities, including the purchase of equipment, land, and easements or construction of facilities to collect, store, and treat stormwater runoff;

\_\_\_\_\_ (vi) Construction of facilities to collect and treat agricultural or animal waste products and the equipment needed to properly run those facilities; and

\_\_\_\_\_ (vii) Remediation or reclamation of a brownfield site to protect and/or restore groundwater.

\_\_\_\_\_ (4)(A)(i) CWSRF nonpoint source funding may be provided through low interest loans from a local financial institution through a linked deposit account provided that the financial institution agrees to and complies with the terms of participation.

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(ii) CWSRF nonpoint source funds will be deposited into a non-interest-bearing demand deposit account or other deposit account at a below market interest rate.

(iii) The financial institutions providing the loan must agree to take full responsibility for the credit evaluation of the borrowers, preparation and execution of loan agreements, disbursement of funds, monitoring and servicing of loans, and the credit risk of nonpayment or default.

(iv) Deposits more than Federal Deposit Insurance Corporation or Federal Savings and Loan Insurance Corporation insured amounts must be fully collateralized by the financial institutions.

(B) Loans will be made for the purpose of implementing best management practices for nonpoint source management projects.

(5) The CWSRF nonpoint source funding program may add funding options or features such as direct loans, providing funds to other state agencies in Arkansas for use in nonpoint source abatement, or other types of assistance authorized by federal law to address changes in priorities.

**(d) CWSRF equivalency projects.**

(1)(A) Federal crosscutter requirements, which include environmental review requirements, must be applied to projects and activities receiving federal dollars.

(B) Because CWSRF consists of an indistinguishable combination of federal, state, and recycled monies, the EPA determined that federal crosscutter requirements must be applied to projects identified by the state whose cumulative funding is equivalent to the amount of the capitalization grant and designated as equivalency projects.

(2)(A) The Department of Agriculture must designate certain projects as equivalency projects.

(B) A project designated by the Department of Agriculture as an equivalency project must comply with section 602(b)(6) of the Clean Water Act and 40 C.F.R. § 35.310 et seq.

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A) A project designated by the Department of Agriculture as an equivalency project must comply with section 602(b)(6) of the Clean Water Act and 40 C.F.R. § 35.310 et seq.

(3) The following projects are not eligible for funding under section 602 of the Clean Water Act:

(A) Costs such as land for the treatment site, except land application sites;

(B) Construction of new collector sewers in existing communities;

(C) Treatment plant office furnishings; and

(D) Cost for treating excessive infiltration and inflow into the sewer system.

(e) **Mitigation.** Eligible costs related to mitigation include:

(1) Costs necessary to mitigate direct, adverse, or physical impacts resulting from building of the wastewater facilities; and

(2) The costs of land acquired for the mitigation of adverse environmental effects identified pursuant to an environmental review under this subpart.

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