

Proposed Rulemaking

Title

Promulgated by:
Department of Agriculture
Arkansas Natural Resources Commission

Title 15. Natural Resources and Economic Development

Chapter I. Arkansas Natural Resources Commission, Department of Agriculture

Subchapter B. Water

Part 25. Rules Governing Loans from the Safe Drinking Water Fund

Subpart 1. Introductory Provisions

~~15 CAR § 25-101. Authority and scope.~~

~~—(a) This part has been promulgated and adopted by the Arkansas Natural Resources Commission (the "commission") pursuant to and as authorized by Acts 1997, No. 772, (the "act"), and as otherwise authorized under the general laws of the State of Arkansas (the "state").~~

~~—(b) This part has been enacted for the purpose of implementing and administering the powers, duties, and responsibilities of the commission as provided by Acts 1997, No. 772, which provide generally for commission approved loans with respect to certain water systems.~~

~~15 CAR § 25-102. Policy statement, interpretation, and application of rules.~~

~~—(a)(1) It is the duty and policy of the Arkansas Natural Resources Commission to fully and expeditiously implement and administer the objectives, purposes, and intent of~~

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~~the Safe Drinking Water Fund (the "fund") authorized under the provisions of Acts 1997, No. 772.~~

~~————(2) This part is accordingly 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 fund, the rules, modes of procedure, commission policies and guidelines herein provided shall, 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 obtained in compliance with the laws of the state and the public purposes sought to be served thereby.~~

~~——**15 CAR § 25-103. Definitions.**~~

~~——Unless the context otherwise requires, the use of certain capitalized words and terms herein that are not otherwise defined shall refer to the meanings of such words and terms as provided in Acts 1997, No. 772.~~

Subpart 2. Procedure

~~——**15 CAR § 25-201. General procedure.**~~

~~——The general procedure to be followed in the loan application, review, and consideration process shall be as follows:~~

~~————(1)(A) All proposed water system projects (hereinafter "projects" or singular "project") must be considered, in order, from the Comprehensive Project Priority List that is developed and administered by the Engineering Section of the Department of Health.~~

~~————(B) The Director of the Arkansas Natural Resources Commission may invite the governing body of each applicant to submit a letter of intent accompanied by a resolution authorizing the same as a prerequisite for further consideration by the Arkansas Natural Resources Commission;~~

~~——(2) **Preapplication.**~~

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~~—————(A) While not specifically required, all potential applicants are encouraged to initially contact the 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 loan may be generally discussed in an effort to familiarize all concerned parties with the applicable program and specific application requirements and procedures;~~

~~—————(3) **Water/Wastewater Advisory Committee.** Prior to submission of a formal application for a project, the applicant must comply with the procedures established by the Water/Wastewater Advisory Committee;~~

~~—————(4) **Application.**~~

~~—————(A) Applicant shall initiate application review and consideration by submission to the commission of an application.~~

~~—————(B) In all instances, applications must be written in the form and must include substantive content meeting the requirements of 15 CAR § 25-301 et seq.~~

~~—————(C) If the applicant is requesting commission funds from other than the Safe Drinking Water Fund, separate applications must be made with respect to the other programs.~~

~~—————(D) However, every application for funds under the Safe Drinking Water Fund may be considered by the commission at its discretion as a request for loan under any other available programs;~~

~~—————(5) **Preliminary review.** Upon receipt of the application by the commission, the application shall be given preliminary review by commission staff for:~~

~~—————(A) An initial determination of project eligibility under the Safe Drinking Water Fund requirements;~~

~~_____ (B) Applicant eligibility; and~~

~~_____ (C) Completeness and accuracy of all required and necessary information;~~

~~_____ (6) **Final review.**~~

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

~~_____ (B) In this endeavor, commission staff shall review and investigate the application for the purpose of determining project compliance with the approval criteria set forth in 15 CAR § 25-401 et seq., and compliance with such other considerations and factors deemed relevant and necessary for staff recommendation purposes.~~

~~_____ (C) In addition, the 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 staff may contact state and federal government entities that have responsibilities associated with the project;~~

~~_____ (7) **Public hearing.**~~

~~_____ (A) If the director determines that a public hearing would be beneficial in considering an application, he or 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 a loan.~~

~~_____ (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 be:~~

~~_____ (a) Furnished to all concerned parties; and~~

~~_____ (b) 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; and

~~———— (8) **Commission review and consideration.** Upon completion of staff review, the submitted application with staff recommendations, if any, shall be placed upon the commission's meeting agenda as promptly as practicable and shall be thereby submitted to the commission for commission:~~

~~———— (A) Review;~~

~~———— (B) Consideration; and~~

~~———— (C) Action.~~

~~———— **15 CAR § 25-202. 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 approve the loan 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 a further hearing and/or submission to the commission of such further or additional information as the commission may require for application consideration purposes;~~

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

~~———— (4) The commission may approve the loan application, in whole or in part, contingent upon the:~~

~~———— (A) Applicant taking certain actions;~~

~~———— (B) Existence of adequate and available money in the Safe Drinking Water Fund; or~~

~~_____ (C) Receipt and approval by commission staff of any outstanding and necessary;~~

~~_____ (i) Material;~~

~~_____ (ii) Information;~~

~~_____ (iii) Documents;~~

~~_____ (iv) Verifications; or~~

~~_____ (v) Other authorization;~~

~~_____ (5)(A) The commission may place an application on a waiting list pending the availability of money in the Safe Drinking Water Fund.~~

~~_____ (B) Applications on the waiting list will be given further consideration regarding approval or denial when adequate funds become available;~~

~~_____ (6) The commission will act on an application based on:~~

~~_____ (A) The information contained therein;~~

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

~~_____ (C) The staff's recommendations;~~

~~_____ (7)(A) Action will normally be taken by the commission within one (1) calendar year of the time application for a loan is made.~~

~~_____ (B) Action may be delayed on certain applications for projects dependent on other financing sources; or~~

~~_____ (8) The Director of the Arkansas Natural Resources Commission shall, within ten (10) days, notify the applicant of the final action of the commission in accepting, modifying, or rejecting the application.~~

~~_____ (b) Upon approval and grant of an application for a loan, the commission may authorize project loan closing and the execution of all necessary closing documents and instruments by the Chair of the Arkansas Natural Resources Commission or other designated commission representative or representatives, and may accordingly authorize and provide for disbursements and may 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.~~

~~—(c)(1) The director shall have 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 judgment, substantial compliance has been achieved by the applicant.~~

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

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

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

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

~~Subpart 3. Applications for Loan~~

~~15 CAR § 25-301. Application content.~~

~~—(a) The Arkansas Natural Resources Commission provides application forms for Safe Drinking Water Fund loans.~~

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

~~—(c) Four (4) copies of the application must be submitted to the commission.~~

~~15 CAR § 25-302. Required information.~~

~~—(a) The following general information, where deemed by the Arkansas Natural Resources Commission to be applicable to the applicant and the project under consideration, will be provided by managerial, technical, and financial capability:~~

~~(b) Managerial capability.~~

~~—(1) Applicant's full, true, and correct legal name, office address, mailing address if different from office address, telephone number, and telecopy number, if available.~~

~~—————(2)(A) Authority of law under which applicant was created and established and the independent legal authority, including supporting documentary evidence as requested by the commission, under which application is made.~~

~~—————(B)(i) Applicant must identify and describe the nature of its legal identification as an eligible entity.~~

~~—————(ii) See 15 CAR § 25 702.~~

~~—————(3) Certified copy of the ordinance, resolution, or other specific authorizing instrument or action reflecting applicant's authority for making application to the commission.~~

~~—————(4) Name, address, telephone number, and telecopy number, if available, of project engineer.~~

~~—————(5) Name, address, telephone number, and telecopy number, if available, of project legal counsel and, if applicable, name, address, telephone number, and telecopy number, if available, of financial consultant or assessor.~~

~~—————(6) Anticipated project timetable, including anticipated dates for:~~

~~—————(A) Completion of plans and specifications;~~

~~—————(B) Arkansas Water Plan compliance review, if required;~~

~~—————(C) Department of Health, Division of Environmental Quality, or other necessary approvals;~~

~~—————(D) Expected award of bids; and~~

~~—————(E) Project construction commencement and completion dates.~~

~~—————(7) 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.~~

~~—————(8)(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 commencement, completion, and operation.~~

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

~~—————(i) All necessary legal rights, including water rights, licenses, easements, or permits, whether existing under federal, state, or local law or regulation;~~

~~_____ (ii) The relative status of secured or outstanding contracting arrangements; and~~

~~_____ (iii) 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.~~

~~_____ (c) **Technical capability.**~~

~~_____ (1) A brief but adequate description of the proposed project for which application is made, including but not limited to the following:~~

~~_____ (A) Project location; and~~

~~_____ (B) Nature of project.~~

~~_____ (2)(A) Preliminary project plans and specifications as may be necessary to reflect general engineering feasibility of the project.~~

~~_____ (B) A finding of financial, technical, and managerial capacity to accomplish the project.~~

~~_____ (3) Anticipated total project cost.~~

~~_____ (d) **Financial capability.**~~

~~_____ (1) Total amount of funds requested for project loan from the commission, including a statement of the specific uses and purposes for which such funds are intended to be applied.~~

~~_____ (2)(A) Comprehensive statement clearly demonstrating project need and the degree and extent of local support for the project.~~

~~_____ (B) Such statement must be in sufficient detail to support and justify the project and should describe all aspects of present local support and approval for the project.~~

~~_____ (C) Applicant may include letters or statements of support from any interested persons or agencies.~~

~~—————(3) Listing of all financing institutions, lenders, or other funding sources, if any, participating in financing the project or other projects related to the project, including, where applicable, the following information:~~

~~—————(A) 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;~~

~~—————(B) Statement reflecting total project cost allocation between lenders or other funding sources;~~

~~—————(C) Statement and description of all project security or project revenues already pledged or to be pledged to other participating lenders or fund sources; and~~

~~—————(D) Statement and description of other projects, if any, related to the project, and information satisfying the requirements of this section with respect to each such other related project, if any.~~

~~—————(4)(A) Nature and amount of security to be pledged to secure the applicant's repayment obligations to the commission for the loan 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 state and describe the nature and extent of applicant's legal or equitable interest in such property and provide a statement setting forth who or what entity owns such property, including details of all outstanding liabilities or indebtedness against such property.~~

~~—————(5) 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 loan for the project, together with such fees and charges as may be imposed by the commission.~~

~~—————(6) 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.~~

~~—————(7)(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.~~

~~—————(8)(A) Certified copy of applicant's previous three (3) years of annual audited financial statements, 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 the security given for all such indebtedness.~~

~~—————(9) All applicants should submit future capital improvement plans as they may relate to the proposed project or the applicant generally.~~

~~—————**15 CAR § 25-303. Additional information for reservoir projects.**~~

~~—————Where a loan is sought in connection with an existing reservoir, the following additional information must be submitted with the application:~~

~~—————(1) The application should contain a description of all estimated firm annual yields and reservoir storage capacities;~~

~~—————(2) A statement containing the purposes for which water will be stored or used and places of use or potential use for such water;~~

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

~~—————(4) A brief description of:~~

~~—————(A) Existing or proposed improvements in the reservoir or reservoir area; and~~

~~—————(B) All such improvements that may require relocation.~~

~~———— **15 CAR § 25-304. Supplemental information.**~~

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

~~———— **15 CAR § 25-305. Application verification and approval as to legality.**~~

~~———— (a) All applications for loans 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."~~

~~———— (b)(1) Additionally, each application shall, at the time of submission, be approved as to legality by applicant's legal counsel.~~

~~———— (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, the application shall be subject to approval by the Arkansas Natural Resources Commission's legal counsel, if deemed advisable.~~

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

~~— 15 CAR § 25-401. General approval standards and criteria.~~

~~— In the review and consideration of applications for a loan, the Arkansas Natural Resources Commission shall give consideration to 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 with all applicable and relevant federal (see Appendix), state, and local laws and regulations (including the Arkansas Water Plan, 15 CAR pt. 29, where applicable), and applicant must possess all necessary and incidental legal rights and privileges necessary to project commencement and operation.~~

~~— (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 be eligible for a loan from the Safe Drinking Water Fund as follows:~~

~~— (A) Projects generally considered eligible include but are not limited to the following:~~

~~— (i) Needed for compliance and public health except monitoring, operation, and maintenance expenditures;~~

~~— (ii) To replace aging infrastructure if needed to maintain compliance or further public health protection goals;~~

~~— (iii) To consolidate water supplies;~~

~~— (iv) For land if integral to the project and needed to meet or maintain compliance and further public health protection;~~

~~— (v) Planning and design of a project; and~~

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

~~— (b) Only if the loan will ensure compliance or if the owner or operator agrees to undertake appropriate changes in operations; and~~

~~— (B) Loans cannot 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;~~

~~_____ (3) **Availability of or combination with other assistance.** 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 the commission loan; and~~

~~_____ (4) **Priority and availability of funds.**~~

~~_____ (A) The commission must give maximum priority to those projects:~~

~~_____ (i) Needed for Safe Drinking Water Act compliance;~~

~~_____ (ii) That provide the greatest protection to public health; and~~

~~_____ (iii) That assist systems most in need on a per household basis.~~

~~_____ (B) Projects will be considered in the order established by the Department of Health in the CPPL.~~

~~_____ (C) If a project is determined to be eligible, it will then be prioritized for funding.~~

~~_____ (D) The commission may bypass a project under any of the following conditions:~~

~~_____ (i) The applicant lacks fiscal capacity;~~

- ~~_____ (ii) It is not ready to proceed;~~
- ~~_____ (iii) It is not an eligible entity;~~
- ~~_____ (iv) The applicant has not submitted a letter of intent with a supporting resolution;~~
- ~~_____ (v) The applicant has not entered into a memorandum of agreement with the commission;~~
- ~~_____ (vi) The applicant has requested that it be withdrawn from further consideration for funding; or~~
- ~~_____ (vii) Other conditions established by the Director of the Arkansas Natural Resources Commission in the annual Intended Use Plan.~~
- ~~_____ (E)(i) The commission may waive any of the above conditions except the first on a case-by-case basis.~~
- ~~_____ (ii) However, each of these waivers may become a special condition of a resulting loan.~~

~~_____ **15 CAR § 25-402. Length of loans.**~~

~~_____ (a) For applicants with median household incomes (as determined by the United States Bureau of the Census) greater than the state average median household income, the maximum length of loan will be twenty (20) years or the life of the project, whichever is less.~~

~~_____ (b) For applicants with median household incomes less than or equal to the state median household income, the maximum length of loan will be thirty (30) years or the life of the project, whichever is less.~~

~~_____ **15 CAR § 25-403. Criteria applicable to establishment of other terms and conditions for loans.**~~

~~_____ 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) Other criteria, as applicable.~~

~~————**15 CAR § 25 404. 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 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 above shall accordingly be interpreted and applied so as to allow sufficient flexibility in the ultimate exercise of the commission's judgment and discretion.~~

Subpart 5. Disbursement of Funds

~~————**15 CAR § 25 501. Conditions for disbursements.**~~

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

~~————(1) Unless otherwise provided and approved by the Director of the Arkansas Natural Resources Commission, applicant must submit to the commission all plans, specifications, and engineering reports for the project, all of which shall be 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 necessary parties shall have executed all instruments and documents, in form and content acceptable to the commission, necessary for closing including, but not limited to, a memorandum of agreement, 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 conform to the requirements of the commission, including without limitation execution and delivery of the specific project documents with such insertions, corrections, modifications, or amendments as may be approved by the commission in a specific instance;~~

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

~~—————(A) Information reflecting the reasonable availability of 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 commission to applicant; and~~

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

~~——(b) At the time of and upon compliance with the above requirements, the commission may release, advance, and disburse loan funds to the applicant for the approved project.~~

~~——**15 CAR § 25-502. Increases in loan.**~~

~~——(a) With respect to approved applications from the Safe Drinking Water Fund, the Director of the Arkansas Natural Resources Commission shall have the discretionary authority to increase the amount of the loan to the applicant by the greater of ten percent (10%) of the approved obligation amount or twenty five thousand dollars~~

~~(\$25,000) without returning to the Arkansas Natural Resources Commission for approval.~~

~~—(b) Such increase in the loan shall be granted only after consultation with the commission chair.~~

~~—(c) Any loan increases pursuant to this section shall be reported to the commission as a whole at the next regularly scheduled commission meeting.~~

~~—15 CAR § 25 503. Deobligation.~~

~~—(a) The Director of the Arkansas Natural Resources Commission shall have the discretionary authority to deobligate funds approved by the Arkansas Natural Resources Commission for the loan to an applicant without returning to the commission for its approval in the following cases:~~

~~———(1) The loan was approved by the commission in an amount in excess of that needed for completion of a project;~~

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

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

~~——(b)(1) Deobligation, except if made under subdivision (a)(1) of this section, shall be made only after consultation with and concurrence of the commission chair.~~

~~———(2) Any deobligations pursuant to this section shall be reported to the commission as a whole at the next regularly scheduled commission meeting.~~

~~Subpart 6. Miscellaneous Provisions~~

~~—15 CAR § 25 601. Inspection of works, technical, and financial records.~~

~~By making application to the Arkansas Natural Resources Commission, the applicant will be deemed to consent and agree 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 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 loan from the commission to the applicant is outstanding, the commission shall 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 loan from the commission to the applicant is outstanding, the applicant shall, unless otherwise agreed to by the Director of the Arkansas Natural Resources Commission, 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 all funds provided by the commission; and~~

~~—————(B) **Annual audit.** The applicant shall furnish to the commission annually, within ninety (90) days after close of applicant's fiscal year, audited financial statements prepared by an independent certified public accountant, accompanied by such accountant's report thereon, reflecting:~~

- ~~—————(i) The financial condition of applicant at the end of such fiscal year;~~
- ~~—————(ii) The results of operations and changes in fund balances with respect to applicant;~~
- ~~—————(iii) Applicant's compliance with the terms and conditions of the loan documents and this part; and~~
- ~~—————(iv) Other management or financial criteria established by the~~

~~director; and~~

~~————(1) **Compliance with federal/state requirements.** As long as the applicant has an outstanding from the Safe Drinking Water Fund, the applicant will comply with all state and federal requirements applicable to the fund.~~

~~————**15 CAR § 25-602. Project modifications.**~~

~~————(a) After an application for a loan has been approved by the Arkansas Natural Resources Commission and after the Director of the Arkansas Natural Resources Commission has 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 that would materially or significantly affect total project cost, estimated revenues, or design shall be made, allowed, or authorized without the prior written approval thereof by the director.~~

~~————(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 § 25-603. Records public.**~~

~~————All records of the Arkansas Natural Resources Commission relating to the funds contemplated within this part shall be public records available for public inspection by any interested person at reasonable times and in a reasonable manner.~~

~~————**15 CAR § 25-604. Administrative fees, loan rates, and terms for Safe Drinking Water Fund loans.**~~

~~————(a) Applicants receiving a loan from the Safe Drinking Water Fund shall pay to the Arkansas Natural Resources Commission an administrative fee of three percent (3%) of the amount of the loan received.~~

~~————(b)(1) A loan servicing fee rate will be charged to the borrower's loan repayments.~~

~~————(2) The servicing fee rate is part of the borrower's combined loan rate.~~

~~————(3) The servicing fee rate and the combined loan rate will be set upon the project's obligation by the commission.~~

~~—(c) Loans from the fund shall be repaid in full at an interest rate up to the maximum allowed under the Arkansas Constitution, Article 19, § 13, as amended by Amendment 60 [repealed].~~

~~**—15 CAR § 25-605. Sanctions.**~~

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

~~——(1) Voluntarily withdraw their application from the Safe Drinking Water Fund 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.~~

~~—(b) Sanctions may include a prohibition from participation in any commission loan programs for a period of up to two (2) years.~~

~~**—15 CAR § 25-606. Project completion, inspection, and audit.**~~

~~—(a) Upon completion of any project for which a loan has been provided, the applicant or its engineer shall furnish to the Arkansas Natural Resources Commission written notification of completion.~~

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

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

~~——(2) An audit of any and all loan funds furnished to the applicant may be required as contained in 15 CAR § 25-601.~~

~~**—15 CAR § 25-607. Return of funds to commission.**~~

~~—(a)(1) Loan funds made available to an applicant by the Arkansas Natural Resources Commission shall be used 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 shall be promptly returned to the commission upon request.~~

~~————(b) In the event funds furnished to an applicant by the commission are not used and expended by the applicant for the specific project for which such funds were furnished within a reasonable period of time after disbursement to the applicant, or in the event the commission determines, at any time, that funds furnished were used and expended for any unauthorized or unallowable purpose, the applicant shall upon demand return or otherwise pay or reimburse to the commission any and all such unused funds or any amounts of funds used and expended for unauthorized or unallowable purposes.~~

~~————**15 CAR § 25-608. Late payments.**~~

~~————(a) As provided in all loan agreements entered into with respect to a loan from the Safe Drinking Water Fund, there is a seven day grace period for lease or loan payments due.~~

~~————(b) 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 § 25-609. Conveyance of ownership/release of secured interest to eligible entity when project cost 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 the project agreements in full satisfaction of the applicant's obligations, the commission will convey/release any ownership/secured interest it has in the project or cause such interest/release to be conveyed to the proper applicant or, if applicable, to a group of applicants as their interests may appear, and the commission shall return control over the operation and maintenance of the project to the applicant or applicants, as the case may be.~~

~~15 CAR § 25-610. Debt service fund, when required.~~

~~(a)(1) A debt service reserve fund, when required to be funded by the Arkansas Natural Resources Commission, will 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.~~

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

~~(b) A debt service reserve fund will be funded in whole at closing of the financing of the project, unless otherwise approved by the commission.~~

~~(c) A debt service reserve fund may be funded from the amounts financed by the commission as part of the overall project cost.~~

~~15 CAR § 25-611. Depreciation reserve fund.~~

~~(a) The depreciation reserve fund will 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.~~

~~(b) This reserve fund is for the replacement of the financed project and shall not be used for any other purpose without the written approval of the director.~~

~~(c) It will be accumulated at a rate and amount established by the director.~~

~~Subpart 7. Eligible Entities~~

~~15 CAR § 25-701. References to eligible entities.~~

~~All of the entities set out in this subpart are collectively referred to in this part as "eligible entities".~~

~~15 CAR § 25-702. Entities eligible for assistance under the Safe Drinking Water Fund.~~

~~— The loans made available under the Safe Drinking Water Fund may be obtained for an eligible project by any:~~

~~— (1) Duly constituted and existing political subdivision of the state, including but not limited to:~~

~~— (A) Counties;~~

~~— (B) Cities;~~

~~— (C) Towns; and~~

~~— (D) Municipalities;~~

~~— (2) Duly constituted:~~

~~— (A) Special purpose improvement district;~~

~~— (B) Rural development authority;~~

~~— (C) Rural waterworks facilities board;~~

~~— (D) Public facilities board; or~~

~~— (E) Regional water distribution district; and~~

~~— (3) Duly qualified and existing public trust or authority, individually or as agent, representative, or instrumentality of any political subdivision or other eligible entity described above.~~

~~**15 CAR § 25 703. Combination of eligible entities.**~~

~~— For purposes of qualifying for and obtaining the loan contemplated herein, any group of eligible entities may combine and join in making application for the project loan, provided each separate entity within the group is an eligible entity with respect to the Safe Drinking Water Fund.~~

~~**15 CAR § 25 704. Nature of project ownership.**~~

~~— (a) The Arkansas Natural Resources Commission shall obtain a secured interest in all projects developed pursuant to the Safe Drinking Water Fund.~~

~~— (b) Accordingly, and as more specifically provided in 15 CAR § 25 501, as a condition of obtaining a loan in connection with any project, the applicant will be required to convey to the commission a secured interest in land, buildings,~~

improvements, equipment, and other facilities that are financially assisted by the fund and that will comprise a project, and the commission must retain such secured interest 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 § 25-705. 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 part, 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;~~

~~(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 Director of the Arkansas Natural Resources Commission.~~

~~———— **15 CAR § 25-706. Granting of secured interest or ownership.**~~

~~————(a) For an approved application and project, the Arkansas Natural Resources Commission is authorized to advance funds in the form of progress payments for the project.~~

~~————(b) Payment requests must be accompanied by appropriate documentation from project applicants satisfying the conditions for disbursements set forth in 15 CAR § 25-501 et seq.~~

~~———— **15 CAR § 25-707. Assets to be conveyed.**~~

~~————(a) A secured interest in all assets constituting part of a project financed with funds must be assigned to the Arkansas Natural Resources Commission at the time of disbursement of such funds.~~

~~————(b) A secured interest may be assigned to the commission in whole or in part from time to time as portions of the project are completed and become the subject of requests for disbursement of funds.~~

~~———— **15 CAR § 25-708. Maximum participation.**~~

—The Arkansas Natural Resources Commission may make a loan to an eligible entity in an amount equal to the total project cost.

Appendix A. List of Federal Law and Authorities

Link:

<https://CodeOfARRules.arkansas.gov/docs/CARCodeAppendices/Appendices/58/15CARpt.25Appendix.pdf>