Title 15 – Mississippi State Department of Health

Part 20: Bureau of Public Water Supply

Subpart 72: Public Water Supply

Chapter 5 REGULATIONS GOVERNING AMERICAN RESCUE PLAN ACT RURAL WATER ASSOCIATIONS INFRASTRUCTURE GRANT PROGRAM

Subchapter 1: General Provisions

Rule 5.1.1 **Legal Authority**. These regulations are adopted pursuant to House Bill 1421 of the Mississippi Legislature's 2022 Regular Session and Senate Bill 2444 of the Mississippi Legislature's 2023 Regular Session shall govern the American Rescue Plan Act Rural Water Associations Infrastructure Grant (ARPA RWAIG) Program. These regulations may be superseded by the grant agreement when a variance or exception is made by the Board of Health (Board) and when not in conflict with any state or federal laws or executive orders.

Source: House Bill 1421, 2022 Regular Session and Senate Bill 2444, 2023 Regular Session of the MS Legislature

Rule 5.1.2 **Definitions**. The following words and terms, when used in these regulations, will have the following meanings, unless the context clearly indicates otherwise:

1. **Act** - The Mississippi House Bill 1421 of 2022 Regular Session and Senate Bill 2444 of 2023 Regular Session

2. **Allowable Costs** - Those project costs that are eligible, reasonable, necessary, allocable to the project, within the established project scope and budget, in conformance with the ARPA RWAIG program regulations and as approved by the Mississippi State Department of Health (Department).

3. **Authorized Representative** - The signatory agent of the applicant authorized and directed by the applicant's governing body to make application for assistance and to sign documents, on behalf of the applicant, required to undertake and complete the project. The signatory agent shall be a member or an employee of the applicant's governing body and may not be under a separate contract with the applicant at any time during the execution of the project.

4. **Board** - The Mississippi State Board of Health.

5. **Change Order** - The documents executed by the grant recipient and the construction contractor, upon recommendation of the licensed engineer if required by the contract documents, authorizing a change, alteration, or

variance in the plans, specifications, and contract documents, including, but not limited to, additions or deletions of work to be performed pursuant to the contract or a change in costs or time for work performed pursuant to the contract.

6. **Construction** - Any one or more of the following: erection, building, acquisition, alteration, remodeling, improvement, or extension of drinking water systems.

7. **Department** - Mississippi State Department of Health and staff, and their designated representatives.

8. **ARPA RWAIGP (Program)** - The ARPA Rural Water Associations Infrastructure Grant Program.

9. **Rural Water Association** - a non-profit corporation or organized not for profit with a primary function to finance, construct, operate and maintain a rural water distribution system, which has the authority to collect, treat, store, and distribute piped water for human consumption.

10. **Eligible Applicant -** entity that meets one of the following criteria:

    A. is a Rural Water Association OR
    B. is operating as rural water association regardless of whether such entities were user created, were initially organized not for profit, or have been granted tax-exempt status under state or federal law OR
    C. is a nonprofit water or sewer provider not owned by a municipality or county and is not a Rural Water Association

    AND is currently operating as a not-for-profit entity AND has the authority under state law to receive ARPA RWAI grant assistance AND did not receive funding under this program in Round 1 or the Mississippi Municipality and County Water Infrastructure Grant Program Act AND has the ability to comply with these regulations and the requirements of the grant agreement.

11. **Ineligible Applicant** – state agency, county, incorporated municipality, district, or other water organization eligible for ARPA funding through other programs.

12. **Eligible Cost** - Eligible costs are those costs in which ARPA RWAI grant participation is authorized pursuant to applicable statute.

13. **Financial Assistance** - Grants by the Department from the ARPA RWAIG Program.

14. **Grant Agreement** - An agreement between the Department and the grant recipient through which the Program provides ARPA RWAI grant funds

for eligible assistance and the recipient promises to follow the rules and regulations of the ARPA RWAI grant period over a period of the grant agreement. Also referred to as Sub-grant Agreement.

15. **Grant Applicant** - A Rural Water Association that makes application for assistance from the ARPA RWAI grant program.

16. **Grant Recipient** - A Rural Water Association that receives a Grant from the ARPA RWAI grant program. Also referred to as Sub-grantee.

17. **May** - whenever used in the context of an action to be taken by the grant applicant/recipient the word will be interpreted as optional but is not mandatory.

18. **Shall** - whenever used in the context of an action to be taken by the grant applicant/recipient the word will be interpreted as mandatory.

19. **Shall Not** - whenever used in the context of an action by the grant applicant/recipient such action is prohibited by these regulations

20. **Plans, Specifications and Contract Documents** - The engineering description of the project including engineering drawings, maps, technical specifications, design reports and construction contract documents in sufficient detail to allow contractors to bid on and construct the work.

21. **Schedule of Awards** - The schedule of awards established by the Department to ensure all funds are obligated by the deadline established by the rules and guidelines of the United States Department of the Treasury for ARPA funds.

22. **Project** - The scope of work for which assistance is offered under the ARPA RWAIG program.

23. **Project Completion** - The date of the final construction observation as performed by the Department for the purpose of an allowability determination.

24. **Protest** - A written complaint to the grant recipient concerning the grant recipient's solicitation or award of a contract. The protest shall be filed with the grant recipient by a party with a direct financial interest adversely affected by a grant recipient's procurement action.

25. **Public Water System** - A system for the provision to the public of piped water for human consumption, if such a system has at least fifteen service connections or regularly serves at least twenty-five individuals. This includes any collection, treatment, storage and distribution facilities under

the control of the operator of a PWS or used primarily in connection with a PWS.

26. **Licensed Engineer** - The engineer, licensed by the Mississippi State Board of Registration for Professional Engineers and Land Surveyors, retained or employed by the grant recipient to provide professional engineering services during the planning, design, and/or construction of the project.

Source: House Bill 1421, 2022 Regular Session & Senate Bill 2444, 2023 Regular Session of the MS Legislature

Subchapter 2: PROGRAM REQUIREMENTS

Rule 5.2.1 **Eligible Applicant Determination and Sub-Grant Agreement**.

1. **Eligible Applicant Determination**. To be eligible for financial assistance, an applicant shall meet the definition of an eligible applicant as described in Rule 5.1.3. of these regulations, as determined by the Department.

2. **Sub-Grant Agreement**. Eligible Recipients will be required to execute a sub-grant agreement with the Department and certify that the reimbursement for a rural water association drinking water infrastructure project is for allowable expenditures under the American Rescue Plan Act (ARPA) of 2021, Public Law 117-2, which amends Title VI of the Social Security Act; and its implementing guidelines, guidance, rules, regulations and/or other criteria, as may be amended or supplemented from time to time, by the United States Department of the Treasury.

Source: House Bill 1421, 2022 Regular Session & Senate Bill 2444, 2023 Regular Session of the MS Legislature

Rule 5.2.2 **Obligation Period**.

Funds allotted to the Program will be available for obligation for the period of July 1, 2022, to December 31, 2024, or as otherwise established by Sub-Grant Agreement, State or federal law.

Source: House Bill 1421, 2022 Regular Session & Senate Bill 2444, 2023 Regular Session of the MS Legislature

Rule 5.2.3 **Reserves**.

Up to five percent of the State's ARPA Rural Water Associations Infrastructure Grant Funds will be reserved for the administration of the program consistent with the Act and state law.

Source: House Bill 1421, 2022 Regular Session

Rule 5.2.4 **ARPA RWAIG Uses**.

The ARPA RWAIG funds may be used for the following purposes:

1. To make grants for eligible infrastructure improvements on the conditions that the recipient of a grant shall establish a plan for asset management;
2. For the reasonable costs of administering the ARPA RWAIG program and conducting activities under this Act, subject to any limitations established in the state or federal law; and,

3. For other uses as allowed under the ARPA

Source: House Bill 1421, 2022 Regular Session & Senate Bill 2444, 2023 Regular Session of the MS Legislature

Rule 5.2.5 **Federal Requirements**.

All projects which receive grant assistance from the ARPA RWAIG fund shall meet the requirements of the Final Rule for the Coronavirus State and Local Fiscal Recovery Funds as established by the federal American Rescue Plan Act (ARPA).

Source: House Bill 1421, 2022 Regular Session

Rule 5.2.6 **Grant Award Cycles**

The Department will prepare a schedule for award cycles to make awards to projects eligible and ready to begin construction. In the first fiscal year after the effective date of the Act, twenty percent (20%) of the funds appropriated to the Department for the program shall be obligated to projects that have completed plans and specifications, acquired all necessary land and/or easements, and are ready to proceed to construction. Award Cycles shall be created at the Departments discretion until such time that all funds are obligated but not to exceed December 31, 2024. Awards occurring during the award cycle will be a product of an applicants' eligibility, the proposed projects eligibility, and the projects ranking score produced by the Program's Application Ranking System.

Source: House Bill 1421, 2022 Regular Session

Rule 5.2.7 **Application Ranking System**

The department shall use the following system for ranking the grant applications received. The ranking system includes the following factors:

1. The environmental impact of the proposed project;

2. The proposed project's ability to address noncompliance with state/federal requirements;

3. The extent to which the project promotes economic development;

4. The number of people served by the project (both new and existing users);

5. Impacts of the proposed project on disadvantaged/ overburdened communities;

6. The grant applicant's prior efforts to secure funding to address the proposed project's objectives;

7. The grant applicant's proposed contribution of other funds or in-kind cost-sharing to the proposed project;

8. The grant applicant's long-term plans for the financial and physical operation and maintenance of the project; and

9. The grant applicant's capacity to initiate construction in a timely manner and complete the proposed project by the deadline specified by rules and guidelines of the United States Department of the Treasury (USDT) for ARPA funds.

These factors will be quantified based on the point allocations within each of the ranking categories defined below. A maximum of 100 points can be received by the combined total points within the nine ranking categories. As Item B. notes, an additional 10 points may be obtained if consolidation/regionalization of systems are involved.

A. The environmental impact of the proposed project will be quantified based on a High (1), Moderate (3), or Low (5) assessment with a maximum of 5 points in this category.

B. The proposed project's ability to address noncompliance with state/federal requirements project will receive up to 30 points based on project category. For the first round of funding, an additional ten points will be added to any project combining consolidation/regionalization of public water systems with one of the other categories listed.

For projects submitted in the second round of funding, an additional ten points will be added to any project combining consolidation/regionalization of public water systems with one of the other categories listed. In order to receive the additional weight, the systems that will consolidate shall be in a proximity of each other as determined by the department. In addition to these additional consolidation points, an additional 10 points shall be added to any application with at least one system that has consolidated after January 1, 2018, and before application to this program and is otherwise eligible.

RANK	PROJECT CATEGORY
30	**Primary Drinking Water Standards** Project facilitates compliance with Primary Drinking Water Standards. Project must correct deficiencies resulting in non-compliance with the primary drinking water standards.
28	**One Well** Project to provide additional water supply to systems that have neither a backup well nor an MSDH-approved emergency tie-in to another system to ensure safe drinking water; thereby protecting the health of the existing population.
26	**Pressure Deficiencies** Project to correct documented deficiencies that result in existing systems routinely failing to maintain minimum acceptable dynamic pressure.
24	**Source Water Protection Projects** Project to manage potential sources of contaminants/pollutants and/or prevent contaminants/pollutants from reaching sources of drinking water.
22	**Capacity Expansion to Serve the Unserved** Project to either expand existing system capacity or construct a new drinking water system to serve existing residences/businesses in currently unserved areas safe drinking water (source, treatment and/or distribution).
20	**Back-up Water Supply Sources Projects** Project to provide additional supply to systems with insufficient back-up water supply sources to ensure safe drinking water, and thereby protect the health of the existing population.

RANK	PROJECT CATEGORY
18	**Existing Facilities Upgrades (Meeting Primary Standards)** Project to rehabilitate, replace, protect or upgrade deteriorated, worn, aged or obsolete equipment, facilities, etc., to assure continued, dependable operation of water systems where such systems are already meeting Primary Drinking Water Standards.
16	**Secondary Drinking Water Standards Projects** Project to provide treatment that brings systems into compliance with Secondary Drinking Water Regulations.
14	**Consolidation Projects** Project to consolidate separate systems into a single system for purposes other than those related to meeting primary standards.
12	**Fluoride Addition** This category is for projects that either rehabilitate existing fluoride treatment facilities at well or treatment plant sites or add new facilities to existing well or treatment plants.
10	**Other** Project does not meet the criteria of any category listed above.

C. The extent to which the project promotes economic development will be quantified based on assessment of yes (5) or no (0) with a maximum of 5 points within this category.

D. The number of people served by the project will be quantified based on population range.

Population Range	Ranking
0 - 3,300	**15**
3,300 - 6,600	**12**
6,600 - 9,900	**10**
9,900 - 13,200	**8**
13,200 - 16,500	**4**
16,500 - 19,800	**3**
19,800 - 23,100	**3**
23,100 - 26,400	**4**
26,400 - 29,700	**8**
29,700 - 33,000	**10**

33,000 - 36,300	**12**
36,300 - Above	**15**

E. Impacts of the proposed project on disadvantaged communities will be quantified based on Median Household Income (MHI).

MHI Range			**Ranking**
$0.00	-	$20,144.00	15
$20,144.00	-	$23,073.67	13
$23,073.67	-	$26,003.33	11
$26,003.33	-	$28,933.00	8
$28,933.00	-	$31,862.67	7
$31,862.67	-	$34,792.34	6
$34,792.34	-	$37,722.00	5
$37,722.00	-	$40,651.67	4
$40,651.67	-	$43,581.34	3
$43,581.34	-	$46,511.00	2
$46,511.00	-	Above	1

F. The grant applicant's prior efforts to fund the project will be quantified based on assessment of yes (5) or no (0) with a maximum of 5 points within this category.

G. The grant applicant's proposed contribution will be quantified based on a percentage range of the projects total cost with a maximum of 5 points within this category.

Percentage Range			**Ranking**
1%	-	4%	**1**
5%	-	9%	**3**
10%	-	Above	**5**

H. The grant applicant's long-term plans for the financial and physical operation and maintenance of the project will be quantified based on an assessment. Applicants with no plan will receive a zero (0). Applicants with a long-term plan will receive five (5). Applicants certifying the development of a~~n~~ asset management plan by the end of the project will receive ten (10) with a maximum of 10 points within this category.

I. The grant applicant's capacity to complete the proposed project by the deadline specified by rules and guidelines of the USDT for ARPA funds will be quantified based on an assessment. Applicants able to meet this requirement will be quantified at 10 with a maximum of 10 points within this

category. Applicants unable to meet this requirement will be disqualified.

J. If necessary, the following will be used as the basis for breaking any ties that occur.

a) Projects to primarily correct a MSDH documented failure to meet primary drinking water standards or a MSDH documented significant deficiency will be given preference.
b) If there are no projects to correct a MSDH documented failure to meet primary drinking water standards or a MSDH documented significant deficiency, projects primarily for consolidation will be given preference.
c) If there are no projects primarily for consolidation, projects with the lowest Median Household Income Range will be given preference.
d) If all projects have the same Median Household Income Range, projects with the lowest Population will be given preference.
e) If all projects have the same Population Range, projects extending potable water service to new users will be given preference.

Source: House Bill 1421, 2022 Regular Session & Senate Bill 2444, 2023 Regular Session of the MS Legislature

Rule 5.2.8 **ARPA RWAIG Financing**.

The ARPA RWAIG fund has been established to provide grants to assist and encourage rural water associations to pursue projects to address drinking water system infrastructure needs. Conditions of these Grants are itemized in Rule 5.2.4 of these regulations. Basic ARPA RWAIG financing requirements are as follows:

1. ARPA RWAI grants may be limited at the discretion of the Department based on funds availability or as otherwise stated under state law.

2. For the first round, the maximum amount of funds that may be provided to any rural water association from all grants under this round is Two Million Five Hundred Thousand Dollars ($2,500,000.00). For the second round, the maximum amount of funds that may be provided to any rural water association from the program is Two Million Dollars ($2,000,000.00).

3. The applicant's project shall be able to initiate construction in a timely manner and complete the proposed project by the deadline specified by rules and guidelines of the United States Department of the Treasury for

ARPA funds and set forth in House Bill 1421 of the Mississippi Legislature's 2022 Regular Session.

4. Terms of any ARPA RWAIG assistance will be as established in the Grant agreement.

5. The applicant shall comply with the requirements of the ARPA and all applicable state and federal laws, requirements, and regulations.

6. The applicant shall not be in violation of any provision of a previously awarded grant of state or federal funds.

7. The applicant shall comply with any technical assistance recommendations provided by the Department.

8. Except for program administration expenses, funds will not be disbursed from the ARPA RWAIG until a Grant recipient has entered into a Grant agreement with the Board.

Source: House Bill 1421, 2022 Regular Session & Senate Bill 2444, 2023 Regular Session of the MS Legislature

Rule 5.2.9 **Responsibility.**

The applicant/Grant recipient is responsible for the proper planning, design, construction, operation, maintenance, replacement, performance, and fiscal integrity of the project. The Department's approval of any document does not relieve the applicant/Grant recipient or any others of any liabilities or responsibilities. Department approval of any document is for Grant eligibility/allowability purposes only and does not establish or transfer any such liability or responsibility.

Source: House Bill 1421, 2022 Regular Session

Rule 5.2.10 **Other Approvals.**

The applicant (or Grant recipient) shall obtain approval of all necessary documents from each state, local, and federal agency having jurisdiction over or funding in the project, if so required by that agency.

Source: House Bill 1421, 2022 Regular Session

Subchapter 3: PROJECT REQUIREMENTS

Rule 5.3.1 **Application for ARPA RWAI Grant.**

1. **Pre-application Guidance and Conference**.

Upon request the Department will provide a Grant application package to the potential Grant applicant and/or its licensed engineer. The potential Grant applicant and/or its licensed engineer may request a pre- application conference with the Department as early in the application process as practical.

2. **Contents of Applications**

All documents listed below shall be complete when submitted to the Department.

When forms are provided by the Department, these forms shall be used, and they shall not be altered. The ARPA RWAI Grant application may request assistance only for costs that are allowable in accordance with Subchapter 4 of these regulations and may include a construction contingency, as determined by the Department, in the project budget. The application shall include a Project Cost Breakdown. A complete application package shall conform to these regulations and shall include the following:

A. A complete ARPA RWAI Grant application form with original signature with associated attachments.

B. A procurement certification from the Grant applicant and the Grant applicant's legal counsel.

C. A legal certification from the Grant applicant and the Grant applicant's legal counsel.

D. A certified copy of a resolution by the Grant applicant's governing body which, 1) authorizes the submission of the application and 2) designates an authorized representative or officer to make application for assistance and to sign documents on behalf of the applicant.

E. A certification regarding debarment, suspension, in accordance with Subchapter 7 Rule 5.7.2 of these regulations.

F. Documentation of its tax-exempt status under either federal or state law.

G. An Internal Revenue Service Form W-9.

H. All waste disposal permit applications, if applicable.

I. All other forms, documents, and supporting information required by the Department.

Source: House Bill 1421, 2022 Regular Session & Senate Bill 2444, 2023 Regular Session of the MS Legislature

Rule 5.3.2 **Submission of Application**.

By the date specified on the MSDH website the applicant shall submit the application to the Department to be considered for the award cycle. Award cycles will be quarterly until allocated funding has been fully obligated or the legislative deadline of December 31, 2024, has been reached.

Source: House Bill 1421, 2022 Regular Session & Senate Bill 2444, 2023 Regular Session of the MS Legislature

Rule 5.3.3 **Offer of ARPA RWAI Grant.**

Upon determination by the Department that (a) all applicable requirements of the ARPA RWAI Grant application have been met, (b) the application deadlines have been met for the award cycle, and (c) funds are available for the amount of the ARPA RWAI Grant application, the State Health Officer or his designee will execute and transmit an ARPA RWAI Grant offer to the Grant recipient. In addition to the estimated allowable project costs as described in Appendices A and B of these regulations, the Grant offer may include a construction contingency, as determined by the Department, in the project budget.

Source: House Bill 1421, 2022 Regular Session & Senate Bill 2444, 2023 Regular Session of the MS Legislature

Rule 5.3.4 **Execution of Grant Offer.**

Upon receipt of the ARPA RWAI Grant offer, the Grant recipient shall execute the acceptance of the Grant offer and return it to the Department within the time frame established in the Grant Offer Letter. The Grant offer becomes void if not executed and returned within the time frame specified, unless extended by the State Health Officer or his designee, for good cause. The Grant Recipient shall provide copies of all proposed or executed contracts for professional services with the executed Grant.

Source: House Bill 1421, 2022 Regular Session & Senate Bill 2444, 2023 Regular Session of the MS Legislature

Rule 5.3.5 **Engineering Design.**

1. **Predesign Guidance and Conference.**

The Department will provide design guidance to the Grant applicant, or its licensed engineer as requested. The applicant/engineer may request a pre-design conference with the Department.

2. **General Requirements for plans, specifications and contract documents.**

A. Plans, specifications, and contract documents shall be prepared for all appropriate elements of the project. These documents shall conform to Department requirements, to these regulations, and to the requirements of the most recent version of the Departmental document "Recommended Minimum Design Criteria for Community Water Supplies. or their successor(s). Other recognized engineering publications may be used for unit processes or technologies not described therein.

B. Plans, specifications, and contract documents shall also conform to such contract language, conditions, and forms as may be required by the Department. The plans, specifications, and contract documents shall bear the seal of the licensed engineer responsible for preparation of these documents.

3. **Contents of plans specifications and contract documents.**

In addition to the above general requirements, the plans, specifications, and contract documents shall contain the following:

A. Provisions assuring compliance with these regulations and all relevant federal and state laws.

B. Forms by which the bid bond, performance bond and payment bonds will be provided.

C. A contractor's assurance which shall warrant compliance by the contractor with all applicable federal laws and regulations and all laws of the State of Mississippi and all regulations and published policies of the Board.

D. Provisions providing for the applicant to retain a certain percentage of the progress payments otherwise due to the contractor, in accordance with state law.

E. Provisions requiring the contractor to obtain and maintain the

appropriate insurance coverage.

F. Provisions giving authorized representatives of the Department access to all such construction activities, books, records, documents, and other evidence of the contractor for the purpose of inspection, audit, and copying during normal business and/or working hours.

G. Provisions for change orders.

H. Those conditions, specifications, and other provisions set forth or required by the Department.

I. Provisions for liquidated damages.

J. Provisions for including water meters on new distribution systems.

Source: House Bill 1421, 2022 Regular Session

Rule 5.3.6 **Submission of Plans, Specifications, Contract Documents and Related Items.**

By the dates specified in the Grant agreement, the recipient shall submit the following items to the Department:

1. Complete plans, specifications, and contract documents.

2. Certification from Licensed Engineer of the environmental impact, either low, moderate, or high of the project. If the Licensed Engineers determination is moderate or high, the Licensed Engineer should complete an Environmental and Intergovernmental Review as defined in Subchapter 6 and 8.

3. A copy of the issued National Pollutant Discharge Elimination System (NPDES) permit or the state operating permit, if required.

4. A copy of the issued solid waste disposal permit, if required.

5. Written waivers from all adjoining property owners when it is not possible to provide required buffer zones if the project includes drinking water sludge treatment facilities.

6. For all Grant eligible real property acquisitions all applicable state law must be followed. Prior to advertisement for construction bids, the Grant recipient shall secure approval of the purchase price by the Department, shall complete purchase of all Grant eligible real property and easements, and shall submit clear title certificates from the Grant recipient and title

counsel for all such Grant eligible property. Clear site certificates will also be required for Grant ineligible property.

7. A copy of all necessary interlocal agreements related to the project, if applicable. Such agreements shall be executed by all appropriate parties and shall be verified by the Department prior to any construction expenditures. If the project is unable to be completed due to failure to execute the necessary interlocal agreements, Grant Recipient shall be required to repay any funds expended for the project.

Source: House Bill 1421, 2022 Regular Session & Senate Bill 2444, 2023 Regular Session of the MS Legislature

Rule 5.3.7 **Approval of Plans, Specifications, and Contract Documents.**

The Department will approve the plans, specifications, and contract documents upon determining that these documents appear to conform to the requirements of these regulations and are consistent with the approved planning documents and environmental determinations required by these regulations.

Source: House Bill 1421, 2022 Regular Session

Rule 5.3.8 **Construction Bidding and Grant Amendment**.

1. **Grant Agreement Timeframe**

Within the timeframe established in the Grant agreement, the Grant recipient shall secure Department approval of the plans, specifications, and contract documents.

A. For all Grant ineligible real property and easements (including power and other utilities), submit clear site certification forms from both the Grant recipient and the title counsel which indicate that all such Grant ineligible real property and easements for the entire project have been secured by clear title.

B. Secure all local funds necessary for the project and submit proof of such.

C. Upon approval of PSCD, submittal of all clear site certificates, and issuance of any other permits or clearances required for the project, advertise the project for construction bids. All procurement actions by the Grant recipient shall comply with applicable law and these regulations.

2. **Process following Receipt of Construction Bids**

Upon receipt of construction bids, the Grant recipient shall then submit:

A. The completed bid package;

B. A Budget modification consistent with as-bid construction costs, a construction contingency as determined by the Department, and any professional services contracts and amendments.

C. If additional funds are necessary for the project, A Grant agreement amendment request outlining the source of the additional funds will be submitted.

3. **Review of Documents**

Upon receipt of the items listed above, the Department will review them to determine whether any request for an increased Grant amount is justified and allowable and whether funds are available. If necessary, a budget modification to move funds between allowable categories may be required. After determining that all documents are approvable, the Department will transmit to the Grant recipient approval to execute the construction contracts. After approval of the bid package, the Grant Recipient shall then submit all necessary executed contracts and amendments as described these regulations.

Source: House Bill 1421, 2022 Regular Session & Senate Bill 2444, 2023 Regular Session of the MS Legislature

Rule 5.3.9 **Budget Modifications, Schedule Modifications, and Amended Grant Offer**

1. **Budget Modifications.** Grant recipients can request to move funds between eligible categories in the Grant Agreement by completing a budget modification. This modification will be required prior to approval of reimbursement of any costs where the costs exceed the available budget. The contingency fund can be spent for *construction costs only* without a budget modification, however these funds should be moved to the construction category prior to the project closeout. After determining that the budget modification is approvable, the Department will transmit to the Grant recipient for approval of the modification.

2. **Schedule Modification.** To amend the schedule in the Grant Agreement, Grant Recipient should submit a letter detailing the need for schedule revision. After determining if the schedule modification is approvable, the Department will transmit to the Grant recipient for approval of the modification. Schedule modifications to construction contract should be submitted in the form of a change order.

3. **Process after Grant Agreement Amendment Request**

If the budget and schedule modifications cannot address the needed changes to the Grant Agreement or if additional local funds are needed for the project, the Grant Recipient can submit a Grant Agreement Amendment Request. After receipt, review, and approval of the Grant agreement amendment request, the Department may prepare and transmit an amended ARPA RWAI Grant offer to the Grant recipient. The Grant offer will include in the project budget:

A. The approved as-bid amounts for construction;

B. The final allowance amounts for professional services in accordance with Subchapter 5 of these regulations;

C. A construction contingency as determined by the Department; and,

D. Required local funds, if any.

4. **Execution of Amended Grant Offer**

Upon receipt of the amended ARPA RWAI Grant offer, the Grant recipient shall completely execute and return it to the Department within the timeframe established in the offer letter. After execution of the amended ARPA RWAI Grant offer. Any increased project costs in excess of the amended ARPA RWAI Grant amount shall be paid by the Grant recipient from sources other than ARPA RWAIG funds.

Source: House Bill 1421, 2022 Regular Session & Senate Bill 2444, 2023 Regular Session of the MS Legislature

Rule 5.3.10 **Awarding Construction Contracts and Preconstruction Conference**.

Upon receipt of the approval to execute the construction contracts and to issue the notice to proceed, the Grant recipient shall do so and shall transmit a copy of the executed construction contracts and the notice to proceed to the Department within the time frame specified in the Grant agreement.

Source: House Bill 1421, 2022 Regular Session

Rule 5.3.11 **Grant Recipient Responsibility**

The Grant recipient will be responsible for assuring that every appropriate procedure and incidental legal requirement are observed in procurement of services, advertisement for bids, and awarding the construction contracts. The plans, specifications, and executed contract documents shall not vary from those approved

by the Department.

Source: House Bill 1421, 2022 Regular Session & Senate Bill 2444, 2023 Regular Session of the MS Legislature

Rule 5.3.12 **Preconstruction Conference**

The Grant recipient may arrange and hold a preconstruction conference and shall allow attendance and participation by the Department if such is held.

Source: House Bill 1421, 2022 Regular Session

Rule 5.3.13 **Observation During Construction**.

1. **Resident Observation**

During construction work being performed, the Grant recipient shall provide for resident observation of the project by the licensed engineer or his staff and shall require the licensed engineer's assurance that the work is being performed in a satisfactory manner in accordance with the Grant agreement and the approved plans, specifications, contract documents, and approved change orders.

2. **Department Observation**

The Department is authorized to observe the building of any project at any time for compliance with the terms of the Grant agreement and to determine if the Grant recipient is assuring that plans, specifications, and contract documents are being followed. Such observation will not subject the Department to any legal action for claims, damages, or any other liability.

Also, such observation shall not release the contractor from any obligation to perform the work in accordance with the requirements of the contract documents or the licensed engineer from determining compliance with the requirements of the contract documents or the Grant recipient from insuring compliance with the terms of the Grant agreement.

3. **Assurance of Work**

The contractor, licensed engineer, and the Grant recipient shall furnish the Department with every reasonable opportunity and means for determining whether the Grant recipient and licensed engineer are assuring that the work is in accordance with the requirements of the approved plans, specifications, and contract documents. The Department is authorized to observe and require submission by the Grant recipient of daily logs, full scale record drawings, file notes, and any other documents prepared by any party in relation to the ARPA RWAI funded project.

Source: House Bill 1421, 2022 Regular Session & Senate Bill 2444, 2023 Regular Session of the MS Legislature

Rule 5.3.14 **Observation of Materials and Equipment**.

The Department is also authorized to observe all equipment and materials furnished, including observation of the preparation or manufacture of the equipment and materials to be used.

Source: House Bill 1421, 2022 Regular Session

Rule 5.3.15 **Construction Deficiencies**.

Nonconformity with Plans and Specifications. In the event that it appears to the Department that the Grant recipient and licensed engineer are not assuring that the construction work, materials, equipment or supplies are in conformity with approved plans and specifications the Department may determine such work unallowable for ARPA RWAI Grant participation, unless the Grant recipient takes such action, through the licensed engineer if applicable, in the manner provided for in the construction contract to correct any deficiencies.

Source: House Bill 1421, 2022 Regular Session & Senate Bill 2444, 2023 Regular Session of the MS Legislature

Rule 5.3.16 **Withholding of Grant Payment.**

The Department may immediately withhold ARPA RWAI Grant payments for such time that it appears that the Grant recipient and licensed engineer are not assuring that construction work, materials, equipment, or supplies are in accordance with the approved plans, specifications, and contract documents, and may require the Grant recipient to repay any previously paid amounts related to such work within 30 days of such notification.

Source: House Bill 1421, 2022 Regular Session & Senate Bill 2444, 2023 Regular Session of the MS Legislature

Rule 5.3.17 **Change Orders**.

1. **General**.

A. In the event a determination is made by a Grant recipient after a construction contract is executed that changes or modifications to the original contract are necessary or would better serve the purpose of the Grant recipient, such Grant recipient may, at its discretion, execute such change orders pertaining to the construction that are necessary under the circumstances, as

provided in the contract documents and when in accordance with applicable law.

B. Change orders shall not change, vary, or alter the basic purpose or effect of the project unless allowed by the Department. Change orders shall be technically adequate, the costs shall be necessary and reasonable, and eligible/ineligible costs shall be appropriately separated.

2. **Change Order Submissions**.

A. After completion of the claims resolution and/or change order negotiation process between the Grant recipient and the contracting party, a fully executed change order shall be submitted to the Department for review and approval, in order to obtain an ARPA RWAI Grant eligibility/allowability determination. If any change order is submitted to the Department that is not complete and fully executed by the Grant recipient, the contracting party, and the licensed engineer if appropriate, the Department may return such change order without review.

B. The Grant recipient may submit a complete and fully executed change order which has been executed conditional upon an ARPA RWAI Grant eligibility/allowability determination by the Department.

C. All change orders shall be submitted to the Department for review and approval in a timely manner.

D. If possible, approval of a change order should be secured from the Department before the work is started, particularly for change orders including time extensions as per Rule 5.3.17.4 below. Approval may also be secured after the work is started; however, the Grant recipient shall bear the cost if the work is determined to be ineligible or unallowable.

E. When the eligible cost of a project will be significantly reduced by a change order or change orders, the Department may issue a budget modification decreasing the Grant amount, and the Grant recipient shall execute such modification within the time frame established by the Department.

3. **Department Review**.

In order to allow the Department to perform a technical and Grant allowability review, requests for change order approvals shall conform to Department guidance, requirements, and regulations.

4. **Time Extensions**.

Change orders which include time extensions exceeding 30 days beyond the original contract completion date, and/or documentation that the Grant recipient is implementing all legal remedies provided in the contract documents for failure to complete construction when required, shall be submitted to the Department as specified in these regulations. Justification for contract time extensions included in a change order shall be prepared but need not be submitted to the Department unless the total time extensions for the contract exceeds 30 days after the original contract completion date, in which case justification for all time extensions shall be submitted to the Department for an allowability determination. The deadline of September 30, 2026, ends the period of performance to liquidate all obligations. The contract completion date should not exceed August 15, 2026.

Source: House Bill 1421, 2022 Regular Session & Senate Bill 2444, 2023 Regular Session of the MS Legislature

Rule 5.3.19 **Construction Phase Submissions, Approvals, and Actions -Timeline**

The following submittals, approvals, and actions will be required during the construction phase of the project. The Department may establish other time frames within the Grant agreement when properly justified.

1. Within 30 days after approval of plans, specifications, and contract documents by the Department (1) all construction related contracts shall be advertised for bids and proof of such advertisement shall be submitted, (2) all local funds necessary for the project shall be secured, and proof of such local funds shall be submitted, and (3) clear site certificates from the Grant recipient and title counsel for all real property shall be submitted.

2. Within 45 days after advertisement, the Grant recipient shall open bids on all construction related contracts.

3. Within 14 days after receipt of bids for new construction, the Grant recipient shall submit all bid packages.

4. Within 60 days after receipt of bids, the Grant recipient shall execute all construction contract documents, shall submit a copy of all executed contract documents, and shall issue and submit a copy of the notice to proceed on all such contracts.

5. By the date initially established in the Grant agreement (which is based upon approximately 50% of contract time) the Grant recipient shall submit a completed asset management plan for all drinking water facilities to be

constructed in whole or in part with ARPA RWAI Grant funds.

6. By the date initially established in the Grant agreement (which is based upon approximately 90% of contract time) the Grant recipient shall secure approval of the asset management plan.

7. Within 10 days after construction completion of each construction contract, the Grant recipient shall notify the Department of construction completion.

8. The Department will perform a final construction observation within 30 days after the current construction contract completion date, unless further delayed by the Department pursuant to review of the Grant recipient's request and justification for such delay. **Should the Department decide that the construction completion is being unreasonably delayed, a final construction observation may be immediately performed by the Department. The final construction observation by the Department is only for the purpose of determining final Grant allowable costs.**

9. Within 30 days after the current construction contract completion date, all change orders which include time extensions exceeding 30 days beyond the original contract completion date, and/or documentation showing the Grant recipient is implementing all legal remedies provided in the contract documents for failure to complete construction when required, shall be submitted to the Department for an allowability determination

10. Within 60 days after the final construction observation performed by the Department, the Grant recipient shall submit: the final payment request for the awarded grant; approvable summary change orders for all construction contracts; full scale record drawings with all revisions shown and noted for the entire project funded in whole or in part with ARPA RWAI Grant funds; the licensed engineer's certification of compliance with plans, specifications, and contract documents; appropriate bacteriological test results; final construction phase professional services contract amendments, if any; and all other administrative forms and documents required by the Grant agreement. **Grant payment requests submitted after this date are not allowable, regardless of when the costs were incurred.**

11. Any other submittals or actions required by the Grant agreement shall be performed when so required and are subject to review and approval by the Department.

Source: House Bill 1421, 2022 Regular Session & Senate Bill 2444, 2023 Regular Session of the MS Legislature

Rule 5.3.20 **Post Construction Phase.**

Rule 5.3.20.1 **Audits**

Following final payment of ARPA RWAI Grant funds to the Grant recipient, or upon expiration of any deadlines established by the Grant agreement or the Department, the Department or other designated parties may perform an audit of the ARPA RWAI Grant project for the purpose of determining compliance with the Grant agreement and to determine final allowable costs, payments made to date, and any additional payments due the Grant recipient or repayment due the Department.

Source: House Bill 1421, 2022 Regular Session

Rule 5.3.20.2 **Final Determination of Allowable Costs and Payments**

Upon completion of the ARPA RWAIG audit (or if an audit is not performed, following final payment of ARPA RWAI Grant funds to the Grant recipient, or upon expiration of any deadlines established by the Grant agreement or the Department), the Department will transmit to the Grant recipient a copy of the audit report, if performed, a final determination of allowable costs and payments due the Grant recipient or repayments due the State.

Source: House Bill 1421, 2022 Regular Session

Rule 5.3.20.3 **Final Determination Letter**

Unless, within 30 days after the date of the above final determination, the Grant recipient submits a written appeal of the final determination, including a written justification of the reason for the appeal, and supporting documentation for any disputed costs of the final determination, the final determination of allowable costs will become the final allowable costs for purposes of ARPA RWAI Grant payments and the Grant agreement, and the Grant recipient shall receive a final determination letter from the department.

Source: House Bill 1421, 2022 Regular Session

Rule 5.3.20.4 **Final Determination Letter following Appeal**

Should an appeal be submitted in accordance with Rule 5.3.20.3 above, the disputes procedures established in Subchapter 9 of these regulations will be followed in order to resolve the dispute and establish the final allowable costs. Upon resolution of a dispute of the final determination, the Department will transmit to the Grant recipient a revised final determination letter.

Source: House Bill 1421, 2022 Regular Session

Rule 5.3.21.1 **Payments to ARPA RWAI Grant recipients**.

Payments from the ARPA RWAIG Fund may be made to ARPA RWAI Grant recipients under the following conditions:

1. Payments may be requested by and made only to Grant recipients, in accordance with the Grant agreement and the Grant recipient's contracts for eligible and allowable services and construction for work performed within the project scope and budget period.

2. Payments may be requested only on project completed work, except as required by state law or as allowed by the Department.

3. The Grant recipient shall deduct from all ARPA RWAIG Fund payment requests the amount of funds provided or to be provided from all other state and federal agency funding sources for allowable ARPA RWAIG Fund project costs.

Source: House Bill 1421, 2022 Regular Session

Rule 5.3.21.2 **Payment Request Submissions**

Payment requests shall be submitted by the Grant recipient to the Department and shall include the following:

1. ARPA RWAIG Fund payment request form with original signature;

2. Cumulative invoices for all allowable costs for which payment is requested; and

3. Any other documents required by the Grant agreement.

Source: House Bill 1421, 2022 Regular Session

Rule 5.3.21.3. **Timing of Payments**

Provided the Grant recipient is in compliance with the requirements of these regulations and all provisions of the Grant agreement, the timing of ARPA RWAIG payments will be upon submission of a reimbursement request by the grant recipient for eligible and allowable services and construction for work performed within the project scope and grant award period. Payments may be requested no more often than on a monthly basis.

Source: House Bill 1421, 2022 Regular Session

Rule 5.3.21.4. **Repayments**

Any payments made to the Grant recipient which are at any time determined by the Department to be for costs not in accordance with the Grant agreement, for ineligible or unallowable costs, or for costs related to waste, fraud, abuse, or illegal acts under state or federal law shall be repaid to the ARPA RWAI grant fund within 30 days of such notification by the Department. Interest may be charged on delinquent repayments after expiration of the 30-day period at a rate of ten (10) percent per annum, compounded monthly. Alternatively, the Department may withhold such amounts from subsequent payment requests.

Source: House Bill 1421, 2022 Regular Session

Subchapter 4 Costs

Rule 5.4.1. **General**

Eligible costs are those costs in which ARPA RWAI Grant participation is authorized pursuant to applicable statute. Allowable costs are eligible costs that meet the following criteria:

1. Are necessary and reasonable for the proper and efficient administration and construction of the project, are allocable to and within the defined scope of the project and are not a general expense required to carry out the overall responsibilities of the Grant recipient.

2. Are authorized or not prohibited under federal, state, or local laws or regulations.

3. Conform to any limitations or exclusions set forth in state laws or other governing limitations as to types or amounts of cost items.

4. Are consistent with policies, regulations, and procedures that apply uniformly to both state assisted and other activities of the Grant recipient.

5. Are accorded consistent treatment through the application of generally accepted accounting principles appropriate to the circumstances.

6. Are not allocable to or included as a cost of any other Federal or State financed program in either the current, prior, or future period.

7. Are approved as allowable by the Department.

8. Are within the scope and budget period of the project as per the Grant agreement. However, the budget period does not apply to the planning and design allowance.

9. Notwithstanding this Subchapter, are eligible and allowable under the ARPA and any implementing federal regulations.

10. Are procured in accordance with Subchapter 7 of these regulations.

Source: House Bill 1421, 2022 Regular Session & Senate Bill 2444, 2023 Regular Session of the MS Legislature

Rule 5.4.2. **Construction**

1. Allowable Construction Costs include the costs for:

A. The following types of projects, and as further described or limited in the Grant Agreement under which the project is funded:

(i) projects that will facilitate compliance with national primary drinking water regulations;

(ii) projects that will facilitate consolidation of public water systems or the use of an alternative water supply. Consolidation between rural water associations and municipalities is eligible if one party is an eligible grant applicant.

(iii) projects that will upgrade a drinking water system; or

(iv) development of a public water system to replace private drinking water supplies if the water poses a significant threat to human health.

B. Subagreements for construction work on drinking water systems improvements. These subagreements are the prime contracts (including any subcontracts) for such construction work and any necessary contracts for purchase of equipment, materials and supplies by the Grant recipient. Should any costs for such contracts be incurred prior to Grant offer, said costs will be allowable provided that the Grant recipient has requested and obtained Department approval of said costs and provided that the Grant agreement budget period includes the time period these costs are incurred.

C. Drinking water distribution lines on drinking water distribution projects which provide drinking water to previously unserved areas, and the service lines between the public water main and the water meter.

D. Drinking water distribution system rehabilitation and replacement

(including rehabilitation and replacement of eligible service lines) necessary to eliminate water loss or to preserve/restore the safety or integrity of the system, as determined in an approved facilities plan.

E. Water system capacity equal to all water distribution system leaks that will remain in the system, as determined in an approved facilities plan.

F. Drinking water systems which include service to industrial or commercial users when such works are owned by an eligible applicant.

G. Buildings that house or protect water production, treatment or distribution facilities.

H. Replacement of existing service lines from a water main up to a building (which includes any privately owned portion) if an identified public health threat exists (such as lead in the drinking water) that can be reduced by the replacement of the existing service line.

2. Unallowable costs include:

A. Costs for the following types of projects:

(i) Projects primarily for growth, development, or fire protection;

(ii) Projects that can be consolidated (except for projects to implement such consolidation);

(iii) Projects for systems without adequate financial or managerial support necessary to comply with ARPA requirements and all requirements of the Grant agreement; and

(iv) Projects for drinking water systems which serve federal users exclusively, or almost exclusively.

B. Construction and construction related costs which are incurred after the Department approved eligible contract completion date (including approved time extension change orders), unless approved by the Department pursuant to Rule 3.7.5.4 of these regulations.

C. Bonus payments that are part of the construction contract for completion of building before a contractual completion date,

unless required by state law.

D. Administration buildings.

Source: House Bill 1421, 2022 Regular Session

Rule 5.4.3 **Equipment, Materials and Supplies**

1. Allowable costs include the costs of:

A. A reasonable inventory of chemicals and supplies necessary to initiate plant operations and laboratory items necessary to conduct tests required for plant operation.

B. Necessary and reasonable safety equipment, provided the equipment meets applicable federal, state, local or industry safety requirements.

C. Constructing or installing water flow metering devices for the primary purpose of monitoring and/or billing inter-municipal or other flows or serving and billing individual residential, commercial or industrial users.

D. Backflow preventers.

E. Computers, display monitors, and computer software which are designed into the control system for the daily operation of the water system, used for the operational control and analysis of the water system, or specifically designed for the operation and maintenance (including the cost of developing unique operating programs for the specific Grant funded project) of the treatment works.

F. Specialized mobile equipment for the operation of the water system, or for the maintenance of equipment. These items include, but are not limited to:

(i) Portable stand-by generators.

(ii) Portable emergency pumps to provide "pump-around" capability in the event of booster station failure or pipeline breaks.

2. Unallowable costs include the costs of:

A. Vehicles for the transportation of the Grant recipient's employees, including buses, trucks, cars, motorcycles, ATVs, golf carts, bicycles, etc.

B. Items of routine "programmed" maintenance such as filters, couplings, hoses, belts, etc.

C. Radios, televisions, VCRs, camcorders, and other items of a similar nature.

D. Shop equipment installed at the treatment works or elsewhere.

E. Distribution system maintenance equipment.

F. Replacement parts.

G. Furnishings, office equipment, and maintenance equipment, including chairs, desks, file cabinets, typewriters, coffee tables, telephones, office supplies, calculators, copiers, bookcases, shelves, lamps, etc.

H. Ordinary site and building maintenance equipment such as lawn mowers, rakes, shovels, brooms, picks, hedge trimmers, and other such equipment.

I. Hand tools such as screw drivers, pliers, socket wrenches, electric drills or saws, etc.

J. Computers for non-operational purposes, such as for the scheduling of equipment maintenance and replacement and for accounting and billing services.

Source: House Bill 1421, 2022 Regular Session

Rule 5.4.4. **Change Orders**

1. Change orders are allowable provided the costs are:

A. Necessary and reasonable.

B. Within the scope of the project.

C. Not caused by the Grant recipient's mismanagement.

D. Not caused by the Grant recipient's vicarious liability for the improper actions of others.

E. In conformance with the ARPA RWAIG regulations.

2. Provided the above requirements are met, the following are examples of allowable change orders.

A. Construction costs resulting from defects in the plans, design drawings and specifications, or other contract documents only to the extent that the costs would have been incurred if the contract documents on which the bids were based had been free of the defects, and excluding the costs of any rework, delay, acceleration, or disruption caused by such defects.

If the defect is realized after substantial construction work has been completed, and therefore requires rework, delay, or additional work beyond that which would have been required by defect-free drawings, the cost would still be allowable, but the additional cost of rework or delay is unallowable.

The additional cost is measured as the difference between the cost which would have been included in the bid based on defect free drawings and the actual cost of the change order.

B. Equitable adjustments for differing site conditions.

Source: House Bill 1421, 2022 Regular Session & Senate Bill 2444, 2023 Regular Session of the MS Legislature

Rule 5.4.5. **Professional Services**

The term professional services refers to engineering, legal, administrative, and similar services.

1. Allowable costs include the costs of/for:

A. Planning, application, and design. These costs include all engineering and other costs that are incurred in planning and designing the project, as well as applying for the Grant. These costs include but are not necessarily limited to the following services, as determined allowable in Subchapter 5 of these regulations.

(i) Preparing the plans, specifications, and contract documents.

(ii) Preparing interlocal agreements necessary for the project.

(iii) Surveys and all other work needed to obtain clearance or permits from all intergovernmental review agencies.

(iv) Preparing the Grant application, preparing applications for permits required by federal, state or local regulations or procedures.

B. Construction Phase Professional Services

(i) Services incurred during the advertisement, award and construction of a project to ensure compliance with applicable purchasing laws and to ensure that the project is built in conformance with the design plans and specifications. These services are primarily engineering, and construction management services provided during the advertisement, award and building of the project, including observation services, materials testing (e.g., concrete strength, soil compaction, etc.) required by the specifications, inspecting and expediting the delivery of equipment and material purchased directly by the Grant recipient, reviewing shop drawings and full-scale record drawings, preparing change orders, payment processing, etc.

(ii) Legal, engineering, and other services incurred by the Grant recipient in deciding procurement protests and defending their decisions in protest appeals under Subchapter 9 are allowable regardless of the outcome of the protest, provided there was not an attempt by the Grant recipient to violate or circumvent applicable purchase laws.

(iii) Asset management plan for constructed components of the funded project

(iv) Accounting services for preparation of the Single Audit or Program Specific Audit

(v) Development of an operation and maintenance manual.

(vi) Start-up services for onsite training of operating personnel in operation and control of specific treatment processes, laboratory procedures, and maintenance and records management, provided these costs are incurred prior to the end of the 60-day period established in Rule 5.3.19. of these regulations.

(vii) Administrative services associated with the construction project and administering the ARPA RWAIG.

(viii) Services, other than engineering services during construction/repairs, such as railway or highway flagmen or

utility or highway inspectors, required during the building of the project, provided that

a. The entity responsible for the affected railway, highway, or utility requires such services for all parties conducting similar types of work, regardless of the source of construction funding for the project, or the services are required by law.

b. The cost of such services has not been included in the construction contractor's bid price.

(ix) Engineering or other services necessary to correct defects in the grant applications plan, design drawings and specifications or other documents to the extent that such costs would have been allowable for preparing defect free documents.

2. Unallowable costs include the costs of:

A. Public liaison services.

B. Local travel (i.e., commuting expenses) between living quarters and the construction site for persons working at the site.

Source: House Bill 1421, 2022 Regular Session & Senate Bill 2444, 2023 Regular Session of the MS Legislature

Rule 5.4.6 **Claims**

1. Allowable costs, provided the costs are properly documented, incurred and requested prior to the end of the 60-day period established Rule 5.3.19.11 of these regulations, include:

A. Change orders to the construction contract as a result of settlements, arbitration awards, or court judgements, to the extent that they would have been allowable had there not been a claim.

B. The costs of assessing the merits of, negotiating, or defending a claim against the Grant recipient are allowable, regardless of the outcome, provided that the matter under dispute is not the result of fraudulent or illegal actions or mismanagement on the part of the Grant recipient.

C. Alterations in engineering, legal, contracts etc. as a result of settlements, arbitration awards, or court judgements are allowable to the same extent that they would have been allowable had there not been a claim.

2. Unallowable costs include the costs of:

A. Claims arising from work outside the scope of the Grant.

B. Claims resulting from fraudulent or illegal activities.

C. Claims resulting from mismanagement by the Grant recipient.

D. Claims resulting from the Grant recipient's vicarious liability for the improper action of others.

E. Settlements, arbitration awards or court judgements over the allowable costs as established in these regulations.

Source: House Bill 1421, 2022 Regular Session

Rule 5.4.7 **Mitigation**

1. Allowable costs include the costs of:

A. Mitigation of only direct adverse physical impacts resulting from construction of the project.

B. Reasonable site screening necessary to comply with required environmental review and necessary to screen adjacent properties.

C. Groundwater monitoring facilities necessary to determine the possibility of groundwater deterioration, depletion or modification resulting from construction of the project. The extent of the allowable costs for groundwater monitoring facilities is decided on a case-by-case basis and depends on the size and complexity of the project and the present and potential future use of the groundwater.

2. Unallowable costs include the costs of:

A. Solutions to aesthetic problems, including design details which require expensive building techniques and architectural features and hardware, that are unreasonable or substantially higher in cost than approvable alternatives and that neither enhance the function or appearance of the treatment works nor reflect regional architectural tradition.

B. Land acquired for the mitigation of adverse environmental effects identified pursuant to an environmental review.

Source: House Bill 1421, 2022 Regular Session & Senate Bill 2444, 2023 Regular Session of the MS Legislature

Rule 5.4.8. **Real Property**

1. Allowable costs include the costs of:

   A. Land acquired in fee simple title or by easement, from a willing seller, for:

      (i) Water supply and/or storage purposes;

      (ii) A consolidation project; and

      (iii) Protection of the source water of the system from contamination.

   B. Preparation of the treatment works site before, during and, to the extent agreed on in the Grant agreement, after building. These include the cost of:

      (i) Demolition of existing structures on the treatment works site (including rights-of-way) if building cannot be undertaken without such demolition. Demolition of existing structures on the treatment works site (including rights-of- way), when not required for building the project, will be considered to be an allowable cost only if the existing structures constitute a real and present hazard to safety, public health, or water quality and when the hazard can best be abated by the removal of the existing structures.

      (ii) Removal, relocation, or replacement of utilities, provided the Grant recipient is legally obligated to pay for such as a result of the ARPA RWAIG project under state or local law.

      (iii) Restoration of streets and rights-of-way to their original condition. The need for such restoration shall result directly from the construction of the ARPA RWAIG project and is generally limited to repaving the width of trench.

2. Unallowable costs include the costs of:

   A. Any amount paid by the Grant recipient for eligible land in excess of the appraised value or the Grant recipient's record of negotiation.

      An amount higher than the appraised value may be found allowable if the Grant recipient provides sufficient written documentation to

the Department and receives allowability approval prior to the actual acquisition.

B. Removal, relocation or replacement of utilities located on land by privilege, such as a franchise, unless the Grant recipient is required to pay such costs under state or local law.

C. Land acquired in fee simple title or by easements for land other than that described under H.(1)(a) above, such as easements for the purpose of water distribution system expansion or improvement.

D. The demolition of an existing structure for the convenience of the owner as a means of increasing property value or property use.

Source: House Bill 1421, 2022 Regular Session & Senate Bill 2444, 2023 Regular Session of the MS Legislature

Rule 5.4.9. **Miscellaneous Costs**

1. Allowable costs include the costs of:

A. Equipment rental and material costs necessary for the construction project.

B. Meeting specific legal requirements directly related to the project unless otherwise specified in these regulations.

C. Royalties associated with the procurement of the right to use, or the rights in, a patented product, apparatus, or process, provided that they are based on a published fee schedule or on reasonable fees charged to other users under similar conditions.

D. Training workshops/seminars for Grant recipient employees that are necessary to provide instruction in operational, administrative, fiscal or contracting procedures required to complete the construction of the project. Attendance at such training workshops or seminars shall occur after Grant offer but before the end of the Grant agreement budget period.

E. A reasonable project sign.

2. Unallowable costs include the costs of:

A. Salaries and benefits for the Grant recipient's employees.

B. Ordinary operating expenses of the Grant recipient, including salaries and expenses of elected and appointed officials and

preparation of routine financial reports and studies.

C. Administrative, engineering, and legal activities associated with the creation of special departments, agencies, commissions, regions, districts, associations, or other entities.

D. Approval, preparation, issuance and sale of bonds or other forms of indebtedness required to finance any portion of the project and the interest on them.

E. Personal injury compensation or damages arising out of the project.

F. Fines and penalties due to violations of or failure to comply with federal, state or local laws, regulations or procedures, and related legal expenses.

G. Operation and maintenance of the water system, which include but are not limited to, labor, utilities, chemicals, materials and supplies, monitoring, testing, equipment replacement, periodic payment of royalties for the right to operate under a patent, etc.

H. Lease payments.

I. Travel, by the Grant recipient, unless included under an indirect cost agreement, and except as allowed under Rule 5.4.9(1)(d) above.

Source: House Bill 1421, 2022 Regular Session

Rule 5.4.10**. Project Income**

1. Bid bond forfeitures will have no effect on the determination of allowable and unallowable costs. The Grant recipient shall make the determination of whether or not a bid bond will be forfeited.

2. The amount of liquidated damages collected will have no effect on the determination of allowable and unallowable costs, except as described by Rule 5.3.17.4 of these regulations.

3. Interest income on ARPA RWAIG Fund payments to Grant recipients will have no effect on the determination of allowable and unallowable costs.

4. The Grant recipient shall receive all income generated from use of the project facilities.

Rule 5.4.11**. Water System Acquisition**

The terms of water system acquisition must be provided to the Department prior to the acquisition to ensure cost allowability under federal regulations and applicable state law.

1. Allowable costs include the costs of**:**

   A. Purchase of a public or private Public Water System with a PWS ID number to consolidate system with Grant Applicant.

   B. Cost of appraisal of water system infrastructure by a licensed engineer

   C. Legal costs associated with negotiation of acquisition and preparation of acquisition documents

   D. Real property costs as outlined in these regulations, including purchase of existing water distribution system easements

2. Unallowable costs include the costs of**:**

   A. Any amount paid by the Grant recipient for eligible PWS infrastructure or real property in excess of the appraised value or the Grant recipient's record of negotiation.

      An amount higher than the appraised value may be found allowable if the Grant recipient provides sufficient written documentation to the Department and receives allowability approval prior to the actual acquisition.

Source: House Bill 1421, 2022 Regular Session & Senate Bill 2444, 2023 Regular Session of the MS Legislature

Subchapter 5. Recommended Allowances for Planning, Design and Construction Phase Professional Services

Rule 5.5.1. Recommended Allowances for Planning and Design.

The recommended allowance for planning and design will be determined using Table 1 in this Subchapter. This table is not intended to be used to determine the consulting engineer's allowable costs for planning and design services. Compensation for these services should be based upon the nature, scope, and complexity of the services required for the project.

Table 1 includes a recommended range for engineering costs during planning and design, which the Grant applicant/recipient should consider while evaluating the

engineer's proposal. If the engineer's proposal exceeds the normal range the Grant applicant/recipient should consider requiring the engineer to justify why the project is more difficult than normal. The actual compensation justified for a particular project may be more or less than the suggested range of the allowance for these services shown in Table 1.

If the consulting engineer and Grant applicant/recipient determine that the maximum recommended allowance calculated using Table 1 in this Subchapter does not adequately reflect the nature, scope, and complexity of the services required for the project, the consulting engineer may submit a detailed cost proposal, in such format as required by the Department, justifying a compensation amount greater than Table 1 recommends. If, in the Department's opinion, the detailed cost proposal justifies such, the Department will approve an allowance for facilities planning and design greater than those recommended in Table 1. The decision of the Department in this matter will be final.

Projects for which the Grant applicant/recipient shall acquire easements or real property may receive an additional 1% above the recommended maximum percentages shown in Table 1 for planning and design allowances. Also, projects for which a value engineering study is conducted may receive an additional 3% above the recommended maximum percentages shown in Table 1 for the planning and design allowance.

Source: House Bill 1421, 2022 Regular Session

Rule 5.5.2. **Recommended Allowance for Construction Phase Professional Services.**

The Allowance for Construction Phase Professional Services includes costs for engineering services during bidding, construction, and post-construction phases, observation during construction, Grant administration and other services (i.e. legal, etc.) that are associated with the construction of the ARPA RWAIG project. The recommended allowance for construction phase professional services will be determined using Table 2 in this Subchapter.

This table is not intended to be used to determine the actual compensation for construction phase professional services. Compensation for these professional services should be based upon the nature, scope, and complexity of the services required for the project.

Table 2 separates the Total Recommended Allowance for Construction Phase Professional Services shown in the far-right hand column into three types of services: engineering, Grant administration, and other services and provides suggested ranges for each of these services depending upon the complexity of the project. The Grant applicant/recipient should consider these recommended ranges when evaluating proposals for these services. If the proposals exceed the normal ranges for any of these services, the Grant applicant/recipient should consider requiring the professional to justify why the project is more difficult than normal.

The actual compensation justified for a particular project may be more or less than the suggested range of the allowance for these services shown in Table 2.

If the consulting engineer and Grant applicant/recipient determine that the maximum recommended allowance calculated using Table 2 in this Subchapter does not adequately reflect the nature, scope, and complexity of the services required for the project, the consulting engineer may submit a detailed cost proposal, in such format as required by the Department, justifying a compensation amount greater than Table 2 recommends. If in the Department's opinion the detailed cost proposal justifies such, the Department will approve an allowance for construction phase professional services greater than those recommended in Table 2. The decision of the Department in this matter will be final.

Although Table 2 shows engineering and Grant administration as separate costs, the Grant applicant/recipient is not required by these regulations to contract for these services separately. The Grant applicant/recipient may wish to have the consulting engineer provide both scopes of services, and under such an arrangement, the engineer's contract should not exceed the total of the suggested ranges for both services.

Source: House Bill 1421, 2022 Regular Session

Rule 5.5.3. General Guidance for Use of the Allowance Tables.

The estimated and final allowances will be determined in accordance with this Subchapter. All allowance percentages will be calculated to four decimal places using linear interpolation. The allowance amount is computed by applying the resulting total allowance percentage to the initial allowable building cost, which is the initial award amount of all prime contracts for construction, equipment, supplies, and testing of the project.

The estimated allowances are to be based on the estimate of the initial allowable building cost from the Subgrant Agreement, Attachment B.

Following execution of the Grant agreement, the Grant recipient may request and receive payment for the facilities planning and design allowance and the allowance for construction phase professional services, in accordance with the procedures described in Rule 5.3.21.3 of these regulations. Advances of allowances will not be provided.

Table 1

Recommended Allowances for Facilities Planning and Design

Allowable Building Cost	Allowances as a Percentage of Building Cost Based Upon the Difficulty of the Project

	Normal to Difficult
$50,000 or less	11.7500% to 13.2000%
$100,000	10.7500% to 12.2000%
$150,000	10.0700% to 11.2519%
$200,000	9.4000% to 10.5000%
$300,000	8.7000% to 9.8042%
$400,000	8.3000% to 9.6312%
$500,000	8.0000% to 9.4417%
$600,000	7.8000% to 9.1467%
$700,000	7.7000% to 9.0297%
$800,000	7.5000% to 8.8089%
$900,000	7.4000% to 8.7472%
$1,000,000	7.2500% to 8.5673%
$1,100,000	7.1030% to 8.3911%
$1,200,000	6.9600% to 8.2185%
$1,300,000	6.8200% to 8.0495%
$1,400,000	6.6800% to 7.8840%
$1,500,000 or greater	6.5400% to 7.7219%

Table 2

Recommended Allowances for Construction Phase Professional Services
Allowances as a Percentage of Building Cost
Based Upon the Difficulty of the Project

Estimated Building Cost	Engineering Services Normal to Difficult	Grant Administration Normal to Difficult	Other Services Normal to Difficult	Total Allowance for Professional Services Normal to Difficult
$50,000 or less	6.4400% to 11.7250%	2.0700% to 3.7688%	0.6900% to 1.2563%	9.2000% to 16.7500%
$100,000	5.7400% to 11.725%	1.8450% to 3.7688%	0.6150% to 1.2563%	8.2000% to 16.7500%
$150,000	5.2850% to 11.725%	1.6988% to 3.7688%	0.5663% to 1.2563%	7.5500% to 16.7500%
$200,000	4.8300% to 9.9400%	1.5525% to 3.1950%	0.5175% to 1.0650%	6.9000% to 14.2000%
$300,000	4.4100% to 8.1690%	1.4175% to 2.6258%	0.4725% to 0.8753%	6.3000% to 11.6700%
$400,000	4.0600% to 7.2800%	1.3050% to 2.3400%	0.4350% to 0.7800%	5.8000% to 10.4000%
$500,000	3.8150% to 6.5800%	1.2263% to 2.1150%	0.4088% to 0.7050%	5.4500% to 09.4000%
$600,000	3.5700% to 5.9500%	1.1475% to 1.9125%	0.3825% to 0.6375%	5.1000% to 08.5000%
$700,000	3.4300% to 5.4600%	1.1025% to 1.7550%	0.3675% to 0.5850%	4.9000% to 07.8000%
$800,000	3.2900% to 5.0400%	1.0575% to 1.6200%	0.3525% to 0.5400%	4.7000% to 07.2000%
$900,000	3.2200% to 4.6690%	1.0350% to 1.5008%	0.3450% to 0.5003%	4.6000% to 06.6700%
$1,000,000	3.1500% to 4.4800%	1.0125% to 1.4400%	0.3375% to 0.4800%	4.5000% to 06.4000%
$1,100,000	3.0815% to 4.2986%	0.9905% to 1.3817%	0.3302% to 0.4606%	4.4022% to 06.1409%
$1,200,000	3.0146% to 4.1246%	0.9690% to 1.3258%	0.3230% to 0.4419%	4.3066% to 5.8923%
$1,300,000	2.9492% to 3.9577%	0.9479% to 1.2721%	0.3160% to 0.4240%	4.2131% to 5.6538%
$1,400,000	2.8852% to 3.7975%	0.9274% to 1.2206%	0.3091% to 0.4069%	4.1217% to 5.4250%
$1,500,000 or greater	2.8226% to 3.6438%	0.9073% to 1.1712%	0.3024% to 0.3904%	4.0323% to 5.2054%

Source: House Bill 1421, 2022 Regular Session

Subchapter 6. Environmental Review Process

Rule 5.6.1. Description of Environmental Impacts

The Licensed Engineer is required to certify the environmental impact of the project as either low, moderate, or high. If the Licensed Engineer determines that there is either a moderate or high impact, the Licensed Engineer shall prepare an Environmental Review Report. The report shall bear the seal of the licensed engineer responsible for preparation of the report and shall contain a description of the environmental impacts of the proposed project and any corresponding mitigative measures including, but not necessarily limited to, the following:

(1) Surface and groundwater resources;

(2) Archaeological/historical/cultural resources;

(3) Vegetative/wildlife resources;

(4) Wetlands and navigable waterways;

(5) Floodplains;

(6) Prime or important farmlands;

(7) Coastal zones;

(8) Wild and scenic rivers; and

(9) Air Quality.

Source: House Bill 1421, 2022 Regular Session & Senate Bill 2444, 2023 Regular Session of the MS Legislature

Rule 5.6.2. Environmental Review.

The Licensed Engineer will take one or more of the following actions pursuant to the review of the of Environmental Impacts:

1. Previously Disturbed Certification
   Complete certification that all work to be performed as a part of this project will be performed on previously disturbed sites, easements, and/or rights-of-way. Certify that no new sites, easements and/or rights-of-way will be disturbed as a result of this construction/repair project, and therefore, no comments or responses are required from the state or federal agencies listed below in order to ensure compliance with the state or federal laws or regulations under the jurisdiction of these agencies.

2. Environmental Impacts Resolved Certification
Complete certification that comments and responses have been solicited and resolved from the state and federal agencies listed below regarding all work to be performed under this project on new sites, easements, and/or rights-of-way.

3. No Further Action

The Licensed Engineer will complete the appropriate certification on all ARPA RWAIG projects. If there are significant changes in the project after the issuance of the environmental documents, those changes will be described in an Amendment to the certification. Some changes are minor, however, and the Department may determine that a separate Amendment need not be issued. Such minor changes may include but are not limited to:

A. Adding work that would otherwise qualify for a previously disturbed certification.

B. Changes in the size of pump stations, storage facilities, wells, distribution lines, etc.

C. Minor changes in the size of water treatment unit processes.

D. Minor rerouting of distribution lines when the new route

i) will be mostly on public property and

ii) will not adversely affect cultural resources, habitats of endangered or threatened species, or environmentally important natural resource areas.

All affected property owners shall be notified by the Grant recipient.

Source: House Bill 1421, 2022 Regular Session & Senate Bill 2444, 2023 Regular Session of the MS Legislature

Rule 5.6.3. **Issuance of the Environmental Certification**

Copies of all necessary environmental review and certification documentation should be issued to the appropriate intergovernmental review agencies listed in Subchapter 8; other agencies shall be contacted as needed. Copies shall also be sent to any individuals or groups requesting them. All environmental review documentation shall be maintained at the grant recipient's office location for review upon request.

Source: House Bill 1421, 2022 Regular Session & Senate Bill 2444, 2023 Regular Session of the

Rule 5.6.4. **Resolution of Adverse Comments**.

Adverse comments received as a result of the environmental review process should be addressed in the following manner:

1. The Grant recipient should resolve the adverse comments

2. If the Grant recipient is unable to resolve the adverse comments and secure approval, the Department may comment on the unresolved issues and suggest a course of action.

Source: House Bill 1421, 2022 Regular Session

Subchapter 7. Miscellaneous Requirements for ARPA RWAIG recipients

Rule 5.7.1. Within this subchapter, Grant recipients should have an understanding of various miscellaneous elements that could affect the project(s) ability to proceed from application to design to construction to grant payment.

Procurement Requirements.

1. In the procurement of all construction, equipment, materials, supplies, professional services and non-professional services and all other costs related to the ARPA RWAIG project, all Grant recipients shall comply with federal procurement regulations and applicable state and local laws.
   - All procurements must comply with the requirements of 2 CFR 200.317-327.
   - All procurements must follow the affirmative outreach steps required in 2 CFR 200.321.
     - Compliance with the 2 CFR 200 rules and regulations must be documented and such documents retained for the ARPA/SLFRF record retention (i.e., for five years after date of final ARPA/SLFRF disbursed or returned to Treasury, whichever is later).

2. The procurement and conduct of all professional engineering and land surveying services shall also be in accordance with the Code of Conduct a and other guidance and interpretations established by the Mississippi State Board of Registration for Professional Engineers and Land Surveyors.

3. The procurement of all construction contracts shall also be in accordance with the rules and regulations of the State Board of Contractors and other guidance and interpretations established by the Mississippi State Board of Contractors.

4. All Grant recipients shall submit a procurement certification, as required

by the Department, indicating that all the above referenced requirements have been met. Should it be determined that any of the above procurement requirements are violated, the Department may determine that the related costs are unallowable and may require repayment of all ARPA RWAIG funds paid for such costs, in accordance with Rule 5.3.21.4 of these regulations.

Source: House Bill 1421, 2022 Regular Session & Senate Bill 2444, 2023 Regular Session of the MS Legislature

Rule 5.7.2. Debarment and Suspension

The Department is prohibited from entering into Grant agreements with Grant applicants that have been debarred or suspended by any state or federal agency.

Grant recipients are prohibited from entering into contractual agreements with individuals, businesses, organizations, or any other entities that have been debarred or suspended by any state or federal agency. Additionally, grant recipients are responsible for ensuring that prime contractors utilized on the project are not debarred or suspended. Likewise, prime contractors are responsible for ensuring that subcontractors utilized on the project are not debarred or suspended.

Anyone may contact the Board concerning the existence of a cause for debarment or suspension. The Department may refer the matter to the State Attorney General or other appropriate office for further investigation. If, after review or investigation, the Board reasonably believes that a cause for debarment exists, the Board may propose debarment or suspension and may initiate procedures similar to, but not necessarily identical to, federal regulation 40 CFR Part 32: Debarment and Suspension Under EPA Assistance Programs.

Such above-described debarment or suspension actions will not affect existing executed contractual agreements, unless such agreements have been terminated or suspended under the terms of the agreement by the Grant recipient.

Source: House Bill 1421, 2022 Regular Session

Rule 5.7.3. ARPA RWAIG Dispute Procedures

Only ARPA RWAIG recipients may submit a notice of dispute (disagreement) with a decision made by the Department, with the exception of decisions regarding Subchapter 6, Environmental Review Process, of these regulations. The following procedures will be used to resolve disputes between the Grant recipient and the Department.

1. The Grant recipient shall submit a written notice of dispute with a Department decision, including a summary of the dispute and reasons the Grant recipient believes the Department decision should be reversed.

2. The Department will then render a written decision on the dispute and will include reasons for the decision.

3. Should the Grant recipient desire to appeal the second Department decision, a request for an informal hearing shall be received by the Department within 30 days after the date of that decision. Upon receipt of such a request, an informal hearing will be held with staff members, as designated by the State Health Officer, and the affected parties. The State Health Officer, or his designee, will render a decision on the appeal as a result of the informal hearing.

4. Appeals of the above formal hearing decision may be made to the Chancery Court in accordance with state law.

Source: House Bill 1421, 2022 Regular Session

Rule 5.7.4. Waste Fraud and Abuse

The Grant recipient is responsible for preventing, detecting, and prosecuting waste, fraud, abuse, and all other corrupt practices which occur in relation to the ARPA RWAIG project.

If the Grant recipient becomes aware of allegations, evidence, or the appearance of corrupt practices, the Grant recipient shall:

1. Immediately inform the Department in writing; and

2. Promptly pursue available state and local legal, administrative, and contractual remedies.

The Department may disallow costs under the Grant agreement where it is determined that such costs are related to waste, fraud, abuse or other corrupt practices. The Department may also require repayment of ARPA RWAI Grant funds paid for such costs in accordance with Rule 5.3.21.4 of these regulations.

Source: House Bill 1421, 2022 Regular Session

Rule 5.7.5. ARPA RWAIG Recipient Accounting and Auditing Requirements

All ARPA RWAIG recipients shall maintain project accounts in accordance with generally accepted government accounting standards, as defined by the Guidelines of the Municipal Accounting and Audit Manual, as prescribed by the State Auditor's Office. Charges to the project account shall be properly supported, related to eligible construction costs, and documented by appropriate records.
These project accounts shall be maintained as separate accounts.

All contracts for professional services, construction, equipment, and supplies shall include an access to audit clause which gives the Department and its representatives access to and the right to audit, inspect, copy and examine books, financial records and other documents relating directly to the receipt and disbursement of ARPA RWAIG funds.

Source: House Bill 1421, 2022 Regular Session

Rule 5.7.6. ARPA RWAIG Procurement Protest Procedures

1. Prior to advertisement for bids, the Grant recipient should consider establishing its own procedures for prompt consideration of initial protests concerning solicitations or contract awards. A "protest" is a written complaint concerning the Grant recipient's solicitation or award of a contract. The protest shall be filed with the Grant recipient by a party with a direct financial interest adversely affected by a Grant recipient's procurement action and shall be filed in accordance with and within the time frame established by the Grant recipient's protest procedures.

2. Any delay due to a protest or protest resolution will not relieve the Grant recipient of the requirement to meet the project schedule established in the Grant agreement, nor will such delays prevent the Department from pursuing the remedies for default established in the Grant agreement.

Source: House Bill 1421, 2022 Regular Session

Rule 5.7.7. Related State Laws and Regulations

The Grant recipient shall comply with the applicable related state laws and regulations regarding Mississippi Safe Drinking Water Act and Operator Certification during the planning, design, construction, and operation of the project.

Source: House Bill 1421, 2022 Regular Session

Rule 5.7.8**.** National Pollutant Discharge Elimination System (NPDES) and Siting Criteria Regulations

The following requirements apply to those drinking water treatment facilities that have or will construct wastewater treatment facilities necessary to treat waste generated by their drinking water treatment facilities.

The Grant recipient shall ensure that all current applicable regulations of the Commission on Environmental Quality and the Environmental Quality Permit Board are complied with during the planning, design, and construction of any wastewater treatment facilities associated with this ARPA RWAIG project. It is

the Grant recipient's responsibility to ensure that the project is in compliance with these regulations and all future amendments.

Source: House Bill 1421, 2022 Regular Session

Subchapter 8. Intergovernmental Review Process

The following outlines the Department's guidance for compliance with the Intergovernmental Review concerns for ARPA RWAIG projects.

Source: House Bill 1421, 2022 Regular Session

Rule 5.8.1. **Intergovernmental Review Agencies:**

1. Mississippi Department of Archives and History (for archaeological/cultural review)

2. Mississippi Natural Heritage Program (for vegetative/wildlife review)

3. U.S. Army Corps of Engineers, Regulatory Functions Branch [for Section 404 (wetlands), Section 10 (navigable waterways), and floodplain impact review]

4. Mississippi Department of Marine Resources (Jackson, Harrison, and Hancock County Projects Only; for shellfish review and Mississippi Coastal Program review)

5. U.S. Fish and Wildlife Service (Jackson, Harrison, and Hancock County projects only; for Coastal Barriers Resources Act review)

6. U.S. Forest Service (projects located in a designated Wild and Scenic River Basin only, for Wild and Scenic Rivers review)

Source: House Bill 1421, 2022 Regular Session

Rule 5.8.2. **Planning and Design**

During preparation of the plans and specifications, the Licensed Engineer will ensure that the appropriate intergovernmental review agencies have been consulted about the proposed project area concerning the existence of any known or possible archaeological/cultural sites, endangered vegetation/wildlife, wetlands, floodplain impacts, wild/scenic river impacts, shellfish/coastal program impacts, or coastal barriers resources impact. The Licensed Engineer will certify during the plans, specifications, and contract documents phase, that the proposed project components have been evaluated through a intergovernmental review process and that no concerns have been discovered that would prevent the project from moving forward and that the project has been cleared. If feasible, the project should avoid negative impacts on areas for which a concern has been expressed by an

intergovernmental review agency. If it is not feasible to avoid negative impacts on these areas, the appropriate intergovernmental review agency should be consulted concerning the probability of obtaining clearance to construct the selected plan.

Source: House Bill 1421, 2022 Regular Session & Senate Bill 2444, 2023 Regular Session of the MS Legislature