

Title 15 - Mississippi Department of Health

Part 20: Bureau of Public Water Supply

Subpart 72: Public Water Supply

CHAPTER 1. MISSISSIPPI PRIMARY DRINKING WATER REGULATION

Subchapter 1. General Provisions:

Rule 1.1.1. **Legal Authority.** This regulation has been promulgated under the authority of and pursuant to the Mississippi Safe Drinking Water Act of 1997 (Section 41-26-1 through Section 41-26-101, Mississippi Code of 1972, Annotated).

SOURCE: Miss. Code Ann. §41-26-6

Rule 1.1.2. Definitions.

- 1. Department** shall mean the Mississippi State Department of Health.
- 2. Director** shall mean the Executive Officer of the Mississippi State Department of Health or his authorized agent.
- 3. Municipality** shall mean a city, town, village, or other public body created by state law, or an Indian tribal organization authorized by law.
- 4. Federal Agency** shall mean any department, agency, or instrumentality of the United States.
- 5. Administrator** shall mean the Administrator of the U.S. Environmental Protection Agency or his authorized representative.
- 6. Federal Act** shall mean the Safe Drinking Water Act of 1974, cited as Public Law 93-523, or any subsequent revisions thereto.
- 7. Regulations** shall mean primary drinking water regulations promulgated by the administrator pursuant to the federal act.
- 8. Backflow** shall mean the reversal of normal flow direction where water flows from the intended point of delivery towards the public water supply.
- 9. Cross Connection** shall mean any direct interconnection between a public water system and a non-public water system or other source which may result in the contamination of the drinking water provided by the public water system. This definition includes any arrangement of piping where a potable water line is connected to non potable water; it

may be a pipe-to-pipe connection where potable and non potable water lines are directly connected or a pipe-to-water connection where the potable water outlet is submerged in non-potable water. If the potable and non-potable source are separated by gate valves, check valves or devices other than the appropriate backflow preventer as outlined by this regulation, a cross connection exists. By-pass arrangements, jumper connections, swivel or change over assemblies, or other temporary or permanent assemblies through which, or because of which, backflow may occur are considered to be cross connections.

- 10. Public water system** means a system for the provision to the public of water for Human consumption through pipes or, after August 5, 1998, other constructed conveyances, if such system has at least fifteen service connections or regularly serves an average of at least twenty-five individuals daily at least 60 days out of the year. Furthermore, two or more water systems that are adjacent, that are owned or operated by the same supplier of water, that individually serve less than 15 service connections or less than 25 persons but in combination serve 15 or more service connections or 25 or more persons, shall also be defined as a public water system. Such term includes: Any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system; and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Such term does not include any “special irrigation district.” Service connection, as used in the definition of public water system, does not include a connection to a system that delivers water by a constructed conveyance other than a pipe if:
- a. The water is used exclusively for purposes other than residential uses (consisting of drinking, bathing, cooking, or other similar uses);
 - b. The Director or Administrator determines that alternative water to achieve the equivalent level of public health protection provided by the applicable national primary drinking water regulation is provided for residential or similar uses for drinking and cooking; or
 - c. The Director or Administrator determines that the water provided for residential or similar uses for drinking, cooking, and bathing is centrally treated or treated at the point of entry by the provider, a pass-through entity, or the user to achieve the equivalent level of protection provided by the applicable national primary drinking water regulation.
 - d. Special irrigation district means an irrigation district in existence prior to May 18, 1994, that provides primarily agricultural service through a piped water system with only incidental residential or similar use where the system or the residential or similar users of the system comply with the exclusion provisions in Section 1401(4)(B)(i)(II) or (III) of the Federal Safe Drinking Water Act.
- 11. Professionally installed** shall mean installed in a workmanlike manner with no apparent errors in installation.

12. **Significant deficiencies** cause or have the potential to cause the introduction of contamination into drinking water delivered to customers of a public water supply. This could include defects in design, operation or maintenance of the source, treatment or distribution systems.
13. **Sanitary defect** is a defect that could provide a pathway for entry for microbial contamination into the distribution system or that is indicative of a failure or imminent failure in a barrier that is already in place.
14. **Assessment – Level 1** is an evaluation to identify the possible presence of sanitary defects, defects in distribution system coliform monitoring practices, and (when possible) the likely reason that the system triggered the assessment. It is conducted by the system operator or owner. Minimum elements include review and identification of atypical events that could affect distributed water quality or indicate that distributed water quality was impaired; changes in distribution system maintenance and operation that could affect distributed water quality (including water storage); source and treatment considerations that bear on distributed water quality, where appropriate (e.g. whether a ground water system is disinfected); existing water quality monitoring data; and inadequacies in sample sites, sampling protocol, and sample processing. The system must conduct the assessment consistent with any State directives that tailor specific assessment elements with respect to the size and type of the system and the size, type, and characteristics of the distribution system.
15. **Assessment – Level 2** is an evaluation to identify the possible presence of sanitary defects, defects in distribution system coliform monitoring practices, and (when possible) the likely reason that the system triggered the assessment. A Level 2 assessment provides a more detailed examination of the system (including the system's monitoring and operational practices) than does a Level 1 assessment through the use of more comprehensive investigation and review of available information, additional internal and external resources, and other relevant practices. It is conducted by an individual approved by the State, which may include the system operator. Minimum elements include review and identification of atypical events that could affect distributed water quality or indicate that distributed water quality was impaired; changes in distribution system maintenance and operation that could affect distributed water quality (including water storage); source and treatment considerations that bear on distributed water quality, where appropriate (e.g., whether a ground water system is disinfected); existing water quality monitoring data; and inadequacies in sample sites, sampling protocol, and sample processing. The system must conduct the assessment consistent with any State directives that tailor specific assessment elements with respect to the size and type of the system and the size, type, and characteristics of the distribution system. The system must comply with any expedited actions or additional actions required by the State in the case of an E. coli MCL violation.

16. **Clean Compliance History** shall mean that the public water supply has a record of no MCL violations under Title 40 Code of Federal Regulations Section 141.63 or subpart Y; no monitoring violations under 40 Code of Federal Regulations Section 141.21 or subpart Y; and no coliform treatment technique trigger exceedances or treatment technique violations under subpart Y.
17. **Seasonal System** shall mean a non-community water system that is not operated as a public water system on a year-round basis and starts up and shuts down at the beginning and end of each operating season

SOURCE: Miss. Code Ann. §41-26-6

Rule 1.1.3. The definitions as stipulated in the National Primary Drinking Water Regulations as published under Title 40 Code of Federal Regulations Section 141.2 are hereby adopted.

SOURCE: Miss. Code Ann. §41-26-6

Rule 1.1.4. **Coverage.** This regulation shall apply to each public water system in the State, except that it shall not apply to a public water system:

1. Which consists only of distribution and storage facilities which does not have any collection and treatment facilities; and
2. Which obtains all of its water from, but is not owned or operated by, a public water system to which such regulation applies; and
3. Which does not sell water to any person; and
4. Which is not a carrier which conveys passengers in interstate or intrastate commerce.

SOURCE: Miss. Code Ann. §41-26-6

Rule 1.1.5. **Variances and Exemptions.** Variances and exemptions may be issued by the Director in accordance with Sections 1415 and 1416 of the federal act. Treatment utilizing best available technology, as stipulated in Title 40 Code of Federal Regulations, Part 142, Subparts F and G, may be required in order to grant variances and exemptions under this regulation. Variances and exemptions shall not be issued if not allowed by the National Primary Drinking Water Regulations.

SOURCE: Miss. Code Ann. §41-26-6

Rule 1.1.6. **Construction, Preconstruction, Treatment, and Operational Requirements.** Planning and design of improvements for existing public water systems or the creation of new community or non-transient non-community public

water system shall be in accordance with the Department's current version of the *"Minimum Design Criteria for Public Water Supplies."*

1. **Siting Requirements.** Before a person may initiate construction of a new community or non-transient non-community public water system or increase the capacity of an existing community or non-transient non-community public water system, he shall submit sufficient information to the Director for evaluation of the proposed site, to determine whether the site and design of the proposed construction or modification will enable the system to comply with this regulation including Title 40 Code of Federal Regulations Sections 141.63.
2. **Plans and Specifications Approval.** Prior to advertising for bids and/or initiating construction of a new community or non-transient non-community public water system or making significant extensions or alterations to an existing community or non-transient non-community public water system which may affect the operation of that system, plans and specifications for the proposed construction shall be approved by the Director. Plans and specifications submitted to the Director for approval shall be prepared by a professional engineer licensed to practice in the State of Mississippi.
3. **Operation and Maintenance Plans.** Each applicant for a new community or non-transient non-community public water system shall submit an operation and maintenance plan for review and approval by the Director. The plan must be approved by the Director prior to beginning construction.
4. **Financial and Managerial Viability.** Each applicant for a new community or non-transient non-community public water system shall submit financial and managerial information as required by the Public Utilities Staff. Plans and specifications shall not be approved by the Director until written certification of the financial and managerial viability of the new water system is received from the Executive Director of the Public Utilities Staff.
5. **Changes to Existing Public Water Systems.** Plans and specification for changes to an existing community or non-transient non-community public water systems shall not be approved if the Director determines the changes would threaten the viability of the water system or if the changes may overload the operational capabilities of the water system.
6. **Non-Centralized Treatment Devices.** Public water systems may utilize point-of-entry devices to comply with maximum contaminant levels as stipulated in the National Primary Drinking Water regulations as published at Title 40 Code of Federal Regulations Sections 141.100 and 141.101.
7. **Ban of Use of Lead Products.** Any pipe, solder, or flux used in the installation or repair of any public water system, or any plumbing in a residential or nonresidential facility providing water for human consumption which is connected to a public water system shall be lead free. Solders and flux are defined as "lead free" when they contain not more than 0.2 percent lead. Pipes and pipe fittings are defined as "lead free" when they contain not more than 0.25 percent lead in the wetted surface material. Plumbing fittings and fixtures intended by the manufacturer to dispense water for human ingestion are defined as "lead

free” when they comply with standards established in accordance with 42 U.S.C. 300g-6(e).

8. **Lead Service Line Replacement.** It shall be the responsibility of each supplier of water to comply with the lead service line replacement requirements and lead service line reporting requirements as stipulated in the National Primary Drinking Water Regulations as published under Title 40 Code of Federal Regulations Sections 141.84 and 141.90.
9. **Overloaded Public Water Systems.** Public water systems that are serving customers in excess of the design capacity as determined by the Director shall be identified as overloaded and shall immediately, upon written notification by the Director, cease adding new customers. Public water systems identified as overloaded shall not add new customers until notified, in writing, by the Director that the system’s design capacity has been increased and that the water system can resume adding new customers.
10. **Corrosion Control Treatment.** Where deemed necessary based on a determination by the Bureau that the water provided to customers is corrosive in nature, the Director shall have the authority to require corrosion control treatment be installed at existing system treatment facilities where none has been previously and operated properly to prevent corrosive water from delivery to customers. A corrosive water determination will be made based on the established methods outlined in the Department’s Minimum Design Criteria of Public Water Supplies. This required installation of treatment does not require the system to have an exceedance of the Lead and Copper Rule action levels in order for it to occur.
11. **Public Water Supply Operations Standards.** Operations of the public water supply shall be governed by the applicable provisions of the Federal and State Safe Drinking Water Acts and the Public Water Supply Operations Manual as outlined in the current edition of the Public Water System Operations Manual published by the Bureau of Public Water Supply. As a public water supply, legally responsible official(s) must ensure that those minimal operation standards are performed by the certified waterworks operator and applicable public water supply staff for the safety and welfare of the public water supply’s facilities and customers.
12. **Drug Free Operation Policy.** Operation of a public water supply should be performed in a manner that is free of both illegal and legal substances that would impair the ability of the certified operator of record and water system personnel to perform their duties and thereby potentially cause harm to the customers of the public water supply that they are charged to operate. By this purpose, the public water system should create and maintain an appropriate Workplace Substance Abuse Policy. If a public water supply becomes aware that a certified operator has operated his/her public water supply while under the influence of illegal or legal substances that impair his/her judgement, official(s) of the public water system shall notify the Bureau of Public Water Supply’s Office of Compliance and Enforcement.

SOURCE: Miss. Code Ann. §41-26-6

Subchapter 2. Maximum Contaminant Levels

Rule 1.2.1. **Microbiological.** All microbiological maximum contaminant levels, maximum contaminant level goals, and treatment technique requirements shall apply to public water systems as stipulated in the National Primary Drinking Water Regulations as published under Title 40 Code of Federal Regulations Sections 141.4, 141.52, 141.63, 141.851, and 141.860.

SOURCE: Miss. Code Ann. §41-26-6

Rule 1.2.2. **Inorganic Chemicals.** All inorganic chemical maximum contaminant levels and action levels shall apply to public water systems as stipulated in the National Primary Drinking Water Regulations as published under Title 40 Code of Federal Regulations Sections 141.6, 141.11, 141.23 (d & e), 141.51, 141.60, 141.62 (b, c & d) and 141.80.

SOURCE: Miss. Code Ann. §41-26-6

Rule 1.2.3. **Organic Chemicals.** All organic chemical maximum contaminant levels shall apply to public water systems as stipulated in the National Primary Drinking Water Regulations as published under Title 40 Code of Federal Regulations Sections 141.50, 141.60 and 141.61.

SOURCE: Miss. Code Ann. §41-26-6

Rule 1.2.4. **Turbidity.** The maximum contaminant levels for turbidity shall apply to public water systems as stipulated in the National Primary Drinking Water Regulations as published under Title 40 Code of Federal Regulations Sections 141.13, 141.73 and 141.173.

SOURCE: Miss. Code Ann. §41-26-6

Rule 1.2.5. **Radionuclides.** All radionuclide maximum contaminant levels and maximum contaminant level goals shall apply to public water systems as stipulated in the National Primary Drinking Water Regulations as published under Title 40 Code of Federal Regulations Sections 141.15, 141.16, 141.55 and 141.66.

SOURCE: Miss. Code Ann. §41-26-6

Rule 1.2.6. **Disinfectant Residuals, Disinfection Byproducts, and Disinfection Byproduct Precursors.** All disinfectant residuals, disinfection byproduct and disinfection byproduct precursor maximum contaminant levels, operational evaluation levels, best technologies, treatment techniques, and other means available for achieving compliance shall apply to public water systems as stipulated in the National Primary Drinking Water Regulations as published under Title 40 Code of Federal Regulations Sections 141.53, 141.54, 141.64, 141.65, 141.130, 141.620 and 141.626.

SOURCE: Miss. Code Ann. §41-26-6

Rule 1.2.7. **Miscellaneous Contaminants.** All maximum contaminant levels not previously referenced in this regulation shall apply to public water systems as stipulated in the latest revision of the National Primary Drinking Water Regulations.

SOURCE: Miss. Code Ann. §41-26-6

Subchapter 3. Monitoring, Analytical, And Treatment Technique Requirements

Rule 1.3.1. **Coliform Sampling and Analyses, Treatment Technique Triggers and Assessment Requirements.** It shall be the responsibility of each supplier of water to comply with the treatment technique triggers, assessment requirements, and Coliform Monitoring and Analytical Requirements as stipulated in the National Primary Drinking Water Regulations as published under Title 40 Code of Federal Regulations Section 141.21 or any subsequent revisions thereto including 141.851 – 141.860 except that the following optional provisions of Title 40 Code of Federal Regulations Section 141.21, 141.854, 141.855, and 141.857 are not adopted:

1. The provision of Title 40 Code of Federal Regulations Section 141.21 (a)(2) concerning the reduction of the monitoring frequency for community water systems serving 1,000 or fewer persons;
2. The provision of Title 40 Code of Federal Regulations Section 141.21 (a)(5) concerning waiver of the time limit for sampling after a turbidity sampling result exceeds 1 NTU;
3. The provision of Title 40 Code of Federal Regulations Section 141.21 (b)(3) concerning collection of large volume repeat samples in containers of any size;
4. The provision of Title 40 Code of Federal Regulations Section 141.21 (d) concerning agents other than State personnel conducting sanitary surveys;
5. The provisions of Title 40 Code of Federal Regulations Section 141.21 (e)(2) with respect to waiver of E. Coli testing on a total coliform positive sample;
6. Provisions allowing systems to perform reduced monitoring below the minimum of monthly. All systems regardless of type and operational status will be on monthly monitoring schedules.

SOURCE: Miss. Code Ann. §41-26-6

Rule 1.3.2. **Inorganic Chemical Sampling and Analyses.** It shall be the responsibility of each supplier of water to comply with the inorganic chemical sampling/analysis requirements, analytical techniques, and water quality parameters as stipulated in the National Primary Drinking Water Regulations as published under Title 40 Code of Federal Regulations Sections 141.6, 141.23, 141.86, 141.87, 141.88 and 141.89 except

that the following optional provisions of Title 40 Code of Federal Regulations are not adopted: Section 141.23 (a)(4) and Section 141.88(a)(1)(iv) which allow compositing of samples. The provisions of Title 40 Code of Federal Regulations, Section 141, Subpart I – Control of Lead and Copper are hereby incorporated by reference including any subsequent amendments and editions.

SOURCE: Miss. Code Ann. §41-26-6

Rule 1.3.3. **Organic Chemical Sampling and Analyses.** It shall be the responsibility of each supplier of water to comply with the organic chemical sampling and analysis requirements as stipulated in the National Primary Drinking Water Regulations as published under Title 40 Code of Federal Regulations Sections 141.6, 141.24, 141.30 and 141.40 except that the following optional provisions of Title 40 Code of Federal Regulations are not adopted: Sections 141.24 (f) (14) and (h) (10) and Section 141.40 (n)(9) which allow compositing of samples.

SOURCE: Miss. Code Ann. §41-26-6

Rule 1.3.4. **Radionuclides.** It shall be the responsibility of each supplier of water to comply with the radionuclide sampling and analysis requirements as stipulated in the National Primary Drinking Water Regulations as published under Title 40 Code of Federal Regulations Sections 141.25 and 141.26.

SOURCE: Miss. Code Ann. §41-26-6

Rule 1.3.5. **Turbidity and Source Water Sampling and Analyses.** It shall be the responsibility of each supplier of water to comply with the turbidity and source water sampling and analysis requirements and state notification procedures as stipulated in the National Primary Drinking Water Regulations as published under Title 40 Code of Federal Regulations Sections 141.22, 141.174, 141.560 – 141.564, 141.701 – 141.704, 141.707 and Appendix B to Subpart Q of Part 41.

SOURCE: Miss. Code Ann. §41-26-6

Rule 1.3.6. **Disinfectant Residuals, Disinfection Byproducts, and Disinfection Byproduct Precursors Sampling and Analyses.** It shall be the responsibility of each supplier of water to comply with the disinfectant monitoring, disinfection byproduct sampling, analysis and all other requirements as stipulated in the National Primary Drinking Water Regulations as published under Title 40 Code of Federal Regulations Sections 141.131, 141.132, 141.531, 141.600-605, 141.620-625, 141.627, and 141.628. Compliance with this section shall be determined as stipulated in the National Primary Drinking Water Regulations as published under Title 40 Code of Federal Regulations Sections 141.133 and 141.620.*SOURCE: Miss. Code Ann. §41-26-6*

SOURCE: Miss. Code Ann. §41-26-6

Rule 1.3.7. **Ground Water Microbial Sampling and Analyses.** It shall be the responsibility of each supplier of ground water to comply with the source microbial monitoring and analytical requirements and if requested, provide any information that will allow the state to perform a hydrogeologic sensitivity assessment as stipulated in the National Primary Drinking Water Regulations as published under Title 40 Code of Federal Regulations Sections 141.400, 141.402, 141.853, and Subpart Y

SOURCE: Miss. Code Ann. §41-26-6

Rule 1.3.8. **Filtration and Disinfection.** It shall be the responsibility of each supplier of water to comply with the filtration and disinfection analytical and monitoring requirements as stipulated in the National Primary Drinking Water Regulations as published under Title 40 Code of Federal Regulations Sections 141.70, 141.71, 141.73, 141.74, 141.174, and 141.856.

Rule 1.3.9. **Miscellaneous Contaminants.** It shall be the responsibility of the supplier of water to comply with the special monitoring requirements of the National Primary Drinking Water Regulation Title 40 Code of Federal Regulations Section 141.41 (special monitoring for sodium) and Section 141.42 (special monitoring for corrosivity characteristics). It shall also be the responsibility of the supplier of water to comply with all other monitoring and analysis requirements not previously addressed in this regulation as stipulated in the National Primary Drinking Water Regulations.

SOURCE: Miss. Code Ann. §41-26-6

Subchapter 4. Sanitary Surveys.

Rule 1.4.1 **Surface Water Systems:** The Mississippi State Department of Health shall make periodic on-site surveys of each public surface water system for the purpose of determining the adequacy of the water source, facilities, equipment, watershed control program, operation and maintenance procedures and monitoring and compliance as stipulated in the National Primary Drinking Water Regulations as published under Title 40 Code of Federal Regulations Sections 141.63, 141.522 and 141.723. These surveys include the right to inspect all records, take water quality samples, or verify procedures, to determine compliance with this regulation. Significant deficiencies, as determined by the Department utilizing current EPA guidance manuals, shall be identified by Department staff during the conduct of sanitary surveys. Public water systems shall, upon receipt of the sanitary survey report, provide a written response to all significant deficiencies identified in the report to the Department within 45 days of receipt of the report. In this written response, the public water system shall outline its plan to correct the significant deficiencies identified in the survey report. After reviewing the public water system's written response, the Director shall require, by means of a written order, that the public water system correct the significant deficiencies within a reasonable period of time as determined by the Department.

SOURCE: Miss. Code Ann. §41-26-6

Rule 1.4.2. **Ground Water Systems:** The Mississippi State Department of Health shall make periodic on-site surveys of each public ground water system for the purpose of determining the adequacy of the water source, treatment, distribution, storage, pumps, reporting, management and operator compliance as stipulated in the National Primary Drinking Water Regulations as published under Title 40 Code of Federal Regulations Section 141.63 and 141.401. These surveys include the right to inspect all records, take water quality samples, or verify procedures, to determine compliance with this regulation. Significant deficiencies, as determined by the Department utilizing current EPA guidance, shall be identified by Department staff during the conduct of sanitary surveys. Public water systems shall, upon receipt of the sanitary survey report, provide a written response to all significant deficiencies identified in the report to the Department within 30 days of receipt of the report. In this written response, the public water system shall outline its plan to correct the significant deficiencies identified in the survey report. After reviewing the public water system's written response, the Director shall require, by means of a written order, that the public water system correct the significant deficiencies within 120 days or within a reasonable period of time as determined by the Department.

SOURCE: Miss. Code Ann. §41-26-6

Rule 1.4.3. **Treatment Techniques.** It shall be the responsibility of each supplier of water to comply with the treatment techniques as stipulated in the National Primary Drinking Water Regulations as published under Title 40 Code of Federal Regulations Sections 141.76, 141.81, 141.82, 141.83, 141.110, 141.111, 141.135, 141.403, and 141.404. Violations as stipulated in the National Primary Drinking Water Regulations as published under Title 40 Code of Federal Regulations Sections 141.403 and 141.404 are hereby incorporated.

SOURCE: Miss. Code Ann. §41-26-6

Subchapter 5. Reporting, Records, And Public Notification

Rule 1.5.1. **Reporting Requirements.**

1. The supplier of water shall provide the results of all water quality analyses, assessments, corrective actions, and certifications to be utilized for compliance with this regulation to the Director as stipulated in the National Primary Drinking Water Regulations as published under Title 40 Code of Federal Regulations Sections 141.31, 141.35, 141.73, 141.75, 141.76, 141.90, 141.134, 141.173, 141.175, 141.405, 141.570, 141.601, 141.602, 141.629, 141.706, 141.710, 141.712, 141.860, and 141.861.
2. The supplier of water shall report to the Director the failure to comply with these regulations, including failure to comply with monitoring and analytical requirements, failure to comply with treatment technique requirements, and failure to meet maximum contaminant levels as stipulated in the National Primary Drinking Water Regulations as published under Title 40 Code of Federal Regulations Sections 141.31, 141.35, 141.73, 141.75, 141.76, 141.173, 141.175, 141.405, 141.860, 141.861.

3. The supplier of water shall provide proof of public notification to the Director as stipulated in the National Primary Drinking Water Regulations as published under Title 40 Code of Federal Regulations Sections 141.31(d), 141.90(f) and 141.405.
4. The supplier of water or consecutive ground water system shall maintain records and submit to the Director copies of all required records as stipulated in the National Primary Drinking Water Regulations as published under Title 40 Code of Federal Regulations Sections 141.31 (e), 141.90, 141.91, 141.75, 141.76, 141.175, 141.405, 141.721, 141.722, 141.860 and 141.861.
5. The state shall be responsible for submitting to the Administrator all information stipulated in the National Primary Drinking Water Regulations as published under Title 40 Code of Federal Regulations Section 142.15.

SOURCE: Miss. Code Ann. §41-26-6

Rule 1.5.2. **Public Notification and Education.** Each supplier of water shall provide public notification or education as stipulated in the National Primary Drinking Water Regulations as published under Title 40 Code of Federal Regulations Sections 141.35, 141.71, 141.73, 141.74, 141.85, 141.90(f), 141.170-141.174, 141.201-141.211, 141.402, 141.404(d), 141.500-141.553, 141.560-141.564, Appendices A-C to Subpart Q, and Subpart Y of Part 141. Public notification of fluoride content is required of all public water suppliers as stipulated in Title 40 Code of Federal Regulations Section 143.5.

SOURCE: Miss. Code Ann. §41-26-6

Rule 1.5.3. **Record Maintenance.** Each supplier of water shall retain records and make such records available to the Director as stipulated in the National Primary Drinking Water Regulations as published under Title 40 Code of Federal Regulations Sections 141.33, 141.35, 141.75, 141.76, 141.134, 141.155, 141.175, 141.571, 141.601, 141.602, 141.629, 142.62, and 141.861.

SOURCE: Miss. Code Ann. §41-26-6

Rule 1.5.4. **Records Kept by States.** Records of currently applicable or most recent tests, measurements, analyses, decisions, and determinations performed on each public water system, including all supporting information and an explanation of the technical basis of each decision to determine compliance with applicable provisions of the Mississippi Primary Drinking Water Regulations will be maintained in accordance with the National Primary Drinking Water Regulations as published under Title 40 Code of Federal Regulations Section 142.14.

SOURCE: Miss. Code Ann. §41-26-6

Rule 1.5.5. **Laboratory Certification.**

1. The Director may prescribe minimum requirements for a laboratory to be certified by the Mississippi State Department of Health to perform water quality analyses required under this regulation.
2. Each supplier of water must utilize the services of certified laboratory or party approved by the state where applicable to complete all water quality analyses as stipulated in the National Primary Drinking Water Regulations as published under Title 40 Code of Federal Regulations Sections 141.28, 141.705, 141.852.

SOURCE: Miss. Code Ann. §41-26-6

Subchapter 6. Filtration and Disinfection - Surface Water Treatment Rule.

Rule 1.6.1. **General Requirements:** Each public water system that uses a surface water source or a ground water source under the direct influence of surface water must comply with the treatment technique requirements as stipulated in the National Primary Drinking Water Regulations as published under Title 40 Code of Federal Regulations Section 141.70.

SOURCE: Miss. Code Ann. §41-26-6

Rule 1.6.2. **Criteria for Avoiding Filtration:** In order to avoid filtration, a public water system that uses a surface water source or a ground water source under the direct influence of surface water must comply with the criteria for avoiding filtration as stipulated in the National Primary Drinking Water Regulations as published under Title 40 Code of Federal Regulations Section 141.71.

SOURCE: Miss. Code Ann. §41-26-6

Rule 1.6.3. **Disinfection:** A public water system that uses a surface water source or a ground water source under the direct influence of surface water must comply with the disinfection requirements as stipulated in the National Primary Drinking Water Regulations as published under Title 40 Code of Federal Regulations Section 141.72.

SOURCE: Miss. Code Ann. §41-26-6

Rule 1.6.4. **Filtration:** A public water system that uses a surface water source or a ground water source under the direct influence of surface water and does not meet all of the criteria in Title 40 Code of Federal Regulations Section 141.71 for avoiding filtration must comply with the treatment requirements as stipulated in the National Primary Drinking Water Regulations as published under Title 40 Code of Federal Regulations Section 141.73.

SOURCE: Miss. Code Ann. §41-26-6

Rule 1.6.5. **Recycle Provisions:** A public water system that uses a surface water source or a ground water source under the direct influence of surface water must comply with the

recycle provisions as stipulated in the National Primary Drinking Water Regulations as published under Title 40 Code of Federal Regulations Section 141.76.

SOURCE: Miss. Code Ann. §41-26-6

Subchapter 7. Enhanced Filtration and Disinfection - Surface Water Treatment Rule.

Rule 1.7.1. **General Requirements:** Each public water system that uses a surface water source or a ground water source under the direct influence of surface water must comply with the treatment technique and microbial protection requirements as stipulated in the National Primary Drinking Water Regulations as published under Title 40 Code of Federal Regulations Sections 141.170, 141.500-141.503, 141.510-141.511, 141.520, 141.700, 141.710 – 141.720.

SOURCE: Miss. Code Ann. §41-26-6

Rule 1.7.2. **Criteria for Avoiding Filtration:** In order to avoid filtration, a public water system that uses a surface water source or a ground water source under the direct influence of surface water must comply with the criteria for avoiding filtration as stipulated in the National Primary Drinking Water Regulations as published under Title 40 Code of Federal Regulations Sections 141.171 and 141.521.

SOURCE: Miss. Code Ann. §41-26-6

Rule 1.7.3. **Disinfection:** A public water system that uses a surface water source or a ground water source under the direct influence of surface water must comply with the disinfection, profiling and benchmarking requirements as stipulated in the National Primary Drinking Water Regulations as published under Title 40 Code of Federal Regulations Sections 141.172, 141.530-141.536, 141.540-141.544, 141.708 and 141.709.

SOURCE: Miss. Code Ann. §41-26-6

Rule 1.7.4. **Filtration:** A public water system that uses a surface water source or a ground water source under the direct influence of surface water and does not meet all of the criteria in Title 40 Code of Federal Regulations Section 141.171 for avoiding filtration must comply with the monitoring, reporting, records maintenance, assessment and treatment requirements as stipulated in the National Primary Drinking Water Regulations as published under Title 40 Code of Federal Regulations Sections 141.173, 141.550-141.553, and 141.560-141.564. A public water system that uses a surface water source or a ground water source under the influence of surface water shall arrange for the conduct of a comprehensive performance evaluation by the Department or a third party approved by the Department within 30 days of exceeding the filter performance triggers stipulated by the National Primary Drinking Water Regulations published under Title 40 Code of Federal Regulations Section 141.175 (b)(4). Based upon the results of this comprehensive performance evaluation, the public water system shall arrange for the completion of a composite correction

program developed in accordance with current EPA guidance documents. This composite correction program shall be submitted to the Department for review and approval prior to actual implementation. The Director, after reviewing and approving the composite correction program, shall, by means of a written order, require the public water system to implement the approved composite correction program on a time schedule approved by the Department as stipulated in Title 40 Code of Federal Regulations Section 142.16(g)(1) and 142.16(j)(1).

SOURCE: Miss. Code Ann. §41-26-6

Subchapter 8. Cross Connections

Rule 1.8.1. Cross Connections Prohibited. No person shall install, permit to be installed or maintain any cross connection between a public water system and any other non-public water system or a line from any container of liquids or other substances, except as specifically authorized by this regulation, unless a backflow prevention assembly is installed between the public water system and the source of contamination. Direct connections between a public water supply and sewer or storm sewer are prohibited.

SOURCE: Miss. Code Ann. §41-26-14

Rule 1.8.2. Low Hazard Cross Connection.

1. A connection between a public water system and a service or other water system not hazardous to health but not meeting established water quality standards for public water systems and not cross connected within its system with a potentially dangerous substance shall be considered a low hazard category cross connection. An appropriate backflow prevention assembly or device recommended by the Department for low hazard cross connections shall be installed except as provided in section 104.02(2).
2. Pursuant to Section 41-26-14(2)(b) of the Mississippi Code of 1972, as amended, the following cross connections shall be considered as low hazard posing a very low risk and shall not be required to have a backflow preventer device:
 - a. Any lawn sprinkler system or lawn irrigation system that is connected to a public water system and was professionally installed regardless of whether the system is underground or above ground or whether the system has pop-up sprinkler heads.
 - b. Any swimming pool that is connected to a public water system and was professionally installed or any swimming pool that is connected to a public water system and has a fill line with an anti-siphon air gap.

- c. Any water fountain or cooler that provides drinking water for human consumption that is connected to a public water system and was professionally installed.
- d. Any fire sprinkler system that contains only water or a dry pipe and no chemicals that is connected to a public water system and was professionally installed.
- e. Any commercial establishment that is connected to a public water system that contains no cross connections directly with a dangerous or hazardous substance or material.

SOURCE: Miss. Code Ann. §41-26-14

Subchapter 9. High Hazard Cross Connection.

Rule 1.9.1. A connection between a public water system and a non-public water system or other source of contamination which has or may have any material in the water dangerous to health, or connected to any material dangerous to health, that is or may be handled under pressure, or subject to negative pressure, shall be considered a high hazard category cross connection. The cross connection shall be eliminated by air gap separation or shall be protected by the installation of an appropriate backflow prevention assembly or device recommended by the Department for high hazard cross connections.

SOURCE: Miss. Code Ann. §41-26-14

Rule 1.9.2. Any lawn sprinkler system or lawn irrigation system that is connected to a public water system and either injects or stores lawn chemicals or is connected to a wastewater supply shall be considered a high hazard cross connection and shall be protected by the installation of a backflow prevention assembly or device.

SOURCE: Miss. Code Ann. §41-26-14

Rule 1.9.3. Additional backflow prevention assemblies or devices shall not be required for carbonated beverage dispensers if 1) the water supply connection to the carbonated beverage dispenser is protected against backflow by a backflow prevention assembly or device that conforms to ASSE 1022 or by an air gap, and 2) the backflow prevention assembly or device and the piping downstream from the device are not affected by carbon dioxide gas.

SOURCE: Miss. Code Ann. §41-26-14

Rule 1.9.4. **Distinction Between Low and High Hazard Cross Connection.** The distinction between low hazard cross connection and high hazard cross connections shall be made by an authorized representative of the public water system subject to review by the Department.

SOURCE: Miss. Code Ann. §41-26-14

Subchapter 10. Responsibility Of Public Water Systems To Establish Cross Connection Control Programs

Rule 1.10.1. **Cross Connection Control Program.** All public water supplies shall adopt and enforce a cross connection control policy or ordinance that is no less stringent than the provisions of this regulation; however, the adopted policy or ordinance shall not be more stringent than the provisions of House Bill 692 enacted by the 2001 Mississippi Legislature, as codified in Section 41-26-14 et. seq. of the Mississippi Code of 1972, Annotated. This policy or ordinance shall establish a cross connection control program consisting of the following:

1. Locating and eliminating unprotected cross connections.
2. Preventing the occurrence of new cross connections with the public water system.
3. Maintaining records pertaining to the location of existing backflow prevention assemblies, type and size of each assembly and results of all tests of backflow prevention assemblies by a tester certified by the Department.

SOURCE: Miss. Code Ann. §41-26-14

Rule 1.10.2. **Cross Connection Surveys.** It shall be the responsibility of each public water system to conduct surveys and on-site visits as necessary to locate existing cross connections. Single family dwellings and multi-family dwellings shall not be included in this survey unless the officials of the public water system have reason to believe that a cross connection exists. This survey shall be performed by an authorized representative of the public water system utilizing established written guidelines as published by the Department.

SOURCE: Miss. Code Ann. §41-26-14

Rule 1.10.3. Each public water system shall complete an initial cross connection survey by December 31, 2000.

SOURCE: Miss. Code Ann. §41-26-14

Rule 1.10.4. Upon completion of the required cross connection survey, the responsible official of each public water system shall certify to the Department, on forms provided by the Department, that the required survey has been properly completed in accordance with the written guidelines published by the Department.

SOURCE: Miss. Code Ann. §41-26-14

Subchapter 11. Installation of Backflow Preventers

Rule 1.11.1. Across connection is identified, the public water system shall require that the property owner eliminate the cross connection or install the proper type backflow prevention assembly.

SOURCE: Miss. Code Ann. §41-26-14

Rule 1.11.2. When a cross connection is identified, the public water system shall notify the property owner, in writing and within ten (10) days, of the existence of the cross connection and that the cross connection must be eliminated or protected.

SOURCE: Miss. Code Ann. §41-26-14

Rule 1.11.3. If the public water system determines that the cross connection is a high hazard category cross connection, it shall be eliminated or protected by the appropriate backflow preventer by June 30, 2001. If a public water system identifies an existing high hazard cross connection after June 30, 2001, the high hazard cross connection shall be eliminated or protected by the property owner within ninety (90) days of written notification by the public water system. If the property owner has an existing backflow preventer, the public water system shall allow the backflow preventer to remain in place until it fails to function properly.

SOURCE: Miss. Code Ann. §41-26-14

Rule 1.11.4. If the public water system determines that the cross connection is a low hazard cross connection, it shall be eliminated or protected by the property owner by installing an appropriate backflow preventer by June 30, 2004. If an existing low hazard cross connection is identified by a public water system after June 30, 2004, the cross connection shall be eliminated or protected by the property owner by installing an approved backflow preventer within one (1) year of written notification by the public water system. If the property owner has an existing backflow preventer, the public water system shall consider the backflow preventer approved and shall allow the installed backflow preventer to remain in place until the backflow preventer fails to function properly.

SOURCE: Miss. Code Ann. §41-26-14

Rule 1.11.5. **Public Water System Enforcement Actions.** In the event a customer refuses to comply with the cross connection control provisions of this regulation, the public water system is authorized to discontinue water service to the customer until such time as the customer complies with this regulation.

SOURCE: Miss. Code Ann. §41-26-14

Subchapter 12. Recommended Backflow Preventers

Rule 1.12.1. **List of Recommended Backflow Preventers.** The Department shall prepare and publish a list of backflow prevention assemblies recommended for use in the State of Mississippi. The Department shall routinely update this list as necessary.

SOURCE: Miss. Code Ann. §41-26-14

Rule 1.12.2. Recommended Devices for High Hazard Cross Connections.

1. Reduced Pressure Principle Backflow Prevention Assemblies. Backflow prevention assemblies recommended to protect high hazard cross connections shall include reduced pressure principle backflow prevention assemblies.
2. Pressure Vacuum Breaker Assemblies. Backflow prevention assemblies recommended to protect high hazard cross connections shall include pressure vacuum breaker assemblies. Pressure vacuum breaker assemblies shall not be used in locations where the vacuum breaker may be subject to back pressure and shall not be used in locations where the vacuum breaker is not higher than all downstream connections.
3. Atmospheric Vacuum Breakers. Backflow prevention devices recommended to protect high hazard cross connections shall include atmospheric vacuum breakers. Atmospheric vacuum breakers shall not be installed in locations that may be subject to back pressure, shall not be installed in locations where the vacuum breaker is not higher than all downstream locations, shall not be installed in locations with valves downstream and shall not be installed in locations of continuous use.

SOURCE: Miss. Code Ann. §41-26-14

Rule 1.12.3. Low Hazard Cross Connections. Backflow prevention assemblies recommended to protect low hazard cross connections shall include reduced pressure principle assemblies, pressure vacuum breaker assemblies, atmospheric vacuum breaker assemblies, and double check valve assemblies. Pressure vacuum breaker assemblies shall not be used in locations where the vacuum breaker may be subject to back pressure and shall not be used in locations where the vacuum breaker is not higher than all downstream connections. Atmospheric vacuum breakers shall not be installed in locations that may be subject to back pressure, shall not be installed in locations where the vacuum breaker is not higher than all downstream locations, shall not be installed in locations with valves downstream and shall not be installed in locations of continuous use.

SOURCE: Miss. Code Ann. §41-26-14

Subchapter 13. Installation Requirements.

Rule 1.13.1. Reduced pressure principle backflow prevention assemblies, double check valve assemblies, and pressure vacuum breaker assemblies shall be installed in a location that provides adequate access for testing and repair of the assembly.

SOURCE: Miss. Code Ann. §41-26-14

Rule 1.13.2. Reduced pressure principle backflow prevention assemblies and double check valve assemblies shall not be subject to possible flooding. Reduced pressure principle

backflow prevention assemblies and double check valve assemblies shall not be located in a pit below ground level.

SOURCE: Miss. Code Ann. §41-26-14

Subchapter 14. Testing Of Backflow Prevention Assemblies

Rule 1.14.1. **Testing By Certified Tester.** When a reduced pressure principle backflow prevention assembly, double check valve assembly, or pressure vacuum breaker assembly is installed to protect a public water system against the possibility of a backflow from a customer's water service, inspection and testing of the assembly, where required by this regulation, shall be performed by an individual who has been licensed as a Certified Tester by the Department.

SOURCE: Miss. Code Ann. §41-26-14

Rule 1.14.2. Each backflow prevention assembly shall be inspected and tested by a Certified Tester after installation and before use by the customer. Reduced pressure principle backflow prevention assemblies and pressure vacuum breakers shall be inspected and tested at least once a year by a Certified Tester.

SOURCE: Miss. Code Ann. §41-26-14

Rule 1.14.3. The Certified Tester shall provide the property owner and the public water system with a written report of the inspection and test results on each assembly tested. This written report shall be on a form provided by the Department. The report shall be prepared and submitted by the Certified Tester making the inspection and test. The Certified Tester and the public water system shall retain all backflow prevention assembly test and inspection results for at least five (5) years from the date of test and inspection.

SOURCE: Miss. Code Ann. §41-26-14

Rule 1.14.4. Reduced pressure principle backflow prevention assemblies and pressure vacuum breaker assemblies that fail to function properly or fail the routine required test shall be repaired or replaced within thirty (30) days of identification of the failure. Double check valves that fail to function properly shall be repaired or replaced within ninety (90) days of identification of the failure.

SOURCE: Miss. Code Ann. §41-26-14

Rule 1.14.5. **Licensing of Certified Testers.** Each Certified Tester shall be licensed by the Department. All tester training shall be submitted to the Department for approval at least 45 days prior to the scheduled date of training. The Department shall review the instructors and course curriculum for all proposed tester training. The Department shall approve proposed tester training if it determines that the proposed training program and instructor(s) meets the Department's minimum guidelines. The Department shall develop and administer the backflow tester certification test at the

conclusion of each approved tester training program. A minimum score of 70% on the Department's written examination and successful performance of prescribed tests on a reduced pressure principle backflow prevention assembly, double check valve assembly, and pressure vacuum breaker assembly will be required for certification. Any applicant not successfully completing both the written and performance tests must attend a Department approved tester training program before taking the certification tests again. Under special circumstances and upon receipt of a written request by the applicant, the Department may allow an applicant to take the written and performance tests without attending a Department approved tester training program.

SOURCE: Miss. Code Ann. §41-26-14

Rule 1.14.6. The Department may issue, solely at its discretion and without testing, certification to a Tester possessing certification from a nationally recognized backflow prevention assembly tester certification program.

SOURCE: Miss. Code Ann. §41-26-14

Rule 1.14.7. Each Tester's certification will expire three (3) years from the date issued. To become re-certified, the Tester must successfully complete a recertification examination developed by the Department and administered by the Department or an authorized representative of the Department.

SOURCE: Miss. Code Ann. §41-26-14

Rule 1.14.8. The Certified Tester shall maintain the accuracy of the testing equipment to be used to test backflow prevention devices. The testing equipment shall be checked for proper calibration and shall be recalibrated, as needed, in accordance with the recommendations of the manufacturer. Only properly trained individuals shall perform calibration adjustments or repair or testing equipment. Calibration standards utilized in the testing or repair of this testing equipment shall have their accuracy checked and adjusted to within allowable tolerances against standard instruments traceable to the National Institute for Standards and Technology (NIST).

SOURCE: Miss. Code Ann. §41-26-14

Subchapter 15. Suspension or Revocation of Tester's Certificate.

Rule 1.15.1. A Tester's Certificate may be revoked or suspended by the Department for just cause. Causes include, but are not limited to, the following:

1. Fraud, deception, or misrepresentation of a material fact to either the public or the Department ;
2. Misfeasance, malfeasance or nonfeasance;
3. Failure to file any official reports required by the Department;

4. Failure to maintain all official records required by the Department;
5. Failure to respond to any official correspondence from the Department;
6. Failure to obey a lawful order of the Director or any duly appointed Administrative Hearing Officer of the Department;
7. Failure to exercise reasonable care or judgment in the testing of backflow prevention devices;
8. Failure to comply with the terms of a suspension of a certificate issued by the Department;

SOURCE: Miss. Code Ann. §41-26-14

Rule 1.15.2. No Tester's Certificate will be suspended or revoked without notice to the Certificate holder and an opportunity for a hearing. Hearings shall be held in conformity with Sections 41-26-17 and 41-26-21 Mississippi Code of 1972 Annotated.

SOURCE: Miss. Code Ann. §41-26-14

Rule 1.15.3. Notwithstanding the requirement for a hearing, the Director may, if he determines that public health is threatened, issue any such orders as are deemed necessary to protect the public health, including, but not limited to, orders to individual(s) to cease all actions as a Certified Tester of backflow prevention devices in the State of Mississippi.

SOURCE: Miss. Code Ann. §41-26-14

Subchapter 16. Cross Connection Control Waivers

Rule 1.16.1. **Waivers.** The Director may issue a waiver to a public water system to any part or parts of the cross connection control provisions of this regulation if the Department deems such waiver to be appropriate and will not potentially jeopardize public health.

SOURCE: Miss. Code Ann. §41-26-14

Subchapter 17. Application And Fees For Certified Tester

Rule 1.17.1. Filing Application.

1. A tester desiring certification shall file an application with the Department on forms provided by the Department.
2. The Department shall review the application and supporting documents, determine the eligibility of the applicant, and issue a certificate when the minimum requirements are met.

SOURCE: Miss. Code Ann. §41-26-14

Rule 1.17.2. Backflow Prevention Assembly Tester Certification Fees.

1. An initial fee of fifty dollars (\$50.00) shall be charged for certification as a Backflow Prevention Assembly Tester. The Department shall invoice each applicant for the \$50 fee and the certificate will not be issued until the fee is received by the Department.
2. A fee of thirty dollars (\$30.00) shall be charged for the renewal of a certificate. The Department shall invoice each applicant for the \$30 fee and the renewal certificate will not be issued until the fee is received by the Department.

SOURCE: Miss. Code Ann. §41-26-14

Subchapter 18. Consumer Confidence Reports

Rule 1.18.1. Purpose and Applicability. Each community public water system shall prepare and deliver to their customers an annual consumer confidence report as stipulated in the National Primary Drinking Water Regulations as published under Title 40 Code of Federal Regulations Section 141.151.

1. **Effective Dates.** The effective dates for community public water supplies to prepare and deliver annual consumer confidence reports shall be as stipulated in the National Primary Drinking Water Regulations as published under Title 40 Code of Federal Regulations Section 141.152.
2. **Content of the Reports.** The content of the Consumer Confidence Reports prepared by community public water supplies shall be as stipulated in the National Primary Drinking Water Regulations as published under Title 40 Code of Federal Regulations Section 141.153 and subpart Y.
3. **Required Additional Health Information.** It shall be the responsibility of each community public water supply preparing a consumer confidence report to include the required additional health information as stipulated in the National Primary Drinking Water Regulations as published under Title 40 Code of Federal Regulations Section 141.154.
4. **Report Delivery.** Delivery of Consumer Confidence Reports prepared by community public water supplies shall be as stipulated in the National Primary Drinking Water Regulations as published under Title 40 Code of Federal Regulations Section 141.155.

SOURCE: Miss. Code Ann. §41-26-6

Subchapter 19. Emergency Conditions And Enforcement

Rule 1.19.1. **Emergency Conditions.** The Director is authorized to develop and implement a plan for the provision of safe drinking water in emergency circumstances for any public water system.

SOURCE: Miss. Code Ann. §41-26-6

Rule 1.19.2. **Enforcement.** Violations of any requirement of this regulation shall be subject to the enforcement provisions of the Mississippi Safe Drinking Water Act of 1997 as found at Sections 41-26-1 through 41-26-101, Mississippi Code of 1972, Annotated.

SOURCE: Miss. Code Ann. §41-26-6

Chapter 2. REGULATION GOVERNING THE CERTIFICATION OF MUNICIPAL AND DOMESTIC WATER SYSTEM OPERATORS

Subchapter 1. General Provisions

Rule 2.1.1. **Legal Authority.** This regulation has been promulgated under the authority of and pursuant to the Municipal and Domestic Water and Wastewater System Operator's Certification Act of 1986, Sections 21-27-201 through 21-27-221, Mississippi Code of 1972. Annotated.

SOURCE: Miss. Code Ann. §§21-27-2017 and 41-26-6

Rule 2.1.2. Definitions

1. **Available** shall mean a certified waterworks operator or his/her designee employed by the water system holding a waterworks operator certification equivalent to or higher than the class of the public water system. The water system must be able to contact the certified operator or his/her designee at all times by telephone, pager or other reliable mode of communication acceptable to the Bureau of Public Water Supply to address system needs and problems as they occur.
2. **Board** shall mean the Mississippi State Board of Health.
3. **Bureau** shall mean the Bureau of Public Water Supply of the Mississippi State Department of Health.
4. **Community Water System** shall mean any water system serving piped water for human consumption to fifteen (15) or more individual service connections used year-round by consumers or regularly serving at least twenty-five (25) or more individual consumers year-round, including, but not limited to, any collection, pretreatment, treatment, storage and/or distribution facilities or equipment used primarily as part of, or in connection with such system, regardless of whether or not such components are under the ownership or control of the operator of such system.
6. **Department** shall mean the Mississippi State Department of Health.

7. **Director** shall mean the director of the Bureau of Public Water Supply or his designated representative.
8. **Distribution System** shall mean all water mains, repumping facilities, and appurtenances past treatment.
9. **Non-transient non-community water system** shall mean a public water system that is not a community water system and that regularly serves at least twenty-five (25) of the same persons.
10. **Operator** shall mean the designated certified waterworks operator who directly supervises and is personally responsible for the daily operation and maintenance of a community or non-transient non-community public water system.
11. **Person** shall mean the state or other agency or institution thereof, any municipality, political subdivision, public or private corporation, individual, partnership, association or other entity, and includes any officer or governing or managing body of any municipality, political subdivision, or public or private corporation, or the United States or any officer or employee thereof.
12. **Responsible Charge** shall mean a waterworks operator, holding a Bureau issued waterworks operator certification at a class equivalent to or higher than the class of the water system, who is officially designated by the owner or responsible official of the water system as the operator responsible for making all decisions regarding the daily operational activities of the public water system including all components of the water system such as treatment plants, water wells, distribution systems, etc. Decisions carried out by the operator in responsible charge shall be performed with reasonable care and ethical judgement. Under special circumstances, the Director may authorize a water system(s) to have more than one operator in responsible charge.
13. **Restricted Certification** shall mean a certified waterworks operator that is given a temporary certification in order to operate a public water system that has received a change in classification or a sudden loss of their certified operator. Operators with this type of Certification are restricted to a specific public water supply temporarily until such time as the operator attends a water operator short course within three years of receiving the Restricted Certification and passes the written examination required by the Bureau. This Restricted Certification is only provided for a period of three years. The Director may extend the restricted period of time of the certification due to the experience requirements of system classification.

SOURCE: Miss. Code Ann. §21-27-203

Rule 2.1.3. **Certificates.** Effective July 1, 1987, all municipal and domestic community water systems must be operated by persons who are certified by the Bureau of Public Water Supply as qualified to operate such facilities. Effective July 1, 1998, all non-transient non-community public water systems must be operated by persons who are certified by the Bureau to operate such facilities.

1. Certificates of competency will be issued by the Bureau only after the applicant has passed the appropriate examination and has met the minimum requirements as specified in Subchapters 3 & 4.
2. Certifications issued in accordance with section 21-27-213 (Grandfather Clause) of the Municipal and Domestic Water and Wastewater System Operator's Certification Act of 1986, shall be valid only for the particular public water system operated by the applicant at the time the certification was issued, and then only so long as the system remains active in the same or lower classification and the operator completes the continuing education requirement found in Rule 2.6.2. (2).
3. Certifications shall be valid for three (3) years from the date of issuance, unless suspended or revoked for cause.
4. In the event of temporary loss of an operator, notice shall be immediately given to the Bureau. Continued operation of such system, without a certified operator, may proceed on an interim basis for a period not to exceed one hundred eighty (180) days, except for good cause shown upon written petition to the Director or designated representative.
5. Reciprocal certification may be issued in a comparable classification to an operator who holds a valid certification in any state, territory, or possession of the United States, provided the applicant's current certification is comparable to the class being applied for and the state from which the operator is requesting reciprocity utilizes a formal examination process. Any operator requesting reciprocal certification may request a waiver from the Director if they hold a valid certification in any state, territory or possession of the United States that does not utilize a formal examination process.
6. Any person allowed to actually make physical changes on a public water system that impact water quality or quantity must hold a waterworks operator's license issued by the Bureau at a class equivalent to or higher than the class of the public water system or be under the supervision of the certified waterworks operator for that system.

SOURCE: Miss. Code Ann. §§21-27-205 and 21-27-211

Subchapter 2. Classification of Public Water Systems & Operator in Responsible Charge

Rule 2.2.1. **Classes of Water Systems.** Water systems shall be classified in accordance with the criteria outlined below. Special systems which do not fall within these guidelines shall be considered as individual cases and be classified by the Bureau. All public water systems shall be under the direct supervision of a Bureau certified waterworks operator who is designated by the owner or responsible official of the system as the operator in responsible charge of the water system. In those situations, where a public water system contracts with a private operating company to operate the public water system, the responsible official of the public water system may authorize the private company to designate an operator employed by the company as the operator in responsible charge of the water system. In either case, the water system shall identify, by means of the Public

Water Supply Annual Report submitted each year to the Bureau, the certified operator in responsible charge of the public water system.

1. **Class E.** Water systems that purchase water only and do not provide additional treatment. This classification shall also apply to waterworks operators whose only job responsibility is the operation and maintenance of the distribution system(s). The certified operator in responsible charge or his/her designee shall be available twenty-four (24) hours a day to address system needs and problems as they occur.
2. **Class D.** Water systems with no treatment other than chlorination and/or fluoridation or direct chemical feed such as polyphosphate. The certified operator in responsible charge or his/her designee shall be available twenty-four (24) hours per day to address system needs and problems as they occur.
3. **Class C.** Water systems with aeration, pH adjustment, corrosion control or closed pressure filtration treatment facilities including zeolite softening or iron removal. The certified operator in responsible charge or his/her designee shall be available twenty-four (24) hours per day to address system needs and problems as they occur.
4. **Class B.** Water systems with two (2) or more Class C treatment facilities of different types, with iron or manganese removal facilities breaking pressure or requiring flocculation and/or sedimentation, a system utilizing membrane filtration, or ion exchange treatment. The certified operator in responsible charge or his/her designee shall be available twenty-four (24) hours per day to address system needs and problems as they occur.
5. **Class A.** Systems with surface water treatment, groundwater under the direct influence of surface water, lime softening, or coagulation and filtration for the removal of constituents other than iron or manganese. A certified class A operator shall be onsite whenever the treatment plant for a Class A public water system treating surface water is in operation. The certified operator in responsible charge shall be available twenty-four (24) hours per day to address system needs and problems as they occur.

SOURCE: Miss. Code Ann. §21-27-205

Subchapter 3. Waterworks Operator Qualifications.

- Rule 2.3.1. **Class A.** The applicant must have at least a bachelor's degree in engineering or applied sciences from an accredited college or university, at least one year of experience in a Class A or B water treatment plant, and pass the written examination required by the Bureau. Or alternatively, an applicant must be a graduate of an accredited high school or possess an equivalent (GED), have at least six (6) years of experience in a Class A or B water plant, and pass the written examination required by the Bureau. In both applicant cases, at least one (1) year of working experience must be in a Class A plant.

SOURCE: Miss. Code Ann. §21-27-205

Rule 2.3.2. **Class B.** The applicant must have graduated from an accredited high school or possess a General Equivalency Diploma (GED), have at least three (3) years of experience in the operation of a Class A, B, or C water treatment plant, of which one (1) year of working experience must be in a Class A or B water treatment plant. The applicant must also pass the written examination required by the Bureau.

SOURCE: Miss. Code Ann. §21-27-205

Rule 2.3.3. **Class C.** The applicant must have graduated from an accredited high school or possess a General Equivalency Diploma (GED), have at least two (2) years of working experience in the operation a Class A, B, C, or D water treatment plant of which one (1) year of working experience must be in a Class A, B, or C water treatment plant. The applicant must also pass the written examination required by the Bureau.

SOURCE: Miss. Code Ann. §21-27-205

Rule 2.3.4. **Class D.** The applicant must have graduated from an accredited high school or possess a General Equivalency Diploma (GED), have at least one (1) year of working experience in operation of the same class facility as being applied for or a higher level. The applicant must also pass the written examination required by the Bureau.

SOURCE: Miss. Code Ann. §21-27-205

Rule 2.3.5. **Class E.** The applicant must have graduated from an accredited high school, or possess a General Equivalency Diploma (GED), have at least one (1) year of working experience in the operation of the same class facility as being applied for or a higher level. The applicant must also pass the written examination required by the Bureau.

SOURCE: Miss. Code Ann. §21-27-205

Subchapter 4. General Qualifications for all Certified Waterworks Operators

Rule 2.4.1. One (1) year of the required working experience must be earned under the direct supervision of a certified waterworks operator who holds a valid certification issued by the Bureau at a class equivalent to or higher than that for which certification is being requested. The year of working experience must be obtained in a public water system of a class equivalent to or higher than that for which certification is being applied. The supervising operator must sign a certification statement verifying the successful completion of the required period of supervision. Under special circumstances, the Director may waive the requirements of this section based upon written evidence of good cause.

SOURCE: Miss. Code Ann. §21-27-205

Rule 2.4.2. To be eligible to serve as the designated certified waterworks operator for a community or non-transient non-community public water system, an operator's primary residence must be no more than fifty (50) miles from the system. Under special circumstances, the responsible official of the water system may appeal to the Director in writing for a waiver of the fifty (50) mile requirement.

SOURCE: Miss. Code Ann. §21-27-205

Rule 2.4.3. An operator whose certification has been expired for twenty-four (24) months or less shall be eligible to receive a new waterworks operator certification at a level no higher than the certification previously issued by the Bureau if he/she successfully passes the written examination required by the Bureau. To be eligible to retake the examination, the operator must comply with the provisions of Rule 2.6.1(5) of this regulation. The provisions of Rule 2.4.1 of this regulation shall be waived for applications received under this section. An operator whose certification has been expired more than twenty-four (24) months must successfully pass the written examination required by the Bureau and comply fully with the provisions of Rule 2.4.1.

SOURCE: Miss. Code Ann. §21-27-205

Rule 2.4.4. Operators who have completed special vocational training, such as special schools, correspondence courses, etc., may be given credit for some portion of the deficiency in their experience. Except that such courses cannot be substituted for the required one (1) year of supervised working experience. Approval of credits shall be at the discretion of the Director. Credit for experience shall be awarded using the following criteria:

1. Eight (8) weeks of classroom instruction will be equivalent to one-year experience.
2. Special vocational training programs that have combinations of classroom instruction and on-the-job training will be evaluated by first separating classroom instruction from on-the-job training. Credit for working experience will be given for experience on the basis of the previous criteria.
3. Applicants with a four (4) year college degree will receive the equivalent of two (2) years of experience. Applicants with an associate's degree will receive the equivalent of a one (1) year of experience. Credit for each year of college successfully completed in engineering, biological sciences, mathematics, chemistry, physics, or environmental sciences will be considered on a case-by-case basis at the discretion of the Director. Twenty-four (24) semester hours completed in the above courses are equal to one (1) year of experience, with a maximum credit of two (2) years.
4. Special education training or experience which does not fall within these guidelines may be considered by the Director.

SOURCE: Miss. Code Ann. §21-27-205

Subchapter 5. Application and Fees

Rule 2.5.1. Filing Application

1. Applicants seeking certification as a certified waterworks operator shall file an application with the Bureau.
2. The Bureau will review the application and supporting documents, determine the eligibility of the applicant, and issue a certification when the applicant meets the minimum requirements of the class requested.

SOURCE: Miss. Code Ann. §21-27-205

Rule 2.5.2. Fees

1. A fee of fifty dollars (\$50.00) shall be charged for an initial certification in any classification and must be paid to the Bureau prior to issuance of the certification.
2. A fee of thirty dollars (\$30.00) shall be charged for the renewal of an active certification and must be paid to the Bureau prior to the renewal of the certification.
3. All application fees must be received within fifteen (15) calendar days of being invoiced by the Bureau. Application fees received after fifteen days will be returned to the applicant and the applicant must reapply to the Bureau for certification or renewal. No application or fee will be accepted thirty (30) days after the expiration of a certification and the applicant must restart the certification process as outlined in Rule 2.4.3.

SOURCE: Miss. Code Ann. §21-27-207

Subchapter 6. Examinations

Rule 2.6.1. Written Examinations

1. The Bureau shall prepare written examinations to be used in determining knowledge, ability, and judgment of operators.
2. Examinations shall be held at places and times set by the Bureau.
3. An individual who passes an examination must be certified within three (3) years following the date the examination was taken. Otherwise, the individual will be required to pass another written examination in order to be certified.
4. Examination papers will not be returned to the individuals.

5. To be eligible to take a written examination, an individual must satisfactorily demonstrate to the Bureau that he/she has attended a Bureau sponsored waterworks operator short course within the previous twelve (12) months.

SOURCE: Miss. Code Ann. §21-27-215

Rule 2.6.2. Renewal of Waterworks Operator Certificate

1. Certifications may be renewed without examination. An application for renewal of a waterworks operator certification must be physically received by the Bureau within thirty (30) calendar days following the date the certification expires. This application must be accompanied by proof of completion of the continuing education requirements found in Rule 2.6.2(2). Upon approval of the renewal application, the applicant will be invoiced for the renewal fee. The Bureau must receive the fee prior to renewing the waterworks operator certification. Operators who file renewal applications more than thirty (30) calendar days after expiration of their certification will be denied the renewal of their certificate and must pass the appropriate written examination and reapply for certification. To be eligible to retake the examination, the operator must comply with the provisions of Rule 2.6.1(5) of this regulation.
2. Operators who have been continuously certified by the Bureau less than nine (9) years are required to obtain at least forty-eight (48) hours of related continuing education units (CEUs) per three (3) year renewal period with at least twelve (12) hours of these CEUs in Bureau approved “Regulation and Compliance” training topics.

At the beginning of the 10th year as a certified operator or operators who have been continuously certified by the Bureau for more than nine (9) years are required to obtain at least twenty-four (24) hours of related CEUs in the three (3) year renewal period with at least twelve (12) hours of these CEUs in Bureau approved “Regulation and Compliance” training topics. All continuing education requirements must be met prior to the expiration date of the certification. These CEUs may only be obtained by attending training sessions approved by the Bureau. Approval shall be strictly at the discretion of the Bureau. Training will be evaluated by the Bureau on an hour for hour basis for continuing education credit.

SOURCE: Miss. Code Ann. §21-27-207

- Rule 2.6.3.** Mississippi Department of Environmental Quality approved wastewater training programs will be awarded CEU credit by the Bureau at the rate of (1) water CEU hour for every 2 wastewater CEU hours earned. The ability to receive CEU credit for wastewater hours will end January 1, 2021.

SOURCE: Miss. Code Ann. §21-27-207

- Rule 2.6.4.** Each certified operator is responsible for maintaining all necessary records to document the completion of the required hours of continuing education. Original documentation of the completion of the required continuing education must be submitted with the application for renewal of the operator’s certification. Copies of CEU certificates will not

be accepted. Additionally, the Bureau reserves the right to audit the record of CEUs obtained for any operator certification up for renewal.

- Rule 2.6.5. Restricted certifications issued by the Bureau are non-renewable. In order to obtain a non-restricted waterworks operator certification, the operator shall attend a Bureau sponsored short course during the three (3) year restricted certification period. The operator must also pass the appropriate written examination at the level of classification of the water system. This requirement may be waived by the Director at his/her discretion.

SOURCE: Miss. Code Ann. §21-27-207

Subchapter 7. Record Keeping, Reporting and Job Performance

Rule 2.7.1. Annual Reporting Requirements

1. Each certified waterworks operator and responsible official shall sign the certification statement on the Public Water Supply Annual Report for each public water system for which he/she is the designated certified waterworks operator in responsible charge of the public water system as required by Mississippi State Law. If a public water system fails to provide a completed Public Water System Annual Report to the Bureau within forty-five (45) days of this Report being mailed to the water system by the Bureau, the Bureau shall officially declare the public water system to be without a certified waterworks operator and the water system shall be in violation of this regulation and Mississippi State law.
2. The water system shall maintain Public Water System Operations Record documenting activities completed on the public water system by the certified waterworks operator of record or his/her designee. This record must be available for inspection by Bureau staff. The Public Water System Operations Record is the property of the public water system and must remain as part of the official records of the Public Water System.

SOURCE: Miss. Code Ann. §21-27-207

- Rule 2.7.2. **Job Performance:** Each certified waterworks operator shall perform, under the direction of public water system's legally responsible official(s), the necessary duties and actions to ensure compliance for the public water system with the Federal and State Safe Drinking Water Acts (SDWA) as outlined in the current edition of the Public Water System Operations Manual published by the Bureau of Public Water Supply. This manual presents the minimum duties and responsibilities for the operation of a public water supply. Bureau certified waterworks operators and employees under their supervision shall perform operational duties exercising reasonable care and ethical judgement to assist the public water systems in maintaining compliance with the SDWA and to ensure that water systems operate safely and in perpetuity.

SOURCE: Miss. Code Ann. §21-27-207

Rule 2.7.3. **Presence of Certified Waterworks Operator during Sanitary Surveys and Inspections:** The certified waterworks operator for a public water system shall be present for the conduct of sanitary surveys and inspections by Bureau staff when requested by Bureau staff and when provided at least twenty-four (24) hours' notice of the survey or inspection. Under special circumstances, this requirement may be waived by the Director provided the certified operator arranges for someone to represent him/her during the survey or inspection.

SOURCE: Miss. Code Ann. §21-27-207

Rule 2.7.4. **Waterworks Operator Certification Waiver:** The Director may waive any part or parts of this regulation if the Director determines that such waiver will not potentially jeopardize public health.

SOURCE: Miss. Code Ann. §21-27-207

Subchapter 8. Suspension or Revocation of Certification

Rule 2.8.1. A waterworks operator certification may be revoked or suspended by the Department for just cause. Causes include, but are not limited to, the following:

1. Fraud or deception;
2. An act or acts of conduct, including, but not limited to the arrest or conviction for a felony or misdemeanor, occurring on or off the job;
3. Violation of any provision of the "Mississippi Municipal and Domestic Water and Wastewater System Operators' Certification Law of 1986," or any rule or regulation of the Department promulgated there under;
4. Violation of any provision of the Federal Safe Drinking Water Act or the Mississippi Safe Drinking Water Act; or any rule or regulation, federal or state, promulgated under these laws;
5. Failure to file any official reports required by the Department;
6. Failure to maintain all official records required by the Department;
7. Failure to respond to any official correspondence from the Department;
8. Failure to obey a lawful order of the Director or any duly appointed Administrative Hearing Officer of the Department;
9. Failure to exercise reasonable care or judgment in the operation of a public water supply or in the performance of official duties; to include, but not limited to, misfeasance, malfeasance or nonfeasance;

10. Failure to comply with the terms of a suspension of certification issued by the Department.

SOURCE: Miss. Code Ann. §21-27-219

Rule 2.8.2. No certificate of competency will be suspended or revoked without notice to the waterworks operator and an opportunity for a hearing. Hearings shall be held in conformity with Sections 21-27-219 and 21-27-221 Mississippi Code of 1972 Annotated.

SOURCE: Miss. Code Ann. §§21-27-219 and 21-27-221

Rule 2.8.3. Notwithstanding the requirement for a hearing, the Department may, if it determines that public health is threatened, issue any such orders as are deemed necessary to protect the public health, including, but not limited to, orders to individual(s) to cease all actions as a certified waterworks operator in the State of Mississippi.

SOURCE: Miss. Code Ann. §§21-27-217 and 21-27-219

Subchapter 9. Enforcement and Appeals Procedures

Rule 2.9.1. **Procedures:** Enforcement and appeals shall be in accordance with the Municipal and Domestic Water and Wastewater System Operator's Certification Act of 1986.

SOURCE: Miss. Code Ann. §§21-27-217 through 21-27-221

Chapter 3 REGULATION GOVERNING FLUORIDATION OF COMMUNITY WATER SUPPLIES

Subchapter 1 GENERAL PROVISIONS

Rule 3.1.1 Coverage

1. This regulation shall only apply to community water systems (CWS) serving a population of at least two thousand (2,000).
2. Each CWS shall be required to acquire and install fluoridation treatment equipment capable of maintaining fluoride levels within the optimal range as defined in this regulation, and shall comply with all requirements of this regulation for the purpose of protecting the dental health of the citizens of this State. No System shall be required to comply unless sufficient funds are identified by the Department, whether by appropriation, capital outlay, grants or similar means or source of funds, as available to that system for the cost of acquiring and installing fluoridation equipment, and the cost of material required to fluoridate said system for at least one year from the date of initial installation.

3. A CWS that changes treatment to include fluoridation shall maintain optimal fluoridation as specified by the Bureau of Public Water Supply.
4. Any CWS that fluoridates and wishes to discontinue community water fluoridation must provide a written request to the Director of the Bureau of Public Water Supply; comply with the Bureau of Public Water Supply policy for *Discontinuation of Community Water Fluoridation for a Public Water Supply* and receive written approval from the Director of the Bureau of Public Water Supply.

SOURCE: Miss. Code Ann. § 41-26-6

Rule 3.1.2 **Definitions.**

1. **Adjusted fluoridated water system** shall mean a public water system that adjusts the fluoride concentration in the drinking water to the optimal level for consumption (within the recommended control range).
2. **Community Water System (CWS)** shall mean any water system serving piped water for human consumption to fifteen (15) or more individual service connections used year-round by consumers or regularly serving twenty-five (25) or more individual consumers year-round, including, but not limited to, any collection, pretreatment, treatment, storage and/or distribution facilities or equipment used primarily as part of, or in connection with such system, regardless of whether or not such components are under the ownership or control of the operator of such system.
3. **Department** shall mean the Mississippi State Department of Health.
4. **Entry point** shall mean a location following one or more finished (fluoridated) water sampling points but prior to the beginning of the distribution system of the public water system.
5. **Natural fluoride content** shall mean the concentration of fluoride in milligrams per liter (mg/L) that is present in the water source from naturally occurring fluoride sources.
6. **Optimal fluoride level** in Mississippi shall mean the amount of fluoride in water that is found naturally or adjusted should be within a recommended control range of 0.6-1.2 parts per million fluoride (ppm) with the optimal fluoride level being 0.7 ppm.
7. **Parts per million** shall mean a unit of measurement that is equivalent to 1 milligram per liter (mg/L) where the density of the liquid measured is 1.0 gram per cubic centimeter (the density of water is 1.0).
8. **Public water system (CWS)** means a system for the provision to the public of water for human consumption through pipes or, after August 5, 1998, other constructed

conveyances, if such system has at least fifteen service connections or regularly serves an average of at least twenty-five individuals daily at least 60 days out of the year.

9. **Raw water** is defined as water that has not been treated or had fluoride injected into it by the CWS and that contains only naturally occurring levels of fluoride.

SOURCE: Miss. Code Ann. § 41-26-6

Subchapter 2 ADJUSTED FLUORIDATED WATER SYSTEM REQUIREMENTS

Rule 3.2.1 **Testing.** : A minimum number of samples shall be collected by designated CWS personnel based on the water supply's classification on different days each week at all entry points and analyzed for fluoride content. At least once each month at each entry point, designated CWS personnel shall divide (split) one sample (hereinafter referred to as the split sample) and have one portion analyzed for fluoride by designated CWS personnel and the other portion analyzed by the Department's laboratory or a private lab certified by the Department for fluoride testing.

SOURCE: Miss. Code Ann. § 41-26-6

Rule 3.2.2 **Verification.** : Designated CWS personnel shall use water sample fluoride content results to compare with a calculated fluoride dosage to verify fluoridation program operation. The calculated dosage is defined as the calculated amount of fluoride that has been added to a water system. The calculation is based on the total amount of fluoride (weight) that was added to the water system and the total amount of water (volume) that was produced plus the naturally occurring fluoride at the source.

SOURCE: Miss. Code Ann. § 41-26-6

Subchapter 3 Optimal Fluoridation Requirements

Rule 3.3.1 Monitoring

1. The monthly average fluoride content of all water samples requested in Rule 3.2.1 shall have fluoride content within the optimal fluoride control range defined in Rule 3.1.2.
2. The designated CWS personnel shall collect no less than 13 water samples per month from each entry point for analysis for fluoride from each entry point for analysis for fluoride and at least 90% of collected samples shall have fluoride content within the optimal fluoride control range defined in Rule 3.1.2. Results from that analysis shall be recorded in the public water system's Operations Record.
3. The split sample result determined through analysis by designated CWS personnel shall agree with the result analyzed by the Department within a range of +/- 0.2 ppm in at least nine of 12 months during the calendar year.

4. Designated CWS personnel shall submit a report of the results of required water sample testing each month to the Department and shall include the type of fluoride chemical used.

SOURCE: Miss. Code Ann. § 41-26-6

Rule 3.3.2 Quality Assurance

1. MSDH Bureau of Water Supply will assess each system's compliance with this policy on a monthly basis and send letters to the Responsible Official and Operator if the system is not compliant.
2. MSDH will prepare a compliance progress report on a monthly basis that will be made available to interested parties.
3. Each CWS that complies with the optimal fluoridation requirements during the calendar year to the satisfaction of the Department shall be recognized by the Department pursuant to its health promotion policies and guidelines.

SOURCE: Miss. Code Ann. § 41-26-6

Subchapter 4 Compliance

Rule 3.4.1 Compliance

1. CWS that fluoridate shall list in the Consumer Confidence Report the number of months in the previous calendar year that average sample results from a certified laboratory were within the optimal range.
2. Each CWS that fluoridates shall list in the Consumer Confidence Report the percentage of all samples collected in the previous calendar year that sample results were within the optimal range.

SOURCE: Miss. Code Ann. § 41-26-6

Subchapter 5 AUTHORITY TO REQUEST RAW WATER SAMPLE

Rule 3.5.1 Verification. : The Department shall have the authority to request samples of the CWS raw water source seasonally for fluoride content analysis at the Department's laboratory.

SOURCE: Miss. Code Ann. § 41-26-6

**Chapter 4 REGULATION GOVERNING DRINKING WATER QUALITY ANALYSIS
FUND**

Subchapter 1 General Provisions:

Rule 4.1.1. **Legal Authority.** This regulation has been promulgated under the authority of and pursuant to the Mississippi Safe Drinking Water Act of 1997 (Section 41-26-1 through Section 41-26-101, Mississippi Code of 1972, Annotated).

SOURCE: Miss. Code Ann. §41-26-23

Subchapter 2 Assessment and Collection of Fees

Rule 4.2.1. **Fees.** The department annually shall assess and collect fees for water quality analysis and related activities as required by the federal Safe Drinking Water Act, as amended, which shall not exceed the amount authorized by the Mississippi State Legislature and approved by the State Board of Health per connection or Forty Thousand Dollars (\$40,000.00) per system, whichever is less. The department annually shall adopt by rule, in accordance with the Administrative Procedures Law and following a public hearing, a fee schedule to cover all reasonable direct and indirect costs of water quality analysis and related activities as required by the federal Safe Drinking Water Act, as amended. In adopting a fee schedule, the department shall consider the recommendations of the advisory committee created in this section, if those recommendations are made in a timely manner as provided.

SOURCE: Miss. Code Ann. §41-26-23

Rule 4.2.2. **Advisory Committee.** An advisory committee is created to study the program needs and costs for the implementation of the water quality analysis program and to conduct an annual review of the needs and costs of administering that program. The annual review shall include an independent recommendation on an equitable fee schedule for the succeeding fiscal year. Each annual review report shall be due to the department by May 1. The advisory committee shall consist of one (1) member appointed by the Mississippi Rural Water Association, one (1) member appointed by the Mississippi Municipal Association, one (1) member appointed by the Mississippi Association of Supervisors and one (1) member appointed by the Mississippi Water and Pollution Control Operators Association, Inc.

SOURCE: Miss. Code Ann. §41-26-23

Rule 4.2.3. **Payments and Penalties.** All suppliers of water for which water quality analysis and related activities as required by the federal Safe Drinking Water Act, as amended, are performed by the State Department of Health shall pay the water quality analysis fee within forty-five (45) days following receipt of an invoice from the department. In the discretion of the department, any supplier of water required to pay the fee shall be liable for a penalty equal to a maximum of two (2) times the amount of fees due and payable plus an amount necessary to reimburse the costs of delinquent fee collection for failure to pay the fee within ninety (90) days following the receipt of the invoice. Any person making sales to customers of water for residential, noncommercial or nonagricultural use and who recovers the fee required by this section or any portion

thereof from any customer shall indicate on each statement rendered to customers that these fees are for water quality analyses required by the federal government under the Safe Drinking Water Act, as amended.

SOURCE: Miss. Code Ann. §41-26-23

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 SB 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
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
 - B. or 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;
 - C. or 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 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, 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.

If the Department determines the available funds for award are not adequate to justify an additional award cycle, the Department shall allow funded Round 1 and 2 projects, awarded less than \$1M to request no more than 100% of their original grant in additional grant funding for the original scope, provided that does not exceed \$1.5M. This shall be awarded based on funding availability at the time of the request and at the discretion of the Department.

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 fifteen 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.

RANK	PROJECT CATEGORY
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.
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 an 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 the program 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 all grants under 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.

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. Grant recipients can also add additional local funds to the project as needed. 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, 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.

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

3. **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

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 an amendment to the 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. Prior to payment of any reimbursement requests for construction contracts, the following shall be submitted and approved by the Department, as appropriate:
 - Plans, specifications, contract documents
 - Bid package, including procurement documentation
 - Executed construction contract
2. By 50% completion of the last contract, 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.

3. By 90% completion of the last contract, the Grant recipient shall secure approval of the asset management plan.
4. Within 10 days after construction completion of each construction contract, the Grant recipient shall notify the Department of construction completion.
5. The Department will perform a final construction observation after the final contract has reached 90% completion. **The final construction observation by the Department is only for the purpose of determining final Grant allowable costs.**
6. 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
7. Within 60 days of final contract completion, 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.
8. 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 RWAIG 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 RWAIG 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 RWAIG Grant recipients.

Payments from the ARPA RWAIG Fund may be made to ARPA RWAIG 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.

- (i) Legal, engineering, and other services incurred by the Grant recipient in deciding procurement protests and defending their decisions in protest appeals under Subchapter 7 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.
- (ii) Asset management plan for constructed components of the funded project
- (iii) Accounting services for preparation of the Single Audit or Program Specific Audit
- (iv) Development of an operation and maintenance manual.
- (v) 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.
- (vi) Administrative services associated with the construction project and administering the ARPA RWAIG.
- (vii) 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.
- (viii) 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.

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. PWS Acquisition

- 1. Allowable costs include the costs of:
 - A. Purchase of a public or private Public Water System 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, audit, 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 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 MS Legislature

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 state purchasing laws as they apply to local governments.
2. The procurement and conduct of all professional engineering and land surveying services shall also be in accordance with the Code of Conduct 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 RWAIG 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

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.

K. 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.

L. 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

M. 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

N. 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.

O. 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

P. 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 an asset management plan by the end of the project will receive ten (10) with a maximum of 10 points within this category.

Q. 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.

R. 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:

9. ARPA RWAI grants may be limited at the discretion of the Department based on funds availability or as otherwise stated under state law.
10. 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).

11. 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.
12. Terms of any ARPA RWAIG assistance will be as established in the Grant agreement.
13. The applicant shall comply with the requirements of the ARPA and all applicable state and federal laws, requirements, and regulations.
14. The applicant shall not be in violation of any provision of a previously awarded grant of state or federal funds.
15. The applicant shall comply with any technical assistance recommendations provided by the Department.
16. 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.

3. 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.

4. 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.

4. 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.

5. 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.

6. 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:

- 8. Complete plans, specifications, and contract documents.
- 9. 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.
- 10. A copy of the issued National Pollutant Discharge Elimination System (NPDES) permit or the state operating permit, if required.
- 11. A copy of the issued solid waste disposal permit, if required.
- 12. 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.
- 13. 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.

14. 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.

4. 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.
- 5. 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.

6. **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**

- 4. **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.
- 5. **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.
- 6. **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.

7. 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.

4. 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.

5. 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.

6. 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.

5. 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.

6. 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.

7. 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.

8. 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 RWAIG 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 RWAIG 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 RWAIG Grant recipients.

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

4. 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.
5. Payments may be requested only on project completed work, except as

required by state law or as allowed by the Department.

6. 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:

4. ARPA RWAIG Fund payment request form with original signature;
5. Cumulative invoices for all allowable costs for which payment is requested; and
6. 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:

11. 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.
12. Are authorized or not prohibited under federal, state, or local laws or regulations.
13. Conform to any limitations or exclusions set forth in state laws or other governing limitations as to types or amounts of cost items.
14. Are consistent with policies, regulations, and procedures that apply uniformly to both state assisted and other activities of the Grant recipient.
15. Are accorded consistent treatment through the application of generally accepted accounting principles appropriate to the circumstances.
16. 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.
17. Are approved as allowable by the Department.
18. 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.
19. Notwithstanding this Subchapter, are eligible and allowable under the ARPA and any implementing federal regulations.
20. 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

3. 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.

4. 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

2. 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

- 3. 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.
- 4. 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.

3. 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.

4. 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

- 3. 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.
- 4. 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

3. 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.
4. 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

3. 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.

4. 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

3. 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.

4. 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

- 5. 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.
- 6. 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.
- 7. Interest income on ARPA RWAIG Fund payments to Grant recipients will have no effect on the determination of allowable and unallowable costs.
- 8. 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.

- 3. Allowable costs include the costs of:
 - E. Purchase of a public or private Public Water System with a PWS ID number to consolidate system with Grant Applicant.
 - F. Cost of appraisal of water system infrastructure by a licensed engineer
 - G. Legal costs associated with negotiation of acquisition and preparation of acquisition documents
 - H. Real property costs as outlined in these regulations, including purchase of existing water distribution system easements
- 4. Unallowable costs include the costs of:

- B. 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%
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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:

- (10) Surface and groundwater resources;
- (11) Archaeological/historical/cultural resources;
- (12) Vegetative/wildlife resources;
- (13) Wetlands and navigable waterways;
- (14) Floodplains;
- (15) Prime or important farmlands;
- (16) Coastal zones;
- (17) Wild and scenic rivers; and
- (18) 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:

4. 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.

5. 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.

6. 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 MS Legislature

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:

3. The Grant recipient should resolve the adverse comments
4. 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.

5. 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).
6. The procurement and conduct of all professional engineering and land surveying services shall also be in accordance with the Code of Conduct and other guidance and interpretations established by the Mississippi State Board of Registration for Professional Engineers and Land Surveyors.
7. 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.
8. 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.

5. 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.
6. The Department will then render a written decision on the dispute and will include reasons for the decision.

7. 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.
8. 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:

3. Immediately inform the Department in writing; and
4. 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 RWAIG 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

3. 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.
4. 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:

7. Mississippi Department of Archives and History (for archaeological/cultural review)
8. Mississippi Natural Heritage Program (for vegetative/wildlife review)
9. U.S. Army Corps of Engineers, Regulatory Functions Branch [for Section 404 (wetlands), Section 10 (navigable waterways), and floodplain impact review]
10. Mississippi Department of Marine Resources (Jackson, Harrison, and Hancock County Projects Only; for shellfish review and Mississippi Coastal Program review)
11. U.S. Fish and Wildlife Service (Jackson, Harrison, and Hancock County projects only; for Coastal Barriers Resources Act review)
12. 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

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](#)

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.

~~**Binding Commitment** - An ARPA RWAIG grant offer, as described in these regulations.~~

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 ~~registered~~ [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.

~~**Eligible Applicant** — A Rural Water Association or water organization that is user member created and has been granted tax exempt status under either federal or state law; has the authority under stat law to receive ARPA RWAI grant assistance; and has the ability to comply with these regulations and the requirement of the grant agreements.~~

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 RWAIG grant funds for eligible assistance and the recipient promises to follow the rules and regulations of the ARPA RWAIG 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 RWAIG grant program.
16. **Grant Recipient** - A Rural Water Association that receives a Grant from the ARPA RWAIG 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

~~PWSS—Public Water System Supervision.~~

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 (PWS)**— 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. **Registered Licensed Engineer** - The engineer, ~~registered~~ 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

Subchapter 2: PROGRAM REQUIREMENTS

Rule 5.2.1 Eligible Applicant Determination and Sub-Grant Agreement.

3. **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.
4. **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

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

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:

4. To make grants for eligible infrastructure improvements on the conditions that the recipient of a grant shall establish a plan for asset management;
5. 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,
6. For other uses as allowed under the ARPA

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

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~~ ~~has developed~~ a system for ranking the grant applications received. The ranking system includes the following factors:

10. The environmental impact of the proposed project;
11. The proposed project's ability to address noncompliance with state/federal requirements;
12. The extent to which the project promotes economic development;
13. The number of people served by the project (both new and existing users);
14. Impacts of the proposed project on disadvantaged/overburdened communities;
15. The grant applicant's prior efforts to secure funding to address the proposed project's objectives;
16. The grant applicant's proposed contribution of other funds or in-kind cost- sharing to the proposed project;
17. The grant applicant's long-term plans for the financial and physical operation and maintenance of the project; and
18. 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 fifteen 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.

RANK	PROJECT CATEGORY
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.
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 an 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.

preference.

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

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:

17. ARPA RWAI grants may be limited at the discretion of the Department based on funds availability or as otherwise stated under state law.
18. 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).
19. 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.
20. Terms of any ARPA RWAIG assistance will be as established in the Grant agreement.
21. The applicant shall comply with the requirements of the ARPA and all applicable state and federal laws, requirements, and regulations.
22. The applicant shall not be in violation of any provision of a previously awarded grant of state or federal funds.
23. The applicant shall comply with any technical assistance recommendations provided by the Department.
24. 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

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.

5. Pre-application Guidance and Conference.

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

6. 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.

~~All proposed or executed contracts for planning, design, bidding, and construction phase~~

professional services.

- 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, ~~agrees to develop an asset management plan for all facilities being funded,~~ 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.

~~A copy of all existing or proposed 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 Grant offer.~~

- 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

Rule 5.3.2 **Submission of Application.**

By the date specified on the MSDH website in the Schedule of Awards 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

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 Schedule of Award's~~ 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

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 ~~Schedule of Awards~~ 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

Rule 5.3.5 Engineering Design.

7. Predesign Guidance and Conference.

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

8. 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 ~~Subchapters 4-8,~~ of 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 ~~registered~~
licensed engineer responsible for preparation of these documents.

9. 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 & Senate Bill 2444, 2023 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:

15. Complete plans, specifications, and contract documents.
16. Certification from ~~Registered~~ Licensed Engineer of the environmental impact, either low, moderate, or high of the project. If the ~~Registered~~ Licensed Engineers determination is moderate or high, the ~~Registered~~ Licensed Engineer should complete an Environmental and Intergovernmental Review as defined in Subchapter 6 and 8.
17. A copy of the issued National Pollutant Discharge Elimination System (NPDES) permit or the state operating permit, if required.
18. A copy of the issued solid waste disposal permit, if required.
19. 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.
20. 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.
21. 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

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.**

7. **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 ~~completion of (1) through (3)~~ approval of PSCD, submittal of all clear site certificates, above 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 ~~state~~ law and these regulations.

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

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

- A. The completed bid package;

~~All necessary executed contracts and amendments as described in Rule 5.2.4 (2B) of these regulation; and~~

- 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 (consistent with as bid-construction costs, a construction contingency as determined by the Department, and any professional services contracts

~~and amendments) to the Department within the time frame established in the Grant agreement outlining the source of the additional funds will be submitted.~~

9. **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

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

8. **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. Funds can be spent from 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.
9. **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.

10. **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.

11. **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

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

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.**

7. **Resident Observation**

During construction work being performed, the Grant recipient shall provide for resident observation of the project by the ~~registered~~ licensed engineer or his staff and shall require the ~~registered~~ 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.

8. **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 ~~registered~~ 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.

9. **Assurance of Work**

The contractor, ~~registered~~ licensed engineer, and the Grant recipient shall furnish the Department with every reasonable opportunity and means for determining whether the Grant recipient and ~~registered~~ 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

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 ~~registered~~ 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 ~~registered~~ 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

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 ~~registered~~ 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

Rule 5.3.17 Change Orders.

9. 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 ~~state~~ 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.

10. 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 ~~registered~~ licensed engineer if appropriate, the Department may return

such change order without review. ~~However, unilateral change orders executed by the Grant recipient, and the registered engineer if appropriate, and identified as such, that are issued in accordance with the contract documents may be submitted to the Department for review and approval, in order to obtain a ARPA RWAI Grant eligibility/allowability determination.~~

- 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 ~~Grant agreement~~ budget modification decreasing the Grant amount, and the Grant recipient shall execute such ~~amendment~~ modification within the time frame established by the Department.

11. 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.

12. 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 ~~Rule 5.3.19.8~~ of 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 ~~statutory~~ deadline of ~~December 31~~ September 30, 2026, ends the period of performance to liquidate all obligations. The contract completion date should not exceed ~~November~~ August 15.

2026.

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

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.

12. 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.
13. ~~Within 60 days after approval of plans, specifications, and contract documents by the Department~~ 45 days after advertisement, the Grant recipient shall open bids on all construction related contracts.
14. Within 14 days after receipt of bids for new construction, the Grant recipient shall submit all bid packages.
15. 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.
16. 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.
17. 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.
18. Within 10 days after construction completion of each construction contract, the Grant recipient shall notify the Department of construction completion.
19. 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.**

20. 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
21. 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 ~~registered~~ 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.**
22. 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

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:

7. 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.
8. Payments may be requested only on project completed work, except as required by state law or as allowed by the Department.
9. 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:

7. ARPA RWAIG Fund payment request form with original signature;
8. Cumulative invoices for all allowable costs for which payment is requested; and
9. 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:

21. 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.
22. Are authorized or not prohibited under federal, state, or local laws or regulations.
23. Conform to any limitations or exclusions set forth in state laws or other governing limitations as to types or amounts of cost items.
24. Are consistent with policies, regulations, and procedures that apply uniformly to both state assisted and other activities of the Grant recipient.
25. Are accorded consistent treatment through the application of generally accepted accounting principles appropriate to the circumstances.
26. 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.
27. Are approved as allowable by the Department.
28. 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.
29. Notwithstanding this Subchapter, are eligible and allowable under the ARPA and any implementing federal regulations.
30. Are procured in accordance with Subchapter 7 of these regulations.

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

Rule 5.4.2. **Construction**

5. 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.

6. 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 & Senate Bill 2444, 2023 Regular Session

Rule 5.4.3 **Equipment, Materials and Supplies**

3. 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

- 5. 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.
 - ~~F. Asset management plan for constructed components of the funded project.~~
- 6. 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

Rule 5.4.5. **Professional Services**

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

5. 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. ~~Contracts for planning, application and design costs need not be submitted to the Department.~~
 - (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 state 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.

6. 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](#)

Rule 5.4.6 Claims

5. 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.

6. 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**

- 5. 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 ~~facilities plan~~ 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.
- 6. 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

Rule 5.4.8. **Real Property**

5. 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.
6. 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.

~~Acquiring all or part of an existing publicly or privately owned drinking water treatment works.~~

- 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

Rule 5.4.9. **Miscellaneous Costs**

5. 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.

6. 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

- 9. 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.
- 10. 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.

11. Interest income on ARPA RWAIG Fund payments to Grant recipients will have no effect on the determination of allowable and unallowable costs.
12. The Grant recipient shall receive all income generated from use of the project facilities.

Rule 5.4.11. **PWS 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.

5. Allowable costs include the costs of:
 - I. Purchase of a public or private Public Water System with a PWS ID number to consolidate system with Grant Applicant.
 - J. Cost of appraisal of water system infrastructure by a licensed engineer
 - K. Legal costs associated with negotiation of acquisition and preparation of acquisition documents
 - L. Real property costs as outlined in these regulations, including purchase of existing water distribution system easements
6. Unallowable costs include the costs of:
 - C. 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

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 ~~facilities plan~~ Subgrant Agreement, Attachment B. ~~The final allowances will be determined one time only for each project, based on the initial allowable as bid cost, and will not be adjusted for subsequent cost increases or decreases.~~

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 & Senate Bill 2444, 2023 Regular Session

Subchapter 6. Environmental Review Process

Rule 5.6.1. Description of Environmental Impacts

The ~~Registered~~ Licensed Engineer is required to certify the environmental impact of the project as either low, moderate, or high. If the ~~Registered~~ Licensed Engineer determines that there is either a moderate or high impact, the ~~Registered~~ Licensed Engineer shall prepare an Environmental Review Report. The report shall bear the seal of the ~~Registered~~ 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:

- (19) Surface and groundwater resources;
- (20) Archaeological/historical/cultural resources;
- (21) Vegetative/wildlife resources;
- (22) Wetlands and navigable waterways;
- (23) Floodplains;
- (24) Prime or important farmlands;
- (25) Coastal zones;
- (26) Wild and scenic rivers; and
- (27) Air Quality.

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

Rule 5.6.2. Environmental Review.

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

7. 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. Categorical Exclusion

8. 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.

The Registered Engineer will issue a Categorical Exclusion (CE) from environmental review if a project meets all of the following criteria:

- A. The project includes minor rehabilitation of existing facilities, functional replacement of equipment, or construction of new ancillary facilities adjacent or appurtenant to existing facilities.
- B. The project will not have a significant adverse effect on the environment.
- C. The project will not adversely affect cultural resources, habitats of endangered or threatened species, or environmentally important natural resource areas.
- D. The project is not expected to cause significant public controversy. The Department may revoke a categorical exclusion at any time if significant adverse information becomes available.

Finding of No Significant Impact (FONSI) on the Environment

The Registered Engineer will issue a Finding of No Significant Impact (FONSI) and an Environmental Assessment (EA) when, based upon review of the environmental impacts in the Environmental Review Report, it appears that a project will not have a significant adverse environmental impact, but does not qualify for a CE.

Amendment to a Finding of No Significant Impact FONSI to the Environment FONSI amendments are occasionally needed to describe changes to proposed facilities that have already been described in a FONSI.

Environmental Impact Statement (EIS)

If the Registered Engineer determines that an environmental impact statement (EIS) is needed, the document will be prepared in general conformance as deemed appropriate by the Department.

9. No Further Action

The Registered Licensed Engineer will issue a CE, FONSI, or EIS 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 a FONSI 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 ~~categorical exclusion~~ 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

Rule 5.6.3. Issuance of the Environmental ~~Action~~ Certification

Copies of all necessary environmental ~~actions~~ 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 ~~actions will also be published in an appropriate local newspaper or~~ review documentation shall be maintained at the grant ~~recipients~~ recipient's office location for review upon request.

~~All environmental actions should provide for at least a 30-day period from the day of issuance to receive comments from agencies, groups, or individuals. All such comments will be evaluated by the Registered Engineer before finalizing any environmental action.~~

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

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:

- 5. The Grant recipient should resolve the adverse comments
- 6. 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.

9. 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 state purchasing laws as they applicable state and local laws.
10.
 - 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).
11. 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.
12. 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.
13. 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

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.

9. 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.
10. The Department will then render a written decision on the dispute and will include reasons for the decision.
11. 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.

12. 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:

5. Immediately inform the Department in writing; and
6. 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 RWAIG 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

5. 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.
6. 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:

13. Mississippi Department of Archives and History
(for archaeological/cultural review)
14. Mississippi Natural Heritage Program (for vegetative/wildlife review)
15. U.S. Army Corps of Engineers, Regulatory Functions Branch [for
Section 404 (wetlands), Section 10 (navigable waterways), and
floodplain impact review]
16. Mississippi Department of Marine Resources (Jackson, Harrison,
and Hancock County Projects Only; for shellfish review and
Mississippi Coastal Program review)
17. U.S. Fish and Wildlife Service (Jackson, Harrison, and Hancock
County projects only; for Coastal Barriers Resources Act review)
18. 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 ~~Registered~~ 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 ~~Registered~~ 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

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HH. 0Plans, 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 registered 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 Registered Engineer of the environmental impact, either low, moderate, or high of the project. If the Registered Engineers determination is moderate or high, the Registered 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.

Source: House Bill 1421, 2022 Regular Session

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 completion of (1) through (3) above 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 state 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. All necessary executed contracts and amendments as described in Rule 5.3.4 (2B) of these regulations; and
- C. A Grant agreement amendment request (consistent with as-bid construction costs, a construction contingency as determined by the Department, and any professional services contracts and amendments) to the Department within the time frame established in the Grant agreement.

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. After determining that all documents are approvable, the Department will transmit to the Grant recipient approval to execute the construction contracts.

Source: House Bill 1421, 2022 Regular Session

Rule 5.3.9 **Amended Grant offer**

1. **Process after 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; and
- C. A construction contingency as determined by the Department.

2. **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

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 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

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 registered engineer or his staff and shall require the registered 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 registered 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, registered engineer, and the Grant recipient shall furnish the Department with every reasonable opportunity and means for determining whether the Grant recipient and registered 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

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 registered 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 registered engineer if applicable, in the manner provided for in the construction contract to correct any deficiencies.

Source: House Bill 1421, 2022 Regular Session

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 registered 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

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 state 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 registered engineer if appropriate, the Department may return such change order without review. However, unilateral change orders executed by the Grant recipient, and the registered engineer if appropriate, and identified as such, that are issued in accordance with the contract documents may be submitted to the Department for review and approval, in order to obtain an ARPA RWAI Grant eligibility/allowability determination.
- 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 an amendment to the Grant agreement decreasing the Grant amount, and the Grant recipient shall execute such amendment 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 Rule 5.3.19.8 of 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 statutory deadline of December 31, 2026 ends the period of performance to liquidate all obligations. The contract completion date should not exceed November 15, 2026.

Source: House Bill 1421, 2022 Regular Session

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 60 days after approval of plans, specifications, and contract documents by the Department, 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 registered 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

Rule 5.3.20 Post Construction Phase.

Rule 5.3.20.1 Audits

Following final payment of ARPA RWAIG 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 RWAIG 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 RWAIG 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 RWAIG 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 RWAIG Grant recipients.

Payments from the ARPA RWAIG Fund may be made to ARPA RWAIG 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 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

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
 - (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.
 - F. Asset management plan for constructed components of the funded project
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

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. Contracts for planning, application and design costs need not be submitted to the Department.
 - (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 state 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 state purchase laws.
- (iii) Development of an operation and maintenance manual.
- (iv) 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 5.3.19.11 of these regulations.
- (v) Professional liability or other insurance premiums for a provider of professional services only for insurance which the provider maintains in connection with the general conduct of its business. The types and extent of coverage

shall be in accordance with sound business practice, and the rates and premiums shall be reasonable under the circumstances but only as part of an indirect cost agreement.

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

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 facilities plans 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

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. Acquiring all or part of an existing publicly or privately owned drinking water treatment works.
- E. 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

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.

Source: House Bill 1421, 2022 Regular Session

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, audit, 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 facilities plan. The final allowances will be determined one time only for each project, based on the initial allowable as-bid cost, and will not be adjusted for subsequent cost increases or decreases.

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 Registered Engineer is required to certify the environmental impact of the project as either low, moderate, or high. If the Registered Engineer determines that there is either a moderate or high impact, the Registered Engineer shall prepare an Environmental Review Report. The report shall bear the seal of the registered 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

Rule 5.6.2. Environmental Review.

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

1. Categorical Exclusion

The Registered Engineer will issue a Categorical Exclusion (CE) from environmental review if a project meets all of the following criteria:

- A. The project includes minor rehabilitation of existing facilities, functional replacement of equipment, or construction of new ancillary facilities adjacent or appurtenant to existing facilities.
- B. The project will not have a significant adverse effect on the environment.
- C. The project will not adversely affect cultural resources, habitats of endangered or threatened species, or environmentally important natural resource areas.
- D. The project is not expected to cause significant public controversy. The Department may revoke a categorical exclusion at any time if significant adverse information becomes available.

2. Finding of No Significant Impact (FONSI) on the Environment

The Registered Engineer will issue a Finding of No Significant Impact (FONSI) and an Environmental Assessment (EA) when, based upon review of the environmental impacts in the Environmental Review Report, it appears that a project will not have a significant adverse environmental impact, but does not qualify for a CE.

3. Amendment to a Finding of No Significant Impact FONSI to the Environment FONSI amendments are occasionally needed to describe changes to proposed facilities that have already been described in a FONSI.

4. Environmental Impact Statement (EIS)

If the Registered Engineer determines that an environmental impact statement (EIS) is needed, the document will be prepared in general conformance as deemed appropriate by the Department.

5. No Further Action

The Registered Engineer will issue a CE, FONSI, or EIS 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 a FONSI. 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 categorical exclusion.
- 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

Rule 5.6.3. Issuance of the Environmental Action.

Copies of all necessary environmental actions 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 actions will also be published in an appropriate local newspaper or maintained at the grant recipients office location for review upon request.

All environmental actions should provide for at least a 30-day period from the day of issuance to receive comments from agencies, groups, or individuals. All such comments will be evaluated by the Registered Engineer before finalizing any environmental action.

Source: House Bill 1421, 2022 Regular Session

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 state purchasing laws as they apply to local governments. Procurement of professional services exceeding the Simplified Acquisition Threshold (SAT) of \$250,000 will require the grant recipient to seek those services under the federal procurement requirements as outlined in the federal Uniform Grant Guidance as distributed by the Office of Management and Budget.
2. The procurement and conduct of all professional engineering and land surveying services shall also be in accordance with the Code of Conduct 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

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 RWAIG 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 Registered 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 Registered 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