



Hugh McDonald  
SECRETARY OF COMMERCE  
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EXECUTIVE DIRECTOR,  
ARKANSAS ECONOMIC  
DEVELOPMENT COMMISSION

**DATE:** July 12, 2023  
**TO:** All Interested Persons  
**FROM:** Arkansas Waterways Commission  
**SUBJECT:** Proposed Amendment to Arkansas Port, Intermodal, and Waterway Development Program

### NOTICE OF PUBLIC HEARING

Please find attached or available by electronic publication by the Arkansas Waterways Commission a proposed amendment to the Arkansas Port, Intermodal, and Waterway Development Program.

Pursuant to the Arkansas Administrative Procedures Act, and all other applicable statutes or rules, NOTICE is hereby given that a PUBLIC HEARING will be held on July 25th, 2024, at 2 p.m. in the Diamond Mine Room on the second floor of the offices of the Arkansas Department of Commerce, 1 Commerce Way, Little Rock, AR 72202.

The purpose of the Public Hearing will be to determine whether the Arkansas Waterways Commission should adopt the proposed amendments. The proposed amendments expand program eligibility to public ports and intermodal facilities located along the Arkansas River.

All interested persons are encouraged to send their comments, statements, or opinions to the address below or to attend the Public Hearing and present, orally or in writing, statements, arguments, or opinions on the proposed amendments. The record will remain open for public comment until the close of the 30-day period outlined in the Arkansas Administrative Procedures Act; in this instance, August 11, 2024.

Persons who wish to testify or make comments are requested to submit intended statements in writing in advance of the Public Hearing. Inquiries should be directed to: Jake Windley, Director of Legislative Affairs & Policies, Arkansas Department of Commerce, 501-682-5355, email: [jake.windley@arkansas.gov](mailto:jake.windley@arkansas.gov). A copy of the proposed amendments may be obtained or viewed at <https://www.waterways.arkansas.gov/>.

Sincerely,

A handwritten signature in blue ink that reads "Jake Windley".

Jake G. Windley  
Director of Legislative Affairs & Policies  
Arkansas Department of Commerce



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## **Executive Summary**

Act 881 of 2023 enacted amendments to the Arkansas Port, Intermodal, and Waterway Development Grant Program, which is administered by the Arkansas Waterways Commission. Among other provisions, the Act extends the boundaries of the program to include public port and intermodal facilities along the Arkansas River. The proposed amendments are necessary to incorporate these changes to the grant program.

# ARKANSAS REGISTER

## Proposed Rule Cover Sheet



Secretary of State  
John Thurston  
500 Woodlane Street, Suite 026  
Little Rock, Arkansas 72201-1094  
(501) 682-5070  
[www.sos.arkansas.gov](http://www.sos.arkansas.gov)



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Name of Department \_\_\_\_\_

Agency or Division Name \_\_\_\_\_

Other Subdivision or Department, If Applicable \_\_\_\_\_

Previous Agency Name, If Applicable \_\_\_\_\_

Contact Person \_\_\_\_\_

Contact E-mail \_\_\_\_\_

Contact Phone \_\_\_\_\_

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Name of Rule \_\_\_\_\_

Newspaper Name \_\_\_\_\_

Date of Publishing \_\_\_\_\_

Final Date for Public Comment \_\_\_\_\_

Location and Time of Public Meeting \_\_\_\_\_

# **ARKANSAS PORT, INTERMODAL, AND WATERWAY DEVELOPMENT PROGRAM**

## **1.0 GENERAL INFORMATION**

The Arkansas Waterways Commission was established by Act 242 of 1967 and its powers and duties were amended by Act 414 of 1973. The Commission's general authority is codified at Arkansas Code § 15-23-201. The Arkansas Waterways Commission is the sole state agency responsible for developing, promoting and protecting waterborne transportation in Arkansas. The Commission also promotes economic development for ports on the five (5) commercially navigable rivers of the state: the Arkansas, Mississippi, Ouachita, Red, and White Rivers.

### **1.1 PROGRAM NAME**

These rules govern the Arkansas Port, Intermodal, and Waterway Development Grant Program.

## **2.0 PROGRAM DESCRIPTION**

The Arkansas Port, Intermodal, and Waterway Development Grant Program provides financial assistance to port authorities and intermodal authorities for the purpose of funding port development projects. The goals of the program are to provide public funds to build land-side infrastructure and to dredge ports and waterways. Funding this infrastructure will provide jobs and competitive transportation costs for moving cargo, thereby minimizing highway congestion, improving safety, and reducing maintenance costs related to Arkansas's highways. This program will also allow Arkansas products to reach additional markets.

## **3.0 TYPE OF AWARD**

- 3.1** The total maximum funding will be limited to the amount of money made available to the Arkansas Waterways Commission for the program.
- 3.2** There is no minimum amount of funding that may be applied for by an eligible applicant. The maximum amount that may be applied for by an eligible applicant is the maximum amount of funds available.

- 3.3** There is no maximum of number of awards that can be received for an eligible applicant in one state fiscal year.
- 3.4** Funds granted may not exceed ninety percent (90%) of construction costs or fifty percent (50%) of dredging costs.

## **4.0 ELIGIBILITY**

### **4.1 ELIGIBILITY CRITERIA**

- 4.1.1 Eligible applicants are an Arkansas public port authority or public intermodal authority with facilities located on the Arkansas, Mississippi, Ouachita, White, or Red Rivers. A port facility can include an intermodal facility and maritime-related industrial park infrastructure development.
- 4.1.2 Eligible projects are construction, improvement, capital facility rehabilitation, and expansion of a public port facility. Dredging projects are also eligible.
- 4.1.3 Planning projects and feasibility studies shall not be eligible.
- 4.1.4 Funds granted may not exceed ninety percent (90%) of the cost of construction or fifty percent (50%) of dredging costs.
- 4.1.5 Eligible projects may be projects that were completed within a year prior to the grant application.

### **4.2 CONFLICT OF INTEREST**

- 4.2.1 No Director, officer or employee of the Arkansas Waterways Commission, for purpose of personal gain, shall have or attempt to have, directly or indirectly, any interest in any contract or agreement of the Commission in connection with the Arkansas Port, Intermodal, and Waterway Development Grant Program.
- 4.2.2 It shall not be a conflict of interest for the Commission to permit any port, intermodal or waterway with which a Director of the Commission is affiliated to participate in any program of the Commission, provided that such Director

shall promptly disclose the nature of the affiliation to the Commission.

## **5.0 APPLICATION PROCESS**

- 5.1** Applications for the Arkansas Port, Intermodal, and Waterways Development Grant shall be submitted on the form prescribed by the Arkansas Waterways Commission.
- 5.2** A Resolution passed by the board of the grant applicant must be enclosed with the application. The Resolution must have the signature of the Chair of the board.
- 5.3** The Commission reserves the right to request additional information as required for evaluation.
- 5.4** Cost estimate submitted with application must come from a certified engineer, construction company, or manufacturer with vendor's logo and contact information on the documentation submitted.

## **6.0 EVALUATION**

Projects will be evaluated by the Arkansas Waterways Commission, which may request the assistance of appropriate representatives from academia, private enterprise, or the public sector. Applications meeting the eligibility requirements will be evaluated on the basis of the evaluation criteria outlined below.

### **6.1 EVALUATION CRITERIA**

- 6.1.1** The qualified applicant and the associated enterprise must have the support and resources available to ensure a reasonable probability of project success if a development grant is awarded.
- 6.1.2** The proposed development project must have commercial feasibility and positively impact a commercially navigable waterway in the State of Arkansas. The development should provide the port, intermodal or waterway with the ability to compete more effectively in the marketplace.

## **7.0 GRANT AWARDS**

- 7.1** The Arkansas Waterways Commission shall make the final decision to select recipients of funding from the Arkansas Port, Intermodal, and Waterway Development Grant Program. Funding decisions will be based on information derived from the Program review.
- 7.2** The Commission will notify all applicants, selected or not, within fifteen (15) business days of the Commission's decision.
- 7.3** The Commission will notify the office of the State Treasurer, and the office of the State Treasurer will mail or direct deposit funds for approved projects.
- 7.4** Grant recipients shall designate a bank account with routing information for grant funds and matching funds. Before grant award is remitted, grant recipient must demonstrate that the cash match is in this account within sixty (60) days of notice of award to recipient, or forfeiture of grant award will occur.
- 7.5** Grant recipients must expend grant funds within a year from award date or the Commission must grant an extension upon proof that all reasonable efforts have been made to comply. Grant funds shall be utilized and expended by the applicant solely and exclusively for the payment of authorized and allowable costs and expenses of the project for which assistance was approved.
- 7.6** If all grant funds are not utilized and expended by the applicant for the specific project for which such funds were furnished within one (1) year, the grant recipient shall return or otherwise pay or reimburse to the Commission any and all such unused funds or any amounts of funds used and expended for unauthorized or unallowable purposes; or the applicant may submit a request to the Director of the Arkansas Waterways Commission to use leftover funds for another project. The Commissioners of the Arkansas Waterways Commission shall approve or disapprove the request.
- 7.7** The grant award recipient must deposit the exact amount applicant stated in the grant application if awarded the full amount requested. If the full amount requested is not awarded, the applicant will

deposit ten percent (10%) of the awarded amount, unless it is a dredge project, in which case fifty percent (50%) must be deposited.

## **8.0 GRANT REPORTING**

- 8.1** Grantees shall complete a quarterly, signed expenditure report and submit it to the Arkansas Waterways Commission within thirty (30) days of report being due, certifying the accurate expenditure of funds, to remain in compliance and be eligible for the next year's program.
- 8.2** Grantees shall complete a final, signed expenditure report and submit it to the Commission within thirty (30) days of the final expenditure, certifying the accurate expenditure of funds, to remain in compliance and be eligible for the next year's program.
- 8.3** All reports shall be subject to review by the Arkansas Legislative Audit.

## **9.0 FREEDOM OF INFORMATION**

All information submitted in applications is subject to the provisions of the Freedom of Information Act of 1967, Arkansas Code § 25-19-101 et seq.



**FINANCIAL IMPACT STATEMENT**

**PLEASE ANSWER ALL QUESTIONS COMPLETELY.**

**DEPARTMENT** \_\_\_\_\_  
**BOARD/COMMISSION** \_\_\_\_\_  
**PERSON COMPLETING THIS STATEMENT** \_\_\_\_\_  
**TELEPHONE NO.** \_\_\_\_\_ **EMAIL** \_\_\_\_\_

To comply with Ark. Code Ann. § 25-15-204(e), please complete the Financial Impact Statement and email it with the questionnaire, summary, markup and clean copy of the rule, and other documents. Please attach additional pages, if necessary.

**TITLE OF THIS RULE** \_\_\_\_\_

1. Does this proposed, amended, or repealed rule have a financial impact?  
Yes                      No
  
2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?  
Yes                      No
  
3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes                      No

If no, please explain:

(a) how the additional benefits of the more costly rule justify its additional cost;

(b) the reason for adoption of the more costly rule;

(c) whether the reason for adoption of the more costly rule is based on the interests of public health, safety, or welfare, and if so, how; and

(d) whether the reason for adoption of the more costly rule is within the scope of the agency's statutory authority, and if so, how.

4. If the purpose of this rule is to implement a *federal* rule or regulation, please state the following:  
(a) What is the cost to implement the federal rule or regulation?

**Current Fiscal Year**

General Revenue \_\_\_\_\_  
 Federal Funds \_\_\_\_\_  
 Cash Funds \_\_\_\_\_  
 Special Revenue \_\_\_\_\_  
 Other (Identify) \_\_\_\_\_

Total \_\_\_\_\_

**Next Fiscal Year**

General Revenue \_\_\_\_\_  
 Federal Funds \_\_\_\_\_  
 Cash Funds \_\_\_\_\_  
 Special Revenue \_\_\_\_\_  
 Other (Identify) \_\_\_\_\_

Total \_\_\_\_\_

(b) What is the additional cost of the state rule?

**Current Fiscal Year**

General Revenue \_\_\_\_\_  
 Federal Funds \_\_\_\_\_  
 Cash Funds \_\_\_\_\_  
 Special Revenue \_\_\_\_\_  
 Other (Identify) \_\_\_\_\_

Total \_\_\_\_\_

**Next Fiscal Year**

General Revenue \_\_\_\_\_  
 Federal Funds \_\_\_\_\_  
 Cash Funds \_\_\_\_\_  
 Special Revenue \_\_\_\_\_  
 Other (Identify) \_\_\_\_\_

Total \_\_\_\_\_

5. What is the total estimated cost by fiscal year to any private individual, private entity, or private business subject to the proposed, amended, or repealed rule? Please identify those subject to the rule, and explain how they are affected.

**Current Fiscal Year**

\$ \_\_\_\_\_

**Next Fiscal Year**

\$ \_\_\_\_\_

6. What is the total estimated cost by fiscal year to a state, county, or municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

**Current Fiscal Year**

\$ \_\_\_\_\_

**Next Fiscal Year**

\$ \_\_\_\_\_

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes      No

If yes, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
  - (a) justifies the agency's need for the proposed rule; and
  - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
  - (a) the rule is achieving the statutory objectives;
  - (b) the benefits of the rule continue to justify its costs; and
  - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

**ARKANSAS PORT, INTERMODAL, AND WATERWAY DEVELOPMENT  
PROGRAM RULES**

~~ARKANSAS WATERWAYS COMMISSION ARKANSAS DEPARTMENT  
OF COMMERCE – Agency 9902~~

~~1.0 GENERAL INFORMATION~~

~~1.1 PROGRAM NAME~~

~~1.2 AUTHORIZATION~~

~~2.0 PROGRAM DESCRIPTION~~

~~3.0 TYPE OF AWARD~~

~~4.0 ELIGIBILITY~~

~~4.1 ELIGIBILITY CRITERIA~~

~~4.2 CONFLICT OF INTEREST~~

~~5.0 APPLICATION PROCESS~~

~~6.0 EVALUATION~~

~~6.1 EVALUATION CRITERIA~~

~~6.2 APPLICATION REVIEW~~

~~7.0 GRANT AWARDS~~

~~8.0 GRANT REPORTING~~

~~9.0 FREEDOM OF INFORMATION~~

## 1.0 GENERAL INFORMATION

The Arkansas Waterways Commission was established by Act 242 of 1967 and its powers and duties were amended by Act 414 of 1973. The Commission's general authority is codified at ~~Ark. Code Ann.~~ [Arkansas Code](#) § 15-23-201. The Arkansas Waterways Commission is the sole state agency responsible for developing, promoting and protecting waterborne transportation in Arkansas. The Commission also promotes economic development for ports on the five [\(5\)](#) commercially navigable rivers of the state: the Arkansas, Mississippi, Ouachita, Red, and White Rivers.

### 1.1 PROGRAM NAME

These rules govern the Arkansas Port, Intermodal, and Waterway Development Grant Program.

### 1.2 AUTHORIZATION

~~The Arkansas Port, Intermodal, and Waterway Development Grant Program is authorized by Ark. Code Ann. § 15-23-305 and § 19-5-1253.~~

## 2.0 PROGRAM DESCRIPTION

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## MARKUP

- 3.3 There is no maximum of number of awards that can be received for an eligible applicant in one state fiscal year.
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## 4.0 ELIGIBILITY

### 4.1 ELIGIBILITY CRITERIA

- 4.1.1 Eligible applicants are an Arkansas public port authority or public intermodal authority ~~to exclude ports, intermodal authorities, or any other public entity located along the McClellan-Kerr Arkansas River Navigation System (MKARNS) due to the Arkansas River Navigation Fund established by Act 561 § 19-5-1264~~ with facilities located on the Arkansas, Mississippi, Ouachita, White, or Red Rivers. A port facility can include an intermodal facility and maritime-related industrial park infrastructure development.
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## MARKUP

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