

The Unpaved Roads Program Rules

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## **I. GENERAL PROVISIONS**

### **Section 1.1 Purpose and enabling legislation.**

These rules implement the Arkansas Unpaved Roads Program provided for in A.C.A. § 14-305-101 et seq.

### **Section 1.2 Definitions.**

- A. “Best management practices” means practices for the construction and maintenance of unpaved roads that are broadly accepted by road engineers and maintenance professionals as the most effective approaches to managing unpaved roads that minimize sediment impacts to adjacent water bodies and aquatic habitats. Best management practices include the Environmentally Sensitive Road Maintenance for Dirt and Gravel Roads guidance issued by the United States Department of Agriculture Forest Service.
- B. “Department” means the Arkansas Department of Agriculture.
- C. “Unpaved road” means a surface of natural material or crushed aggregate that has not been incorporated into a bound layer using asphalt, oil, or other such binder. Roads with driving surface aggregate shall be considered unpaved for purposes of the program.

## **II. ELIGIBILITY, APPLICATION, AND SELECTION**

### **Section 2.1 Eligibility.**

- A. Counties are eligible to apply for grants for program funding for county-owned and maintained roads in Arkansas that are open to public vehicle travel.
- B. If different entities own the unpaved road right-of-way and the property on which the unpaved road traverses, only the entity that owns, manages, and maintains the road right-of-way is eligible to apply for program funding, unless the property is managed for the public trust.
- C. Privately owned roads, including those open to public use, and those owned by associations, private conservancies, non-profit companies, and other non-public entities, are not eligible to apply for program funding.

D. Eligible unpaved roads include only roads open to public motor vehicle travel for a minimum of eight (8) consecutive weeks annually.

E. All applicants must complete training held by the Department in best management practices and maintain certification as provided in these rules before becoming eligible to apply for project funding. Training certification is valid for a period of five years.

F. Projects are eligible for funding only if the projects meet the requirements of A.C.A. § 14-305-101 et seq. and these rules.

### **Section 2.2 Grant Applications.**

A. All applications for program funding must be received on the application packet form approved by the Department, and the application must include the following information in addition to the information required under Ark. Code Ann. § 14-305-105(b):

1. A work plan, which consists of a detailed hand-drawn or digitally produced sketch of the proposed project, with a plan view of the road with all planned features including but not limited to any pipes, aggregate, underdrain, and surface features;
2. The name of the waterbody impacted by the project;
3. All General Contracts associated with the project; and
4. The applicant's signature.

B. All applicants shall be notified in writing of the Department's funding decision.

### **Section 2.3 Project Funding and Expenses.**

A. Projects shall be funded in accordance with Ark. Code Ann. § 14-305-106.

B. Applicants may apply for the full or partial costs of materials, equipment, and labor required for implementation of the grant project, up to seventy-five thousand dollars (\$75,000.00). The following expenses may be included for consideration of project funding:

1. Material expenses including, but not limited to, pipe, stone, fill, fabric, and aggregate.
  2. Equipment expenses for the use of equipment that is owned by the applicant;
    - a. Reimbursement of applicant-owned equipment costs may be considered for project funding if:
      - i. The expense is less than or equal to the current Federal Emergency Management Agency (FEMA) Schedule of Equipment rates as published by FEMA;  
or
      - ii. The expense is supported by a legitimate quote or invoice acceptable to the Department.
  3. The cost of contractual labor must be equal to Davis-Bacon Act wage determinations unless sufficient documentation is provided to the Department to justify another amount.
  4. Equipment expenses for the use of equipment that that is rented or leased by the applicant;
    - a. Reimbursement for the cost of rented or leased by an applicant may be considered for project funding if:
      - i. The equipment rented or leased was necessary to complete the project for which the applicant applied; and
      - ii. The equipment rented or leased was only used on the project for which it was rented or leased.
  5. Expenses for work performed by contractors or subcontractors. However, the funding shall be paid to the grant recipient and not directly to the grant recipient's sub-contractors;
  6. Expenses for engineering, permitting, or other similar consultant costs, not to exceed ten percent (10%) of the total grant amount between the Department and the grant recipient.
- C. Grant funds shall not be used to purchase or maintain equipment.

D. Grantee's salaries and other associated personnel expenses are not eligible for funding.

#### **Section 2.4 Combined Funds.**

A. Program funds may be combined with other funding sources to pay for a project. Program funds may only be used on the program project. If program funds are combined with other funding sources, the grant recipient must maintain an accounting acceptable to the Department of which funds were spent on which portions of the project, and the accounting must be provided to the Department at the Department's request and in accordance with Section 3.5(E).

B. Project funds shall not be combined with other funding sources that have requirements that are in conflict with best management practices.

C. Projects may be completed in stages where program funds are used to complete a particular phase of the project and other funding sources are used to fund different stages of a project.

### **III. PROJECT ADMINISTRATION**

#### **Section 3.1 Unpaved Roads Program Stakeholder Advisory Committee.**

A. The Department shall form a committee to serve the Department in an advisory role. The committee shall:

1. Review and rank grant applications and provide evaluations to the Department; and
2. Provide technical expertise in the subject matters of unpaved roads including but not limited to, construction methods and technologies, sediment abatement methods, conservation of land, soil, and water, watershed management, road system assessment, fisheries, and aquatic biology.

### **Section 3.2 Grant Funding, Project Monitoring, and Reporting.**

- A. When an entity is selected for grant funding, the recipient and the Department shall enter into an agreement regarding the terms and conditions of the project and the disbursement of grant funds to the recipient.
- B. The Department shall monitor projects funded by the program to ensure compliance with the purpose of the project and the program, and grant recipients shall cooperate with the Department.
- C. Grant applicants and recipients are subject to audits and inspections by the department at any time from the grant application process up to three (3) years following the closure of the project.
- D. Grant recipients shall notify the Department of the occurrence of anything that may affect the grant recipient's ability to complete the project in the time allotted in Ark. Code Ann. § 14-305-107.
- E. For good cause shown, the Department may allow one (1) extension not to exceed one (1) year for a grant recipient that is unable to complete its unpaved road project within the period stated in Ark. Code Ann. § 14-305-107.

### **Section 3.3 Grant Changes and Amendments.**

- A. If unforeseen circumstances arise and so require, the Department may, at its discretion, make changes to the scope of the project that affect the requested funds or completion timeframe of the grant project.
- B. Before any project may be materially modified by a grant recipient, the Department must approve any proposed changes.
- C. The Department may approve project modifications if the modification does not result in a failure to meet any of the selection criteria from Ark. Code Ann. § 14-305-105 which initially qualified the project for funding under the program.
- D. If an approved modification results in a reduction of the total project costs and excess funding, the Department will de-obligate the excess grant monies.

**Section 3.4 Enforcement Provisions.**

- A. The Department may attempt to resolve compliance issues by instituting corrective action, including but not limited to a warning letter against a grant recipient who fails to comply with any of the terms agreed upon in the grant agreement.
- B. The Department, after unsuccessfully attempting to resolve compliance issues through a corrective action, may withhold, reduce, or de-obligate the grant recipient's program grant monies.
- C. The Department may take other action as appropriate to recapture program grant monies expended in contravention to ~~this Title~~ these rules.

**Section 3.5 Completion of unpaved road projects.**

- A. Grant recipients shall comply with the project completion requirements of Ark. Code Ann. § 14-305-107.
- B. Upon completion of the project, the grant recipient shall notify the Department and schedule a final inspection of the project.
- C. A final inspection must be completed after project completion.
- D. The final inspection must include the grant recipient and the Department, or the Department's designee, and the parties must verify:
  - 1. The project is completed in accordance with the program standards and to the satisfaction of the Department;
  - 2. All work elements classified as "in-kind services" are also completed in accordance with program standards and to the satisfaction of the Department; and
  - 3. That work elements proposed in the work plan have been properly installed.
- E. Upon completion of the project, the grant recipient shall provide the Department a final financial report including the separate accounting of grant funds required in Ark. Code Ann. § 14-305-107 and a financial report inclusive of grant and non-grant funds.

F. Projects are not closed until the Department issues a closure letter.

G. Grant recipients shall comply with the record retention requirements in Ark. Code Ann. § 14-305-

108.



1 State of Arkansas  
2 93rd General Assembly  
3 Regular Session, 2021

# A Bill

SENATE BILL 637

4  
5 By: Senator Irvin

## For An Act To Be Entitled

8 AN ACT TO AMEND THE ARKANSAS UNPAVED ROADS PROGRAM  
9 ACT; TO TRANSFER DUTIES TO THE DEPARTMENT OF  
10 AGRICULTURE; TO AUTHORIZE THE DEPARTMENT OF  
11 AGRICULTURE TO PROMULGATE RULES AND AWARD GRANT  
12 FUNDS; AND FOR OTHER PURPOSES.

## Subtitle

16 TO AMEND THE ARKANSAS UNPAVED ROADS  
17 PROGRAM ACT; TO TRANSFER DUTIES TO THE  
18 DEPARTMENT OF AGRICULTURE; AND TO  
19 AUTHORIZE THE DEPARTMENT OF AGRICULTURE  
20 TO PROMULGATE RULES AND AWARD GRANT  
21 FUNDS.

24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

25  
26 SECTION 1. Arkansas Code § 14-305-105 is amended to read as follows:  
27 14-305-105. Application process – Criteria for selection.

28 (a)(1) After completing training in best management practices, a  
29 county may submit an application to receive funding for an unpaved road  
30 project to the ~~Arkansas Natural Resources Commission~~ Department of  
31 Agriculture.

32 (2) The ~~Arkansas Natural Resources Commission~~ department shall:  
33 (A) Determine which of the proposed unpaved road projects  
34 to fund based on the criteria and requirements stated in this chapter; and  
35 (B) Create an advisory committee to assist the ~~Arkansas~~  
36 ~~Natural Resources Commission~~ department in evaluating applications and



1 determining which proposed unpaved road projects to fund.

2 (b) A county applying for funding for an unpaved road project shall  
3 submit an application to the ~~Arkansas Natural Resources Commission~~ department  
4 that includes the following:

5 (1) A brief description of the maintenance needs to be addressed  
6 by the unpaved road project;

7 (2) A cost estimate for the unpaved road project;

8 (3) A proposed work schedule for the unpaved road project;

9 (4) The basis for successful completion of the unpaved road  
10 project with citation to the relevant feature contained in subsection (c) of  
11 this section;

12 (5) A plan for using best management practices;

13 (6) A description of the unpaved road project site, including  
14 without limitation a site map; and

15 (7) Any other information requested by the ~~Arkansas Natural~~  
16 ~~Resources Commission~~ department.

17 (c) The proposed unpaved road project shall be located in a watershed  
18 area with at least one (1) of the following features, listed in order of  
19 priority:

20 (1) An aquatic species that the United States Government has  
21 listed as a threatened, endangered, or candidate species;

22 (2) A water body that has been determined to be impaired as a  
23 result of turbidity or sediment;

24 (3) A drinking water source;

25 (4) An interstate water body;

26 (5) A species that the Arkansas State Game and Fish Commission  
27 has declared is of greatest conservation need;

28 (6) An agricultural or pasture land use; or

29 (7) A forestry land use.

30 (d) The proposed unpaved road project shall not include the paving or  
31 chipping and sealing of a dirt or gravel road.

32 (e) The ~~Arkansas Natural Resources Commission~~ department shall  
33 evaluate and prioritize each proposed unpaved road project based on the  
34 characteristics of the road contributing to erosion.

35  
36 SECTION 2. Arkansas Code § 14-305-106(b) and (c), concerning grant

1 funding from the Arkansas Unpaved Roads Program Fund, are amended to read as  
2 follows:

3 (b) ~~The Arkansas Natural Resources Commission~~ Department of  
4 Agriculture may award a grant to a county using funds available in the  
5 Arkansas Unpaved Roads Program Fund for up to fifty percent (50%) of the  
6 estimated total costs of a proposed unpaved road project.

7 (c) At least four percent (4%) of the funding obtained from the  
8 ~~commission~~ department under this chapter shall be used to evaluate and assess  
9 the unpaved road project.

10

11 SECTION 3. Arkansas Code § 14-305-107(b) and (c), concerning the  
12 completion of unpaved road projects, are amended to read as follows:

13 (b)(1) If an unpaved road project that has been approved for a grant  
14 is not completed within one (1) year of the award of the grant, the county  
15 shall refund the full grant amount to the ~~Arkansas Natural Resources~~  
16 ~~Commission~~ Department of Agriculture.

17 (2) However, for good cause shown, the ~~Director of the Arkansas~~  
18 ~~Natural Resources Commission~~ department may allow one (1) extension for a  
19 county that is unable to complete its unpaved road project within the period  
20 stated in subdivision (b)(1) of this section.

21 (c) A county shall:

22 (1) Comply with the standards set by the ~~commission~~ department  
23 for the completion of an unpaved road project to ensure that the unpaved road  
24 project is conducted in a manner that is not harmful to the state or the  
25 environment; and

26 (2) Report on the progress of the unpaved road project in the  
27 manner and at the times determined by the ~~commission~~ department.

28

29 SECTION 4. Arkansas Code § 14-305-108(3), concerning inspections of  
30 records of a county that receives a grant under the Arkansas Unpaved Roads  
31 Program, is amended to read as follows:

32 (3) Allow inspection by the ~~Arkansas Natural Resources~~  
33 ~~Commission~~ Department of Agriculture of the records described in subdivisions  
34 (1) and (2) of this section.

35

36 SECTION 5. Arkansas Code § 14-305-110 is amended to read as follows:

1 14-305-110. Rules.

2 ~~The Arkansas Natural Resources Commission~~ Department of Agriculture  
3 shall promulgate rules to implement and administer this chapter, including  
4 without limitation rules regarding:

5 (1) The application process;

6 (2) The creation and administration of an advisory committee to  
7 assist the ~~commission~~ department in evaluating applications and making  
8 funding determinations;

9 (3) The disbursement of grant funds;

10 (4) The reporting required by counties that receive grant funds  
11 under this chapter;

12 (5) The evaluation and assessment of unpaved road projects  
13 approved for grants;

14 (6) The expenses that are eligible for grant funds; and

15 (7) The standards a county is required to meet in completing an  
16 unpaved road project.

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19 **APPROVED: 4/25/21**  
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