

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



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 _____

Name of Rule _____

Newspaper Name _____

Date of Publishing _____

Final Date for Public Comment _____

Location and Time of Public Meeting _____

**Arkansas Natural Resources Commission
Rules Implementing the Water Resource Conservation and
Development Incentives Act
Title 14
(Revised 2020)**

<u>Subtitle</u>	<u>Page</u>
I. General provisions	
1401.1 Purpose.....	1
1401.2 Enabling and pertinent legislation	1
1401.3 Definitions.....	1
1401.4 Limitations	3
1401.5 Record keeping	3
1401.6 Appeals	3
II. Application and approval procedure	
1402.1 Application for tax credit	3
1402.2 Fees	4
1402.3 Issuance of Certificate of Tax Credit Approval by the Director.....	4
1402.4 Issuance of Certificate of Completion by the Director	5
III. Project design, construction, maintenance, and termination	
1403.1 Project design and construction requirements	5
1403.2 Project completion.	6
1403.3 Project termination.....	6
IV. Tax credits	
1404.1 Water impoundments	6
1404.2 Surface water conversion outside critical areas	7
1404.3 Surface water conversion for agricultural or recreational purposes within critical areas	7
1404.4 Surface water conversion for commercial or industrial purposes within critical areas	8
1404.5 Land-leveling for water conservation	8
1404.6 Installation of water-measuring or metering devices.....	8
1404.7 Deduction for project costs above tax credit.....	9
IV. Transferability of tax credits	
1405.1 Transfer of ownership.....	9
1405.2 Perfecting transfer of ownership.....	9
1405.3 Responsibility for failure to complete or maintain project	10

**Arkansas Natural Resources Commission
Rules Implementing the Water Resource Conservation and
Development Incentives Act
(Revised ~~2011~~ 2020)**

Subtitle I. General provisions

Section 1401.1 Purpose.

A. The State of Arkansas is blessed with abundant rainfall and other surface and underground water resources which, when managed conjunctively, can provide a continuous high-quality water supply to meet the foreseeable needs of the entire state.

B. Existing water use patterns are depleting groundwater supplies at an unacceptable rate and alternative surface water supplies are not available in sufficient quantities without developing additional water storage to alleviate this groundwater depletion problem.

C. The tax incentives provided under this program encourage water users to invest in: (1) the construction of impoundments to utilize available surface water and reduce our dependence on groundwater; (2) the conversion from groundwater use to surface water use when surface water is available; (3) the water conservation practice of land-leveling to reduce agricultural irrigation water use; and (4) the installation of water meters to monitor groundwater usage.

D. It is of utmost importance to Arkansas that within critical groundwater areas, surface water be used when available.

Section 1401.2 Enabling and pertinent legislation.

A. Ark. Code Ann. § 26-51-1001 *et seq.*, the Water Resource Conservation and Development Incentives Act.

B. Ark. Code Ann. § 15-20-201 *et seq.*, the Arkansas Natural Resources Commission.

C. Ark. Code Ann. § 25-15-201 *et seq.*, the Arkansas Administrative Procedure Act.

Section 1401.3 Definitions.

Unless the context requires otherwise, the following definitions shall apply to all parts of this title:

A. "Acre-foot" means the volumetric measure equal to forty-three thousand five hundred sixty (43,560) cubic feet or approximately three hundred twenty-five thousand nine hundred (325,900) gallons.

B. "Act" means the Water Resource Conservation and Development Incentives Act.

C. "Application" means a written request for approval for tax credits, describing the project including a water conservation plan outlining the operation of the project and any additional requirements as the Commission may adopt by rule.

D. "Approved applicant" means an individual, fiduciary, partnership, limited liability company, or corporation that submits a written request for approval of a project

for tax credits in compliance with this subchapter and receives a Certificate of Tax Credit Approval for that project.

E. "Chief Engineer" means the Chief Engineer of the Natural Resources Division of the Department of Agriculture.

F. "Commission" means the Arkansas Natural Resources Commission, established pursuant to Ark. Code Ann. §15-20-201 *et seq.*

G. "Critical groundwater area" means those areas that are designated by the Commission pursuant to the Arkansas Groundwater Protection and Management Act, contained in Title 15, Chapter 22, Subchapter 9 of the Arkansas Code of 1987 Annotated.

H. "Department" means the Arkansas Department of Finance and Administration.

I. "Director" means the Director of the Arkansas Natural Resources Commission who shall appointed by and serve at the pleasure of the Governor.

J. "Division" or "Natural Resources Division" references the Department of Agriculture employees responsible for carrying out the functions of the Arkansas Natural Resources Commission.

K. "Fee" means the payment made by an applicant to the Division for processing the application pursuant to Section 1402.2 of these rules.

L. "Land-leveling" means modifying the surface relief of a field to a planned grade to provide a more suitable surface for efficiently applying irrigation water without excessive erosion, loss of water quality, or damage to land by water logging.

M. "Local district" means the conservation district in which the project is located.

N. "Project" means:

1. The construction, installation or restoration of a water impoundment or water control structure of twenty acre-feet or more designed for storing water to be used for agricultural, commercial, or industrial purposes;
2. The conversion from groundwater to surface water use by an agricultural, commercial, industrial or recreational water user;
3. Agricultural land-leveling resulting in water savings due to the more efficient use of irrigation water for which tax credits are claimed; or
4. The purchase and installation of a water-measuring or metering device to determine the quantity of water used.

O. "Project cost" means the actual expenditure for a project less any reimbursement received by an approved applicant from cost-share programs.

P. "Transferee" means a person or corporate entity who receives some or all of an approved applicant's tax credit and is named as the successor to the credit through a certified statement executed by the approved applicant.

Q. "USDA-NRCS" means the United States Department of Agriculture National Resources Conservation Service or its successor.

Section 1401.4 Limitations.

A. Prior to claiming any tax credits under this program, a taxpayer must obtain a Certificate of Tax Credit Approval from the Director certifying to the Department that the taxpayer has complied with the procedure contained in Subtitle II of these rules.

B. An approved applicant shall not receive a tax credit for costs which are reimbursed from cost share or other programs.

C. Any tax credit or percentage of a tax credit issued to an approved applicant that is a partnership, a limited liability company taxed as a partnership, a subchapter S corporation, or a fiduciary shall be passed through to the partners, members, or owners, respectively, on a pro rata basis or pursuant to an executed agreement between or among the partners, members, or owners documenting an alternative method for the distribution of the credit.

Section 1401.5 Record keeping.

An approved applicant claiming a credit under the program must maintain all financial records for ~~thirteen~~ fifteen years after the tax year in which the certificate of completion is issued.

Section 1401.6 Appeals.

A. Except as otherwise provided herein, an applicant or an approved applicant may appeal, pursuant to Title I, Subtitle V of the Commission's Rules, any decision or action of the Director.

B. All decisions related to recapture of tax credits shall be appealed in accordance with the Department's established procedures as found in Arkansas Code Annotated § 26-18-101 *et seq.*

Subtitle II. Application and approval procedure

Section 1402.1 Application for tax credit.

A. An applicant requesting a tax credit under this program must submit a written application on a form provided by the Director and pay a required fee, if applicable, to the Division.

B. The application form shall require the following information:

1. Name of the individual or legal entity seeking credit for construction of the project identified in the application.
2. Social security number or Federal Employer Identification Number.
3. Address and telephone number of the individual or legal entity seeking credit.
4. Name, address, and telephone number of a contact person capable of answering questions about the application.
5. Estimated project cost including a breakdown of costs by activity.
6. List of other programs from which cost-share or tax credit assistance will be obtained. Include all those applied for, even if approval is still pending, and the amount of contribution anticipated from each.

7. Location of project site (e.g., county, section, township, range, watershed, etc.) including driving directions to the site.
8. Detailed plans of project in sufficient detail as necessary.
9. Additional relevant information may be requested by the Director as deemed necessary for a complete review of the proposed project.

Section 1402.2 Fees.

A. With the exception of applications for credits for the installation of water-measuring or metering devices, an applicant shall pay to the Division a fee in an amount equal to three percent (3%) of the total tax credit approved by the Division. The minimum fee shall be one hundred dollars (\$100.00) and the maximum fee shall be one thousand five hundred dollars (\$1,500.00).

B. Any fee due shall be paid to the Division when an application for tax credit approval is filed. No Certificate of Tax Credit Approval shall be issued until the applicant pays an applicable fee.

C. If the actual project cost is more than the estimated project cost contained in the application, the approved applicant must pay any difference between the original fee and the amount equivalent to three percent (3%) of actual project costs before the issuance of a Certificate of Completion. No Certificate of Completion shall be issued until the fee balance due has been paid. If an approved applicant fails to pay the fee balance, the Director will cancel the Certificate of Tax Approval, barring the approved applicant from claiming any more additional credit, and the Department may seek to recover all tax credit previously claimed.

D. All fees collected shall be deposited in the Water Development Fund.

E. Application fees are not refundable.

Section 1402.3 Issuance of Certificate of Tax Credit Approval by the Director.

A. After reviewing the application, the Director, if he or she determines that the project complies with the Act and this title of the Commission's rules, shall issue a Certificate of Tax Credit Approval based on estimated project costs to any approved applicant whose project meets program requirements.

B. The approved applicant must file the Certificate of Tax Credit Approval or both the Certificate of Tax Credit Approval and Certificate of Completion with his, her, or its income tax return for the first year in which the approved applicant claims a tax credit under the program for the project for which the certificate is issued.

C. With respect to a project undertaken by a partnership, a subchapter S corporation, a limited liability company taxed as a partnership, or a fiduciary, the Certificate of Tax Credit Approval shall be issued to each individual partner, shareholder, member or owner based upon that person's percentage of ownership or pursuant to an executed agreement between or among the partners, members, or owners documenting an alternative method for the distribution of the credit.

Section 1402.4 Issuance of Certificate of Completion by the Director.

A. Upon completion of the project, the approved applicant shall make a written request to the Director for issuance of a Certificate of Completion. As part of the request, the approved applicant shall submit the amount of tax credit requested, a summary of reasonable detail stating the total cost of the project, and any other information requested by the Director.

B. A final inspection shall be conducted by a representative of the Division or the USDA-NRCS.

C. After a satisfactory review and inspection of the project, the Director shall issue a Certificate of Completion based on the approved applicant's reported and documented cost of the project. The entire project must be completed prior to the issuance of any Certificate of Completion.

D. The approved applicant must file the Certificate of Completion with the first tax return filed after issuance of the Certificate of Completion.

Subtitle III. Project design, construction, maintenance, and termination

Section 1403.1. Project design, construction, and maintenance requirements.

A. Plans, designs or specifications must be submitted to the Division for approval and must meet the following criteria:

1. The plans, designs, and specifications shall meet or exceed minimum standards as established by the Chief Engineer;

2. The plans, designs, and specifications shall be developed by an agent of the USDA-NRCS or by a registered professional engineer, licensed in Arkansas; and

3. For agricultural projects, the project must be certified by the local conservation district as being adopted as a part of a water conservation plan, or if the plan is prepared by someone other than an agent of the USDA-NRCS, then the plan must be certified by the local district as being in conformance with accepted soil and water conservation practices.

B. The design and construction must comply with all state or local codes, rules, regulations and laws as they may apply to construction, operation and maintenance.

C. The approved applicant shall allow representatives of the Commission and the USDA-NRCS to inspect the construction, operation or maintenance of facilities at any reasonable time.

D. All projects must be maintained for a minimum life of ten years after issuance of a Certificate of Completion.

Section 1403.2 Project completion.

A. With the exception of an applicant applying for tax credit for installation of a water-measuring or metering device, only project costs incurred after issuance of a Certificate of Tax Credit Approval shall be claimed for tax credit.

B. All projects must be completed within ~~three years of the date of the Certificate of Tax Credit Approval~~ the deadline set in Ark. Code Ann. § 26-51-1011(c)(1).

C. If an approved applicant does not complete a project within the ~~three year period~~ deadline set in Ark. Code Ann. § 26-51-1011(c)(1), all credits claimed must be repaid to the Department, and the project will be disallowed as a project for tax credit purposes.

Section 1403.3 Project termination.

A. If the approved applicant terminates the project prior to expiration of the minimum project life, the approved applicant shall provide written notification to the Director and the Department. In addition, the approved applicant shall file an amended tax return and repay the amount of tax credit claimed which was not allowable.

B. If the Director determines that the approved applicant has terminated the project, he or she shall notify the Department.

C. Upon the termination of a project, the approved applicant shall not be allowed any further tax credits provided in this Act and the Department shall recapture the pro-rata share of any tax credits claimed under this Act for the period of termination.

D. The pro-rata share for recapture of the disallowed tax credits shall be determined by dividing the period of time from termination of the project until the expiration of the minimum life of the project by the required minimum life of the project times the tax credit claimed.

E. Under the Act, the Department may make necessary assessments to recapture disallowed tax credits for three years from the date of expiration of the minimum life of the project.

Subtitle IV. Tax credits

~~Section 1404.1 Water impoundments.~~

~~A. An approved applicant shall be allowed an income tax credit for a project primarily for an agricultural, commercial or industrial purpose that creates water storage of twenty acre feet or more by construction and installation or restoration of a water impoundment or water control structure.~~

~~B. An approved applicant shall be allowed a tax credit not to exceed the lesser of fifty percent (50%) of the project cost incurred or ninety thousand dollars (\$90,000.00).~~

~~C. The amount of the credit that may be used by an approved applicant for a taxable year shall not exceed the lesser of the amount of individual or corporate income tax otherwise due or nine thousand dollars (\$9,000.00).~~

~~D. If the approved applicant is a pass-through entity such as a partnership, a limited liability company taxed as a partnership, a subchapter S corporation, or a fiduciary, the amount of tax credit that may be used for a taxable year shall not exceed~~

~~the lesser of the aggregate amount of individual or corporate income tax otherwise due by all members of the pass-through entity; or nine thousand dollars (\$9,000.00).~~

~~E. Any unused credit may be carried over for a maximum of nine fifteen consecutive taxable years following the taxable year in which the credit originated.~~

~~Section 1404.2 Surface water conversion outside critical areas.~~

~~A. An approved applicant shall be allowed an income tax credit for a project reducing groundwater use by substitution of surface water for industrial, commercial, agricultural or recreational purposes located outside critical groundwater areas.~~

~~B. An approved applicant shall be allowed a tax credit not to exceed the lesser of ten percent (10%) of the project cost incurred or twenty-seven thousand dollars (\$27,000.00).~~

~~C. The amount of the credit that may be used by an approved applicant for a taxable year shall not exceed the lesser of the amount of individual or corporate income tax otherwise due or nine thousand dollars (\$9,000.00).~~

~~D. If the approved applicant is a pass-through entity such as a partnership, a limited liability company taxed as a partnership, a subchapter S corporation, or a fiduciary, the amount of tax credit that may be used for a taxable year shall not exceed the lesser of the aggregate amount of individual or corporate income tax otherwise due by all members of the pass-through entity; or nine thousand dollars (\$9,000.00).~~

~~E. Any unused tax credit may be carried over for a maximum of two consecutive taxable years following the taxable year in which the credit originated.~~

~~Section 1404.3 Surface water conversion for agricultural or recreational purposes within critical areas.~~

~~A. An approved applicant shall be allowed an income tax credit for a project with an agricultural or recreational purpose within a critical groundwater area that reduces groundwater use by substitution of surface water.~~

~~B. For agricultural or recreational projects, an approved applicant shall be allowed a tax credit not to exceed the lesser of fifty percent (50%) of the project cost incurred or twenty-seven thousand dollars (\$27,000.00).~~

~~C. The amount of tax credit allowed to each approved applicant per project that may be used for a taxable year shall not exceed the lesser of the amount of individual or corporate income tax otherwise due or nine thousand dollars (\$9,000.00).~~

~~D. If the approved applicant is a pass-through entity such as a partnership, a limited liability company taxed as a partnership, a subchapter S corporation, or a fiduciary, the amount of tax credit that may be used for a taxable year shall not exceed the lesser of the aggregate amount of individual or corporate income tax otherwise due by all members of the pass-through entity or nine thousand dollars (\$9,000.00).~~

~~E. Any unused tax credit may be carried over for a maximum of two consecutive taxable years following the taxable year in which the credit originated.~~

~~Section 1404.4 Surface water conversion for commercial or industrial purposes within critical areas.~~

~~A. An approved applicant shall be allowed an income tax credit for a project with a commercial or industrial purpose within a critical groundwater area that reduces groundwater use by substitution of surface water.~~

~~B. For industrial or commercial projects, an approved applicant shall be allowed a tax credit not to exceed the lesser of fifty percent (50%) of the project cost incurred or one million dollars (\$1,000,000.00).~~

~~C. The amount of tax credit allowed to each approved applicant per project that may be used for a taxable year shall not exceed the lesser of the amount of individual or corporate income tax otherwise due or two hundred thousand dollars (\$200,000.00).~~

~~D. If the approved applicant is a pass-through entity such as a partnership, a limited liability company taxed as a partnership, a subchapter S corporation, or a fiduciary, the amount of tax credit that may be used for a taxable year shall not exceed the lesser of the aggregate amount of individual or corporate income tax otherwise due by all members of the pass-through entity or two hundred thousand dollars (\$200,000.00).~~

~~E. Any unused tax credit may be carried over for a maximum of four consecutive taxable years following the taxable year in which the credit originated.~~

~~Section 1404.5 Land-leveling for water conservation.~~

~~A. An approved applicant shall be allowed an income tax credit for an agricultural land-leveling project that conserves irrigation water.~~

~~B. An approved applicant shall be allowed a tax credit not to exceed the lesser of ten percent (10%) of the project cost incurred or twenty seven thousand dollars (\$27,000.00).~~

~~C. The amount of tax credit that may be used by an approved applicant for a taxable year shall not exceed the lesser of the amount of individual or corporate income tax otherwise due or nine thousand dollars (\$9,000.00).~~

~~D. If the approved applicant is a pass-through entity such as a partnership, a limited liability company taxed as a partnership, a subchapter S corporation, or a fiduciary, the amount of tax credit that may be used for a taxable year shall not exceed the lesser of the aggregate amount of individual or corporate income tax otherwise due by all members of the pass-through entity; or nine thousand dollars (\$9,000.00).~~

~~E. Any unused tax credit may be carried over for a maximum of two consecutive taxable years following the taxable year in which the credit originated.~~

~~Section 1404.6~~ 1404.1 Installation of a water-measuring or metering device.

~~A. The installation of a water measuring or metering device entitles an applicant to an income tax credit equivalent to the credit available for conversion from ground to surface water use. If the meter is installed outside of a critical groundwater area, subsections B, C, D, and E of Section 1404.2 applies. If the meter is installed within a critical groundwater area, subsections B, C, D, and E of Section 1404.3 apply. —~~

~~B~~ A. An applicant must submit an "Application for Water Meter Tax Credit" to the Division. Proof of purchase price of the device and of the installation cost, if installed by a person other than the applicant, must be included with the completed application.

~~C~~ B. All meters installed within the same tax year may be listed in one credit application.

~~D~~ C. The Division shall not collect an application fee from an applicant submitting a tax credit application for the installation of a water-measuring or metering device.

~~E~~ D. Credit for installation of meters does not require pre-approval by the Division or local conservation district. Upon approval of an application, a Certificate of Tax Credit Approval as well as a Certificate of Completion will be issued by the Division.

~~Section 1404.7 Deduction for project costs above tax credit.~~

~~A. An approved applicant qualifying for the tax credits provided under this program is entitled to a deduction in an amount equal to the project cost less the total amount of credits to which the approved applicant is entitled.~~

~~B. The deduction must be taken during the year in which the project costs were incurred.~~

Subtitle V. Transferability of tax credits

Section 1405.1 Transfer of ownership.

A. An approved applicant may freely transfer ownership of a tax credit to a transferee who shall be entitled to an income tax credit only to the extent the income tax credit is still available and has not been previously used by the approved applicant.

B. A transferee under this section is subject to the carry-over provisions provided in the Act based on the taxable year in which the income tax credit originated.

C. The approved applicant shall perfect the transfer of ownership by notifying the Department in writing within thirty (30) calendar days following the effective date of the transfer and shall provide any information as may be required by the Division and the Department to ensure proper tracking of the ownership of the unused tax credit.

Section 1405.2 Perfecting transfer of ownership.

A transferee of income tax credits under the Act that seeks to qualify for the income tax credits provided in the Act shall obtain and attach to the transferee's income tax return for the years the income tax credit is claimed a certified statement from the approved applicant stating the:

1. Name and address of the approved applicant and all transferees;
2. Tax identification number of all persons entitled to any portion of the original income tax credit;
3. Original date the income tax credit was approved;

4. Amount of the income tax credit associated with the transfer of the income tax credit;
5. Original amount of the income tax credit; and
6. Remaining amount of the income tax credit that is available for use by the transferee.

Section 1405.3 Responsibility for failure to complete or maintain project.

A. If a project is not completed or maintained for the total number of years required under § 26-51-1011, the approved applicant is responsible for refunding the income tax credit to the Department as provided in § 26-51-1011.

B. The transferee of an income tax credit under the Act is not liable for the repayment of the income tax credit allowed under the Act if the approved applicant fails to complete or maintain the project under § 26-51-1011.

**Arkansas Natural Resources Commission
Rules Implementing the Water Resource Conservation and
Development Incentives Act
Title 14
(Revised 2020)**

<u>Subtitle</u>	<u>Page</u>
I. General provisions	
1401.1 Purpose.....	1
1401.2 Enabling and pertinent legislation	1
1401.3 Definitions.....	1
1401.4 Limitations	3
1401.5 Record keeping	3
1401.6 Appeals	3
II. Application and approval procedure	
1402.1 Application for tax credit	3
1402.2 Fees	4
1402.3 Issuance of Certificate of Tax Credit Approval by the Director.....	4
1402.4 Issuance of Certificate of Completion by the Director	5
III. Project design, construction, maintenance, and termination	
1403.1 Project design and construction requirements	5
1403.2 Project completion.	6
1403.3 Project termination.....	6
IV. Tax credits	
1404.1 Water impoundments	6
1404.2 Surface water conversion outside critical areas	7
1404.3 Surface water conversion for agricultural or recreational purposes within critical areas	7
1404.4 Surface water conversion for commercial or industrial purposes within critical areas	8
1404.5 Land-leveling for water conservation	8
1404.6 Installation of water-measuring or metering devices	8
1404.7 Deduction for project costs above tax credit.....	9
IV. Transferability of tax credits	
1405.1 Transfer of ownership	9
1405.2 Perfecting transfer of ownership.....	9
1405.3 Responsibility for failure to complete or maintain project	10

**Arkansas Natural Resources Commission
Rules Implementing the Water Resource Conservation and
Development Incentives Act
(Revised ~~2011~~ 2020)**

Subtitle I. General provisions

Section 1401.1 Purpose.

A. The State of Arkansas is blessed with abundant rainfall and other surface and underground water resources which, when managed conjunctively, can provide a continuous high-quality water supply to meet the foreseeable needs of the entire state.

B. Existing water use patterns are depleting groundwater supplies at an unacceptable rate and alternative surface water supplies are not available in sufficient quantities without developing additional water storage to alleviate this groundwater depletion problem.

C. The tax incentives provided under this program encourage water users to invest in: (1) the construction of impoundments to utilize available surface water and reduce our dependence on groundwater; (2) the conversion from groundwater use to surface water use when surface water is available; (3) the water conservation practice of land-leveling to reduce agricultural irrigation water use; and (4) the installation of water meters to monitor groundwater usage.

D. It is of utmost importance to Arkansas that within critical groundwater areas, surface water be used when available.

Section 1401.2 Enabling and pertinent legislation.

A. Ark. Code Ann. § 26-51-1001 *et seq.*, the Water Resource Conservation and Development Incentives Act.

B. Ark. Code Ann. § 15-20-201 *et seq.*, the Arkansas Natural Resources Commission.

C. Ark. Code Ann. § 25-15-201 *et seq.*, the Arkansas Administrative Procedure Act.

Section 1401.3 Definitions.

Unless the context requires otherwise, the following definitions shall apply to all parts of this title:

A. "Acre-foot" means the volumetric measure equal to forty-three thousand five hundred sixty (43,560) cubic feet or approximately three hundred twenty-five thousand nine hundred (325,900) gallons.

B. "Act" means the Water Resource Conservation and Development Incentives Act.

C. "Application" means a written request for approval for tax credits, describing the project including a water conservation plan outlining the operation of the project and any additional requirements as the Commission may adopt by rule.

D. "Approved applicant" means an individual, fiduciary, partnership, limited liability company, or corporation that submits a written request for approval of a project

for tax credits in compliance with this subchapter and receives a Certificate of Tax Credit Approval for that project.

E. "Chief Engineer" means the Chief Engineer of the Natural Resources Division of the Department of Agriculture.

F. "Commission" means the Arkansas Natural Resources Commission, established pursuant to Ark. Code Ann. §15-20-201 *et seq.*

G. "Critical groundwater area" means those areas that are designated by the Commission pursuant to the Arkansas Groundwater Protection and Management Act, contained in Title 15, Chapter 22, Subchapter 9 of the Arkansas Code of 1987 Annotated.

H. "Department" means the Arkansas Department of Finance and Administration.

I. "Director" means the Director of the Arkansas Natural Resources Commission who shall appointed by and serve at the pleasure of the Governor.

J. "Division" or "Natural Resources Division" references the Department of Agriculture employees responsible for carrying out the functions of the Arkansas Natural Resources Commission.

K. "Fee" means the payment made by an applicant to the Division for processing the application pursuant to Section 1402.2 of these rules.

L. "Land-leveling" means modifying the surface relief of a field to a planned grade to provide a more suitable surface for efficiently applying irrigation water without excessive erosion, loss of water quality, or damage to land by water logging.

M. "Local district" means the conservation district in which the project is located.

N. "Project" means:

1. The construction, installation or restoration of a water impoundment or water control structure of twenty acre-feet or more designed for storing water to be used for agricultural, commercial, or industrial purposes;
2. The conversion from groundwater to surface water use by an agricultural, commercial, industrial or recreational water user;
3. Agricultural land-leveling resulting in water savings due to the more efficient use of irrigation water for which tax credits are claimed; or
4. The purchase and installation of a water-measuring or metering device to determine the quantity of water used.

O. "Project cost" means the actual expenditure for a project less any reimbursement received by an approved applicant from cost-share programs.

P. "Transferee" means a person or corporate entity who receives some or all of an approved applicant's tax credit and is named as the successor to the credit through a certified statement executed by the approved applicant.

Q. "USDA-NRCS" means the United States Department of Agriculture National Resources Conservation Service or its successor.

Section 1401.4 Limitations.

A. Prior to claiming any tax credits under this program, a taxpayer must obtain a Certificate of Tax Credit Approval from the Director certifying to the Department that the taxpayer has complied with the procedure contained in Subtitle II of these rules.

B. An approved applicant shall not receive a tax credit for costs which are reimbursed from cost share or other programs.

C. Any tax credit or percentage of a tax credit issued to an approved applicant that is a partnership, a limited liability company taxed as a partnership, a subchapter S corporation, or a fiduciary shall be passed through to the partners, members, or owners, respectively, on a pro rata basis or pursuant to an executed agreement between or among the partners, members, or owners documenting an alternative method for the distribution of the credit.

Section 1401.5 Record keeping.

An approved applicant claiming a credit under the program must maintain all financial records for **fifteen** years after the tax year in which the certificate of completion is issued.

Section 1401.6 Appeals.

A. Except as otherwise provided herein, an applicant or an approved applicant may appeal, pursuant to Title I, Subtitle V of the Commission's Rules, any decision or action of the Director.

B. All decisions related to recapture of tax credits shall be appealed in accordance with the Department's established procedures as found in Arkansas Code Annotated § 26-18-101 *et seq.*

Subtitle II. Application and approval procedure

Section 1402.1 Application for tax credit.

A. An applicant requesting a tax credit under this program must submit a written application on a form provided by the Director and pay a required fee, if applicable, to the Division.

B. The application form shall require the following information:

1. Name of the individual or legal entity seeking credit for construction of the project identified in the application.
2. Social security number or Federal Employer Identification Number.
3. Address and telephone number of the individual or legal entity seeking credit.
4. Name, address, and telephone number of a contact person capable of answering questions about the application.
5. Estimated project cost including a breakdown of costs by activity.
6. List of other programs from which cost-share or tax credit assistance will be obtained. Include all those applied for, even if approval is still pending, and the amount of contribution anticipated from each.
7. Location of project site (e.g., county, section, township, range, watershed, etc.) including driving directions to the site.

8. Detailed plans of project in sufficient detail as necessary.
9. Additional relevant information may be requested by the Director as deemed necessary for a complete review of the proposed project.

Section 1402.2 Fees.

A. With the exception of applications for credits for the installation of water-measuring or metering devices, an applicant shall pay to the Division a fee in an amount equal to three percent (3%) of the total tax credit approved by the Division. The minimum fee shall be one hundred dollars (\$100.00) and the maximum fee shall be one thousand five hundred dollars (\$1,500.00).

B. Any fee due shall be paid to the Division when an application for tax credit approval is filed. No Certificate of Tax Credit Approval shall be issued until the applicant pays an applicable fee.

C. If the actual project cost is more than the estimated project cost contained in the application, the approved applicant must pay any difference between the original fee and the amount equivalent to three percent (3%) of actual project costs before the issuance of a Certificate of Completion. No Certificate of Completion shall be issued until the fee balance due has been paid. If an approved applicant fails to pay the fee balance, the Director will cancel the Certificate of Tax Approval, barring the approved applicant from claiming any more additional credit, and the Department may seek to recover all tax credit previously claimed.

D. All fees collected shall be deposited in the Water Development Fund.

E. Application fees are not refundable.

Section 1402.3 Issuance of Certificate of Tax Credit Approval by the Director.

A. After reviewing the application, the Director, if he or she determines that the project complies with the Act and this title of the Commission's rules, shall issue a Certificate of Tax Credit Approval based on estimated project costs to any approved applicant whose project meets program requirements.

B. The approved applicant must file the Certificate of Tax Credit Approval or both the Certificate of Tax Credit Approval and Certificate of Completion with his, her, or its income tax return for the first year in which the approved applicant claims a tax credit under the program for the project for which the certificate is issued.

C. With respect to a project undertaken by a partnership, a subchapter S corporation, a limited liability company taxed as a partnership, or a fiduciary, the Certificate of Tax Credit Approval shall be issued to each individual partner, shareholder, member or owner based upon that person's percentage of ownership or pursuant to an executed agreement between or among the partners, members, or owners documenting an alternative method for the distribution of the credit.

Section 1402.4 Issuance of Certificate of Completion by the Director.

A. Upon completion of the project, the approved applicant shall make a written request to the Director for issuance of a Certificate of Completion. As part of the request, the approved applicant shall submit the amount of tax credit requested, a summary of reasonable detail stating the total cost of the project, and any other information requested by the Director.

B. A final inspection shall be conducted by a representative of the Division or the USDA-NRCS.

C. After a satisfactory review and inspection of the project, the Director shall issue a Certificate of Completion based on the approved applicant's reported and documented cost of the project. The entire project must be completed prior to the issuance of any Certificate of Completion.

D. The approved applicant must file the Certificate of Completion with the first tax return filed after issuance of the Certificate of Completion.

Subtitle III. Project design, construction, maintenance, and termination

Section 1403.1. Project design, construction, and maintenance requirements.

A. Plans, designs or specifications must be submitted to the Division for approval and must meet the following criteria:

1. The plans, designs, and specifications shall meet or exceed minimum standards as established by the Chief Engineer;

2. The plans, designs, and specifications shall be developed by an agent of the USDA-NRCS or by a registered professional engineer, licensed in Arkansas; and

3. For agricultural projects, the project must be certified by the local conservation district as being adopted as a part of a water conservation plan, or if the plan is prepared by someone other than an agent of the USDA-NRCS, then the plan must be certified by the local district as being in conformance with accepted soil and water conservation practices.

B. The design and construction must comply with all state or local codes, rules, regulations and laws as they may apply to construction, operation and maintenance.

C. The approved applicant shall allow representatives of the Commission and the USDA-NRCS to inspect the construction, operation or maintenance of facilities at any reasonable time.

D. All projects must be maintained for a minimum life of ten years after issuance of a Certificate of Completion.

Section 1403.2 Project completion.

A. With the exception of an applicant applying for tax credit for installation of a water-measuring or metering device, only project costs incurred after issuance of a Certificate of Tax Credit Approval shall be claimed for tax credit.

B. All projects must be completed within the deadline set in Ark. Code Ann. § 26-51-1011(c)(1).

C. If an approved applicant does not complete a project within the deadline set in Ark. Code Ann. § 26-51-1011(c)(1), all credits claimed must be repaid to the Department, and the project will be disallowed as a project for tax credit purposes.

Section 1403.3 Project termination.

A. If the approved applicant terminates the project prior to expiration of the minimum project life, the approved applicant shall provide written notification to the Director and the Department. In addition, the approved applicant shall file an amended tax return and repay the amount of tax credit claimed which was not allowable.

B. If the Director determines that the approved applicant has terminated the project, he or she shall notify the Department.

C. Upon the termination of a project, the approved applicant shall not be allowed any further tax credits provided in this Act and the Department shall recapture the pro-rata share of any tax credits claimed under this Act for the period of termination.

D. The pro-rata share for recapture of the disallowed tax credits shall be determined by dividing the period of time from termination of the project until the expiration of the minimum life of the project by the required minimum life of the project times the tax credit claimed.

E. Under the Act, the Department may make necessary assessments to recapture disallowed tax credits for three years from the date of expiration of the minimum life of the project.

Subtitle IV. Tax credits

Section 1404.1 Installation of a water-measuring or metering device.

A. An applicant must submit an "Application for Water Meter Tax Credit" to the Division. Proof of purchase price of the device and of the installation cost, if installed by a person other than the applicant, must be included with the completed application.

B. All meters installed within the same tax year may be listed in one credit application.

C. The Division shall not collect an application fee from an applicant submitting a tax credit application for the installation of a water-measuring or metering device.

D. Credit for installation of meters does not require pre-approval by the Division or local conservation district. Upon approval of an application, a Certificate of Tax Credit Approval as well as a Certificate of Completion will be issued by the Division.

Subtitle V. Transferability of tax credits

Section 1405.1 Transfer of ownership.

A. An approved applicant may freely transfer ownership of a tax credit to a transferee who shall be entitled to an income tax credit only to the extent the income tax credit is still available and has not been previously used by the approved applicant.

B. A transferee under this section is subject to the carry-over provisions provided in the Act based on the taxable year in which the income tax credit originated.

C. The approved applicant shall perfect the transfer of ownership by notifying the Department in writing within thirty (30) calendar days following the effective date of the transfer and shall provide any information as may be required by the Division and the Department to ensure proper tracking of the ownership of the unused tax credit.

Section 1405.2 Perfecting transfer of ownership.

A transferee of income tax credits under the Act that seeks to qualify for the income tax credits provided in the Act shall obtain and attach to the transferee's income tax return for the years the income tax credit is claimed a certified statement from the approved applicant stating the:

1. Name and address of the approved applicant and all transferees;
2. Tax identification number of all persons entitled to any portion of the original income tax credit;
3. Original date the income tax credit was approved;
4. Amount of the income tax credit associated with the transfer of the income tax credit;
5. Original amount of the income tax credit; and
6. Remaining amount of the income tax credit that is available for use by the transferee.

Section 1405.3 Responsibility for failure to complete or maintain project.

A. If a project is not completed or maintained for the total number of years required under § 26-51-1011, the approved applicant is responsible for refunding the income tax credit to the Department as provided in § 26-51-1011.

B. The transferee of an income tax credit under the Act is not liable for the repayment of the income tax credit allowed under the Act if the approved applicant fails to complete or maintain the project under § 26-51-1011.

QUESTIONNAIRE FOR FILING PROPOSED RULES WITH THE
ARKANSAS LEGISLATIVE COUNCIL

DEPARTMENT/AGENCY Arkansas Department of Agriculture/Natural Resources Commission
DIVISION Natural Resources
DIVISION DIRECTOR Chris Colclasure
CONTACT PERSON Wade Hodge
ADDRESS #1 Natural Resources Drive, Little Rock AR 72205
PHONE NO. 501-219-6361 **FAX NO.** _____
E-MAIL wade.hodge@agriculture.arkansas.gov
NAME OF PRESENTER AT COMMITTEE MEETING Chris Colclasure
PRESENTER E-MAIL chris.colclasure@agriculture.arkansas.gov

INSTRUCTIONS

- A. Please make copies of this form for future use.
- B. Please answer each question **completely** using layman terms. You may use additional sheets, if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
- D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Rebecca Miller-Rice
Administrative Rules Review Section
Arkansas Legislative Council
Bureau of Legislative Research
One Capitol Mall, 5th Floor
Little Rock, AR 72201

- 1. What is the short title of this rule? Title 14 Water Resource Conservation and Development Incentives Act Rules
- 2. What is the subject of the proposed rule? To implement the changes provided for in Acts 563 and 875. Act 563 amended the time frame for completing certain water projects, and Act 875 changed the available tax incentives for completing those water projects.
- 3. Is this rule required to comply with a federal statute, rule, or regulation? Yes _____ No x _____
If yes, please provide the federal rule, regulation, and/or statute citation.
- 4. Was this rule filed under the emergency provisions of the Administrative Procedure Act? Yes _____ No x _____
If yes, what is the effective date of the emergency rule? _____
When does the emergency rule expire? _____

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? Yes_____ No_____

5. Is this a new rule? Yes _ No_✓ If yes, please provide a brief summary explaining the rule. See attached summary.

Does this repeal an existing rule? Yes_____ No__✓ ___ If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does.

Is this an amendment to an existing rule? Yes_✓ ___No_____ If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The summary should explain what the amendment does.**

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation. Ark. Code Ann. § 26-51-1001 et seq; specifically § 26-51-1010.

7. What is the purpose of this proposed rule? Why is it necessary? See attached summary

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b). www.agriculture.arkansas.gov

9. Will a public hearing be held on this proposed rule? Yes__✓ ___ No_____ If yes, please complete the following:

Date:___ March 24, 2022_____

Time:___ 9:30

Place:___1 Natural Resources Drive, Little Rock

-
10. When does the public comment period expire for permanent promulgation? (Must provide a date.)

___March 26, 2022_____

11. What is the proposed effective date of this proposed rule? (Must provide a date.)

___June 1, 2022

12. Please provide a copy of the notice required under Ark. Code Ann. § 25-15-204(a), and proof of the publication of said notice.

13. Please provide proof of filing the rule with the Secretary of State as required pursuant to Ark.

14. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Arkansas Department of Agriculture/Natural Resources Commission
DIVISION Natural Resources
PERSON COMPLETING THIS STATEMENT Wade Hodge
TELEPHONE NO. 501-219-6361 **FAX NO.** _____
EMAIL: wade.hodge@agriculture.arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE Water Resource Conservation and Development Incentives Act rules

1. Does this proposed, amended, or repealed rule have a financial impact?
Yes _____ No x_____
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 xx_____ 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 x_____ No _____

If an agency is proposing a more costly rule, please state the following:

- (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 more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and
 - (d) Whether the reason is within the scope of the agency's statutory authority, and if so, please explain.
4. If the purpose of this rule is to implement a federal rule or regulation, please state the following: N/A
- (a) What is the cost to implement the federal rule or regulation? N/A

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, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected. N/A

Current Fiscal Year

\$ N/A _____

Next Fiscal Year

\$ N/A _____

.

6. What is the total estimated cost by fiscal year to state, county, and 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

\$ N/A _____

Next Fiscal Year

\$ N/A _____

Unknown, see above. _____

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 x _____

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.



Asa Hutchinson
Governor

ARKANSAS DEPARTMENT OF AGRICULTURE

1 Natural Resources Drive, Little Rock, AR 72205
agriculture.arkansas.gov
(501) 225-1598



Wes Ward
Secretary of Agriculture

February 18, 2022

Summary of Amendments the Arkansas Natural Resources Commission's Rule Implementing the Water Resources Conservation and Development Incentive Act

Purpose:

This memorandum summarizes the proposed amendments to the Arkansas Natural Resources Commission's (Commission) existing rules implementing the Water Resources Conservation and Development Incentive Act (Title 14).

Background:

The Water Resources Conservation and Development Incentive Act ("the Incentives Act") provides tax incentives to those who invest in projects to promote water conservation. During the 2021 session of the Arkansas General Assembly, the legislature passed Act 563 and Act 875, both of which modified the Incentives Act. Act 563 extended the deadline for completion of eligible projects from three years to five years. Act 875 increased the credit amounts available for eligible projects under the Incentives Act. For that reason, the Commission's Title 14 rule, which implements the Incentives Act, conflicts with Acts 563 and 875 and needs to be amended.

On September 15, 2021, the Commission considered the changes required by Acts 563 and 875 and voted to initiate rulemaking to bring Title 14 in compliance with the Incentives Act. Ark. Code Ann. § 25-51-1010(a)(2) requires that the rule must also be approved by the Department of Finance and Administration (DF&A). The rule was forwarded to DF&A on September 29, 2021. DF&A requested the rule also be amended to reflect that records regarding the incentives must be kept for fifteen years instead of thirteen years. That change was made, and approval to proceed was received from DF&A on February 18, 2022.

Key Points: The proposed amendments

- Bring the rule into compliance with Act 563 regarding the time frame for completing water projects
- Bring the rule into compliance with Act 875 regarding tax incentives for completing water projects
- Changes the length of time records regarding the incentives must be kept from 13 to 15 years
- Eliminate the necessity of repeated amendments should the law change in the future
- Shorten the rule by three pages

Discussion:

Current Title 14 language indicates that water projects must be completed within three years. Act 563 extended the deadline for completion of eligible projects to five years. The proposed amendment changes that language to require completion within "the deadline set in Ark. Code Ann. § 26-51-1011(c)(1)." Therefore, if the law is amended again to reflect a change in the time frame, the rule will not need to be amended.

Act 875 is self-implementing and does not require a rule. Current Title 14 language as it relates to tax credit or tax incentive amounts is merely a recitation of the Incentives Act and does not explain or clarify the Incentives Act in any way, so that unnecessary language was removed.