

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 _____

Linda Luebke

From: legalads@arkansasonline.com
Sent: Thursday, October 6, 2022 8:23 AM
To: Linda Luebke
Subject: Re: CORRECTED - Legal Notice - October 7 - 9, 2022 - Arkansas Natural Resources Commission

Will run Fri 10/7, Sat 10/8, and Sun 10/9.

Thank you.

Gregg Sterne, Legal Advertising
Arkansas Democrat-Gazette
legalads@arkansasonline.com

From: "Linda Luebke" <linda.luebke@agriculture.arkansas.gov>
To: "legalads@arkansasonline.com" <legalads@arkansasonline.com>
Cc: "Wade Hodge" <wade.hodge@agriculture.arkansas.gov>, "Wes Ward" <wes.ward@agriculture.arkansas.gov>, "Cynthia Edwards" <cynthia.edwards@agriculture.arkansas.gov>, "Autumn Causey" <Autumn.causey@agriculture.arkansas.gov>, "Chris Colclasure" <Chris.Colclasure@agriculture.arkansas.gov>, "Tate Wentz" <Tate.Wentz@agriculture.arkansas.gov>, "Michael Bynum" <Michael.Bynum@agriculture.arkansas.gov>, "Kolton Jones" <kolton.jones@agriculture.arkansas.gov>, "Caitlin Bennett" <Caitlin.Bennett@agriculture.arkansas.gov>, "Dana Jones" <dana.jones@agriculture.arkansas.gov>, "April Harris" <April.Harris@agriculture.arkansas.gov>
Sent: Wednesday, October 5, 2022 11:10:14 AM
Subject: CORRECTED - Legal Notice - October 7 - 9, 2022 - Arkansas Natural Resources Commission

I am sending a corrected email. I had attached the wrong document in WORD format. I have attached the correct one.

Thank you!

Linda

From: Linda Luebke
Sent: Wednesday, October 5, 2022 9:27 AM
To: 'legalads@arkansasonline.com' <legalads@arkansasonline.com>
Cc: Wade Hodge <wade.hodge@agriculture.arkansas.gov>; Wes Ward <wes.ward@agriculture.arkansas.gov>; Cynthia Edwards <cynthia.edwards@agriculture.arkansas.gov>; Autumn Causey <Autumn.causey@agriculture.arkansas.gov>; Chris Colclasure <Chris.Colclasure@agriculture.arkansas.gov>; Tate Wentz <Tate.Wentz@agriculture.arkansas.gov>; Michael Bynum <Michael.Bynum@agriculture.arkansas.gov>; Kolton Jones <kolton.jones@agriculture.arkansas.gov>; Caitlin Bennett <Caitlin.Bennett@agriculture.arkansas.gov>; Dana Jones <dana.jones@agriculture.arkansas.gov>; April Harris <April.Harris@agriculture.arkansas.gov>
Subject: Legal Notice - October 7 - 9, 2022 - Arkansas Natural Resources Commission

Legal Notice - October 7 - 9, 2022

Please run the attached legal notice on Friday, October 7, 2022, Saturday, October 8, 2022 in all counties that still receive daily (Mon.-Sat.) delivery of the printed edition, and statewide on Sunday, October 9, 2022.

Thank you!

Linda Luebke

Administrative Analyst

Arkansas Department of Agriculture

1 Natural Resources Drive, Little Rock, AR 72205

(501) 225-1598

linda.luebke@agriculture.arkansas.gov

agriculture.arkansas.gov



Legal Notice

Arkansas Natural Resources Commission

The Arkansas Natural Resources Commission is proposing amendments to its Title 10 Rules Governing the Arkansas Water Resource Agricultural Cost-Share Program and its Title 13 Rules Governing the Tax Credit Program for the Creation, Restoration, and Conservation of Private Wetland and Riparian Zones

The purpose of the proposed rule amendments to Title 10 is increase the landowner project cap from \$2,500 or \$7,500 per three-year cycle to \$5,000 annually or \$15,000 per three-cycle and revise the cost-share percentage to align with current federal nonpoint source pollution program requirements of 60% federal funds and 40% non-federal sponsor funds. The purpose of the proposed rule amendments to Title 13 is to clarify that for a project to qualify for a tax credit under the rule, the project must include activities that reduce sediment inputs.

Comments can be mailed to: Arkansas Department of Agriculture – Attn: Tate Wentz, 10421 West Markham Street, Little Rock, AR 72205, or emailed to tate.wentz@agriculture.arkansas.gov

Comments will be accepted beginning October 7 until the close of business on November 5, 2022. Oral comments may be made in person at the Arkansas Department of Agriculture, 1 Natural Resources Drive, Little Rock, AR 72205 on October 12, 2022, at 10:00 a.m.

The proposed rules can be viewed on the website at www.arkansas.agriculture.gov



Wade Hodge, Legal Counsel
Arkansas Department of Agriculture

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:

~~Jessica C. Whittaker~~ 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? Rules governing the Tax Credit Program for the Creation, Restoration, and Conservation of Private Wetland and Riparian Zones
2. What is the subject of the proposed rule? To clarify that for a project to qualify for a tax credit, the project must include activities that reduce sediment inputs—something that is intended by the Tax Credit Program but not clearly stated in the current version of the rules. The proposed amendment makes a small change to clarify that point.
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. To clarify that credit-eligible projects under the rule must include activities that reduce sediment inputs. 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.**

To clarify that for a project to qualify for a tax credit, the project must include activities that reduce sediment inputs—something that is intended by the Tax Credit Program but not clearly stated in the current version of the rules.

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation. Ark. Code Ann. §§ 14-125-101—907; 15-20-201—207; 15-22-507; 15-22-913 -- 914;
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: ~~TBD~~ November 16, 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.)
~~TBD~~ October 22, 2022
11. What is the proposed effective date of this proposed rule? (Must provide a date.)
January 1, 2023
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. Code Ann. § 25-15-204(e).
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 Rules governing the Tax Credit Program for the Creation, Restoration, and Conservation of Private Wetland and Riparian Zones

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 x _____ 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:
 - (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 N/A

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total N/A

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

Current Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total N/A

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total N/A

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.

Current Fiscal Year

\$ N/A

Next Fiscal Year

\$ N/A

The proposed rule change just adds clarification on what projects are eligible for tax credit, but the
change does not affect the current practice for selection of projects. No cost is anticipated to private
individuals, entities, or businesses.

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

There is no anticipated cost to implement the rule.

-
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

September 19, 2022

Memorandum regarding Amendment to Natural Resources Commission's Title XIII Rules

Purpose

This memorandum analyzes a proposed amendment to the Arkansas Natural Resources Commission's (ANRC) existing rules implementing the Title XIII rules governing the Tax Credit Program for the Creation and Restoration of Private Wetland and Riparian Zones (Tax Credit Program).

Background: In 1995, the Arkansas Legislature passed Act 561, the Arkansas Private Wetland and Riparian Zone Creation and Restoration Incentive Act of 1995, which allows for tax credits for qualifying projects that restore and enhance existing wetlands and riparian zones, create new wetlands and riparian zones, or donate wetland and riparian qualified real property interests. The Title XIII Rule governs the Tax Credit Program.

Under Act 561, there exists the Private Wetlands and Riparian Zone Creation, Restoration, and Conservation Committee (Committee) that reviews and provides recommendations for approval or disapproval of each application for a tax credit. The Committee is made up of the secretary, director, or their designees, of the Arkansas State Game and Fish Commission; the Department of Finance and Administration; the Division of Arkansas Heritage; and the Department of Energy and Environment; as well as two public members with expertise in wetlands and riparian zone ecology appointed by the ANRC.

Additionally, the Department of Agriculture's Natural Resources Division administers the Groundwater Conservation Tax Credit Program, established in 1995 by the Water Resource Conservation and Development Incentives Act. That program allows for tax credits to encourage water users to invest in the construction of impoundments, the conversion from groundwater use to surface water use, and land leveling and water meter installation to conserve water.

The Committee members from Arkansas Game and Fish Commission and Arkansas Parks, Heritage, and Tourism requested an amendment to the Title XIII rules to clarify that for a project to qualify for a tax credit, the project must include activities that reduce sediment inputs—something that is intended by the Tax Credit Program but not clearly stated in the current version of the rules. On August 11, 2022, the ANRC voted to move forward with an amendment makes a small change to clarify that point.

Key Points

- The Committee provides recommendations on which projects are eligible to receive tax credits
- The Committee is comprised of Arkansas Forestry Division, Arkansas Game and Fish Commission, Arkansas Department of Finance and Administration, Arkansas Parks, Heritage, and Tourism, Arkansas Division of Energy and Environment, and two public members appointed by the ANRC.
- In 2021, Committee members from the Arkansas Game and Fish Commission and Arkansas Parks, Heritage, and Tourism began verbally requesting NRD staff amend the rule to clarify that tax credit-eligible projects must include activities that reduce sediment inputs.
- The ANRC proposes to amend the Title XIII rule to clarify that requirement.

- The proposed amendment includes stylistic changes to conform to the new Code of Arkansas Rules project style guidelines.

Discussion:

Since establishment of Title XIII, there have been over 240 applications totaling nearly \$5.3 million in approved tax credits. There is on average 15 applications per year. The goal of NRD's Water Quality Section is to increase average application to 20 per year, which would likely hit the annual \$500,000 tax credit cap.

Clarifying that tax credit-eligible projects must include activities that reduce sediment inputs is in line with statutory intent.

Finally, due to the Bureau of Legislative Research's ongoing Code of Arkansas Rules Project, the proposed amendment also contains many stylistic changes that are non-substantive to bring the rule into compliance with the new style guide for rules.

PROPOSED RULE
CLEAN COPY

Arkansas Natural Resources Commission Rules Governing the Tax Credit Program for the Creation,
Restoration, and Conservation of Private Wetland and Riparian Zones

Title 13

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Arkansas Natural Resources Commission Rules Governing the Tax Credit Program for the Creation, Restoration, and Conservation of Private Wetland and Riparian Zones

Subtitle I. General provisions

Section 1301.1 Purpose.

Wetlands and riparian zones provide the state with significant benefits in the areas of flood control, water quality enhancement, sediment reduction, fish and wildlife habitat, recreation, and recharging of groundwater. The state continues to experience significant loss of wetlands. Since the majority of lands suitable for wetlands and riparian zones are held by private owners, the state has developed this program to encourage these owners to restore and enhance existing wetlands and riparian zones, create new wetlands and riparian zones, or donate wetland and riparian zone qualified real property interests.

Section 1301.2 Legislation.

A. Arkansas Code Annotated § 26-51-1501 *et seq.*, the "Arkansas Wetland and Riparian Zone Creation, Restoration, and Conservation Tax Credits Act," allows a wetlands and riparian zone creation and restoration tax credit against the tax imposed by the Arkansas Income Tax Act (Arkansas Code Annotated § 26-51-101 *et seq.*) for any taxpayer engaged in the development or restoration of wetlands and riparian zones.

B. The same act also allows a wetland and riparian zone conservation tax credit against the tax imposed by the Arkansas Income Tax Act for any eligible donor who donates a qualified real property interest for a qualified conservation purpose to an eligible donee.

Section 1301.3 Definitions.

As used herein, unless the context otherwise requires:

A. "Act" means the Arkansas Wetland and Riparian Zone Creation, Restoration, and Conservation Tax Credits Act, Ark. Code Ann. § 26-51-1501 *et seq.*

B. "Commission" means the Arkansas Natural Resources Commission.

C. "Committee" means the Private Wetlands and Riparian Zone Creation, Restoration, and Conservation Committee.

D. "Conservation application" means an application submitted by a taxpayer seeking tax credit for donation of a qualified real property interest.

E. "Developing wetlands" means to establish a wetland or other aquatic resource.

F. "Eligible donee" means a qualified organization under 26 U.S.C. § 170(h)(3), as in effect on January 1, 2009, and corresponding regulations in 26 C.F.R. § 1.170A-14(c), as in effect on January 1, 2009. A non-governmental qualified organization must have adopted the Land Trust Alliance's Land Trust Standards and Practices, as in effect on January 1, 2009, in order to qualify as an "eligible donee".

G. "Eligible donor" means any person or entity, including without limitation an individual, corporation, trust, estate, and partnership or other pass-through legal entity, that owns a qualified real property interest.

I. "Director" means the Director of the Arkansas Department of Agriculture's Natural Resources Division.

J. "Project" means wetlands or riparian zones created or restored by activities for which tax credits are claimed.

K. "Project application" means a written plan for development and operation of the project, including all requirements as the commission may adopt by rule.

L. "Project cost" means the actual expenditure for a project less any reimbursement received by the taxpayer from cost-share programs or any other funding.

M. "Qualified appraisal" means an appraisal in accordance with 26 C.F.R. § 1.170A-13(c)(3), as in effect on January 1, 2009, and the Uniform Standards of Professional Appraisal Practice, as in effect on January 1, 2009.

N. "Qualified conservation purpose" means a conservation purpose as defined by 26 U.S.C. § 170(h)(4), as in effect on January 1, 2009, and corresponding regulations in 26 C.F.R. § 1.170A-14(d), as in effect on January 1, 2009.

O. "Qualified real property interest" means an interest in real property located completely in this state and containing wetlands or riparian zones, which also meets the definition of a qualified real property interest under 26 U.S.C. § 170(h)(2), as in effect on January 1, 2009, and the corresponding regulations in 26 C.F.R. § 1.170A-14(b), as in effect on January 1, 2009.

P. "Restoring wetlands" means to return wetland values and functions to a former wetland or degraded wetland where human or natural activities have diminished or destroyed such values and functions thereby returning the land to wetland status.

Q. "Riparian zone" means an area of land along the bank of a natural water course or contiguous to a body of water that is set aside to reduce impacts of adjoining land use on the stream or water body or any other definition promulgated by the commission.

R. "Tax credits" means the authorized amount that may be applied against Arkansas corporate income tax or Arkansas individual income tax, whether earned by an individual, partnership, limited liability company, S Corporation, or corporation.

S. "Taxpayer" means the entity that is certified to earn tax credits for an approved project, whether an individual, partnership, limited liability company, S Corporation, or corporation.

T. "Wetlands" means an area that has water at or near the surface of the ground at some time during the growing season (wetland hydrology). It contains plants that are adapted to wet habitats (hydrophytic vegetation) and is made up of soil that has developed under wet conditions (hydric soils) or any other definition promulgated by the commission.

Section 1301.4 Tax credit amount allowed.

A. The amount of wetland and riparian zone creation and restoration credit allowed shall be equal to the project cost incurred in the development, creation, or restoration of wetlands and riparian zones but shall not exceed fifty thousand dollars (\$50,000). Only the actual costs to the taxpayer will be considered for tax credit.

B. The amount of the wetland and riparian zone conservation tax credit allowed shall equal fifty percent (50%) of the fair market value of the qualified real property interest donation calculated to exclude any short-term capital gain under 26 U.S.C. § 170(e)(1)(A), as in effect on January 1, 2009, and shall not exceed fifty thousand dollars (\$50,000).

C. The amount of credit that may be used by a taxpayer for a taxable year may not exceed the lesser of the amount of individual or corporate income tax otherwise due or five thousand dollars (\$5,000.00) per taxpayer.

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

Section 1301.5 Application fee.

A. The commission may charge a reasonable application fee for the processing of tax credit applications.

B. Applicant shall pay to the Department of Agriculture a fee in an amount equal to three percent (3%) of the total tax credit submitted for approval to the commission. The minimum fee shall be one hundred dollars (\$100.00).

C. All fees shall be paid to the Department of Agriculture when an application for tax credit approval is filed.

D. When an application is rejected by the director, the full application fee will be refunded.

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

Section 1301.6 Delegation of authority.

The director is delegated all powers necessary and convenient to carry out the responsibilities contained in these rules.

Section 1301.7 Department of Agriculture reports to Department of Finance and Administration.

The Department of Agriculture shall provide reports quarterly to the Department of Finance and Administration of the total number of tax credit applications approved and the total number of creation and restoration projects receiving final certification.

Section 1301.8 Appeals.

A. Except as otherwise provided herein, a taxpayer 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 of Finance and Administration's established procedures contained in A.C.A. §26-18-101 *et seq.*

Subtitle II. Private Wetlands and Riparian Zone Creation, Restoration, and Conservation Committee

Section 1302.1 Membership.

A. This committee shall be made up of the directors, or their designees, of the Arkansas Forestry Commission, Arkansas Game and Fish Commission, Arkansas Department of Finance and Administration, Department of Arkansas Parks, Heritage, and Tourism, and the Arkansas Department of Energy and Environment, and two public members appointed by the director.

B. Selection of public members shall be made on the basis of their knowledge of wetlands and riparian zones with consideration given to representation of a wide variety of interests.

C. The public members of the committee shall be appointed for five-year terms. Individuals appointed are eligible for reappointment at the expiration of this term.

D. Any vacancies arising in the appointed public membership of this committee shall be filled by the director. The committee shall submit its recommendations for appointees within thirty days of the vacancy.

E. The committee shall elect a chairman and a vice-chairman annually from among its members. Any member may be elected to succeed themselves in office. The Department of Agriculture shall provide administrative assistance to the committee.

Section 1302.2 Procedures.

A. It shall be the duty of the committee to meet regularly, when necessary, for the purpose of conducting the business of the committee.

B. Special meetings of the committee may be called at any time at the discretion of the chairman or the director. Special meetings may also be called upon the request of any two members of the committee.

C. Four members shall constitute a quorum at any meeting of the committee. A quorum shall be required for any action on issues before the committee. Any action which is not reached by a consensus shall be presented to the director with the multiple recommendations to be considered.

D. The department shall maintain the official records of the committee, including accurate minutes of each committee meeting, a log of all applications received, a summary of discussions upon which committee decisions are based and a copy of recommendations of the committee to the commission.

E. Written notice of all meetings shall be provided to committee members by the department. However, the department may provide notice of special meetings through phone contact when necessary.

Section 1302.3 Committee responsibilities.

The committee shall:

A. Offer comments to the commission on proposed rules governing tax incentives relating to creation,

restoration, and donation of wetlands and riparian zones.

B. Provide recommendations to the director for approval or disapproval of each application for tax credit.

C. Participate in site visits and compliance inspections as deemed necessary for the evaluation and certification of projects.

D. Provide information as required by the director for the Department of Agriculture's report to the Department of Finance and Administration.

E. Provide assistance in the furtherance of the program.

Subtitle III. Procedure for obtaining creation and restoration credits

Section 1303.1 Application for creation and restoration credit.

A. Applicants must submit to the Department of Agriculture a completed project application on a form provided by the Department of Agriculture along with the application fee.

B. The application form shall require the following information:

1. Identify taxpayer by name and type of ownership (individual, corporation, partnership, subchapter s, etc.).
2. List of officers, subchapter s shareholders with percentage of ownership, partners with percentage of ownership, etc.
3. Federal employer identification number or social security numbers for business or individuals to claim credit.
4. Address, telephone, and facsimile numbers of all participating taxpayers.
5. Contact person's name, address, telephone and facsimile numbers.
6. Estimated project cost including a breakdown of costs by activity.
7. List all funding sources, including all those applied for even if approval is still pending, and amount of contribution anticipated from each.
8. Location of project, including maps and description of site location (e.g., county, section, township, range, latitude, longitude, watershed, etc.).
9. Current and historical ownership information, including whether adjacent land is owned by taxpayer.
10. Description of current and historical land use of project site and of adjacent properties.
11. Name of water body(ies) affected by the proposed restoration project, if applicable.
12. Site characterization information in sufficient detail necessary to describe the proposed project.

Include the following if applicable to the project:

- (a). soil type,
- (b). existing vegetation,
- (c). information describing the condition of site (e.g., site highly eroded or scoured, banks sloughing, heavily grazed or trampled vegetation, compacted soils, riprapped banks, etc.),
- (d). topography,
- (e). flood plain boundaries if available, and
- (f). pictures of the site, including aerial photographs if available.
- (g). Detailed description of project, including the following if applicable to the project:
 - (h). project goals and objectives for restoration project, identifying the problems being addressed and the solutions to be implemented,
 - (i). success criteria (i.e., measures of success),
 - (k). target vegetative community to be established,
 - (l). target site hydrology to be established (if applicable),

- (m). planting plan showing location, spacing, and planting arrangements of plant species,
- (n). proposed construction activities, construction drawings,
- (o). proposed post-construction activities,
- (p). proposed project construction schedule,
- (q). proposed monitoring plan, and
- (r). names, postal addresses, email addresses, telephone and facsimile numbers, and qualifications of individuals or companies providing professional services or assistance in the development of the plan on company letterhead.

13. Additional relevant information may be requested by the committee and the Department of Agriculture as deemed necessary for a complete review of the proposed project.

Section 1303.2 Committee and Director review.

- A. Upon receipt of the application, the Department of Agriculture shall make the application available to the committee for its review.
- B. The committee shall evaluate the application for compliance with the Act and requirements of Title XIII of the commission's rules.
- C. The Department of Agriculture and the committee shall give priority to projects involving extraordinary resource streams, projects which enhance potential habitat for threatened or endangered species, and projects located in public water supply watersheds.
- D. The committee shall provide the Department of Agriculture with written comments and recommendations on applications when the evaluation process is completed.
- E. After reviewing the application and the committee comments, the director, if he or she determines that the application complies with the act and this rule, may issue a Certificate of Tax Credit Approval to the applicant.
- F. After a satisfactory final inspection of the project, the Department of Agriculture shall issue a Certificate of Completion based on the taxpayer's reported costs of the project.

Section 1303.3 Applicant's Responsibilities

- A. All projects must be completed and properly functioning within three years of the date of the certificate of tax credit approval and the project must be maintained for a minimum life of ten years after certified as being complete.
- B. The taxpayer shall also notify the Department of Agriculture when complications develop which may cause the project to fail to function as designed and such notice shall include anticipated steps to be taken to ensure project goals and objectives are met.
- C. The taxpayer shall maintain records related to this tax credit for the minimum life of the project plus three years.
- D. The taxpayer is responsible for insuring project maintenance for the full term of obligation.

Section 1303.4 Certificate of completion.

- A. The taxpayer shall provide written notice to the Department of Agriculture when the project is completed and available for final inspection.
- B. At that time the taxpayer will provide a report on the actual cost of the project if that figure varies from the amount quoted in the application.
- C. If any fee is based on an estimate of cost which is less than the actual final total cost of the project, the balance on the fee due the commission will be due and payable when a request for a Certificate of Completion is filed. No Certificate of Completion shall be issued until the balance due has been paid.
- D. Project costs incurred after issuance of a Certificate of Tax Credit Approval may be claimed for tax credit, subject to limitations stated herein. Actual project costs will be compared to the projections which appeared on the application and any necessary adjustments will be made when the Department of Agriculture prepares the Certificate of Completion.

E. If the applicant's estimate exceeded the actual cost of the project, the Department of Agriculture will refund the fee overcharge when the Certificate of Completion is issued.

F. At least one member or designee of the committee shall accompany a member of the Department of Agriculture staff on a site inspection prior to issuance of the Certificate of Completion. After that time, monitoring of project maintenance shall be done by a member of the Department of Agriculture staff or a member or designee of the committee in periodic random inspections.

G. The taxpayer must file the certificate of completion with the first tax return filed after issuance of the Certificate of Completion.

H. If the taxpayer completes the project and receives a Certificate of Completion in the same year the Certificate of Tax Credit Approval is issued, both documents must be filed with the tax return when tax credit is claimed.

Section 1303.5 Eligible costs.

A. Any portion of a project that is a mitigation activity required under state or federal law shall not be eligible for tax credit under this Act.

B. The costs of the following activities are eligible activities for tax credit:

1. Professional services required in the characterization of the site, in the preparation of the plan or project design and in the implementation of the plan, and professional monitoring required for maintenance of the project.
2. Activities that are considered creation, restoration or improvement of riparian zones, including:
 - (a). The site preparation necessary to establish permanent vegetation;
 - (b). Establishment of permanent vegetation cover such as approved grasses and trees;
 - (c). Water facilities to benefit livestock which will protect wetland and riparian zones;
 - (d). Construction of partial or full enclosures (e.g., fencing, vegetative screens or borders, placement of timbers or railroad ties) along stream banks, shorelines, and slopes to deter grazing, trampling of vegetation, and soil compaction;
 - (e). Bank or shoreline stabilization and erosion control including mulching, geotextile fibers (e.g., geoweb, geogrids, etc.), structural materials (e.g., timbers, stone), riprap, tree revetments, gabions, or other approved practices when used to supplement other eligible activities;
 - (f). Woody debris addition for bank stabilization; and
 - (g). Other activities recommended by the committee and approved by the Department of Agriculture.
3. Activities that are considered creation, restoration or improvement of wetlands, including:
 - (a). Construction of berms or other structures, plugging of dams or outlet structures, construction of diversion structures, excavation of areas, etc. to capture and store water on a site;
 - (b). Breaking or plugging of agricultural tiles or drains;
 - (c). Construction of low maintenance water control structures (inlets and outlets);
 - (d). Planting of wetland vegetation, nurse or cover crops, and grasses on slopes, berms, etc;
 - (e). Placement of wetland topsoil or hydric soil mulch;
 - (f). Site activities required for establishment of a wetland during the three-year establishment period (e.g., selective harvesting, cultivation, weed control, exotic species control);
 - (g). Construction of enclosures. (fencing, etc.);
 - (h). Erosion control measures (e.g., hay bales, silt fencing, etc.); and
 - (i). Other activities recommended by the committee and approved by the Department of Agriculture.

Section 1303.6 Approved design standards.

Project activities shall meet or exceed those standards as established in this subtitle. Projects should be

developed in consultation with a professional, such as a governmental natural resources planning employee or a private consultant, who possesses experience and appropriate expertise related to the type of project proposed. Structural aspects of the project shall be reviewed by a professional engineer prior to the filing of an application.

Section 1303.7 Minimum standards for projects.

- A. The purpose for the creation and restoration of wetlands and riparian zones is to provide the State with significant benefits in the areas of flood control, water quality enhancement, sediment reduction, fish and wildlife habitat, recreation, and recharging of groundwater. All construction operations of a project shall be carried out in such a manner that soil erosion and water degradation are minimized.
- B. A project must involve an area large enough to maintain adequate protection and integrity of the water resource and associated bank or shoreline.
- C. A project area must be identified with easily visible marking.
- D. A project must comply with all applicable federal, state, and local requirements including permits.
- E. When practicable, the proposed project must incorporate applicable Best Management Practices.
- F. Proposed projects must include activities which will:
 - 1. contribute to the stabilization of the bank;
 - 2. reduce erosion and sediment inputs to waterbodies;
 - 3. unless otherwise approved by the committee or Department of Agriculture, establish a permanent vegetation covering of trees and grasses native to the area, adapted to the site based on soil and site factors; and
 - 4. unless otherwise approved by the committee or Department of Agriculture, limit use of the area by people or cattle.

Section 1303.8 Specific standards for riparian zones.

- A. Generally, the minimum width desired for a zone will be fifty feet; however, each project will be considered on a case-by-case basis by evaluating the water flow of the stream, slope of the ground, type of vegetation and use of land adjacent to the proposed zone.
- B. When feasible, an applicant will be encouraged to involve both sides of the stream in the proposed project.
- C. The grade must be controlled, either by natural or artificial means, before any permanent type of bank protection can be considered feasible, unless the protection can be safely and economically constructed to a depth well below the anticipated lowest depth of bottom scour.
- D. Stream bank protection shall be started and ended at a stabilized point on the stream provided such points exist on the taxpayer's property.
- E. Structural measures must be able to withstand greater floods without serious damage and should avoid an increase in erosion.
- F. Vegetative protection shall be considered on the upper parts of eroding banks, including areas that are susceptible to infrequent inundation.
- G. The riparian zone will be an area large enough (width and length) to maintain adequate protection and integrity of the water course and associated bank or shoreline.

Section 1303.9 Specific standards for wetlands.

- A. The project shall be compatible with the Arkansas Wetlands Conservation Plan.
- B. The project shall restore hydrologic conditions as close to the original condition as practical.
- C. Particularly in the case of created wetlands, it is recognized that all wetlands conditions may not exist within three years. However, if the committee and the Department of Agriculture are satisfied that processes are underway which will result in the establishment of the conditions, the project may be approved or judged complete.
- D. Wetlands shall be restored adjacent to existing wetlands whenever possible to increase wetland

system complexity, decrease habitat fragmentation, and enhance natural colonization of the wetland by plants and animals.

E. Wetlands shall be connected to other wetlands by corridors, where feasible, to facilitate movement of plants and animals between wetlands and to enhance other wetland functions and values.

F. All vegetation establishment components shall conform to current acceptable standards and practices to ensure adequate survival rates and spacing of plantings and should be selected to benefit wildlife and not be detrimental to the environment.

G. Materials used for grade stabilization or water control structures will have a minimum ten-year durability in the soil, water, and climate conditions associated with the site.

Section 1303.10 Failure to complete installation.

A. If the Department of Agriculture determines that failure to complete the project within three years receipt of the Certificate of Tax Credit Approval is the result of conditions beyond the control of the taxpayer, the Department of Agriculture may extend the time for full compliance for a period not to exceed one year.

B. Under any other circumstances, if the taxpayer does not complete the project within the period provided herein, all credits claimed must be repaid by filing an amended income tax return within thirty days for each year in which tax credits were claimed. The project will no longer be considered an authorized project for tax credit purposes and further credits will not be allowed.

C. If the Department of Agriculture, having received no written notice of termination from the taxpayer, determines that the taxpayer has terminated the project, the Department of Agriculture shall notify the Department of Finance and Administration. The Department of Finance and Administration will notify the taxpayer in writing that repayment is due and that no further credits are allowed.

D. Sale of the real estate involved in a project shall automatically terminate the tax credit eligibility. The taxpayer should notify the Department of Agriculture and the Department of Finance and Administration of the termination. The Department of Finance and Administration will then provide the taxpayer with information on the pro rata recapture of benefits due.

Section 1303.11 Tax consequences.

A. Upon termination of the project, the taxpayer shall not be allowed any further tax credits provided under the Act and the Department of Finance and Administration shall recapture the pro-rata share of any tax credits claimed under the Act for the period of termination.

B. The pro-rata share of 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.

C. If the taxpayer terminates the project after the completion period but prior to expiration of the minimum project life, the taxpayer shall provide written notification to the Department of Agriculture and the Department of Finance and Administration prior to termination. In addition, the taxpayer shall file an amended tax return within thirty days of termination and repay the amount of tax credit claimed which was not allowable.

D. Any failure of the taxpayer to comply with the filing and required repayment of taxes will result in an assessment by the Department of Finance and Administration according to the Tax Procedures Act.

Subtitle IV. Procedure for obtaining conservation credits

Section 1304.1 Application for conservation tax credit.

A. Applicants must submit a completed conservation application on a form provided by the Department of Agriculture along with the application fee.

B. The application form shall require the following information:

1. Identify taxpayer by name and type of ownership (individual, corporation, partnership, etc.);
2. List of officers, Subchapter S shareholders with percentage of ownership, partners with percentage of ownership, etc.;
3. Federal Employer Identification Number or Social Security Numbers for business or individuals to claim credit;
4. Address, telephone, and facsimile numbers of all participating taxpayers;
5. Contact person's name, address, telephone and facsimile numbers;
6. Record acceptable to the Department of Agriculture that demonstrates that the interest conveyed meets the Commission's definition of qualified real property interest;
7. Legal description of qualified real property interest;
8. Qualified appraisal of the property interest;
9. Record acceptable to the Department of Agriculture demonstrating that interest conveyed belonged to the donor prior to conveyance;
10. Name and contact information of donee that has accepted the qualified real property interest;
11. A copy of the executed document illustrating that a qualified donee has accepted the property interest;
12. Location of project, including maps and description of site location (e.g., county, section, township, range, latitude, longitude, watershed, etc.);
13. Name of water body(ies) benefited by the donated qualified real property interest, if applicable;
14. Donee's representation that this donation would qualify as a Qualified Conservation Contribution pursuant to Section 170(h) of the Internal Revenue Code; and
15. Additional relevant information may be requested by the committee and the Department of Agriculture as deemed necessary for a complete review of the proposed donation.

Section 1304.2 Conditional approval of conservation tax credit.

- A. An eligible donor may apply for conditional approval of a wetland and riparian zone conservation tax credit before a qualified real property interest donation has been recorded.
- B. If conditional approval of a wetland and riparian zone conservation tax credit is granted, the application must be resubmitted to the Department of Agriculture after the qualified real property interest donation has been recorded for the limited purpose of demonstrating conformity with the originally submitted draft documents.

Section 1304.3 Committee and Director review.

- A. Upon receipt of the application, the Department of Agriculture shall make the application available to the committee for its review.
- B. The committee shall evaluate the application for compliance with the Act and requirements of this rule.
- C. The committee's review shall also include the following considerations:
 1. Whether the appraisal of the qualified real property interest appears to meet the minimum standards of the Uniform Standards of Professional Appraisal Practice and the Internal Revenue Service requirements for a qualified appraisal;
 2. Whether the qualified real property interest's valuation does not appear to be manifestly abusive;
 3. Whether the conservation purpose of the donation complies with the requirements of a qualified conservation purpose and contributes to the wetland and riparian zone benefits in § 26-51-1502;
 4. Whether the real property interest meets the requirements for a qualified real property interest; and
 5. Whether the donee of the qualified real property interest meets the requirements of an eligible donee.

- A. The committee shall provide the Department of Agriculture with written comments and

recommendations on applications when the evaluation process is completed.

B. After reviewing the application and the committee comments, the Department of Agriculture, if determined that the project complies with the Act and this rule, may issue a Certificate of Tax Credit Approval to applicants.

C. If the Department of Agriculture denies approval of a wetland and riparian zone conservation tax credit, the Department of Agriculture shall provide a brief written statement to the applicant of the reason for a decision to deny approval.

D. When a problem identified by the commission is remedied, an eligible donor may resubmit the application for approval of the wetland and riparian zone conservation tax credit.

E. A decision on an application for approval or conditional approval of a wetland and riparian zone conservation tax credit, or on a resubmission of a conditionally approved or previously denied application, shall be issued in the order in which the completed applications or resubmissions are received.

Section 1304.4 DFA review.

For good cause shown, the Department of Finance and Administration may review and either accept or reject in whole or in part any wetland and riparian zone conservation tax credit claimed by a taxpayer and may require information from a taxpayer regarding the:

1. Appraisal value of the qualified real property interest;
2. Amount of the wetland and riparian zone conservation tax credit;
3. Validity of the wetland and riparian zone conservation tax credit; and
4. Other relevant matters.

Section 1304.5 Limitations.

A. The taxpayer shall file the Certificate of Tax Credit Approval with the income tax return for the first year in which the taxpayer claims a tax credit under this Act.

B. Only one wetland and riparian zone conservation tax credit may be earned per qualified real property interest donation. If the qualified real property interest is held in joint ownership, the wetland and riparian zone conservation tax credit shall be allocated in proportion to the Department of Agriculture's knowledge of each respective ownership share.

C. If the qualified real property interest is held by a pass-through entity, the wetland and riparian zone tax credit shall be allocated as prescribed under 26 U.S.C. § 704(b), as in effect on January 1, 2009, and corresponding regulations in 26 C.F.R. § 1.704-1(b)(4)(ii), as in effect on January 1, 2009.

D. An eligible donor may earn only one wetland and riparian zone conservation tax credit per income year.

Section 1304.6 Record keeping.

The taxpayer shall maintain records related to this tax credit six years after filing an income tax return on which credit is claimed.

Subtitle V. Tax credit rules applicable to both creation and restoration tax credits and to conservation credits

Section 1305.1 Availability of credits.

A. Wetlands and riparian zone creation and restoration tax credits provided under the Act may be applied to taxable years beginning on or after January 1, 1996, and all taxable years thereafter.

B. Wetland and riparian zone conservation tax credits may be applied to all taxable years beginning on or after January 1, 2009, and all taxable years thereafter.

C. Taxpayers claiming a tax credit under this Act may not claim a credit under the Water Resources Conservation and Development Incentives Act of 1985 or any similar act for any costs related to the

same project.

D. Any tax credits issued to partnerships, limited liability companies, Subchapter S corporations or fiduciaries may pass through to their members, managers, partners, shareholders and beneficiaries. Tax credits are not transferable to other individuals or entities.

E. The tax credits established by the Act shall expire on December 31 of the calendar year following the calendar year in which the tax credits used pursuant to the provisions of the Act exceed five hundred thousand dollars (\$500,000.00) in any one year. Any taxpayer having been issued a certificate of tax credit approval on or prior to this day shall be entitled to the tax credits provided under the Act without regard to expiration of tax credit availability.

Section 1305.2 Use of assigned credits.

A. Any unused tax credit under this subchapter shall survive the death of an individual taxpayer and may be used by the individual taxpayer's estate.

B. Tax credits may only be used by a taxpayer certified to earn a tax credit to offset the taxpayer's state income tax liability and are non-transferable.

PROPOSED RULE
MARKUP

Arkansas Natural Resources Commission Rules Governing the Tax Credit Program for the Creation,
Restoration, and Conservation of Private Wetland and Riparian Zones

Title 13

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Arkansas Natural Resources Commission Rules Governing the Tax Credit Program for the Creation, Restoration, and Conservation of Private Wetland and Riparian Zones

Subtitle I. General provisions

Section 1301.1 Purpose.

Wetlands and riparian zones provide the ~~State~~ state with significant benefits in the areas of flood control, water quality enhancement, sediment reduction, fish and wildlife habitat, recreation, and recharging of groundwater. The ~~State~~ state continues to experience significant loss of wetlands. Since the majority of lands suitable for wetlands and riparian zones are held by private owners, the ~~State~~ state has developed this program to encourage these owners to restore and enhance existing wetlands and riparian zones, create new wetlands and riparian zones, or donate wetland and riparian zone qualified real property interests.

Section 1301.2 Legislation.

A. Arkansas Code Annotated § 26-51-1501 *et seq.*, the "Arkansas Wetland and Riparian Zone Creation, Restoration, and Conservation Tax Credits Act," allows a wetlands and riparian zone creation and restoration tax credit against the tax imposed by the Arkansas Income Tax Act (Arkansas Code Annotated § 26-51-101 *et seq.*) for any taxpayer engaged in the development or restoration of wetlands and riparian zones.

B. The same ~~Act~~ act also allows a wetland and riparian zone conservation tax credit against the tax imposed by the Arkansas Income Tax Act for any eligible donor who donates a qualified real property interest for a qualified conservation purpose to an eligible donee.

Section 1301.3 Definitions.

As used herein, unless the context otherwise requires:

A. "Act" means the Arkansas Wetland and Riparian Zone Creation, Restoration, and Conservation Tax Credits Act, ~~(A.C.A. § 26-51-1501 et seq.)~~.

B. "Commission" means the Arkansas Natural Resources Commission.

C. "Committee" means the Private Wetlands and Riparian Zone Creation, Restoration, and Conservation Committee.

D. "Conservation application" means an application submitted by a taxpayer seeking tax credit for donation of a qualified real property interest.

~~E. "Department" means the Revenue Division of the Arkansas Department of Finance and Administration ("DFA").~~

~~F. E.~~ "Developing wetlands" means to establish a wetland or other aquatic resource.

~~G. F.~~ "Eligible donee" means a qualified organization under 26 U.S.C. § 170(h)(3), as in effect on January 1, 2009, and corresponding regulations in 26 C.F.R. § 1.170A-14(c), as in effect on January 1, 2009. A non-governmental qualified organization must have adopted the Land Trust Alliance's Land Trust Standards and Practices, as in effect on January 1, 2009, in order to qualify as an "eligible donee".

~~H. G.~~ "Eligible donor" means any person or entity, including without limitation an individual, corporation, trust, estate, and partnership or other pass-through legal entity, that owns a qualified real property interest.

~~I. H.~~ "Enhancing wetlands" means any activity that improves wetlands.

~~J. I.~~ "Executive Director" means the ~~Executive~~ Director of the ~~Arkansas Natural Resources Commission~~ Arkansas Department of Agriculture's Natural Resources Division.

~~K. J.~~ "Project" means wetlands or riparian zones created or restored by activities for which tax credits are claimed.

~~L-K.~~ "Project application" means a written plan for development and operation of the project, including all requirements as the ~~Commission~~ commission may adopt by rule.

~~M-L.~~ "Project cost" means the actual expenditure for a project less any reimbursement received by the taxpayer from cost-share programs or any other funding.

~~N-M.~~ "Qualified appraisal" means an appraisal in accordance with 26 C.F.R. § 1.170A-13(c)(3), as in effect on January 1, 2009, and the Uniform Standards of Professional Appraisal Practice, as in effect on January 1, 2009.

~~O-N.~~ "Qualified conservation purpose" means a conservation purpose as defined by 26 U.S.C. § 170(h)(4), as in effect on January 1, 2009, and corresponding regulations in 26 C.F.R. § 1.170A-14(d), as in effect on January 1, 2009.

~~P-O.~~ "Qualified real property interest" means an interest in real property located completely in this state and containing wetlands or riparian zones, which also meets the definition of a qualified real property interest under 26 U.S.C. § 170(h)(2), as in effect on January 1, 2009, and the corresponding regulations in 26 C.F.R. § 1.170A-14(b), as in effect on January 1, 2009.

~~Q-P.~~ "Restoring wetlands" means to return wetland values and functions to a former wetland or degraded wetland where human or natural activities have diminished or destroyed such values and functions thereby returning the land to wetland status.

~~R-Q.~~ "Riparian zone" means an area of land along the bank of a natural water course or contiguous to a body of water that is set aside to reduce impacts of adjoining land use on the stream or water body or any other definition promulgated by the ~~Commission~~ commission.

~~S-R.~~ "Tax credits" means the authorized amount that may be applied against Arkansas corporate income tax or Arkansas individual income tax, whether earned by an individual, partnership, limited liability company, S Corporation, or corporation.

~~T-S.~~ "Taxpayer" means the entity that is certified to earn tax credits for an approved project, whether an individual, partnership, limited liability company, S Corporation, or corporation.

~~U-T.~~ "Wetlands" means an area that has water at or near the surface of the ground at some time during the growing season (wetland hydrology). It contains plants that are adapted to wet habitats (hydrophytic vegetation) and is made up of soil that has developed under wet conditions (hydric soils) or any other definition promulgated by the ~~Commission~~ commission.

Section 1301.4 Tax credit amount allowed.

A. The amount of wetland and riparian zone creation and restoration credit allowed shall be equal to the project cost incurred in the development, creation, or restoration of wetlands and riparian zones but shall not exceed fifty thousand dollars (\$50,000). Only the actual costs to the taxpayer will be considered for tax credit.

B. The amount of the wetland and riparian zone conservation tax credit allowed shall equal fifty percent (50%) of the fair market value of the qualified real property interest donation calculated to exclude any short-term capital gain under 26 U.S.C. § 170(e)(1)(A), as in effect on January 1, 2009, and shall not exceed fifty thousand dollars (\$50,000).

C. The amount of credit that may be used by a taxpayer for a taxable year may not exceed the lesser of the amount of individual or corporate income tax otherwise due or five thousand dollars (\$5,000.00) per taxpayer.

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

Section 1301.5 Application fee.

A. The ~~Commission~~ commission may charge a reasonable application fee for the processing of tax credit applications.

B. Applicant shall pay to the ~~Commission~~ Department of Agriculture a fee in an amount equal to three

percent (3%) of the total tax credit submitted for approval to the ~~Commission~~ commission. The minimum fee shall be one hundred dollars (\$100.00).

C. All fees shall be paid to the ~~Commission~~ Department of Agriculture when an application for tax credit approval is filed.

D. When an application is rejected by the ~~Executive Director~~ director, the full application fee will be refunded.

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

Section 1301.6 Delegation of authority.

The ~~Executive Director~~ director is delegated all powers necessary and convenient to carry out the responsibilities contained in these rules.

Section 1301.7 ~~Commission~~ Department of Agriculture reports to ~~DFA~~ Department of Finance and Administration.

The ~~Executive Director~~ Department of Agriculture shall provide reports quarterly to ~~the Department~~ the Department of Finance and Administration of the total number of tax credit applications approved and the total number of creation and restoration projects receiving final certification.

Section 1301.8 Appeals.

A. Except as otherwise provided herein, a taxpayer may appeal, pursuant to Title I, Subtitle V of the Commission's Rules, any decision or action of the ~~Executive Director~~ director.

B. All decisions related to recapture of tax credits shall be appealed in accordance with ~~the Department's~~ the Department of Finance and Administration's established procedures contained in A.C.A. §26-18-101 *et seq.*

Subtitle II. Private Wetlands and Riparian Zone Creation, Restoration, and Conservation Committee

Section 1302.1 Membership.

A. This ~~Committee~~ committee shall be made up of the directors, or their designees, of the Arkansas Forestry Commission, Arkansas Game and Fish Commission, Arkansas Department of Finance and Administration, Department of Arkansas Parks, Heritage, and Tourism, and the Arkansas Department of ~~Environmental Quality~~ Energy and Environment, and two public members appointed by the ~~Commission~~ director.

B. Selection of public members shall be made on the basis of their knowledge of wetlands and riparian zones with consideration given to representation of a wide variety of interests.

C. The public members of the ~~Committee~~ committee shall be appointed for five-year terms. Individuals appointed are eligible for reappointment at the expiration of this term.

D. Any vacancies arising in the appointed public membership of this ~~Committee~~ committee shall be filled by the ~~Commission~~ director. The ~~Committee~~ committee shall submit its recommendations for appointees within thirty days of the vacancy.

E. The ~~Committee~~ committee shall elect a chairman and a vice-chairman annually from among its members. Any member may be elected to succeed themselves in office. ~~The Executive Director shall appoint an ex-officio Secretary to~~ The Department of Agriculture shall provide administrative assistance to the ~~Committee~~ committee.

Section 1302.2 Procedures.

A. It shall be the duty of the ~~Committee~~ committee to meet regularly, when necessary, for the purpose of conducting the business of the ~~Committee~~ committee.

B. Special meetings of the ~~Committee~~ committee may be called at any time at the discretion of the chairman or the ~~ex-officio Secretary~~ director. Special meetings may also be called upon the request of any two members of the ~~Committee~~ committee.

C. Four members shall constitute a quorum at any meeting of the ~~Committee~~ committee. A quorum shall be required for any action on issues before the ~~Committee~~ committee. Any action which is not reached by a consensus shall be presented to the ~~Executive Director~~ director with the multiple recommendations to be considered.

D. The ~~ex-officio Secretary~~ department shall maintain the official records of the ~~Committee~~ committee, including accurate minutes of each ~~Committee~~ committee meeting, a log of all applications received, a summary of discussions upon which ~~Committee~~ committee decisions are based and a copy of recommendations of the ~~Committee~~ committee to the ~~Commission~~ commission.

E. Written notice of all meetings shall be provided to ~~Committee~~ committee members by the ~~ex-officio Secretary~~ department. However, the ~~ex-officio Secretary~~ department may provide notice of special meetings through phone contact when necessary.

Section 1302.3 Committee responsibilities.

The ~~Committee~~ committee shall:

A. Offer comments to the ~~Commission~~ commission on proposed rules governing tax incentives relating to creation, restoration, and donation of wetlands and riparian zones.

B. Provide recommendations to the ~~Executive Director~~ director for approval or disapproval of each application for tax credit.

C. Participate in site visits and compliance inspections as deemed necessary for the evaluation and certification of projects.

D. Provide information as required by the ~~Executive Director~~ director for the ~~Commission's~~ Department of Agriculture's report to ~~the Department~~ the Department of Finance and Administration.

E. Provide assistance in the furtherance of the program.

Subtitle III. Procedure for obtaining creation and restoration credits

Section 1303.1 Application for creation and restoration credit.

A. Applicants must submit to the Department of Agriculture a completed project application on a form provided by the ~~Executive Director~~ Department of Agriculture along with the ~~Commission's~~ application fee.

B. The application form shall require the following information:

1. Identify taxpayer by name and type of ownership (individual, corporation, partnership, subchapter s, etc.).
2. List of officers, subchapter s shareholders with percentage of ownership, partners with percentage of ownership, etc.
3. Federal employer identification number or social security numbers for business or individuals to claim credit.
4. Address, telephone, and facsimile numbers of all participating taxpayers.
5. Contact person's name, address, telephone and facsimile numbers.
6. Estimated project cost including a breakdown of costs by activity.
7. List all funding sources, including all those applied for even if approval is still pending, and amount of contribution anticipated from each.
8. Location of project, including maps and description of site location (e.g., county, section, township, range, latitude, longitude, watershed, etc.).
9. Current and historical ownership information, including whether adjacent land is owned by taxpayer.
10. Description of current and historical land use of project site and of adjacent properties.
11. Name of water body(ies) affected by the proposed restoration project, if applicable.

12. Site characterization information in sufficient detail necessary to describe the proposed project. Include the following if applicable to the project:

- (a). soil type,
- (b). existing vegetation,
- (c). information describing the condition of site (e.g., site highly eroded or scoured, banks sloughing, heavily grazed or trampled vegetation, compacted soils, riprapped banks, etc.),
- (d). topography,
- (e). flood plain boundaries if available, and
- (f). pictures of the site, including aerial photographs if available.
- (g). Detailed description of project, including the following if applicable to the project:
- (h). project goals and objectives for restoration project, identifying the problems being addressed and the solutions to be implemented,
- (i). success criteria (i.e., measures of success),
- (k). target vegetative community to be established,
- (l). target site hydrology to be established (if applicable),
- (m). planting plan showing location, spacing, and planting arrangements of plant species,
- (n). proposed construction activities, construction drawings,
- (o). proposed post-construction activities,
- (p). proposed project construction schedule,
- (q). proposed monitoring plan, and
- (r). names, postal addresses, email addresses, telephone and facsimile numbers, and qualifications of individuals or companies providing professional services or assistance in the development of the plan on company letterhead.

13. Additional relevant information may be requested by the ~~Committee~~ committee and the ~~Executive Director~~ Department of Agriculture as deemed necessary for a complete review of the proposed project.

Section 1303.2 Committee and Executive Director review.

- A. Upon receipt of the application, the ~~Commission~~ Department of Agriculture shall make the application available to the ~~Committee~~ committee for its review.
- B. The ~~Committee~~ committee shall evaluate the application for compliance with the Act and requirements of Title XIII of the ~~Commission's regulations~~ commission's rules.
- C. The ~~Executive Director~~ Department of Agriculture and the ~~Committee~~ committee shall give priority to projects involving extraordinary resource streams, projects which enhance potential habitat for threatened or endangered species, and projects located in public water supply watersheds.
- D. The ~~Committee~~ committee shall provide the ~~Executive Director~~ Department of Agriculture with written comments and recommendations on applications when the evaluation process is completed.
- E. After reviewing the application and the ~~Committee~~ committee comments, the ~~Executive Director~~ director, if he or she determines that the application complies with the act and this ~~rule~~ title of the Commission's regulations, may issue a Certificate of Tax Credit Approval to the applicant.
- F. After a satisfactory final inspection of the project, the ~~Executive Director~~ Department of Agriculture shall issue a Certificate of Completion based on the taxpayer's reported costs of the project.

Section 1303.3 Applicant responsibilities.

- A. All projects must be completed and properly functioning within three years of the date of the certificate of tax credit approval ~~AND and~~ the project must be maintained for a minimum life of ten years after certified as being complete.
- B. The taxpayer shall also notify the ~~Executive Director~~ Department of Agriculture when complications develop which may cause the project to fail to function as designed and such notice shall include

anticipated steps to be taken to ensure project goals and objectives are met.

C. The taxpayer shall maintain records related to this tax credit for the minimum life of the project plus three years.

D. The taxpayer is responsible for insuring project maintenance for the full term of obligation.

Section 1303.4 Certificate of completion.

A. The taxpayer shall provide written notice to the ~~Executive Director~~ Department of Agriculture when the project is completed and available for final inspection.

B. At that time the taxpayer will provide a report on the actual cost of the project if that figure varies from the amount quoted in the application.

C. If any fee is based on an estimate of cost which is less than the actual final total cost of the project, the balance on the fee due the ~~Commission~~ commission will be due and payable when a request for a Certificate of Completion is filed. No Certificate of Completion shall be issued until the balance due has been paid.

D. Project costs incurred after issuance of a Certificate of Tax Credit Approval may be claimed for tax credit, subject to limitations stated herein. Actual project costs will be compared to the projections which appeared on the application and any necessary adjustments will be made when the ~~Executive Director~~ Department of Agriculture prepares the Certificate of Completion.

E. If the applicant's estimate exceeded the actual cost of the project, the ~~Commission~~ Department of Agriculture will refund the fee overcharge when the Certificate of Completion is issued.

F. At least one member or designee of the ~~Committee~~ committee shall accompany a member of the ~~Commission~~ Department of Agriculture staff on a site inspection prior to issuance of the Certificate of Completion. After that time, monitoring of project maintenance shall be done by a member of the ~~Commission~~ Department of Agriculture staff or a member or designee of the ~~Committee~~ committee in periodic random inspections.

G. The taxpayer must file the certificate of completion with the first tax return filed after issuance of the Certificate of Completion.

H. If the taxpayer completes the project and receives a Certificate of Completion in the same year the Certificate of Tax Credit Approval is issued, both documents must be filed with the tax return when tax credit is claimed.

Section 1303.5 Eligible costs.

A. Any portion of a project that is a mitigation activity required under state or federal law shall not be eligible for tax credit under this Act.

B. The costs of the following activities are eligible activities for tax credit:

1. Professional services required in the characterization of the site, in the preparation of the plan or project design and in the implementation of the plan, and professional monitoring required for maintenance of the project.
2. Activities that are considered creation, restoration or improvement of riparian zones, including:
 - (a). The site preparation necessary to establish permanent vegetation;
 - (b). Establishment of permanent vegetation cover such as approved grasses and trees;
 - (c). Water facilities to benefit livestock which will protect wetland and riparian zones;
 - (d). Construction of partial or full enclosures (e.g., fencing, vegetative screens or borders, placement of timbers or railroad ties) along stream banks, shorelines, and slopes to deter grazing, trampling of vegetation, and soil compaction;
 - (e). Bank or shoreline stabilization and erosion control including mulching, geotextile fibers (e.g., geoweb, geogrids, etc.), structural materials (e.g., timbers, stone), riprap, tree revetments, gabions, or other approved practices when used to supplement other eligible activities;
 - (f). Woody debris addition for bank stabilization; and

(g). Other activities recommended by the ~~Committee~~ committee and approved by the ~~Executive Director~~ Department of Agriculture.

3. Activities that are considered creation, restoration or improvement of wetlands, including:

- (a). Construction of berms or other structures, plugging of dams or outlet structures, construction of diversion structures, excavation of areas, etc. to capture and store water on a site;
- (b). Breaking or plugging of agricultural tiles or drains;
- (c). Construction of low maintenance water control structures (inlets and outlets);
- (d). Planting of wetland vegetation, nurse or cover crops, and grasses on slopes, berms, etc;
- (e). Placement of wetland topsoil or hydric soil mulch;
- (f). Site activities required for establishment of a wetland during the three-year establishment period (e.g., selective harvesting, cultivation, weed control, exotic species control);
- (g). Construction of exclosures. (fencing, etc.);
- (h). Erosion control measures (e.g., hay bales, silt fencing, etc.); and
- (i). Other activities recommended by the ~~Committee~~ committee and approved by the ~~Executive Director~~ Department of Agriculture.

Section 1303.6 Approved design standards.

Project activities shall meet or exceed those standards as established in this subtitle. Projects should be developed in consultation with a professional, such as a governmental natural resources planning employee or a private consultant, who possesses experience and appropriate expertise related to the type of project proposed. Structural aspects of the project ~~must~~ shall be reviewed by a professional engineer prior to the filing of an application.

Section 1303.7 Minimum standards for projects.

- A. The purpose for the creation and restoration of wetlands and riparian zones is to provide the State with significant benefits in the areas of flood control, water quality enhancement, sediment reduction, fish and wildlife habitat, recreation, and recharging of groundwater. All construction operations of a project shall be carried out in such a manner that soil erosion and water degradation are minimized.
- B. A project must involve an area large enough to maintain adequate protection and integrity of the water resource and associated bank or shoreline.
- C. A project area must be identified with easily visible marking.
- D. A project must comply with all applicable federal, state, and local requirements including permits.
- E. When practicable, the proposed project must incorporate applicable Best Management Practices.
- F. Proposed projects must include activities which will:
 - 1. contribute to the stabilization of the bank;
 - 2. reduce erosion and sediment inputs to waterbodies;
 - 3. unless otherwise approved by the ~~Committee~~ committee or ~~Executive Director~~ Department of Agriculture, establish a permanent vegetation covering of trees and grasses native to the area, adapted to the site based on soil and site factors; and
 - 4. unless otherwise approved by the ~~Committee~~ committee or ~~Executive Director~~ Department of Agriculture, limit use of the area by people or cattle.

Section 1303.8 Specific standards for riparian zones.

- A. Generally, the minimum width desired for a zone will be ~~thirty~~ fifty feet; however, each project will be considered on a case-by-case basis by evaluating the water flow of the stream, slope of the ground, type of vegetation and use of land adjacent to the proposed zone.
- B. When feasible, an applicant will be encouraged to involve both sides of the stream in the proposed project.
- C. The grade must be controlled, either by natural or artificial means, before any permanent type of bank protection can be considered feasible, unless the protection can be safely and economically

constructed to a depth well below the anticipated lowest depth of bottom scour.

D. Stream bank protection shall be started and ended at a stabilized point on the stream provided such points exist on the taxpayer's property.

E. Structural measures must be able to withstand greater floods without serious damage and should avoid an increase in erosion.

F. Vegetative protection shall be considered on the upper parts of eroding banks, including areas that are susceptible to infrequent inundation.

G. The riparian zone will be an area large enough (width and length) to maintain adequate protection and integrity of the water course and associated bank or shoreline.

Section 1303.9 Specific standards for wetlands.

A. The project shall be compatible with the Arkansas Wetlands Conservation Plan.

B. The project shall restore hydrologic conditions as close to the original condition as practical.

C. Particularly in the case of created wetlands, it is recognized that all wetlands conditions may not exist within three years. However, if the ~~Committee~~ committee and the ~~Executive Director~~ Department of Agriculture are satisfied that processes are underway which will result in the establishment of the conditions, the project may be approved or judged complete.

D. Wetlands shall be restored adjacent to existing wetlands whenever possible to increase wetland system complexity, decrease habitat fragmentation, and enhance natural colonization of the wetland by plants and animals.

E. Wetlands shall be connected to other wetlands by corridors, where feasible, to facilitate movement of plants and animals between wetlands and to enhance other wetland functions and values.

F. All vegetation establishment components shall conform to current acceptable standards and practices to ensure adequate survival rates and spacing of plantings and should be selected to benefit wildlife and not be detrimental to the environment.

G. Materials used for grade stabilization or water control structures will have a minimum ten-year durability in the soil, water, and climate conditions associated with the site.

Section 1303.10 Failure to complete installation.

A. If the ~~Executive Director~~ Department of Agriculture determines that failure to complete the project within three years receipt of the Certificate of Tax Credit Approval is the result of conditions beyond the control of the taxpayer, ~~he~~ the Department of Agriculture may extend the time for full compliance for a period not to exceed one year.

B. Under any other circumstances, if the taxpayer does not complete the project within the period provided herein, all credits claimed must be repaid by filing an amended income tax return within thirty days for each year in which tax credits were claimed. The project will no longer be considered an authorized project for tax credit purposes and further credits will not be allowed.

C. If the ~~Executive Director~~ Department of Agriculture, having received no written notice of termination from the taxpayer, determines that the taxpayer has terminated the project, ~~he~~ the Department of Agriculture shall notify the Department of Finance and Administration. The Department of Finance and Administration will notify the taxpayer in writing that repayment is due and that no further credits are allowed.

D. Sale of the real estate involved in a project shall automatically terminate the tax credit eligibility. The taxpayer should notify the ~~Commission~~ Department of Agriculture and the Department of Finance and Administration of the termination. The Department of Finance and Administration will then provide the taxpayer with information on the pro rata recapture of benefits due.

Section 1303.11 Tax consequences.

A. Upon termination of the project, the taxpayer shall not be allowed any further tax credits provided under the Act and the Department of Finance and Administration shall recapture the pro-rata share of

any tax credits claimed under the Act for the period of termination.

B. The pro-rata share of 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.

C. If the taxpayer terminates the project after the completion period but prior to expiration of the minimum project life, the taxpayer shall provide written notification to the ~~Executive Director~~ Department of Agriculture and the Department of Finance and Administration prior to termination. In addition, the taxpayer shall file an amended tax return within thirty days of termination and repay the amount of tax credit claimed which was not allowable.

D. Any failure of the taxpayer to comply with the filing and required repayment of taxes will result in an assessment by the Department of Finance and Administration according to the Tax Procedures Act.

Subtitle IV. Procedure for obtaining conservation credits

Section 1304.1 Application for conservation tax credit.

A. Applicants must submit a completed conservation application on a form provided by the ~~Executive Director~~ Department of Agriculture along with the ~~Commission's~~ application fee.

B. The application form shall require the following information:

1. Identify taxpayer by name and type of ownership (individual, corporation, partnership, etc.);
2. List of officers, Subchapter S shareholders with percentage of ownership, partners with percentage of ownership, etc.;
3. Federal Employer Identification Number or Social Security Numbers for business or individuals to claim credit;
4. Address, telephone, and facsimile numbers of all participating taxpayers;
5. Contact person's name, address, telephone and facsimile numbers;
6. Record acceptable to the ~~Commission~~ Department of Agriculture that demonstrates that the interest conveyed meets the Commission's definition of qualified real property interest;
7. Legal description of qualified real property interest;
8. Qualified appraisal of the property interest;
9. Record acceptable to the ~~Commission~~ Department of Agriculture demonstrating that interest conveyed belonged to the donor prior to conveyance;
10. Name and contact information of donee that has accepted the qualified real property interest;
11. A copy of the executed document illustrating that a qualified donee has accepted the property interest;
12. Location of project, including maps and description of site location (e.g., county, section, township, range, latitude, longitude, watershed, etc.);
13. Name of water body(ies) benefited by the donated qualified real property interest, if applicable;
14. Donee's representation that this donation would qualify as a Qualified Conservation Contribution pursuant to Section 170(h) of the Internal Revenue Code; and
15. Additional relevant information may be requested by the ~~Committee~~ committee and the ~~Executive Director~~ Department of Agriculture as deemed necessary for a complete review of the proposed donation.

Section 1304.2 Conditional approval of conservation tax credit.

A. An eligible donor may apply for conditional approval of a wetland and riparian zone conservation tax credit before a qualified real property interest donation has been recorded.

B. If conditional approval of a wetland and riparian zone conservation tax credit is granted, the application must be resubmitted to the ~~Commission~~ Department of Agriculture after the qualified real

property interest donation has been recorded for the limited purpose of demonstrating conformity with the originally submitted draft documents.

Section 1304.3 Committee and Executive Director review.

- A. Upon receipt of the application, the ~~Commission~~ Department of Agriculture shall make the application available to the ~~Committee~~ committee for its review.
- B. The ~~Committee~~ committee shall evaluate the application for compliance with the Act and requirements of this rule ~~Title XIII of the Commission's regulations~~.
- C. The ~~Committee's~~ committee's review shall also include the following considerations:
1. Whether the appraisal of the qualified real property interest appears to meet the minimum standards of the Uniform Standards of Professional Appraisal Practice and the Internal Revenue Service requirements for a qualified appraisal;
 2. Whether the qualified real property interest's valuation does not appear to be manifestly abusive;
 3. Whether the conservation purpose of the donation complies with the requirements of a qualified conservation purpose and contributes to the wetland and riparian zone benefits in § 26-51-1502;
 4. Whether the real property interest meets the requirements for a qualified real property interest; and
 5. Whether the donee of the qualified real property interest meets the requirements of an eligible donee.
- A. The ~~Committee~~ committee shall provide the ~~Executive Director~~ Department of Agriculture with written comments and recommendations on applications when the evaluation process is completed.
- B. After reviewing the application and the ~~Committee~~ committee comments, the ~~Executive Director~~ Department of Agriculture, if ~~he determines~~ determined that the project complies with the Act and this ~~rule~~ title of the Commission's regulations, may issue a Certificate of Tax Credit Approval to applicants.
- C. If the ~~Executive Director~~ Department of Agriculture denies approval of a wetland and riparian zone conservation tax credit, ~~he~~ the Department of Agriculture shall provide a brief written statement to the applicant of the reason for a decision to deny approval.
- D. When a problem identified by the ~~Commission~~ commission is remedied, an eligible donor may resubmit the application for approval of the wetland and riparian zone conservation tax credit.
- E. A decision on an application for approval or conditional approval of a wetland and riparian zone conservation tax credit, or on a resubmission of a conditionally approved or previously denied application, shall be issued in the order in which the completed applications or resubmissions are received.

Section 1304.4 DFA review.

For good cause shown, the Department of Finance and Administration may review and either accept or reject in whole or in part any wetland and riparian zone conservation tax credit claimed by a taxpayer and may require information from a taxpayer regarding the:

1. Appraisal value of the qualified real property interest;
2. Amount of the wetland and riparian zone conservation tax credit;
3. Validity of the wetland and riparian zone conservation tax credit; and
4. Other relevant matters.

Section 1304.5 Limitations.

- A. The taxpayer shall file the Certificate of Tax Credit Approval with the income tax return for the first year in which the taxpayer claims a tax credit under this Act.
- B. Only one wetland and riparian zone conservation tax credit may be earned per qualified real property interest donation. If the qualified real property interest is held in joint ownership, the wetland and riparian zone conservation tax credit shall be allocated in proportion to the ~~Commission's~~ Department of Agriculture's knowledge of each respective ownership share.

C. If the qualified real property interest is held by a pass-through entity, the wetland and riparian zone tax credit shall be allocated as prescribed under 26 U.S.C. § 704(b), as in effect on January 1, 2009, and corresponding regulations in 26 C.F.R. § 1.704-1(b)(4)(ii), as in effect on January 1, 2009.

D. An eligible donor may earn only one wetland and riparian zone conservation tax credit per income year.

Section 1304.6 Record keeping.

The taxpayer shall maintain records related to this tax credit six years after filing an income tax return on which credit is claimed.

Subtitle V. Tax credit rules applicable to both creation and restoration tax credits and to conservation credits

Section 1305.1 Availability of credits.

A. Wetlands and riparian zone creation and restoration tax credits provided under the Act may be applied to taxable years beginning on or after January 1, 1996, and all taxable years thereafter.

B. Wetland and riparian zone conservation tax credits may be applied to all taxable years beginning on or after January 1, 2009, and all taxable years thereafter.

C. Taxpayers claiming a tax credit under this Act may not claim a credit under the Water Resources Conservation and Development Incentives Act of 1985 or any similar act for any costs related to the same project.

D. Any tax credits issued to partnerships, limited liability companies, Subchapter S corporations or fiduciaries may pass through to their members, managers, partners, shareholders and beneficiaries. Tax credits are not transferable to other individuals or entities.

E. The tax credits established by the Act shall expire on December 31 of the calendar year following the calendar year in which the tax credits used pursuant to the provisions of the Act exceed five hundred thousand dollars (\$500,000.00) in any one year. Any taxpayer having been issued a certificate of tax credit approval on or prior to this day shall be entitled to the tax credits provided under the Act without regard to expiration of tax credit availability.

Section 1305.2 Use of assigned credits.

A. Any unused tax credit under this subchapter shall survive the death of an individual taxpayer and may be used by the individual taxpayer's estate.

B. Tax credits may only be used by a taxpayer certified to earn a tax credit to offset the taxpayer's state income tax liability and are non-transferable.