

ARKANSAS REGISTER

Transmittal Sheet

Use only for **FINAL** and **EMERGENCY RULES**



Secretary of State

John Thurston

500 Woodlane, Suite 026

Little Rock, Arkansas 72201-1094

(501) 682-5070

www.sos.arkansas.gov



For Office

Use Only:

Effective Date _____ Code Number _____

Name of Agency Arkansas Department of Agriculture

Department Natural Resources Division

Contact Wade Hodge E-mail wade.hodge@agriculture.arkansas.gov Phone 501-225-1598

Statutory Authority for Promulgating Rules Ark. Code Ann. §§ 14-125-101 - 907; 15-20-201 - 207; 15-22-507; 15-22-913 - 914

Rule Title: Arkansas Natural Resources Commission Rules Governing the Arkansas Water Resource Agricultural Cost-Share Program Title 10

Intended Effective Date
(Check One)

☐ Emergency (ACA 25-15-204)

☒ 10 Days After Filing (ACA 25-15-204)

☐ Other _____
(Must be more than 10 days after filing date.)

Legal Notice Published

Final Date for Public Comment

Reviewed by Legislative Council

Adopted by State Agency

Date

October 7 - 9, 2022

November 5, 2022

December 16, 2022

August 11, 2022

Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

Linda Luebke

linda.luebke@agriculture.arkansas.gov

December 19, 2022

Contact Person

E-mail Address

Date

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)



Signature

501-225-1598

Phone Number

wade.hodge@agriculture.arkansas.gov

E-mail Address

Chief Counsel

Title

December 19, 2022

Date

**Arkansas Natural Resources Commission Rules Governing the
Arkansas Water Resource Agricultural Cost-Share Program
Title 10**

~~*In 2005, the agency known as 'Arkansas Soil and Water Conservation Commission' was renamed 'Arkansas Natural Resources Commission' pursuant to Act 1243 of 2005. References to the Commission in these rules have been updated to reflect the 2005 name change.~~

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Arkansas Natural Resources Commission Rules Governing the Arkansas Water Resource Agricultural Cost-Share Program

Subtitle I. General provisions

Section 1001.1 Purpose.

The purpose of these rules is to establish the procedures for implementing the Arkansas Water Resource Agricultural Cost-Share Program. These rules are applicable to both the ~~Commission~~ commission and ~~Conservation Districts~~ conservation districts, when receiving ~~Commission~~ commission delegation to implement the program.

Section 1001.2 Enabling and pertinent legislation.

- A. Ark. Code Ann. § 15-22-913 through 914, Arkansas Groundwater Protection Act.
- B. Ark. Code Ann. § 15-22-507, Water Development Fund.
- C. Ark. Code Ann. § 15-20-201 through 207, Arkansas Natural Resources Commission.
- D. Ark. Code Ann. § 14-125-101 through 907, Conservation Districts Law.

Section 1001.3. Definitions.

The following definitions shall apply to all parts of this title:

~~A. Agricultural Stabilization and Conservation Service: United States Department of Agriculture Agricultural Stabilization and Conservation Service or its successor.~~

~~B.A.~~ “Agricultural Cost-Share Program” means the program administered by the Agricultural Stabilization and Conservation Service United States Department of Agriculture pursuant to 16 U.S.C. § 590g-q3, 7 C.F.R. Part 701 and 1-AR(ACP)(Rev. 11) Part 2, as amended.

~~C. Chief Engineer: The chief engineer of the Arkansas Natural Resources Commission.~~

~~C.B.~~ “Commission” means the Arkansas Natural Resources Commission, as defined in Ark. Code Ann. § 15-20-201 through 207.

~~D. C.~~ “Conservation Plan” means a set of decisions addressing resource use, development and conservation on a unit of land or water. The decisions are formally recorded in the conservation plan document that describes the schedule of operations and activities needed to solve identified problems.

~~E.D.~~ “Cooperator” means a person who has entered into a cooperative agreement with a conservation district to work together in planning and carrying out resource use, development, and conservation on a specific land area.

~~F.E.~~ “District” means a conservation district created under the Conservation District Law, Ark. Code Ann. §14-125-101 through 907.

~~G.F.~~ Executive “Director” The person appointed to administer the affairs of the Arkansas Natural Resources Commission, as defined by Ark. Code Ann. §15-20-205. means the Director of the Arkansas Department of Agriculture Natural Resources Division.

~~H. Soil Conservation Service United States Department of Agriculture Soil Conservation Service or its successor.~~

~~I. G.~~ “Department” means the Arkansas Department of Agriculture.

~~J. H.~~ “Water conservation and development project or practice” means a project or practice to preserve or protect water. This term includes projects that result in either water quantity or quality benefits or substitutes the use of surface water for groundwater such that the groundwater resource may be protected.

Section 1001.4 District transfer of funds.

A district obtaining delegation under Subtitle II of this Title may by appropriate resolution of the board of directors transfer funds held for use under this title to the water conservation education/information

fund created under Subtitle XXV of Title II of the ~~Commission~~ commission rules. Notice of this transfer shall be properly noted in the district permanent records and accounting records.

Subtitle II. Procedure for delegation of Agricultural Cost-Share Program to conservation districts

Section 1002.1 Memorandum of understanding.

Any district wishing to obtain delegation of the agricultural cost-share program within its boundaries shall enter into a memorandum of understanding with the ~~Commission~~ commission agreeing to abide by these rules.

Section 1002.2 Annual plan.

Upon delegation, a district shall develop an annual plan in which it prioritizes water conservation activities within the district. The ~~District~~ district shall take this plan in account when considering applications for financial assistance under this program. This plan shall be reviewed and updated annually. This plan must be submitted to the ~~Commission~~ commission at the time the District Operating Plan, required under Title II Section 217.2 of the Commission Rules Governing Conservation Districts, is submitted.

Section 1002.3 Report of activities.

A. The ~~District~~ district shall provide the ~~Commission~~ department a copy of the annual reports of cost-share activities within the district. These reports shall be in a form acceptable to the ~~Executive Director~~ director and may include, but are not limited to, the following information:

1. Number and type of applications received.
2. Number and type of projects or practices approved.
3. Benefits to be received from approved projects or practices, and amount of cost-share funding approved.
4. Projects or practices completed, including cost-share funds disbursed and estimated dollar value of projects or practices installed. Benefits to be received from the installed project or practice, including estimated quantity of benefits received (e.g., Acre feet of groundwater use converted to surface water use).
5. Projects pending.

B. This report shall be submitted with the assessment of activities required to be submitted to the ~~Executive Director~~ director pursuant to Title II Section 217.2E of the Commission Rules Governing Conservation Districts.

Section 1002.4 Financial records.

A. A district obtaining delegation under this program shall establish and maintain a system of management and accounting for cost-share funds that is acceptable to the ~~Executive Director~~ director.

B. Funds provided under this program to a ~~District~~ district shall be subject to the financial reporting requirements of Subtitle XIX of Title II of the Commission's Rules Governing Conservation Districts.

Subtitle III. Application procedures – generally

Section 1003.1 Applicant in general.

A. An applicant may be an individual, partnership, corporation, limited liability company, joint venture, watershed improvement district, drainage district, or regional water distribution district.

B. Except for drainage and watershed improvement districts, the ~~Applicant~~ applicant must be the owner of the property where the project is to be constructed/installed or have property rights to said land that equal or exceed the predetermined project life of the project for which funding is requested.

Section 1003.2 Applicant must be cooperator.

An applicant must be a cooperator with the district in which the cost-share funds are to be expended. If

applicant is a joint venture, then all individuals shall be cooperators. This section shall not be applicable to drainage or watershed improvement districts.

Section 1003.3 Conservation plan on file.

The farm on which the proposed project is located must have a current conservation plan on file with the district. This conservation plan must identify the proposed practice or project as a solution to one or more identified water conservation problems.

Section 1003.4 Application period.

Applications for agricultural cost-share funds shall be accepted during the months of October, November, December, and January, unless otherwise approved by the ~~Executive Director~~ director.

Section 1003.5 Application procedure.

Applications shall be made on forms provided by the district or ~~Commission~~ department and approved by the department ~~Commission~~. Required information includes, but is not limited to, the following:

- A. Name, address and telephone number of the applicant.
- B. Description of proposed practice or project.
 - 1. location of project
 - 2. type of project
 - 3. sketch showing the location of proposed practice or project
- C. Benefits to be obtained from the proposed project.

Section 1003.6 Application review.

- A. As soon as practicable after the close of the application period, the applications received shall be reviewed. In making a decision concerning an application consideration shall be given to the proposed project furtherance of the local district's annual plan, the Arkansas Water Plan developed by the ~~Commission~~ department and any other applicable plan of the department or the Arkansas Department of ~~Pollution Control and Ecology~~ Energy and Environment or ~~Arkansas Livestock and Poultry Commission~~.
- B. All applications shall be prioritized as to benefits to be received in accordance with Subsection A. Applications shall be approved based upon this prioritization.

Section 1003.7 Additional technical information on highest ranking applications.

The ~~Executive Director~~ director for applications made to the ~~Commission~~ department, or the district board of directors for applications made to a district, shall request that applicants with highest priority ranking applications submit additional technical information concerning their applications. The following information shall be completed in consultation with the ~~Soil Conservation Service~~ United States Department of Agriculture, district or ~~Commission~~ department technical staff or an Arkansas licensed professional engineer and submitted to supplement the application:

- A. Estimate of extent of work (e.g. number of acres, feet of pipe, cubic yards of dirt).
- B. Estimated construction schedule.
- C. Estimated cost of project or practice.
- D. Amount of cost-share funds requested.

If the ~~Applicant~~ applicant does not provide the additional information within thirty (30) days, the application will lose its priority ranking. As additional cost-share funds become available, applicants with the next highest-ranking priority shall be requested to submit this additional information.

Section 1003.8 Consideration of applications.

- A. The ~~Executive Director~~ director on applications made to the ~~Commission~~ department, or the district board of directors on applications made to a district, may approve, disapprove or approve subject to conditions or limitations on any application received.
- B. An application may be approved for the current year and up to two years into the future.
- C. No application shall be approved for cost-share funds in excess of ~~\$2,500.00~~ five thousand

dollars (5,000) per year.

For joint venture applications, the limitation under this subsection shall be applicable to each individual joint venture participant.

Section 1003.9 Limitation of cost-share participation

A. Cost-share participation under this program is limited to ~~forty six~~ sixty percent (40% ~~60~~%) of allowable costs.

B. Total cost-share participation from all contributing sources, including federal, state and local sources, is limited to seventy-five percent (75%) of allowable costs.

Subtitle IV. Projects and practices – generally

Section 1004.1 Project design criteria.

All projects or practices shall be designed and installed in compliance with current standards and technical specifications of the ~~Soil Conservation Service United States Department of Agriculture~~ or other standards and specifications approved by the ~~Chief Engineer~~ director.

Section 1004.2 Project design.

All projects or practices shall be designed by an employee of the ~~Soil Conservation Service United States Department of Agriculture~~, district, or ~~Commission~~ department or by an Arkansas licensed professional engineer.

Section 1004.3 Final inspection.

Upon completion of the installation of a project or practice, an inspection shall be conducted by a representative of the district, ~~Commission~~ department or ~~Soil Conservation Service United States Department of Agriculture~~ to ensure the projects are installed in compliance with applicable standards. Any deficiency found must be corrected prior to the disbursement of cost-share funds.

Section 1004.4 Project maintained for project life.

A. All projects or practices constructed or installed under this program shall be properly maintained for the predetermined project life. Project maintenance shall be the responsibility of the applicant.

B. If a project or practice funded under this program is removed prior to the end of its predetermined life, the applicant shall repay to the ~~Commission~~ department or district the pro rata share of the remaining life of the project or practice. For example: A project with a ten-year predetermined life is removed four years after being installed, then $(10 - 4)/10$ or sixty percent (60%) of the cost-share funds must be returned to the district or ~~Commission~~ department.

C. The district and ~~Commission~~ department reserve the right to make periodic inspections of the project or practice during the predetermined life of the project or practice.

Subtitle V. Approved projects and practices

Section 1005.1 ~~Agricultural Conservation Program~~ Projects and practices approved by the United States Department of Agriculture.

All projects and practices approved for Arkansas by the ~~Agricultural Conservation Program, as operated by the Agricultural Stabilization and Conservation Service United States Department of Agriculture~~, shall qualify as an approved water conservation and development project and be eligible for cost-share assistance under this program.

Section 1005.2 Projects and practices approved by the ~~Chief Engineer~~ director.

The ~~Chief Engineer~~ director may approve certain classes of projects and practices as water conservation and development projects eligible for cost-sharing under this program.

Section 1005.3 Specific project approval.

An applicant wishing to develop a project or practice not being approved under Sections 1005.1 or 1005.2 of this Title may request approval of the project from the ~~Chief Engineer~~ director. Upon approval by the ~~Chief Engineer~~ director as an approved water conservation and development practice, the project or practice shall be eligible for cost-share funding under this program.

Subtitle VI. Agreements and payments**Section 1006.1. Cost-share agreement.**

Within ~~sixty~~ (60) days after approval of an application, or if application is approved subject to availability of funds ~~sixty~~ (60) days after applicant is notified that funds are available, the applicant must enter into a cost-share agreement with the district or ~~Commission~~ department. The form of the agreement must be approved by the ~~Executive director~~ director.

Section 1006.2 Supplemental design, construction, or operation information.

The district or ~~Commission~~ department may require additional information concerning design, construction, or operation of the project or practice at any time.

Section 1006.3 Payment request and certification.

Upon final inspection and approval of the project or practice by the ~~Commission~~ department or district, the applicant may request payment of cost-share funds. This request shall be in a form approved by the ~~Executive director~~ director and at a minimum contain:

- A. An accounting of expenses incurred in the installation of the project or practice.
- B. The allowed cost-share expenses.
- C. Certification by the applicant that the project or practice was installed in compliance with approved specifications.

Section 1006.4 Payment of cost-share funds.

Upon satisfactory review and approval, the ~~Commission~~ department or district shall make the proper payment to the applicant.



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 X Rules

Purpose

This memorandum analyzes a proposed amendment to the Arkansas Natural Resources Commission's (Commission) existing rules implementing the Title X Rules Governing the Arkansas Water Resource Agricultural Cost-Share Program (Cost-Share Program).

Background

The Cost-Share Program was established in 1994 and is regulated under the Commission's Title X rules. The Cost-Share Program is funded by the United States Environmental Protection Agency Section 319(h) Nonpoint Source Pollution Grant. Arkansas is typically awarded \$3.3 million annually to administer the Arkansas Nonpoint Source Pollution Program.

The Department's Natural Resources Division (NRD) does not set aside any 319(h) funds directly for the Cost-Share Program but administers the program by providing grant awards to partners to implement conservation practices, education and outreach, or water quality monitoring. Grant awards are selected through ranking of workplan proposals. The proposals that rank highest are those that work to implement conservation practices in designated nonpoint priority watersheds or watersheds with EPA accepted Nine Element Watershed Plans.

On August 11, 2022, the Commission voted to proceed with adoption of the proposed amendments to Title X to increase the incentives available under the Cost-Share Program to increase Program participation.

Key Points

- The Cost-Share Program has suffered from low participation by conservation districts, with only 15% of districts participating in the Program over the last ten years
- The proposed amendment includes increasing the landowner project cap from \$2,500 or \$7,500 per three-year cycle to \$5,000 annually or \$15,000 per three-cycle.
- The proposed amendment also revises the cost-share percentage to align with current federal nonpoint source pollution program requirements of 60% federal funds and 40% non-federal sponsor funds.

Discussion

Under Title X, the Commission delegates the authority for administration of the Cost-Share Program to conservation districts, including identifying eligible landowners, developing farm plans for conservation practices, and ensuring implementation aligns with NRCS national conservation practice standards. Over the last ten years, NRD has only had 11 of 75 (15%) conservation districts participate in funding \$1,670,009 worth of conservation practices. The Cost-Share Program has also been used to purchase equipment for Conservation Districts to rent to landowners to help subsidize their local budgets and staffing.

The proposed amendment includes increasing the landowner project cap from \$2,500 or \$7,500 per three-year cycle to \$5,000 annually or \$15,000 per three-cycle. Staff also proposed revising 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 current rule requires a 60% non-federal sponsor to implement cost-share projects.

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.



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

December 19, 2022

Honorable John Thurston
Secretary of State
State Capitol Rm. 01
Little Rock, Arkansas 72201-1094

Enclosed is a Transmittal Sheet and a final rule. **Arkansas Natural Resources Commission Rules Governing the Arkansas Water Resource Agricultural Cost-Share Program Title 10** was approved by the Arkansas Natural Resources Commission at a meeting held August 11, 2022.

The final rule was reviewed and approved by the Administrative Rules Subcommittee of the Arkansas Legislative Council on December 15, 2022, and the Arkansas Legislative Council on December 16, 2022.

If more information is needed, please contact me.

Sincerely,

Wade Hodge
Chief Counsel

WH:ll

Enclosures

QUESTIONNAIRE FOR FILING PROPOSED RULES WITH THE
ARKANSAS LEGISLATIVE COUNCIL

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

INSTRUCTIONS

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

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

1. What is the short title of this rule? Title 10 Water Resource Agricultural Cost-Share Program rules
2. What is the subject of the proposed rule? The proposed amendment includes increasing the landowner project cap from \$2,500 or \$7,500 per three-year cycle to \$5,000 annually or \$15,000 per three-cycle. Also proposed revising the cost-share percentage to align with current federal nonpoint source pollution program requirements of 60% federal funds and 40% non-federal sponsor funds.
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 amend the incentives available under the Title X rules to increase program participation and make stylistic changes to conform to Code of Rules guidelines. 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.**

The proposed amendment includes increasing the landowner project cap from \$2,500 or \$7,500 per three-year cycle to \$5,000 annually or \$15,000 per three-cycle. Also proposed revising the cost-share percentage to align with current federal nonpoint source pollution program requirements of 60% federal funds and 40% non-federal sponsor funds.

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: October 12, 2022

Time: 10:00

Place: 1 Natural Resources Drive, Little Rock

-
10. When does the public comment period expire for permanent promulgation? (Must provide a date.)
 November 5, 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 Title 10 Water Resource Agricultural Cost-Share Program rules

1. Does this proposed, amended, or repealed rule have a financial impact?
Yes _____ No X _____
2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?
Yes 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: N/A
 - (a) What is the cost to implement the federal rule or regulation? N/A

Current Fiscal Year

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

Total _____

Next Fiscal Year

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

Total _____

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

Current Fiscal Year

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

Total _____

Next Fiscal Year

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

Total _____

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected. N/A

Current Fiscal Year

\$____ N/A _____

Next Fiscal Year

\$____ N/A _____

The proposed rule is currently funded under existing US Environmental Protection Agency Section 319(h) administered by ADA-NRD Nonpoint Source Pollution program. This rule change will reduce cost to private individuals by reducing the participants' cost share percentage from 60% to 40%.

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 _____

The cost for this cost-share program is shared between the United State Environmental Protection Agency and the individual landowner. There is no anticipated increased cost to state, county, or

municipal government due to this proposed rule change.

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.

CLEAN COPY

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Arkansas Natural Resources Commission Rules Governing the Arkansas Water Resource Agricultural Cost-Share Program

Subtitle I. General provisions

Section 1001.1 Purpose.

The purpose of these rules is to establish the procedures for implementing the Arkansas Water Resource Agricultural Cost-Share Program. These rules are applicable to both the commission and conservation districts, when receiving commission delegation to implement the program.

Section 1001.2 Enabling and pertinent legislation.

- A. Ark. Code Ann. § 15-22-913 through 914, Arkansas Groundwater Protection Act.
- B. Ark. Code Ann. § 15-22-507, Water Development Fund.
- C. Ark. Code Ann. § 15-20-201 through 207, Arkansas Natural Resources Commission.
- D. Ark. Code Ann. § 14-125-101 through 907, Conservation Districts Law.

Section 1001.3. Definitions.

The following definitions shall apply to all parts of this title:

- A. "Agricultural Cost-Share Program" means the program administered by the United States Department of Agriculture pursuant to 16 U.S.C. § 590g-q3, 7 C.F.R. Part 701 and 1-AR(ACP)(Rev. 11) Part 2, as amended.
- B. "Commission" means the Arkansas Natural Resources Commission, as defined in Ark. Code Ann. § 15-20-201 through 207.
- C. "Conservation Plan" means a set of decisions addressing resource use, development and conservation on a unit of land or water. The decisions are formally recorded in the conservation plan document that describes the schedule of operations and activities needed to solve identified problems.
- D. "Cooperator" means a person who has entered into a cooperative agreement with a conservation district to work together in planning and carrying out resource use, development, and conservation on a specific land area.
- E. "District" means a conservation district created under the Conservation District Law, Ark. Code Ann. §14-125-101 through 907.
- F. "Director" means the Director of the Arkansas Department of Agriculture Natural Resources Division.
- G. "Department" means the Arkansas Department of Agriculture.
- H. "Water conservation and development project or practice" means a project or practice to preserve or protect water. This term includes projects that result in either water quantity or quality benefits or substitutes the use of surface water for groundwater such that the groundwater resource may be protected.

Section 1001.4 District transfer of funds.

A district obtaining delegation under Subtitle II of this Title may by appropriate resolution of the board of directors transfer funds held for use under this title to the water conservation education/information fund created under Subtitle XXV of Title II of the commission rules. Notice of this transfer shall be properly noted in the district permanent records and accounting records.

Subtitle II. Procedure for delegation of Agricultural Cost-Share Program to conservation districts

Section 1002.1 Memorandum of understanding.

Any district wishing to obtain delegation of the agricultural cost-share program within its boundaries

shall enter into a memorandum of understanding with the commission agreeing to abide by these rules.

Section 1002.2 Annual plan.

Upon delegation, a district shall develop an annual plan in which it prioritizes water conservation activities within the district. The district shall take this plan in account when considering applications for financial assistance under this program. This plan shall be reviewed and updated annually. This plan must be submitted to the commission at the time the District Operating Plan, required under Title II Section 217.2 of the Commission Rules Governing Conservation Districts, is submitted.

Section 1002.3 Report of activities.

A. The district shall provide the department a copy of the annual reports of cost-share activities within the district. These reports shall be in a form acceptable to the director and may include, but are not limited to, the following information:

1. Number and type of applications received.
2. Number and type of projects or practices approved.
3. Benefits to be received from approved projects or practices, and amount of cost-share funding approved.
4. Projects or practices completed, including cost-share funds disbursed and estimated dollar value of projects or practices installed. Benefits to be received from the installed project or practice, including estimated quantity of benefits received (e.g., Acre feet of groundwater use converted to surface water use).
5. Projects pending.

B. This report shall be submitted with the assessment of activities required to be submitted to the director pursuant to Title II Section 217.2E of the Commission Rules Governing Conservation Districts.

Section 1002.4 Financial records.

A. A district obtaining delegation under this program shall establish and maintain a system of management and accounting for cost-share funds that is acceptable to the director.

B. Funds provided under this program to a district shall be subject to the financial reporting requirements of Subtitle XIX of Title II of the Commission's Rules Governing Conservation Districts.

Subtitle III. Application procedures – generally

Section 1003.1 Applicant in general.

A. An applicant may be an individual, partnership, corporation, limited liability company, joint venture, watershed improvement district, drainage district, or regional water distribution district.

B. Except for drainage and watershed improvement districts, the applicant must be the owner of the property where the project is to be constructed/installed or have property rights to said land that equal or exceed the predetermined project life of the project for which funding is requested.

Section 1003.2 Applicant must be cooperator.

An applicant must be a cooperator with the district in which the cost-share funds are to be expended. If applicant is a joint venture, then all individuals shall be cooperators. This section shall not be applicable to drainage or watershed improvement districts.

Section 1003.3 Conservation plan on file.

The farm on which the proposed project is located must have a current conservation plan on file with the district. This conservation plan must identify the proposed practice or project as a solution to one or more identified water conservation problems.

Section 1003.4 Application period.

Applications for agricultural cost-share funds shall be accepted during the months of October, November, December, and January, unless otherwise approved by the director.

Section 1003.5 Application procedure.

Applications shall be made on forms provided by the district or department and approved by the department. Required information includes, but is not limited to, the following:

- A. Name, address and telephone number of the applicant.
- B. Description of proposed practice or project.
 - 1. location of project
 - 2. type of project
 - 3. sketch showing the location of proposed practice or project
- C. Benefits to be obtained from the proposed project.

Section 1003.6 Application review.

- A. As soon as practicable after the close of the application period, the applications received shall be reviewed. In making a decision concerning an application consideration shall be given to the proposed project furtherance of the local district's annual plan, the Arkansas Water Plan developed by the department and any other applicable plan of the department or the Arkansas Department of Energy and Environment.
- B. All applications shall be prioritized as to benefits to be received in accordance with Subsection A. Applications shall be approved based upon this prioritization.

Section 1003.7 Additional technical information on highest ranking applications.

The director for applications made to the department, or the district board of directors for applications made to a district, shall request that applicants with highest priority ranking applications submit additional technical information concerning their applications. The following information shall be completed in consultation with the United States Department of Agriculture, district or department technical staff or an Arkansas licensed professional engineer and submitted to supplement the application:

- A. Estimate of extent of work (e.g. number of acres, feet of pipe, cubic yards of dirt).
- B. Estimated construction schedule.
- C. Estimated cost of project or practice.
- D. Amount of cost-share funds requested.

If the applicant does not provide the additional information within thirty (30) days, the application will lose its priority ranking. As additional cost-share funds become available, applicants with the next highest-ranking priority shall be requested to submit this additional information.

Section 1003.8 Consideration of applications.

- A. The director on applications made to the department, or the district board of directors on applications made to a district, may approve, disapprove or approve subject to conditions or limitations on any application received.
- B. An application may be approved for the current year and up to two years into the future.
- C. No application shall be approved for cost-share funds in excess of five thousand dollars (5,000) per year.

For joint venture applications, the limitation under this subsection shall be applicable to each individual joint venture participant.

Section 1003.9 Limitation of cost-share participation

- A. Cost-share participation under this program is limited to sixty percent (60%) of allowable costs.
- B. Total cost-share participation from all contributing sources, including federal, state and local sources, is limited to seventy-five percent (75%) of allowable costs.

Subtitle IV. Projects and practices – generally

Section 1004.1 Project design criteria.

All projects or practices shall be designed and installed in compliance with current standards and technical specifications of the United States Department of Agriculture or other standards and specifications approved by the director.

Section 1004.2 Project design.

All projects or practices shall be designed by an employee of the United States Department of Agriculture, district, or department or by an Arkansas licensed professional engineer.

Section 1004.3 Final inspection.

Upon completion of the installation of a project or practice, an inspection shall be conducted by a representative of the district, department or United States Department of Agriculture to ensure the projects are installed in compliance with applicable standards. Any deficiency found must be corrected prior to the disbursement of cost-share funds.

Section 1004.4 Project maintained for project life.

- A. All projects or practices constructed or installed under this program shall be properly maintained for the predetermined project life. Project maintenance shall be the responsibility of the applicant.
- B. If a project or practice funded under this program is removed prior to the end of its predetermined life, the applicant shall repay to the department or district the pro rata share of the remaining life of the project or practice. For example: A project with a ten-year predetermined life is removed four years after being installed, then $(10 - 4)/10$ or sixty percent (60%) of the cost-share funds must be returned to the district or department.
- C. The district and department reserve the right to make periodic inspections of the project or practice during the predetermined life of the project or practice.

Subtitle V. Approved projects and practices

Section 1005.1 Projects and practices approved by the United States Department of Agriculture.

All projects and practices approved for Arkansas by the United States Department of Agriculture, shall qualify as an approved water conservation and development project and be eligible for cost-share assistance under this program.

Section 1005.2 Projects and practices approved by the director.

The director may approve certain classes of projects and practices as water conservation and development projects eligible for cost-sharing under this program.

Section 1005.3 Specific project approval.

An applicant wishing to develop a project or practice not being approved under Sections 1005.1 or 1005.2 of this Title may request approval of the project from the director. Upon approval by the director as an approved water conservation and development practice, the project or practice shall be eligible for cost-share funding under this program.

Subtitle VI. Agreements and payments

Section 1006.1. Cost-share agreement.

Within sixty (60) days after approval of an application, or if application is approved subject to availability of funds sixty (60) days after applicant is notified that funds are available, the applicant must enter into a cost-share agreement with the district or department. The form of the agreement must be approved

by the director.

Section 1006.2 Supplemental design, construction, or operation information.

The district or department may require additional information concerning design, construction, or operation of the project or practice at any time.

Section 1006.3 Payment request and certification.

Upon final inspection and approval of the project or practice by the department or district, the applicant may request payment of cost-share funds. This request shall be in a form approved by the director and at a minimum contain:

- A. An accounting of expenses incurred in the installation of the project or practice.
- B. The allowed cost-share expenses.
- C. Certification by the applicant that the project or practice was installed in compliance with approved specifications.

Section 1006.4 Payment of cost-share funds.

Upon satisfactory review and approval, the department or district shall make the proper payment to the applicant.