

COLORADO DEPARTMENT OF AGRICULTURE

Conservation Services Division

Rules Pertaining to the Agricultural Stewardship Tax Credit

8 CCR 1206-5

1. Definitions

- 1.1. "Agricultural land" has the meaning set forth in section 39-1-102(1.6), C.R.S.
- 1.2. "Agricultural Stewardship Tax Credit" means that tax credit established by section 39-22-561, *et seq.*, C.R.S.
- 1.3. "Annual Practices" describes agricultural stewardship practices that are implemented on operations that plant and harvest crops within one season.
- 1.4. "Applicant" means the Qualified Taxpayer applying for an Agricultural Stewardship Tax Credit in a given year.
- 1.5. "Department" or "CDA" means the Colorado Department of Agriculture created in section 35-1-103, C.R.S.
- 1.6. "Farm" has the meaning set forth in section 39-1-102 (3.5), C.R.S.
- 1.7. "Notice of Completeness" means the written notice that the Colorado Department of Agriculture provides to an Applicant who has submitted a complete application for an Agricultural Stewardship Tax Credit.
- 1.8. "Perennial Practices" describes agricultural stewardship practices that are implemented on operations that focus on the cultivation and management of crops that are not harvested or replanted within one calendar year.
- 1.9. "Qualified Stewardship Practice" has the meaning set forth in section 39-22-561(2)(b), C.R.S.
- 1.10. "Qualified Taxpayer" has the meaning set forth in section 39-22-561(2)(c), C.R.S.
- 1.11. "Ranch" has the meaning set forth in section 39-1-102(13.5), C.R.S.
- 1.12. "Supplemental Practices" describe Qualified Stewardship Practices or exercises that are relevant to and can be implemented on any operation type and in combination with Annual or Perennial Practices.
- 1.13. "Tax Credit Certificate" or "Credit Certificate" means a credit certificate awarded under the Agricultural Stewardship Tax Credit program as defined at section 39-22-561(2)(a), C.R.S.
- 1.14. "Waitlist" means that list described in section 39-22-561(6)(a), C.R.S.

2. Tax Credit Application Process

- 2.1. The Department will post the full application, required documents, and the date the Tax Credit Certificate application opens on the Agricultural Stewardship Tax Credit website:
<https://ag.colorado.gov/ag-stewardship-tax>.

- 2.2. An Applicant may only submit one application per calendar year. Any Tax Credit Certificate issued will apply to the tax year that begins during the calendar year for which it is awarded.
- 2.3. Applications will be reviewed in the order received, based on the date and time the Department receives an application.
- 2.4. An Applicant must submit a complete Tax Credit Certificate application and provide all required documents, materials, and any other information to support the claimed Qualified Stewardship Practice described in Section 7 below. Upon reviewing the application, the Department will notify an Applicant if the Applicant's application is incomplete or complete.
 - 2.4.1. An Applicant will have 10 business days from the date of the Department's written notification of incompleteness to correct any deficiencies, after which the Department will deny the application.
- 2.5. The Department will issue tax credits in an aggregate amount of three million dollars per calendar year. After the Department has issued tax credits in an aggregate amount of three million dollars per calendar year, the Department will place additional claims in an aggregate amount of two million dollars per calendar year on a Waitlist. After the Department has placed additional claims in an aggregate amount of two million dollars per calendar year on a Waitlist, the Department will deny any remaining claims in that calendar year.
- 2.6. An eligible Applicant may only receive a tax credit for the calendar year in which the Applicant implemented the Qualified Stewardship Practice(s).
- 2.7. For an Applicant who submits a complete application, including the supporting documents for the identified Qualified Stewardship Practice(s) identified in Section 7 below, the Department will issue a Notice of Completeness, which will include the estimated dollar amount of the tax credit awarded to the Applicant, based upon the proposed Qualified Stewardship Practice(s) and the proposed acreage impacted. The Notice of Completeness will also include relevant deadlines based on the identified Qualified Stewardship Practice(s).
 - 2.7.1. In order to be awarded a Tax Credit Certificate, Applicants must comply with the Department's demonstration requirements, including any deadlines. Failure to comply with any demonstration requirements or deadlines may constitute an immediate denial of the application.
 - 2.7.2. If an eligible Applicant receives a Notice of Completeness and is unable to implement or complete the Qualified Stewardship Practice(s) within that calendar year, the Applicant must notify the Department in a timely manner.
- 2.8. Per section 39-22-561(3)(b)(I), C.R.S., an Applicant may only receive an Agricultural Stewardship Tax Credit for three income tax years.

3. Waitlist

- 3.1. After the Department has issued tax credits in an aggregate amount of three million dollars in a calendar year, the Department will place no more than two million dollars in applications for a tax credit on a Waitlist, in the following priority:
 - 3.1.1. First, to a Qualified Taxpayer who has been issued a Tax Credit Certificate in the calendar year preceding the calendar year in which the Qualified Taxpayer is placed on the Waitlist.
 - 3.1.2. Second, to a Qualified Taxpayer whom the Department previously placed on the Waitlist.

- 3.2. The Department will not place on the Waitlist an Applicant who has not complied with the Department's implementation or demonstration requirements.
- 3.3. The Department will notify an Applicant when the Applicant is on the Waitlist.
- 3.4. An Applicant on the Waitlist will be issued a Tax Credit Certificate for the following calendar year after the Applicant has implemented the Qualified Stewardship Practice(s) identified in the Applicant's application and successfully demonstrated implementation, as described in Section 4 below.

4. Implementing and Demonstrating Qualified Stewardship Practices

- 4.1. The Applicant will be responsible for submission of the supporting documentation for each Qualified Stewardship Practice(s) described below in Section 7, including complying with any of the deadlines described in the Notice of Completeness.
- 4.2. An Applicant who receives a Notice of Completeness per Section 2.7 above understands and agrees that the Department may conduct a site inspection to confirm that the Qualified Stewardship Practice(s) conforms to the Applicant's application.
- 4.3. Failure to comply with any demonstration requirements or deadlines may constitute an immediate denial of the application.

5. Tax Credit Certificate Issuance

- 5.1. The Department will only issue a Tax Credit Certificate to an Applicant who has documented successful implementation of the Qualified Stewardship Practice(s) described in the Applicant's application and consistent with any deadlines in the Notice of Completeness.
- 5.2. Pursuant to section 39-22-561(5), C.R.S., a Qualified Taxpayer must file the Tax Credit Certificate with the Qualified Taxpayer's state income tax return.
- 5.3. The final Tax Credit Certificate dollar amount issued by the Department will reflect only those Qualified Stewardship Practices and acreages identified in the application and Notice of Completeness and subsequently implemented and demonstrated in the calendar year for the tax year for which the Tax Credit Certificate is issued.
- 5.4. Per sections 39-22-561(6) and (7), C.R.S., if the tax credit exceeds the income tax due on the income of the Qualified Taxpayer for the taxable year, the excess credit may not be carried forward and must be refunded to the Qualified Taxpayer.
- 5.5. Per sections 39-22-561(6) and (7), C.R.S., Tax Credit Certificates are not transferable.

6. Tax Credit Certificate Award Structure

- 6.1. The amount of the Tax Credit Certificate issued to a Qualified Taxpayer will be based on a) the number of Qualified Stewardship Practices implemented per acre; b) the category assigned to those Qualified Stewardship Practices per 7 below; and c) the acreage upon which the Qualified Stewardship Practice(s) is implemented. No Tax Credit Certificate shall exceed the maximum allowable amounts in section 39-22-561(3)(a)(I) - (III), C.R.S.
- 6.2. **Number of Qualified Stewardship Practice Implemented Per Acre.** Applicants may implement more than one Qualified Stewardship Practice.

- 6.2.1. Total tax credit amount will be calculated by 1) calculating each dollar per acre for each Qualified Stewardship Practice, based on practice categories and acreage, and then 2) adding tax credit amounts together.
 - 6.2.2. Not all Qualified Stewardship Practices are compatible. Section 7 below identifies which Qualified Stewardship Practices cannot be combined or otherwise implemented on the same acre of land.
 - 6.3. **Practice Category.** Each Qualified Stewardship Practice is categorized into one of three categories. These categories are based on complexity to implement and ecosystem benefits associated with each Qualified Stewardship Practice. Section 7 below identifies the category assigned to each Qualified Stewardship Practice.
 - 6.3.1. Category 1 Practices (those practices that are difficult to implement or have a greater benefit related to increasing soil health, improving water efficiency, or creating a more diverse and beneficial ecosystem) are eligible to receive a maximum of \$50 per acre.
 - 6.3.2. Category 2 Practices (those practices that are easier to implement or have a medium benefit related to increasing soil health, improving water efficiency, or creating a more diverse and beneficial ecosystem) are eligible to receive a maximum of \$30 per acre.
 - 6.3.3. Category 3 Practices (those practices that are the easiest to implement or have a reduced benefit related to increasing soil health, improving water efficiency, or creating a more diverse and beneficial ecosystem) are eligible to receive a maximum of \$10 per acre.
 - 6.4. **Application of Acreage to Tax Credit Certificate.** Tax Credit Certificate amounts will be based on total acres subject to a Qualified Stewardship Practice(s) as follows:
 - 6.4.1. The first 10 acres subject to the Qualified Stewardship Practice(s) will receive the maximum tax credit amount per acre for the relevant category.
 - 6.4.2. The next 90 acres (total 100 acres) will receive the maximum credit amount of the relevant category multiplied by 0.90.
 - 6.4.3. The next 400 acres (total 500 acres) will receive the maximum credit amount of the relevant category multiplied by 0.80.
 - 6.4.4. Any acreage above 500 acres will receive the maximum credit amount of the relevant category multiplied by 0.70.
 - 6.5. All tax credit amounts will be rounded to the nearest dollar.
- 7. Qualified Stewardship Practices**
- 7.1. Qualified Stewardship Practices are grouped below by type (Annual Cropping Systems, Perennial Cropping Systems, and Supplemental Practices that can be implemented on either annual or perennial systems) and by category as described above in Section 6.3.
 - 7.2. **Annual Practices**
 - 7.2.1. Category 1 Practices. The following Annual Practices are Category 1 Practices: No Tillage and Seasonal Cover Cropping and Seasonal Crop Rotation.

7.2.1.1. **No Tillage.** The management practice of growing an annual crop without disturbing the soil through tillage. Removing residue directly within the seeding or transplanting area before planting primary crop or cover crops is allowed. Types of equipment associated with no-till would include flail mowers and roller/crimpers to terminate cover crops and no-till drills for seeding. Roller crimpers, herbicides, or livestock can be used to terminate cover crops. In a no-till system, no tillage is performed at any time during the calendar year.

7.2.1.1.1. Supporting Documentation. The following will be required when an Applicant submits a Tax Credit Certificate application.

- (a) Written plan specifically explaining how no-tillage practices will be implemented, including details about implement/equipment types to be used on the proposed land, and
- (b) Map showing where practice will occur.

7.2.1.1.2. Supporting Documentation. The following will be required to demonstrate successful implementation of this practice prior to the issuance of a Tax Credit Certificate:

- (a) Written records or logs with specific focus on lack of tillage (can include records from specialized software),
- (b) Geotagged and time-stamped photos showing field preparation, no-till planting, crop termination, etc. with no visible tillage marks throughout the growing season, and
- (c) If applicable, records of herbicide or livestock used for terminating crops.

7.2.1.1.3. Eligible Combined Practices. This practice can be combined with any other Annual Practice and any Supplemental Practices except Minimized Tillage. It cannot be combined with any Perennial Practice.

7.2.1.2. **Seasonal Cover Cropping and Seasonal Crop Rotation.** The management practice of growing a crop between successive production crop plantings, companion planted into production crops, or alley cropping (i.e., growing trees/shrubs in alternating rows with other crops). These plantings are done within the relevant crop year to protect soil or fields that would otherwise be bare for certain periods of the year, increase species diversity within the cropping system, slow soil erosion, retain soil moisture, suppress weeds, and improve soil health. This practice is specific to annual cropping unless it is utilized as alley cropping in orchards, vineyards, or hops.

7.2.1.2.1. Supporting Documentation. The following will be required when an Applicant submits a Tax Credit Certificate application:

- (a) A written plan with specific details about cover cropping, companion planting or alley cropping and that must specify species to be planted, seeding density, and method of planting, and
- (b) Map showing where practice will occur.

7.2.1.2.2. Supporting Documentation. The following will be required to demonstrate successful implementation of this practice prior to the issuance of a Tax Credit Certificate:

- (a) Written records or logs with specific focus on cover cropping, companion plantings, or alley cropping (can include records from specialized software). Records must specify planting dates, species planted, seeding density, method of planting, and method of termination,
- (b) Geotagged and time-stamped photos showing all planting activity, and
- (c) Seed tags for all plantings.

7.2.1.2.3. Eligible Combined Practices. This practice can be combined with any other Annual Practice and any Supplemental Practices. It cannot be combined with Perennial Practices.

7.2.2. Category 2 Practices. The following Annual Practice is a Category 2 Practice: Minimized Tillage.

7.2.2.1. **Minimized Tillage.** A management practice specific to annual crop systems that limits soil-disturbing activities while growing and harvesting crops with targeted and appropriate tilling of field surfaces. This includes minimizing tillage frequency, depth, or total area disturbed within a field. Minimized tillage practices include strip-tilling, ridge-tilling, mulch-tilling, and vertical/shallow-tilling. Strip tilling involves only tilling the soil that is within the seeded row, therefore leaving soil structure outside of the bed undisturbed. Vertical tillage involves mixing and chopping plant residue into the topsoil; this tilling process is shallow and does not disturb lower layers of soil. In a minimal tillage system, the producer reduces the level of mechanical soil disruption while still preparing a suitable seedbed for planting and managing crop residues. Tillage should not exceed 3 inches in depth OR surface disturbance must not exceed 30% with a maximum tillage depth of 6 inches. In a minimal tillage system, no intensive tillage (any tillage that goes beyond 6 inches in depth or disturbs >30% of the soil surface) is implemented in the relevant calendar year.

7.2.2.1.1. Supporting Documentation. The following will be required when an Applicant submits a Tax Credit Certificate application:

- (a) Written plan which specifically outlines tillage frequency, depth, type of disturbance, type of equipment to be used, and termination plan, and
- (b) Map showing where practice will occur.

7.2.2.1.2. Supporting Documentation. The following will be required to demonstrate successful implementation of this practice prior to the issuance of a Tax Credit Certificate:

- (a) Written records or logs of tillage equipment used (e.g., strip-till or shallow-till implements) and tillage depth (can include records from specialized software),

- (b) Geotagged and time-stamped photos of land before, during, and after field prep, tillage, planting, and termination activities, and
- (c) If applicable, records of herbicide or livestock used for terminating crops.

7.2.2.1.3. Eligible Combined Practices. This practice can be combined with any other Annual Practice and any Supplemental Practices except No Tillage.

7.2.3. Category 3 Practices. The following Annual Practices are Category 3 Practices: Managed Livestock Grazing on Cover Crop and Residue Management.

7.2.3.1. **Managed Livestock Grazing on Cover Crops.** The management practice of moving grazing livestock onto annual cropland to manage vegetation growth, increase or maintain forage production, and to improve animal, plant, and soil health. This practice is specific to producers that plant cover crops and then graze those crops with livestock.

7.2.3.1.1. Supporting Documentation. The following will be required when an Applicant submits a Tax Credit Certificate application:

- (a) A written plan with specific details about cover cropping and livestock grazing those cover crops and that must specify what type of cover crop will be used, how many animals will graze the crop, and approximate timing of grazing events, and
- (b) Map showing where practice will occur.

7.2.3.1.2. Supporting Documentation. The following will be required to demonstrate successful implementation of this practice prior to the issuance of a Tax Credit Certificate:

- (a) Written records with specific details about cover cropping and livestock grazing those cover crops (can include records from specialized software). The plan must specify what type of cover crop was planted, how many animals grazed the crop, and timing/length of grazing events, and
- (b) Geotagged and time-stamped photos of livestock grazing the cover crop.

7.2.3.1.3 Eligible Combined Practices. This practice can be combined with any other Annual Practice and any Supplemental Practices except Residue Management.

7.2.3.2. **Residue Management.** The management practice of maximizing ground cover on annual cropland throughout dormant/fallow seasons by making decisions to actively retain a portion of all cash crop residue on the field where it originates. This practice includes light incorporation of residue to prevent residue from blowing away and moving grazing livestock onto cropland to utilize crop residue and to improve animal, plant, and soil health. This practice only qualifies if a producer has >30% ground cover from crop residue. When producers are grazing residue from their primary crop, animals must be removed before bare ground reaches >30%.

7.2.3.2.1. Supporting Documentation. The following will be required when an Applicant submits a Tax Credit Certificate application:

- (a) Written plan with specific details about how residue will be managed to maximize covered ground. The plan must specify what cash crop is grown, how the crop is harvested, and how the residue will be managed after harvest to leave no more than 30% of ground surface uncovered through dormant seasons, and
- (b) Map showing where practice will occur.

7.2.3.2.2. Supporting Documentation. The following will be required to demonstrate successful implementation of this practice prior to the issuance of a Tax Credit Certificate:

- (a) Written records with specific details about how residue was managed to maximize ground cover (can include records from specialized software). Records must specify what cash crop was grown, how the crop was harvested, and how the residue was managed after harvest, and
- (b) Geotagged and time-stamped photos showing crop residue levels before, during, and after grazing or incorporation.

7.2.3.2.3. Eligible Combined Practices. This practice can be combined with any other Annual Practice and any Supplemental Practice except Managed Livestock Grazing on Cover Crops. It cannot be combined with any Perennial Practice.

7.3. Perennial Practices

7.3.1. Category 1 Practices. The following Perennial Practices are Category 1 Practices: Orchard and Vineyard Netting, Pollinator Habitat, Conservation Cover, and Virtual Fencing.

7.3.1.1. **Orchard and Vineyard Netting.** The management practice of utilizing protective mesh netting over trees/vines to reduce pest pressure from insects and birds. This physical barrier prevents damage from common orchard pests like codling moths, Japanese beetles, and fruit-feeding birds, reducing the need for chemical controls and increasing fruit/berry yield and quality. Netting should be applied seasonally and removed in the dormant season.

7.3.1.1.1. Supporting Documentation. The following will be required when an Applicant submits a Tax Credit Certificate application:

- (a) A written plan with specific details for proposed netting application on an orchard/block and that must specify the type of netting, application method, application timing, and why netting is being applied, and
- (b) Map showing orchard or block where practice will occur.

7.3.1.1.2. Supporting Documentation. The following will be required to document successful implementation of this practice prior to the issuance a Tax Credit Certificate:

- (a) Written records with specific details about all netting that was applied to an orchard/block (can include records from specialized software). Records must specify type of netting, application method, application timing, and why the netting was applied, and
- (b) Geotagged and time-stamped photos of netting application and orchard/block conditions over time.

7.3.1.1.3. Eligible Combined Practices. This practice can be combined with Seasonal Cover Cropping and Seasonal Crop Rotation (Alley Cropping) and Supplemental Practices. It cannot be combined with any Perennial Practice.

7.3.1.2. **Pollinator Habitat Planting.** The management practice of planting perennial cover for the specific purpose of establishing multi-species habitat for pollinating insects. Species established should be a diverse mix of flowering plants with emphasis on staggered flowering times throughout the spring/summer/fall seasons. Specific to the relevant calendar year, pollinator plantings should not be harvested during times of the year when pollinators are active but can be grazed by livestock during times of pollinator dormancy.

7.3.1.2.1. Supporting Documentation. The following will be required when an Applicant submits a Tax Credit Certificate application:

- (a) A written plan with specific details for proposed planting and seeding activities that must specify species to be planted, seeding density, method of planting, and estimated flowering windows for each species, and
- (b) Map showing where practice will occur.

7.3.1.2.2. Supporting Documentation. The following will be required to document successful implementation of this practice prior to the issuance of a Tax Credit Certificate:

- (a) Written records with specific details about planting and seeding efforts (can include records from specialized software). Records must specify planting dates, species planted, and seeding density,
- (b) Geotagged and time-stamped photos of planting activities and field conditions over time, and
- (c) Seed tags for all species planted.

7.3.1.2.3. Eligible Combined Practices. This practice can only be combined with Supplemental Practices. It cannot be combined with any Annual Practices or any Perennial Practices.

7.3.1.3. **Conservation Cover.** The management practice of establishing perennial vegetative cover on land that is not being used for crop production or livestock

grazing. Planting species should be chosen to provide feed or habitat for native wildlife. Ground covered on this practice can include field borders/corners or tracts specifically designated to provide wildlife habitat.

7.3.1.3.1. Supporting Documentation. The following will be required when an Applicant submits a Tax Credit Certificate application:

- (a) A written plan with specific details for proposed planting and seeding activities that must specify species to be planted, seeding density, method of planting, purpose of cover, and long-term plans for maintenance of the stand, and
- (b) Map showing where practice will occur.

7.3.1.3.2. Supporting Documentation. The following will be required to document successful implementation of this practice prior to the issuance of a Tax Credit Certificate:

- (a) Written records with specific details about planting and seeding efforts (can include records from specialized software). Records must specify planting dates, species planted, seeding density, and method of planting, and
- (b) Geotagged and time-stamped photos of planting activities and field conditions over time,
- (c) Seed tags for all species planted.

7.3.1.3.3. Eligible Combined Practices. This practice can only be combined with Supplemental Practices. It cannot be combined with any Annual Practice or any Perennial Practice.

7.3.1.4. **Virtual Fencing.** The practice of utilizing virtual fencing as a precision livestock management practice that uses GPS technology and wireless communication to control animal movement without physical barriers. This system employs collars worn by livestock that emit auditory cues and mild electric stimuli to guide animals within designated boundaries, reducing the need for traditional fencing. Virtual fencing allows for dynamic grazing management, improved pasture utilization, and protection of sensitive environmental areas by easily adjusting containment zones through digital mapping. This practice enhances efficiency, reduces infrastructure costs, and supports sustainable grazing by promoting even forage distribution and minimizing overgrazing.

7.3.1.4.1. Supporting Documentation. The following will be required when an Applicant submits a Tax Credit Certificate application:

- (a) A livestock management plan with specific details about the application of virtual fencing technologies. Plans should include head count for animals involved, when the technology will be implemented, and how the technology will be implemented to avoid the use of physical barriers and/or protect riparian/wetlands/sensitive areas. Plans/printouts from the provider company can be used for this application, and

- (b) Map of all land to be included in the virtual fencing management plan.

7.3.1.4.2. Supporting Documentation. The following will be required to document successful implementation of this practice prior to the issuance of a Tax Credit Certificate:

- (a) Reports generated by virtual fencing software systems showing livestock movement throughout the season. Reports should include head count of animals involved, when the technology was implemented, and how the technology was implemented to avoid the use of physical barriers and/or protect riparian/wetlands/sensitive areas, and
- (b) Geotagged and time-stamped photos of livestock wearing collars, collar application, and base stations.

7.3.1.4.3. Eligible Combined Practices. This practice can only be combined with Rangeland Planting and Overseeding and Supplemental Practices.

7.3.2. Category 2 Practices. The following Perennial Practice is a Category 2 Practice: Prescribed Grazing.

7.3.2.1. **Prescribed Grazing.** A management practice that involves carefully planned and controlled livestock grazing to achieve specific land and ecological management goals. This practice is designed to optimize the health of the land, such as promoting plant diversity, controlling invasive species, improving soil health, and preventing overgrazing. It requires a strategic approach, with the timing, duration, and intensity of grazing tailored to the needs of the land and its ecosystem. This process must take into account forage availability, soil conditions, and local environmental factors to create a sustainable grazing plan. Fence placement, cross fencing, strategic placement of watering facilities, location of supplement/mineral stations, and/or bale/swath grazing are important tools in the implementation of this practice.

7.3.2.1.1. Supporting Documentation. The following will be required when an Applicant submits a Tax Credit Certificate application:

- (a) A grazing management plan specifying intended stocking rates, grazing schedules, and rotation plans. The plan must specify how the use of paddocks, fencing, watering facilities, mineral/supplement stations, and/or bale/swath grazing will be used to control livestock movement patterns. Details should include intended efforts to protect riparian/wetlands and other sensitive areas that may be negatively impacted by livestock usage. Applicants must demonstrate intent to avoid overgrazing and allow for proper resting periods for fields or paddocks, and
- (b) Map of all land included in grazing management plan.

7.3.2.1.2. Supporting Documentation. The following will be required to document successful implementation of this practice prior to the issuance of a Tax Credit Certificate:

- (a) Written records of actual stocking rates, grazing schedules, and rotations (can include records from specialized software). Records must specify how the use of paddocks, fencing, watering facilities, mineral/supplement stations, and/or bale/swath grazing were used to control livestock movement patterns. Records should demonstrate that maximum efforts were implemented to protect riparian/wetlands and other sensitive areas,
- (b) Written explanation of any deviation from plans described in the Applicant's application and why these deviations occurred (weather factors, accidental, etc.),
- (c) Geotagged and time-stamped photos of land before, during, and after grazing events with specific emphasis on demonstrating that overgrazing did not occur, and
- (d) Records of forage production, utilization, and rest periods for grazed areas.

7.3.2.1.3. Eligible Combined Practices. This practice can only be combined with Rangeland Planting and Overseeding and Supplemental Practices.

7.3.3. Category 3 Practices. The following Perennial Practices are Category 3 Practices: Rangeland Planting and Overseeding and Planting or Overseeding on Perennial Hayland.

7.3.3.1. **Rangeland Planting and Overseeding.** The management practice of planting and overseeding on rangeland to improve degraded range, reduce bare spots, increase species diversity, or increase forage quantity/quality for livestock.

7.3.3.1.1. Supporting Documentation. The following will be required when an Applicant submits a Tax Credit Certificate application:

- (a) A written plan outlining specific details for proposed planting and seeding activities and that must specify species to be planted, seeding density, and method of planting, and
- (b) Map showing where practice will occur.

7.3.3.1.2. Supporting Documentation. The following will be required to document successful implementation of this practice prior to the issuance of a Tax Credit Certificate:

- (a) Written records with specific details about planting and seeding efforts (can include records from specialized software). Records must specify planting dates, species planted, and seeding density,
- (b) Geotagged and time-stamped photos of planting activities and field conditions over time, and
- (c) Seed tags for all species planted.

7.3.3.1.3. Eligible Combined Practices. This practice can only be combined with Prescribed Grazing or Virtual Fencing and Supplemental Practices.

7.3.3.2. **Planting or Overseeding on Perennial Hayland.** The management practice of planting and overseeding on perennial hayland to increase stand production, reduce bare spots, or increase species diversity. Hayland is defined as ground that may or may not have livestock integrated but that is cut and harvested for forage at least one time during the relevant calendar year.

7.3.3.2.1. Supporting Documentation. The following will be required when an Applicant submits a Tax Credit Certificate application:

- (a) A written plan with specific details for proposed planting and seeding activities and that must specify species to be planted, seeding density, and method of planting, and
- (b) Map showing where practice will occur.

7.3.3.2.2. Supporting Documentation. The following will be required to document successful implementation of this practice prior to the issuance of a Tax Credit Certificate:

- (a) Written records with specific details about planting and seeding efforts (can include records from specialized software). Records must specify planting dates, species planted and seeding density,
- (b) Geotagged and time-stamped photos of planting activities and field conditions over time, and
- (c) Seed tags for all species planted.

7.3.3.2.3. Eligible Combined Practices. This practice can only be combined with Supplemental Practices. It cannot be combined with any Annual Practices or any Perennial Practices.

7.4. Supplemental Practices

7.4.1. Category 1 Practices. No Supplemental Practices are classified as Category 1 Practices.

7.4.2. Category 2 Practices. The following Supplemental Practices are Category 2 Practices: Soil Carbon Amendment, Irrigation Water Management, and Invasive Plant Management.

7.4.2.1. **Soil Carbon Amendment.** A practice aimed at improving soil health and increasing its carbon content through the application of organic materials like livestock manure, compost, compost tea, and compost extract. Biosolids (i.e., treated sewage sludge) may also be applied, provided biosolids are first composted by a state-certified facility to ensure safety and quality. Material applied under this practice must be done with consideration of nutrient content and to prevent nutrient runoff to local waterways, including testing for nutrient content and application in accordance with agronomic rates to avoid over-application.

7.4.2.1.1. Supporting Documentation. The following will be required when an Applicant submits a Tax Credit Certificate application:

- (a) A written plan with specific details for the application of soil carbon amendments that must specify all materials to be applied, application methods, and application rates, and
- (b) Map showing where practice will occur.

7.4.2.1.2. Supporting Documentation. The following will be required to document successful implementation of this practice prior to the issuance of a Tax Credit Certificate:

- (a) Written records detailing all soil carbon amendment actions carried out, including specific materials applied, application methods, rates, and timing of applications (can include records from specialized software). Records must show that nutrient containing material was not overapplied (agronomic rate) compared to a soil analysis taken prior to application,
- (b) Geotagged and time-stamped photos documenting all material application activities,
- (c) Laboratory grade soil nutrient analysis taken before application, and
- (d) Nutrient analysis for all applied materials.

7.4.2.1.3. Eligible Combined Practices. This practice can be combined with any Annual Practices, Perennial Practices, and Supplemental Practices.

7.4.2.2. Irrigation Water Management. A practice focused on improving the timing and efficiency of irrigation events to optimize water use and energy consumption while ensuring plants receive adequate water for healthy growth. This practice involves precisely timing irrigation events to align with the plant's water needs, minimizing waste, and preventing over-irrigation. To determine the optimal timing for irrigation, producers must utilize advanced techniques such as monitoring soil moisture levels or tracking evapotranspiration (ET), which provides insights into the plant's actual water requirements based on environmental conditions. This management practice can also include the use of variable rate irrigation systems, surge valves, and other irrigation infrastructure/technologies designed to increase irrigation efficiency.

7.4.2.2.1. Supporting Documentation. The following will be required when an Applicant submits a Tax Credit Certificate application:

- (a) A written irrigation management plan with proposed timing, frequency, and application amounts for all irrigation events that outlines strategies for optimizing irrigation timing and efficiency. The plan must outline these efforts by providing details for any novel irrigation technologies to be used, efforts to monitor soil moisture levels, time irrigation events using evapotranspiration (ET) rates, or other novel methods of assessing crop water needs, along with how irrigation schedules will be adjusted based on these devices and measurements. The plan should also include documentation of irrigation system specifications, including the type of irrigation system used (e.g., drip, sprinkler)

and any technologies or sensors in place for monitoring water use, and

- (b) Map of all land included in the irrigation management plan.

7.4.2.2.2. Supporting Documentation. The following will be required to document successful implementation of this practice prior to the issuance of a Tax Credit Certificate:

- (a) Written records showing the timing, frequency, and application rates for all irrigation events for the season with specific details about any novel irrigation technologies used, efforts to monitor soil moisture levels, efforts to time irrigation events using evapotranspiration (ET) rates, or any other novel methods of assessing crop water needs that were used throughout the irrigation season. These records can include printouts from soil moisture monitoring systems, data from ET gauges (local to the field), data from weather stations with automated ET calculations (local to the field), ET calculations from CSU weather stations, or other types of software used for the electronic tracking of irrigation water management, and
- (b) Geotagged and time-stamped photos of all devices used towards irrigation efficiency, including soil moisture monitoring systems, ET gauges, variable rate sprinkler systems, surge valves, etc.

7.4.2.2.3. Eligible Combined Practices. This practice can be combined with any other Annual Practices, Perennial Practices, or Supplemental Practices.

7.4.2.3. **Invasive Plant Management.** A management practice focused on eliminating, controlling, or preventing the spread of invasive plant species that threaten local ecosystems, agricultural productivity, and biodiversity. For the purposes of this Qualified Stewardship Practice, "invasive plant species" means any weed species, including state-listed noxious weeds or locally designated noxious weeds, whose introduction or presence causes or is likely to cause economic or environmental harm or harm to human health. This term includes kochia, Russian thistle, pigweed, and palmer amaranth, but does not include sagebrush, yucca, cactus, milkweed, or other native plants that provide or can provide critical habitat to wildlife. Effective control requires a management plan specific to fields claimed for the tax credit that identifies target species, assesses the infestation level, and outlines appropriate methods for control, including cultural, mechanical, biological, or chemical approaches. Management of state-listed noxious weed species under this practice must align with state management objectives in accordance with the Noxious Weed Act, § 35-5.5-101, *et seq.*, C.R.S., and any local government's weed management plan. Regular monitoring and follow-up are essential to assess the success of the plan and to adapt strategies as needed.

7.4.2.3.1. Supporting Documents. The following will be required when an Applicant submits a Tax Credit Certificate application:

- (a) A management plan outlining strategies to eliminate, control, and prevent the spread of invasive plant species. All plans must identify the target species, provide an assessment of infestation levels and details for intended control methods, as well as details

for follow-up monitoring with management strategies for observed results,

- (b) Plans featuring biological control must specify control species to be utilized and provide details of control species introduction, and
- (c) Map of all land included in the management plan.

7.4.2.3.2. Supporting Documentation. The following will be required to document successful implementation of this practice prior to the issuance of a Tax Credit Certificate:

- (a) Written records detailing all efforts taken to eliminate, control, and prevent the spread of invasive plant species (can include records from specialized software). Records must identify the species targeted, explain what control methods were employed, and include all followup monitoring and management efforts that occurred in the calendar year,
- (b) Geotagged and time-stamped photos of all efforts taken under the management plan to control invasive plant species, including chemical control methods, manual removal, and biocontrol releases, and
- (c) Geotagged and time-stamped photos taken before and after management efforts were enacted.

7.4.2.3.3. Eligible Combined Practices. This practice can be combined with any other Annual Practices, Perennial Practices, or Supplemental Practices.

7.4.3. Category 3 Practices. The following Supplemental Practice is a Category 3 Practice: Nutrient Management.

7.4.3.1. **Nutrient Management.** A practice aimed at optimizing fertilizer use to enhance soil health and crop productivity while minimizing environmental impact. Producers must employ advanced techniques such as split fertilizer applications, slow-release fertilizers, fertigation, or other smart application methods that ensure nutrients are delivered efficiently, in sync with the crop's needs, and at the appropriate times. These targeted applications are based on a soil analysis specific to the field, ensuring that the amounts applied meet or do not exceed the fertilizer requirements for that particular field and crop.

7.4.3.1.1. Supporting Documentation. The following will be required when an Applicant submits a Tax Credit Certificate application:

- (a) A written plan with specific details for all proposed fertilizer applications that specifies fertilizer types, application methods, and application rates. To qualify for this practice, the written plan must demonstrate some form of application efficiency, such as the use of a fertigation system or timing applications with crop needs via split applications or slow-release fertilizers, and
- (b) Map showing where practice will occur.

7.4.3.1.2. Supporting Documentation. The following will be required to document successful implementation of this practice prior to the issuance of a Tax Credit Certificate:

- (a) Written records detailing the nutrient management practices carried out, including specific fertilizer types used, application methods, rates, and timing of applications (can include records from specialized software). Records must show that fertilizer was not overapplied (agronomic rate) compared to a soil analysis taken prior to application,
- (b) Geotagged and time-stamped photos documenting fertilizer application activities and specifically showing the efficiency efforts outlined in the Applicant's application,
- (c) Laboratory grade soil nutrient analysis taken before application of fertilizer(s), and
- (d) Material safety data sheets for fertilizers applied.

7.4.3.1.3. Eligible Combined Practices. This practice can be combined with any other Annual Practices, Perennial Practices, or Supplemental Practices.

8. General Provisions

- 8.1. Applicants are responsible for complying with any applicable local, state, or federal laws and for operating within the scope of any necessary license, registration, permit, approval, or agreement. Applicants are responsible for obtaining any necessary local, state, or federal regulatory review associated with implementation of the Qualified Stewardship Practice(s) identified in the Applicant's application.
- 8.2. A Qualified Taxpayer who receives a Tax Credit Certificate understands and agrees that the Department may conduct further site inspections to review implementation of the Qualified Stewardship Practice(s) identified in the Applicant's application.

9. Statements of Basis, Specific Statutory Authority, and Purpose

9.1. Adopted Month Day, Year – Effective Month Day, Year

Statutory Authority

The Commissioner of the Colorado Department of Agriculture ("Department") adopts these rules pursuant to the Commissioner's authority under sections 39-22-561(2)(b), (3)(a), and (8), C.R.S.

Purpose

Section 39-22-561, *et seq.*, C.R.S., creates an agricultural stewardship tax credit to encourage qualified taxpayers to actively practice one or more Qualified Stewardship Practices on a farm or ranch, including any practice that increases soil health, improves water efficiency, or creates more diverse and beneficial ecosystems while maintaining the productivity of the farm or ranch. The Commissioner adopts these rules to administer the application submission and review process required to claim the tax credit; to specify requirements for implementing and demonstrating completion of the Qualified Stewardship Practice(s) described in the application; to set tax credit amounts and parameters affecting the same; and to issue a tax credit certificate consistent with the process described in the rules.

Factual and Policy Issues

The factual and policy issues encountered when developing these rules include:

1. As required by section 39-22-561(8), C.R.S., the Department held multiple virtual and in-person stakeholder engagement sessions between August 28, 2024 and February 21, 2025 wherein the Department requested and received feedback on: a) which Qualified Stewardship Practices to include; b) the Tax Credit Certificate application process; and c) the requirements for implementing and demonstrating Qualified Stewardship Practices. Incorporating the feedback received at those stakeholder meetings, Section 7 includes descriptions of various Qualified Stewardship Practices, as well as the supporting documentation required to demonstrate completion of those practices.
2. In identifying the Qualified Stewardship Practices described in Section 7, the Department relied upon the definition of Qualified Stewardship Practice in section 39-22-561(2)(b), C.R.S., practices commonly implemented by landowners participating in the Colorado Soil Health Program, and common stewardship practices described by the National Resources Conservation Service (NRCS), an agency within the United States Department of Agriculture (USDA) that provides technical and other assistance to landowners to help them conserve and improve soil, water, air, and other natural resources on private lands. All Qualified Stewardship Practices identified in Section 7 either increase soil health, improve water use efficiency, or create more diverse and beneficial ecosystems in accordance with section 39-22-561(2)(b), C.R.S.
3. When developing the Tax Credit Certificate award structure, the Department researched current costs to implement the Qualified Stewardship Practices described in Section 7, reviewed reimbursement requests from producers enrolled in the Colorado Soil Health Program and other Department programs, and considered USDA-NRCS's reimbursement rates for various conservation practices. The Department also incorporated feedback received from farmers, ranchers, researchers, and other conservation practice experts during the stakeholder engagement process in order to estimate the effect that different stewardship practices have on soil health, water quality, and resiliency, diversity, and functionality of ecosystems.
4. The Qualified Stewardship Practices defined in Section 7 differ with respect to operational complexity; length of time, ease, or cost to implement; and anticipated short- or long-term effect on soil health, water efficiency, surrounding ecosystems, and farm or ranch productivity. Therefore, Section 6.3 defines three categories of Qualified Stewardship Practices based on degree of impact and ease of implementation, and Section 7 assigns each Qualified Stewardship Practice to one of these three categories. This category assignment is taken into account when determining the Tax Credit Certificate amount associated with a given Qualified Stewardship Practice. The Department developed these categories and assigned each Qualified Stewardship Practice to a specific category based upon input from stakeholders, consultation with NRCS, the Colorado State Conservation Board, representatives from Colorado State University, and data from the Colorado Soil Health Program and USDA-NRCS programs.
5. The cost to implement a Qualified Stewardship Practice differs depending on the size of the farm or ranch implementing the practice. Because there is a cost efficiency for implementing Qualified Stewardship Practices on larger farm or ranch operations (i.e., more acres), the total acres impacted by the Qualified Stewardship Practice factor into the final Tax Credit Certificate amount. Therefore, Section 6.2 describes that the maximum credit amount is allotted to the first 10 acres under that Qualified Stewardship Practice(s), and that credit amount per acre decreases as the affected acreage increases. The Department included the specific acreage ranges that appear in Section 6.4 based upon farm census data showing approximate farm size in Colorado.
6. Although sections 39-22-561(3)(a)(I) - (III), C.R.S., increase the maximum credit amount claimed when there is more than one Qualified Stewardship Practice implemented on a piece of land, there are certain Qualified Stewardship Practices that are incompatible due to their definition and conflicting management strategies and stewardship outcomes. For example, the "No Till" Qualified Stewardship Practice requires no tillage to disturb the land during the calendar year, and thus it cannot be combined with a "Minimized

Till” Qualified Stewardship Practice, which requires tillage. Similarly, Qualified Stewardship Practices that require grazing (i.e., Prescribed Grazing) cannot be combined with Qualified Stewardship Practices that prohibit grazing (i.e., Pollinator Habitat or Conservation Cover). Finally, Annual Practices are commonly practiced on annual systems (croplands), while Perennial Practices are commonly practiced on perennial operations (hayland, rangeland), and thus Annual and Perennial Practices would not be compatible on the same acreage. In contrast, Supplemental Practices can be implemented on any type of operation and thus are compatible with all other practices. To account for such realities, the Department has included in each description of a Qualified Stewardship Practice in Section 7 whether that practice can or cannot be combined with other practices.

7. Section 39-22-561(6), C.R.S., establishes a Tax Credit Certificate waitlist that the Department will manage each year. Therefore, as described in Part 3.1, after issuing tax credits in an aggregate amount of three million dollars for a given calendar year, the Department will place no more than two million dollars in claims on a waitlist to receive a tax credit for the next calendar year. Placement on this waitlist will follow the order of priority established in section 39-22-561(6), C.R.S., and set forth in Part 3.2 and will only occur once an applicant has submitted a complete application with all required supporting documentation necessary to demonstrate implementation of the Qualified Stewardship Practice(s) described in the applicant’s application. Notification of placement on the waitlist and issuance of a Tax Credit Certificate to waitlisted applicants for the next calendar year will occur as described in Part 3.