

MARKED UP VERSION

RULES GOVERNING THE ARKANSAS MAJOR HISTORIC REHABILITATION INCOME TAX CREDIT ACT

I. PURPOSE

Pursuant to Arkansas Laws Act 855 of 2019, the Division of Arkansas Heritage through its Arkansas Historic Preservation Program hereby establishes these rules governing the ~~three~~four part application process for which the Owner of a historic Arkansas property may apply for an income tax credit under The Arkansas Major Historic Rehabilitation Income Tax Credit Act.

II. ENABLING LEGISLATION

Arkansas Code Annotated § 19-5-1150 (Act 855 of 2019) created on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State, a trust fund known as the "Arkansas Major Historic Rehabilitation Trust Fund".

Arkansas Code Annotated § 26-51-2601et seq. (Act 855 of 2019), the "Arkansas Major Historic Rehabilitation Income Tax Credit Act", allows a credit against the Arkansas Income Tax Act of 1929, Ark. Coe Ann. §§ 26-51-101 - 26-51-2510 and the Insurance Premium Tax levied under §§ 26-57-603 - 26-57-605;

III. DEFINITIONS

"Act" means Ark. Acts, No. 855 as codified at Arkansas Code Annotated § 19-5-1150 and at § 26-51-2601et seq., as such may be amended from time to time.

"AHPP" means the Arkansas Historic Preservation Program, an agency of the Division of Arkansas Heritage ("DAH") under the Arkansas Department of Parks, Heritage & Tourism.

"Application" means the Arkansas Major Historic Rehabilitation Tax Credit Application that constitutes a written plan for development and operation of a Rehabilitation project. Applications are submitted in ~~three~~four parts:

1. Determination of Eligibility (Part 1) is used by the AHPP to determine whether a property is of historic significance and eligible to receive tax credits. Upon approval of a Part 1, the AHPP will issue a certificate of eligibility.

2. Proposed Rehabilitation Project (Part 2) is used by AHPP to determine whether a proposed Rehabilitation project will comply with the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring & Reconstructing Historic Buildings (as used herein, the "Secretary's Standards"). See

<https://www.nps.gov/tps/standards/treatment-guidelines-2017.pdf>

3. Application for Funding Allocation (Part 3) is the process used by AHPP to guarantee that projects will have funding for their requested Major Historic Rehabilitation Tax Credit at the completion of the rehabilitation process. Funding awards may not exceed \$12 million dollars. Rehabilitation projects will be ranked based on the priorities of the Arkansas Major Historic Rehabilitation Tax Credit Act via an allocation priority score. Funding will be reserved on a priority basis, according to assigned allocation priority score. Applications which would cause the total amount of funding allocation to exceed the amount of non-allocated funding remaining in the Arkansas Major Historic Rehabilitation Trust Fund will be rolled over to the following period for rescoring.

34. Completed Rehabilitation Project (Part 34) is used by AHPP to determine whether a completed Rehabilitation project successfully complied with the Secretary's Standards. Upon approval of a Part 34, the AHPP will issue a Certificate of Completion. Holders will submit Certificates of Completion to the appropriate taxing authority to claim tax credits.

"Arkansas Major Historic Rehabilitation Income Tax Credit" means the income tax credit allowed under this subchapter against the income tax imposed by this chapter and the Premium Tax levied under §§ 26-57-601 - 26-57-605;

"Certification of Completion" means a certificate issued by the Division of Arkansas Heritage certifying that a project is a Certified Rehabilitation of an Eligible Property that qualifies for the Arkansas Major Historic Rehabilitation Income Tax Credit;

"Certified Rehabilitation" means the total of appropriate and approved Rehabilitation work on an Eligible Property that results in a substantial rehabilitation of an Eligible Property that has been issued an eligibility certificate.

"Eligible Property" means property that is located in the state that:

- (A) Qualifies as a certified historic structure under 26 U.S.C. § 47, as it existed on January 1, 2019;
- (B) Will qualify as a certified historic structure following Certified Rehabilitation;
- (C) Is listed in the National Register of Historic Places;
- (D) Is designated as contributing to a district listed in the National Register of Historic Places; or

(E) Is eligible for designation as contributing to a district listed in the National Register of Historic Places following Certified Rehabilitation.

"Federal Rehabilitation Tax Credit" means the federal tax credit provided under 26 U.S.C. § 47, as it existed on January 1, 2009;

"Historic District" means a geographically definable area, urban or rural, that possesses a significant concentration, linkage or continuity of sites, buildings, structures or objects united historically or aesthetically by plan or physical development. A district may also comprise individual elements separated geographically during the period of significance but linked by association or function.

"Holder" means the holder of a Certification of Completion that is:

(A) A person, firm, or corporation subject to the income tax imposed by this chapter; or

(B) An insurance company paying the Premium Tax on its gross premium receipts;

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

"National Register" or "National Register of Historic Places" means the National Register of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering, and culture pursuant to section 101(a)(1) of the National Historic Preservation Act of 1966, as amended. (The procedures of the National Register appear in 36 CFR part 60 et seq.)

"Owner" means a person or an entity that owns Eligible Property and is the initial recipient of the Certification of Completion from the Division of Arkansas Heritage;

"Premium Tax" means a tax levied under Ark. Code Ann. §§ 26-57-603 - 26-57-615;

"Qualified Rehabilitation Expenses" means costs and expenses incurred to complete a Certified Rehabilitation that are Qualified Rehabilitation Expenses under the Federal Rehabilitation Tax Credit or under the Arkansas Major Historic Rehabilitation Income Tax Credit.

"Rehabilitation" means the process of returning a building or buildings to a state of utility, through repair or alteration, which makes possible an efficient use while preserving those portions and features of the

building and its site and environment which are significant to its historic, architectural, and cultural values.

Funding Reservation Award: Where funds within the Arkansas Major Historic Rehabilitation Trust Fund are obligated to a specific rehabilitation project which continues to meet progression requirements. Funding awards may not exceed \$12 million dollars.

"State Historic Preservation Officer" (SHPO) means the Director of the Division of Arkansas Heritage, or other official designated by the Governor or statute to act as liaison for purposes of administering historic preservation programs within Arkansas.

"Tourism Attraction" means cultural or historical site, recreational or entertainment facility, area of natural phenomenon or scenic beauty, theme park, amusement or entertainment park, indoor or outdoor play or music show, botanical gardens, or cultural or educational centers.

IV.DELEGATION OF AUTHORITY

A. The State Historic Preservation Officer is delegated all powers necessary and convenient to carry out the responsibilities contained in these rules.

B. The Arkansas Department of Finance and Administration and the Arkansas State Insurance Department are responsible for all procedures, legal determinations, and rules concerning the tax consequences relating to the Act. Any certification made by the State Historic Preservation Officer pursuant to the Act or these rules shall not be considered as binding upon the Arkansas Department of Finance and Administration and the Arkansas State Insurance Department with respect to tax consequences.

V.INTRODUCTION TO CERTIFICATIONS OF ELIGIBILITY AND REHABILITATION

A. Who may apply:

1. Ordinarily, only the fee simple Owner of the property in question may apply for the certifications herein described. However, if an Application is made by someone other than the fee simple Owner, the Application must be accompanied by a written statement from the fee simple Owner indicating that the Owner is aware of the Application and has no objection to the request for certification.

2. Upon receipt of an Application, the AHPP may determine whether a particular structure qualifies as an Eligible Property. The AHPP shall do so, however, only after notifying the Owner of the request, informing such Owner of the possible tax consequences of such a decision, and permitting the Owner a 30-day time period to submit written comments to the AHPP prior to decision. Such time period for comment may be waived by the Owner.

3. Owners of properties that appear to meet National Register criteria, but are not yet listed in the National Register or are located within potential Historic Districts, may request preliminary determinations of historic significance from the AHPP as to whether such structures may qualify as Eligible Properties when and if the properties or the potential Historic Districts in which they are located are listed in the National Register. Preliminary determinations may also be requested for properties outside the period or area of historic significance of registered Historic Districts. Procedures for obtaining these determinations shall be the same as those herein described. Such determinations are preliminary only and are not binding on the AHPP. Preliminary determinations will become final as of the date of the listing of the property, or district, in the National Register. For properties outside the period or registered Historic District, preliminary determinations will become final, except as provided below, when the district documentation on file with the National Park Service ("NPS") is formally amended. If during review of a request for a Certificate of Rehabilitation, it is determined that the property does not contribute to the historic significance of the district because of changes that occurred after the preliminary determination of historic significance was made, Eligible Property designation will be denied.

4. Owners of structures not yet designated Eligible Properties may obtain determinations from the AHPP on whether Rehabilitation proposals meet the Secretary's Standards. Such determinations will be made only when the Owner has requested a preliminary determination of the historic significance of the property as described above and such request for determination has been acted upon by the AHPP. Final certifications of Rehabilitation will be issued only to Owners of Eligible Properties.

5. Owners of properties who have not taken a Rehabilitation tax credit on the Eligible Property within the past 24 months.

B. How to apply:

1. Requests for certifications of eligibility and of Rehabilitation shall be made on Major Historic Preservation Certification Applications. Part 1 of the Application shall be used in requesting a certification of eligibility and for preliminary determinations of eligibility; while Part 2 of the Application shall be used in requesting an evaluation of a proposed Rehabilitation project.

2. Application forms are available by contacting AHPP and requesting a hard copy or an electronic version via e-mail. It is important that an applicant contact AHPP staff prior taking any action on the proposed tax credit project.

3. Applications should be reviewed within 30 days of receipt of a complete, adequately documented Application. Where adequate documentation is not provided, the Owner will be notified of the additional information needed to undertake or complete review. The time periods in this part are based on the receipt of a complete Application. They will be adhered to as closely as possible and are defined as calendar days. They are not, however, considered to be mandatory, and the failure to complete review within the designated periods does not waive or alter any certification requirement. It is the applicant's responsibility to notify the State Historic Preservation Officer if Application reviews are not completed within the time periods specified above. The State Historic Preservation Officer, in turn, will consult with the AHPP to ensure that the review is completed in as timely manner as possible under the circumstances.

4. Approval of Applications and amendments to Applications is conveyed only in writing by duly authorized officials of the AHPP acting on behalf of the State Historic Preservation Officer. Decisions with respect to certifications are made on the basis of the descriptions contained in the Application form and other available information. In the event of any discrepancy between the Application form and other, supplementary material submitted with it (such as architectural plans, drawings, specifications, etc.), the applicant shall be requested to resolve the discrepancy in writing. In the event the discrepancy is not resolved, the description in the Application form shall take precedence. Intentional falsification of factual representations in the Application is subject to criminal and civil sanctions.

5. Although certifications of eligibility and Rehabilitation are considered separately, Owners must submit Part 1 of the Historic Preservation Certification Application prior to, or with, Part 2. Part 2 of the Application will not be processed until an adequately documented Part 1 is on file and acted upon unless the property is already individually listed on the National Register. Applications will not be considered if the Owner has objected to the listing of the property in the National Register.

VI.APPLICATION PERIOD

A. The Division of Arkansas Heritage shall accept Applications for the Arkansas Major Historic Rehabilitation Income Tax Credit beginning July 1, 2020, and ending June 30th, 2025. All tax credit projects must have their completed Part III Application submitted by May 30th 2025~~30~~. Any additional work required to bring the project into compliance with the Secretary's Standards must have been completed and final documentation submitted for review no later than May 30th 2025~~30~~.

B. An Arkansas Major Historic Rehabilitation Income Tax Credit approved under an Application on or before the ~~May 30th 2025~~ June 30, 2030 date may be carried forward to be claimed up to five years from the date of issue of the certificate.

VII.CERTIFICATIONS OF ELIGIBILITY (Part 1 Application)

A. Requests for certifications of historic significance should be made by the Owner to determine:

1. That a property located within a National Register Historic District is of historic significance to such district; or
2. That a property not yet listed on the National Register appears to meet National Register criteria; or
3. That a property located within a potential Historic District appears to contribute to the historic significance of such district; and
4. If a property has received a Rehabilitation tax credit within the past 24 months.

B. To determine whether a property is individually listed or is part of a district in the National Register, the Owner may consult the AHPP for current information.

C. If a property is located within the boundaries of a National Register Historic District and the Owner wishes the AHPP to certify whether the property contributes or does not contribute to the historic significance of the district, or if the Owner is requesting a preliminary determination of eligibility, the Owner must complete Part 1 of the Historic Preservation Certification Application according to instructions accompanying the Application. Such documentation includes but is not limited to:

1. Name and mailing address of the Owner;
2. Name and address of the property;
3. Name of the Historic District;
4. Current photographs of the property; photographs of the building and its site and landscape features prior to alteration if Rehabilitation has been completed; photograph(s) showing the property along with adjacent properties and structures on the street; and photographs of interior features and spaces adequate to document historic significance;
5. Brief description of appearance including alterations, distinctive features and spaces, and date(s) of construction;
6. Brief statement of historic significance summarizing how the property does or does not reflect the values that give the district its distinctive historical and visual character, and explaining any significance attached to the property itself (i.e., unusual building techniques, important event that took place there, etc.).
7. Sketch map clearly delineating the property's location within the district; and
8. Signature of the Owner requesting or concurring in a request for evaluation.

D. If a structure is individually listed in the National Register, it is generally considered an Eligible Property or certified historic structure and no further certification is required, with the following exceptions:

1. If the property is individually listed in the National Register and the Owner believes it has lost the characteristics that caused it to be nominated and therefore wishes it delisted, the Owner should refer to the delisting procedures outlined in the U.S. Code of Federal Regulations at 36 CFR part 60.
2. Some properties individually listed in the National Register include more than one structure. In such cases, the Owner must submit a single Part 1 Application and include descriptions of all the buildings within the listing. The AHPP will determine which of the structures included within the listing are of historic significance to the property.

E. Properties containing more than one structure where the structures are judged by the AHPP to have been functionally related historically to serve an overall purpose (such as a mill complex or a residence and carriage house) will be treated as a single Eligible Property, whether the property is individually listed in the National Register or is located within a Historic District, when rehabilitated as part of an overall project. Structures that are functionally related historically are those which have functioned together to serve an overall purpose during the property's period of significance. In the case of a property within a registered Historic District that contains more than one structure where the structures are judged to be functionally related historically, an evaluation will be made to determine whether the component buildings contribute to the historic significance of the property and whether the property contributes to the significance of the Historic District.

F. Applications for preliminary determinations for individual listing must show how the property individually meets the National Register criteria for evaluation. An Application for a property located in a potential Historic District must document how the district meets the criteria and how the property

contributes to the historic significance of that district. An Application for a preliminary determination for a property in a Historic District that is outside the period of significance in the district documentation on file with the AHPP must document and justify the expanded historic significance of the district and how the property contributes to the significance of the district or document the individual historic significance of the property. Applications must contain substantially the same level of documentation as National Register nominations, as specified in the U.S. Code of Federal Regulations at 36 CFR part 60 and National Register Bulletin 16, Guidelines for Completing National Register of Historic Places Forms (available from the AHPP).

Owners should understand that intent to nominate to the National Register, or amend an existing National Register listing, does not constitute listing in the National Register, nor does it constitute a certification of eligibility as required by law for tax incentives. Owners should further understand that they are proceeding at their own risk. If the property or district is not listed in the National Register for procedural, substantive or other reasons; if the district documentation is not formally amended; or if the historic significance of the property has been lost as a result of alterations or damage, these preliminary determinations of significance will not become final. The State Historic Preservation Officer must nominate the property or the district before the preliminary certification of eligibility can become final.

G. The AHPP discourages the moving of historic buildings from their original sites. However, if a building is to be moved as part of a Rehabilitation project for which certification is sought, the Owner must follow different procedures depending on whether the building is individually listed in the National Register or is within a Historic District. When a building is moved, every effort should be made to re-establish its historic orientation, immediate setting, and general environment. Moving a building may result in removal of the property from the National Register or, for buildings within a Historic District, denial or revocation of a certification of eligibility. Consequently, a moved building may, in certain circumstances, be ineligible for tax credits.

H. Documentation must be submitted that demonstrates:

1. The effect of the move on the building's integrity and appearance (any proposed demolition, proposed changes in foundations, etc.);
2. Photographs of the site and general environment of the proposed site; Evidence the proposed site does not possess historical significance that would be adversely affected by the moved building;
3. The effect of the move on the distinctive historical and visual character of the district, where applicable; and
4. The method to be used for moving the building.

For buildings individually listed in the National Register, the procedures contained in the U.S. Code of Federal Regulations at 36 CFR part 60 must be followed prior to the move, or the building will be removed from the National Register, will not be considered an Eligible Property, and will have to be re-nominated to the National Register. The Owner may submit a Part 1 Application in order to receive a preliminary determination from the AHPP of whether a move will cause the property to be removed from the National Register. However, preliminary approval of such a Part 1 application does not satisfy

the requirements for property eligibility. The applicant must follow the remaining National Register procedures to ensure that the moved building will remain listed in the National Register and retain its status as an Eligible Property.

If an Owner moves (or proposes to move) a building into a National Register Historic District or moves (or proposes to move) a building elsewhere within a Historic District, a Part 1 Application containing the required information must be submitted. The building to be moved will be evaluated to determine if it contributes to the historic significance of the district both before and after the move.

I. Properties within Historic Districts will be evaluated to determine if they contribute to the historic significance of the district by Application of the Secretary's Standards for Evaluating Significance within Historic Districts as listed in the U.S. Code of Federal Regulations at 36 CFR §67.5.

J. Once the historic significance of a property located within a registered Historic District or a potential Historic District has been determined by the AHPP, written notification will be sent to the Owner in the form of a certification of eligibility.

K. Owners shall report to the AHPP any substantial damage, alteration or changes to a property that occurs after issuance of a certification of eligibility and prior to a final Certification of Completion. The AHPP may withdraw a certification of eligibility, upon thirty days' notice to the Owner, if a property has been damaged, altered or changed effective as of the date of the occurrence, the property may also be removed from the National Register.

VIII.STANDARDS FOR EVALUATING SIGNIFICANCE WITHIN HISTORIC DISTRICTS

A. Properties located within Historic Districts are reviewed by the AHPP to determine if they contribute to the historic significance of the district by applying the following Standards for Evaluating Significance within Historic Districts:

1. A building contributing to the historic significance of a district is one which by location, design, setting, materials, workmanship, feeling and association adds to the district's sense of time and place and historical development.

2. A building not contributing to the historic significance of a district is one which does not add to the district's sense of time and place and historical development; or one where the location, design, setting, materials, workmanship, feeling and association have been so altered or have so deteriorated that the overall integrity of the building has been irretrievably lost.

3. Ordinarily, buildings that have been built within the past 50 years shall not be considered to contribute to the significance of a district unless a strong justification concerning their historical or architectural merit is given or the historical attributes of the district are considered to be less than 50 years old.

B. A condemnation order may be presented as evidence of physical deterioration of a building, but will not of itself be considered sufficient evidence to warrant certification of historic non-significance for loss of integrity. In certain cases it may be necessary for the Owner to submit a structural engineer's report to

help substantiate physical deterioration and/or structural damage. Guidance on preparing a structural engineer's report is available from the AHPP.

C. Some properties listed in the National Register, primarily districts, are resources whose concentration or continuity possesses greater historical significance than many of their individual component buildings and structures. These usually are documented as a group rather than individually. Accordingly, this type of National Register documentation is not conclusive for the purposes of determining eligibility and must be supplemented with information on the significance of the specific property. Certifications of historic significance and non-significance will be made on the basis of the Application documentation, existing National Register documentation, and other available information as needed. The AHPP may submit an amended National Register nomination or the National Park Service if the Application material warrants such an amendment. If a certification request is received for a property, which is not yet listed on the National Register or which is outside a district's established period or area of significance, a preliminary determination of eligibility will be issued only if the request includes adequate documentation and if there is written assurance that the Owner plans to nominate the property or district or that the district nomination in question is being revised to expand its significance. Certifications will become final when the property or district is listed or when the district documentation is officially amended, unless the historic significance of the property has been lost as a result of alteration or damage. For procedures on amending listings to the National Register and additional information on the use of National Register documentation, Owners should contact the AHPP.

D. Where Rehabilitation credits are sought, certifications of eligibility will be made on the appearance and condition of the property before Rehabilitation was begun.

E. If a non-historic surface material obscures a facade, it may be necessary for the Owner to remove a portion of the surface material prior to requesting certification so that a determination of historic significance or non-significance can be made. After the material has been removed, if the obscured facade has retained substantial historic integrity and the property otherwise contributes to the Historic District, it will be determined to be an Eligible Property.

IX.CERTIFICATIONS OF PROPOSED REHABILITATION (Part 2 Application)

A. Owners who want Rehabilitation projects for Eligible Properties to be certified by the AHPP as being consistent with the historic character of the structure, and, where applicable, the district in which the structure is located, thus qualifying as a Certified Rehabilitation, shall comply with the procedures listed below:

1. To initiate review of a Rehabilitation project for certification purposes, an Owner must complete Part 2 of the Historic Preservation Certification Application according to instructions accompanying the Application. The Application may describe a proposed Rehabilitation project, a project in progress, or a completed project.
2. These instructions explain in detail the documentation required for certification of a Rehabilitation project. In all cases, documentation, including photographs (color processed photographs) adequate to document the appearance of the structure(s), both on the exterior and on the interior, and its site and environment prior to Rehabilitation must accompany the Application. The social security or taxpayer identification number(s) of all Owners must be provided in the Application. Other documentation, such

as window surveys or cleaning specifications, may be required by the AHPP to evaluate certain Rehabilitation projects. Plans for any attached, adjacent, or related new construction must also accompany the Application. Where necessary documentation is not provided, review and evaluation may not be completed and a denial of certification will be issued on the basis of lack of information.

3. Owners are strongly encouraged to submit Part 2 of the Application prior to undertaking any Rehabilitation work. Owners who undertake Rehabilitation projects without prior review and approval from the AHPP do so strictly at their own risk. Because the circumstances of each Rehabilitation project are unique to the particular certified historic structure involved, certifications that may have been granted to other Rehabilitations are not specifically applicable and may not be relied on by Owners as applicable to other projects.

4. A project does not become a Certified Rehabilitation until it is completed and so designated by the AHPP. A determination that the completed Rehabilitation of a structure not yet designated an Eligible Property meets the Secretary's Standards does not constitute a Certification of Completion. When requesting certification of a completed Rehabilitation project, the Owner shall submit a Request for Certification of Completion (Part 34) and provide the project completion date and a signed statement that the completed Rehabilitation project meets the Secretary's Standards and is consistent with the work described in Part 2 of the Major Historic Preservation Certification Application. Also required in requesting Certification of Completion are costs attributed to the Rehabilitation, photographs adequate to document the completed Rehabilitation, and the social security or taxpayer identification number(s) of all Owners.

B. For certification purposes, a Rehabilitation project encompasses all work on the interior and exterior of the Eligible Property and its site and environment, as determined by the AHPP, as well as related demolition, new construction or Rehabilitation work, which may affect the historic qualities, integrity or site, landscape features, and environment of the Eligible Property. More specific considerations in this regard are as follows:

1. All elements of the Rehabilitation project must meet the Secretary's Standards for Rehabilitation; portions of the Rehabilitation project not in conformance with the Standards may not be exempted. In general, an Owner undertaking a Rehabilitation project will not be held responsible for prior Rehabilitation work not part of the current project or Rehabilitation work that was undertaken by previous Owners or third parties.

2. However, if the AHPP considers, or has reason to consider, that a project submitted for certification does not include the entire Rehabilitation project subject to review hereunder, the AHPP may choose to deny a Certificate of Completion or to withhold a decision on such a certification until such time as the AHPP has determined the proper scope of the Rehabilitation project to be reviewed. Factors to be taken into account by the AHPP in this regard include, but are not limited to, the facts and circumstances of each Application and:

a. whether previous demolition, construction or Rehabilitation work irrespective of ownership or control at the time was in fact undertaken as part of the Rehabilitation project for which certification is sought; and

b. whether property conveyances, reconfigurations, ostensible ownership transfers or other transactions were transactions which purportedly limit the scope of a Rehabilitation project for the purpose of review by the AHPP without substantially altering beneficial ownership or control of the property. The fact that a structure may still qualify as an eligible after having undergone inappropriate Rehabilitation, construction or demolition work does not preclude the AHPP from determining that such inappropriate work is part of the Rehabilitation project to be reviewed.

3. Conformance to the Standards will be determined on the basis of the Application documentation and other available information by evaluating the property as it existed prior to the commencement of the Rehabilitation project, regardless of when the structure becomes or became an Eligible Property.

4. For Rehabilitation projects involving more than one Eligible Property where the structures are judged by the AHPP to have been functionally related historically to serve an overall purpose (such as a mill complex or a residence and carriage house) a Certification of Completion will be issued on the merits of the overall project rather than for each structure or individual component. For Rehabilitation projects where there is no historic functional relationship among the structures, the decision will be made for each separate Eligible Property regardless of how they are grouped for ownership or development purposes.

5. Demolition of a building as part of a Rehabilitation project involving multiple buildings may result in denial of a Certification of Completion. In projects where there is no historic functional relationship among the structures being rehabilitated, related new construction which physically expands one Eligible Property undergoing Rehabilitation and, therefore, directly causes the demolition of an adjacent structure, will generally result in denial of a Certification of Completion unless a determination has been made that the building to be demolished is not an Eligible Property. In Rehabilitation projects where the structures have been determined to be functionally related historically, demolition of a component may be approved, in limited circumstances, when:

a. The component is outside the period of historic significance of the property, or

b. The component is so deteriorated or altered that its integrity has been irretrievably lost; or

c. The component is a secondary one that generally lacks historic, engineering, or architectural significance or does not occupy a major portion of the site and persuasive evidence is present to show that retention of the component is not technically or economically feasible.

6. In situations involving Rehabilitation of an Eligible Property in a Historic District, the AHPP will review the Rehabilitation project first as it affects the Eligible Property and second as it affects the district and make a decision accordingly.

7. In the event that an Owner of a portion of an Eligible Property requests a certificate of completion related only to that portion, but there is or was a larger related Rehabilitation project(s) occurring with respect to the Eligible Property, AHPP's decision on the requested Certification of Completion will be based on review of the overall Rehabilitation project(s) for the Eligible Property.

C. Upon receipt of the complete Application describing the Rehabilitation project, the AHPP shall determine if the project is consistent with the Secretary's Standards. If the project does not meet the

Secretary's Standards, the Owner shall be advised of that fact in writing and, where possible, will be advised of necessary revisions to meet such standards.

D. Once a proposed or ongoing project has been approved, substantive changes in the work as described in the Application must be brought promptly to the attention of the AHPP by written statement to ensure continued conformance to the Secretary's Standards. The AHPP will notify the Owner in writing whether the revised project continues to meet these standards. Oral approvals of revisions are not authorized or valid.

E. Projects in progress may be inspected by an authorized representative of the State Historic Preservation Officer to determine if the work meets the Secretary's Standards. The AHPP may deny a Certification of Completion if it is determined that the Rehabilitation project was not undertaken as represented by the Owner in the Application.

F. If a proposed, ongoing, or completed Rehabilitation project does not meet the Secretary's Standards, an explanatory letter will be sent to the Owner by the AHPP. A rehabilitated property not in conformance with these Standards and which is determined to have lost those qualities which caused it to be nominated to the National Register will be removed from the National Register in accordance with U.S. Department of the Interior regulations.

G. All Rehabilitation projects seeking tax credits must address one or more of the Program's priorities. Applications should indicate which of these priorities their project addresses when submitting the Part 2 Application. Applications will be prioritized in the following order:

1. Creation of a new business
2. Expansion of an existing business
3. Establishment of a Tourism Attraction
4. Revitalization of a commercial Historic District
5. Rehabilitation of a significant property in a historic neighborhood

X. Application for Allocation of Funding (Part 3)

A. Eligibility for Allocation of Funding

Upon the approval of Part 2 of the application, a rehabilitation project shall become eligible to apply for the Funding Reservation Award within the Arkansas Major Historic Rehabilitation Trust Fund within the Allocation of Funding Enrollment Period. Funding must be allocated to a project via Part 3 before it may submit Part 4 of its application.

B. Part 3 Application components

All Part 3 Applications must contain:

1. The Completed Part 1 Application
2. The Completed Part 2 Application

3. A commercially reasonable estimate of total eligible rehabilitation costs signed by a licensed commercial contractor. Estimates shall not result in the reservation of over \$12 million dollars in funding.
4. The Allocation Priority Score Application

C. Allocation Priority Score Application

Allocation Priority Score Application will contain the following categories that applicants may request for certification and cumulative scoring;

Primary Prioritization Category (Select up to three to apply for)

1. Creation of a new business (Up to 80 points)
2. Expansion of an existing business (Up to 75 points)
3. Establishment of a tourism attraction (Up to 70 points)
4. Revitalization of a commercial historic district (Up to 65 points)
5. Rehabilitation of a significant property in a historic neighborhood. (Up to 60 points)

Secondary Prioritization Category (Select all applicable)

1. Potential Structural Crisis and Dilapidation (Up to 50 points)
2. Percentage of Occupancy Increase (Up to 50 points)
3. Financing Availability (Up to 50 points)
4. Historic Importance of Property to the State or Local Community (Up to 50 points)
5. Potential to Contribute to Revitalization. (Up to 50 points)

Applications for the Funding Reservation Award shall be reviewed and Allocation Priority Score Applications scored by the State Historic Preservation Officer in consultation with the Director of the Department of Heritage and the Federal Programs and Tax Credit Manager within the Department of Heritage.

D. Reservation Process

The AHPP shall first have an open reservation application period from 03/01/2024 to 03/31/2024. In this period, major historic rehabilitation projects which have completed Part 1 and Part 2 applications may apply for the allocation of funds. At the conclusion of the application period, the projects shall be scored. No project with a score of less than 100 shall be given a funding allocation. When funding all allocation applications with a score of 100 or greater would cause allocated funds to exceed the amount certified available, the projects shall be ranked, and the highest score shall be given the highest priority. Projects which would cause the allocation of funds to exceed the current certification shall be rolled over to the

next open reservation application period for rescoring. No project shall be awarded more than \$12 million dollars in funding.

Beginning in Fiscal Year 2025, the Department of Heritage shall have biannual open application periods each July 1-31st and January 1-31st. In this period, major historic rehabilitation projects which have completed Part 1 and Part 2 applications may apply for Part 3 allocation of funding. At the conclusion of the application period, the Allocation Priority Score Applications shall be scored. No project with a score of less than 100 shall be given funding allocation. When allocating funding for all allocation applications with a score of 100 or greater would, as measured by AHPP, cause the amount of total allocated funds to exceed the amount certified available, the projects shall be ranked, and the highest score shall be given the highest priority. Projects which would cause the total amount of funds allocated via the Part 3 process to exceed the current funding certification shall be rolled over to next open reservation application period for rescoring. No project shall be awarded more than \$12 million dollars in funding.

Only projects with a Funding Reservation Award shall be deemed to have completed Part 3 of the application.

E. Amendments:

Amendments may alter the applicant, scope of the project, cost, timeline for completion, financing, rehabilitation activities, or end use. No amendment may be accepted which materially negates the original primary or secondary prioritization categories of the restoration project. Amendments to the Part 3 Application total rehabilitation cost reservation are acceptable to the extent additional funding is available. The acceptance of any amendment resides in the sole discretion of the AHPP.

F. Progression Requirements:

Upon receiving a Funding Reservation Award for a specific project, the AHPP shall give the project a date by which the Part 4 application must be submitted to retain the reservation of funds. This date shall consider the scope and difficulty of the project attempted, while encouraging timeliness. If the Part 4 application is not submitted by the required date, the rehabilitation project must reapply for funding allocation.

The AHPP may request evidence of the progression of a specific project at their discretion, but no more often than every 60 days. Acceptable evidence may include permits, drawings, active permit applications, new financial documents, purchase orders, site photographs, or other industry standard evidence of progression. If no material evidence is provided to the AHPP within 90 days of a request, the reservation shall be forfeited.

Forfeited reservation awards will be made available to other applicants to the extent possible. DFA will be notified of any forfeiture of reservation awards for the revocation of the fund obligation.

XI. STANDARDS FOR REHABILITATION

A. The standards for rehabilitation cited herein are the criteria used to determine if a Rehabilitation project qualifies as a Certified Rehabilitation. The intent of the standards is to assist the long term preservation of a property's significance through the preservation of historic materials and features. The standards pertain to historic buildings of all materials, construction types, sizes, and occupancy and encompass the exterior and the interior of historic buildings. The standards also encompass related

landscape features and the building's site and environment, as well as attached, adjacent, or related new construction. To be certified, a Rehabilitation project must be determined by the AHPP to be consistent with the historic character of the structure(s) and, where applicable, the district in which it is located.

B. The following standards are to be applied to specific Rehabilitation projects in a reasonable manner, taking into consideration economic and technical feasibility:

1. A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.
2. The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.
3. Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.
4. Most properties change over time. Those changes that have acquired historic significance in their own right shall be retained and preserved.
5. Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a historic property shall be preserved.
6. Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.
7. Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.
8. Significant archeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.
9. New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old work and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.
10. New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

C. The quality of materials and craftsmanship used in a Rehabilitation project must be commensurate with the quality of materials and craftsmanship of the historic building in question. Certain treatments, if improperly applied, or certain materials by their physical properties, may cause or accelerate physical deterioration of historic buildings. Inappropriate physical treatments include, but are not limited to: improper repointing techniques; improper exterior masonry cleaning methods; or improper introduction of insulation where damage to historic fabric would result. In almost all situations, use of these materials

and treatments will result in denial of a Certification of Completion. Similarly, exterior additions, that duplicate the form, material, and detailing of the structure to the extent that they compromise the historic character of the structure, will result in denial. For further information on appropriate and inappropriate Rehabilitation treatments, Owners are to consult the Guidelines for Rehabilitating Historic Buildings published by the U.S. National Park Service (see <https://www.nps.gov/tps/standards/rehabilitation/rehab/guide.htm>). Technical information to help property Owners formulate plans for the Rehabilitation, preservation, and continued use of historic properties consistent with the intent of the Secretary's Standards is available from the AHPP. Owners are responsible for procuring this material as part of planning for a Rehabilitation project.

D. In certain limited cases, it may be necessary to dismantle and rebuild portions of an Eligible Property to stabilize and repair weakened structural members and systems. In such cases, the AHPP will consider such extreme intervention if:

1. The necessity for dismantling is justified in supporting documentation;
2. Significant architectural features and overall design are retained; and
3. Adequate historic materials are retained to maintain the architectural and historic integrity of the overall structure. Owners are cautioned that the standards for rehabilitation require retention of distinguishing historic materials of external and internal walls as well as structural systems. In limited instances, Rehabilitations involving removal of existing external walls, (i.e., external walls that detract from the historic character of the structure such as in the case of a non-significant later addition or walls that have lost their structural integrity due to deterioration) may be certified as meeting the Secretary's Standards.

E. Prior approval of a project by other state, federal, or local agencies or organizations does not ensure certification by the AHPP for tax purposes. The Secretary's Standards take precedence over other regulations and codes in determining whether the Rehabilitation project is consistent with the historic character of the property and, where applicable, the district in which it is located.

F. The qualities of a structure and its environment which qualify it as an Eligible Property are determined taking into account all available information, including information derived from the physical and architectural attributes of the building; such determinations are not limited to information contained in National Register or related documentation.

XII. CERTIFICATION OF COMPLETION (Part ~~34~~ Application)

A. Upon completion of a Rehabilitation project and successful Part 1, Part 2, and Part 3 Applications, the Owner shall submit documentation required by the AHPP to verify that the completed Rehabilitation qualifies as a Certified Rehabilitation.

1. The Owner shall certify to the AHPP the validity of costs and expenses claimed as Qualified Rehabilitation Expenses and shall maintain a record supporting the claim for at least five (5) years after the issuance of the Certification of Completion.
2. An Owner's record supporting a claim for Qualified Rehabilitation Expenses may be reviewed by the AHPP, the appropriate tax collection authority, or a Holder.

B. If the AHPP determines that a completed Rehabilitation project qualifies as a Certified Rehabilitation and that the Certified Rehabilitation is complete, the AHPP shall issue a freely transferable certificate of completion specifying the total amount of the Qualified Rehabilitation Expenses and Arkansas Major Historic Rehabilitation Income Tax Credit allowed. Accordingly:

1. The Arkansas Major Historic Rehabilitation Income Tax Credit allowed shall be an amount equal to twenty-five percent (25%) of the total Qualified Rehabilitation Expenses incurred by the Owner to complete the Certified Rehabilitation.

2. The Division of Arkansas Heritage shall not issue Arkansas Major Historic Rehabilitation Income Tax Credits for more than the amount certified under § 19-5-1150(c) (1) (A) or for an amount greater than the Funding Reservation Award with accepted amendments.

a. Any unused tax credits shall not be carried over to the following fiscal year for use by the AHPP or the Division of Arkansas Heritage.

b. Any Certification of Completion that would cause the Arkansas Major Historic Rehabilitation Income Tax Credit to exceed the amounts listed above during the fiscal year will be carried forward for consideration during the following fiscal year.

3. The Arkansas Major Historic Rehabilitation Income Tax Credit shall be available to an Owner of an Eligible Property that:

a. Completes a Certified Rehabilitation that is placed in service after January 1, 2019;

b. Has a minimum investment of one million five hundred thousand dollars (\$1,500,000) in Qualified Rehabilitation Expenses; and

c. Is not receiving a tax credit under any other state law for the same Eligible Property.

d. Has completed and been approved Part 1, Part 2, and Part 3 of the Application.

C. Upon issuance of a certificate of completion, the AHPP will notify the appropriate tax authority within fifteen (15) business days.

XIII. CLAIMING CREDIT/TRANSFERRING CREDIT

A.

1. A Holder shall submit the certificate of completion and documents proving an assignment, if any, with the appropriate tax collection authority at the time of filing the Holder's income tax return or Premium Tax return.

2. The appropriate tax collection authority may refuse to recognize the Arkansas Major Historic Rehabilitation Income Tax Credit claimed if the Holder fails to submit the Certification of Completion and any assignment documents.

B. The amount of the Arkansas Major Historic Rehabilitation Income Tax Credit that may be used by a Holder for a taxable year may equal but shall not exceed the amount of income tax or Premium Tax due.

C. A Holder of an unused Arkansas Major Historic Rehabilitation Income Tax Credit may carry forward part or all of an Arkansas Major Historic Rehabilitation Income Tax Credit for five (5) consecutive taxable years to apply against the Holder's income taxes due or the Holder's Premium Tax due. The credit will be forfeited after the fifth tax year from the date of issue of the certificate.

D.

1. An Owner of an Arkansas Major Historic Rehabilitation Income Tax Credit may freely transfer, sell, or assign part or all of the Arkansas Major Historic Rehabilitation Income Tax Credit amount identified in the Certification of Completion.

2. A subsequent Holder may transfer, sell, or assign part or all of the remaining Arkansas Major Historic Rehabilitation Income Tax Credit.

E. An Owner may sell the Owner's Eligible Property after the issuance of the Certification of Completion.

F. An Arkansas Major Historic Rehabilitation Income Tax Credit granted to a partnership, Subchapter S corporation, a limited liability company taxed as a partnership, or multiple Owners of property shall be passed through to the partners, members, or Owners respectively on a pro rata basis or pursuant to an executed agreement among the partners, members, or Owners documenting an alternate distribution method.

G.

1. A Holder may use the Arkansas Major Historic Rehabilitation Income Tax Credit to offset up to one hundred percent (100%) of the state income taxes due or Premium Tax due from the Holder.

2. A Holder is not required to have any ownership or other interest in the Eligible Property for which an Arkansas Major Historic Rehabilitation Income Tax Credit is claimed.

3. An Arkansas Major Historic Rehabilitation Income Tax Credit may be used up to its total amount by any Holder without limitation and is not subject to limits imposed by federal law or regulation on the use of Federal Rehabilitation Tax Credits.

H. An Owner or Holder that assigns part or all of an Arkansas Major Historic Rehabilitation Income Tax Credit shall perfect the transfer by notifying the Division of Arkansas Heritage and the appropriate tax collection authority in writing within thirty (30) calendar days following the effective date of the transfer and shall provide any information as may be required by the Division of Arkansas Heritage and the appropriate tax collection authority to administer and carry out the Act and to ensure proper tracking of the ownership of the unused Arkansas Major Historic Rehabilitation Income Tax Credit.

I.

1. Any consideration received for the transfer of an Arkansas Major Historic Rehabilitation Income Tax Credit shall not be deducted from income taxable by the State of Arkansas.

2. Any consideration paid for the transfer of an Arkansas Major Historic Rehabilitation Income Tax Credit shall not be included as income taxable by the State of Arkansas.

~~XXX~~ XIV.FEES

A. The fee for review of a proposed Rehabilitation project (Part 2) is fifty dollars (\$50). This initial review fee is non-refundable and is due upon submission of a Proposed Rehabilitation Project (Part 2).

B. The fees for reviewing Completed Rehabilitation Projects (Part ~~34~~) for an income-producing property are based on the dollar amount of the costs attributed solely to the Qualified Rehabilitation Expenses on the eligible structure, in accordance with the schedule below.

Fee Size of Rehabilitation

\$400 review fee for \$1,500,000 or more

1. The initial fee of \$50 will be deducted from these fees.
2. The balance shall be paid by the applicant upon submission of the Part ~~34~~ Application.
3. No Certification of Completion shall be issued until the balance due has been paid.
4. No Certification of Completion shall be issued until the pending Eligible Property has officially been placed on the National Register, individually or as a contributing structure in a National Register Historic District.

C. The fee for perfecting the transfer of an unused tax credit, in whole or in part, is seventy-five hundredths percent (0.75%) of the amount of tax credit to be transferred.

D. All fees collected will be deposited into the AHPP's cash funds and may be used for the administration of the Act or as directed by the AHPP Director.

~~XIV~~.APPEALS

Except as otherwise provided herein, an Owner may appeal any decision or action of the State Historic Preservation Officer.

A. An Owner appealing the AHPP's determination of eligibility for listing on the National Register of Historic Places (Part 1 Application) may appeal to the National Park Service, in accordance with the procedures set forth in 36 CFR part 60 et seq. The State Historic Preservation Officer will consider the determination from the National Park Service to be final.

B. An appeal by the Owner may be made from any of the certifications or any decisions made pursuant to the Act. Such appeals must be in writing and received by the State Historic Preservation Officer within 30 calendar days of receipt of the decision which is the subject of the appeal. The appellant may request an opportunity for a meeting to discuss the appeal, but all information the Owner wishes to be considered must be submitted in writing.

1. The State Historic Preservation Officer will convene the Rehabilitation Tax Credit Appeals Committee with 30 calendar days of an Owner's request for an appeal. The committee will be comprised of the State

Historic Preservation Officer or his/her designee, two members of the State Review Committee for Historic Preservation, the AHPP director, and the AHPP Federal Programs Manager.

2. The committee will consider the record of the decision in question, any further written submissions by the Owner, and other available information. The committee will decide by majority vote whether the Application for a Certification of Completion should be approved and shall provide the appellant a written decision as promptly as circumstances permit.

3. The committee's decision constitutes an administrative review of the decision appealed and will not be conducted as an adjudicative proceeding.

PUBLIC NOTICE

In compliance with the Administrative Procedure Act of the State of Arkansas (Act 434 of 1967), notice is hereby given that the Arkansas Department of Parks, Heritage, and Tourism is to promulgate rules concerning Major Historic Tax Credits in the state of Arkansas.

The Department will consider rules in the following areas:

Rules governing the Arkansas Major Historic Rehabilitation Income Tax Credit Act.

Public comments will be accepted from November 14 through December 14th, 2023. The proposed rule is available on our website at: <https://adpht.arkansas.gov/about-us/public-notice>.

The Department of Parks, Heritage and Tourism will accept written comments on the proposed rules from November 14 to December 14, 2023. Please send all inquiries and written public comments regarding these rules to: Scott Kaufman, Director of the Historic Preservation Program, 1100 North Street, Little Rock, AR 72201.

Marty Ryall, Director
Arkansas Heritage Division
Arkansas Department of Parks, Heritage and Tourism

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY.

DEPARTMENT _____
BOARD/COMMISSION _____
PERSON COMPLETING THIS STATEMENT _____
TELEPHONE NO. _____ **EMAIL** _____

To comply with Ark. Code Ann. § 25-15-204(e), please complete the Financial Impact Statement and email it with the questionnaire, summary, markup and clean copy of the rule, and other documents. Please attach additional pages, if necessary.

TITLE OF THIS RULE _____

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

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 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 No

If no, please explain:

(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 reason for adoption of the more costly rule is based on the interests of public health, safety, or welfare, and if so, how; and

(d) whether the reason for adoption of the more costly rule is within the scope of the agency's statutory authority, and if so, how.

4. If the purpose of this rule is to implement a *federal* rule or regulation, please state the following:
(a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

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

 Total _____

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, private entity, or private business subject to the proposed, amended, or repealed rule? Please identify those subject to the rule, and explain how they are affected.

Current Fiscal Year

\$ _____

Next Fiscal Year

\$ _____

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

\$ _____

Next Fiscal Year

\$ _____

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

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.