

The proposed Amendments, Adoption, and Re-adoptions will be published in the North Carolina Register on 7/16/18.

The comment period for all rules ends 9/14/2018. Written comments may be submitted to Tina Hlabse, Secretary, NC Board of Agriculture, 1001 Mail Service Center, Raleigh, 27699-1001. Tina.hlabse@ncagr.gov.

Any person may request a public hearing on the proposed rules by submitting a request in writing no later than July 31, 2018 to Tina Hlabse, Secretary, NC Board of Agriculture, 1001 Mail Service Center, Raleigh, NC 27699-1001. Please include in the request your name, address, and telephone number.

02 NCAC 09B .0135 is being proposed for adoption to make applicable Subpart B of 21 C.F.R. Part 117, the current good manufacturing practices for human foods ("CGMP") applicable to retail food establishments. The North Carolina Department of Agriculture and Consumer Services ("NCDA&CS") currently inspects retail food establishments under 21 C.F.R. Part 110's CGMP. However, 21 C.F.R. Part 110 will expire on September 17, 2018. 21 C.F.R. Part 117 is a continuation of 21 C.F.R. Part 110.

02 NCAC 09B .0116 is proposed to be amended to adopt and incorporate by reference 21 C.F.R. Part 507 and the definition for "animal feed" as found under 21 U.S.C. 321(w). 21 C.F.R. Part 507 establishes science based preventive control standards for animal food and was promulgated by the United States Food and Drug Administration in accordance the Food Safety Modernization Act. NCDA&CS is proposing to adopt and incorporate by reference the regulation and the definition of animal feed to ensure North Carolina's standards are on par with federal regulations. In addition, NCDA&CS is proposing to update the citations for existing adopted federal regulations.

02 NCAC 37 .0203 is proposed to be amended to add an out-of-state surcharge of \$10.00 per sample for nematode advisory services. It also proposes to increase to \$20.00 the fee for Nematode species identification by molecular diagnosis.

02 NCAC 58 .0105, .0106, .0107, .0108, are currently being readopted with substantive changes as they have gone through the Periodic Review and Expiration of Existing Rules process and were classified as “necessary with substantive public interest.” The proposed amendments reduce the number of copies for grant applications, moves from paper applications to electronic, clarifies restrictions on the use of funding, clarifies reporting requirements, and modifies record-keeping requirements.

02 NCAC 60B .0701 is proposed to be amended to give the agency the ability to better manage applicant requests and ensure effective allocation of limited funds.

Text of Proposed Rules:

02 NCAC 09B .0135 is proposed for adoption as follows:

**02 NCAC 09B .0135 CURRENT GOOD MANUFACTURING PRACTICES FOR RETAIL
FOOD ESTABLISHMENTS**

Subpart B of 21 C.F.R. Part 117, as incorporated by reference pursuant to Rule .0116(o)(55) of this Subchapter, shall apply to “retail food establishments” as defined by 21 C.F.R. 1.227, and shall include bakeries, retail food outlets, and seafood markets.

History Note: Authority G.S. 106-139.

02 NCAC 09B .0116 is proposed for amendment as follows:

02 NCAC 09B .0116 ADOPTIONS BY REFERENCE

(a) The Board incorporates by reference, including subsequent amendments and editions, "Official Methods of Analysis of AOAC," published by the Association of Official Analytical Chemists. Copies of this document may be obtained from the Association of Official Analytical Chemists International, Department 0742, 1970 Chain Bridge Road, McLean, VA 22109-0742, at a cost of sixseven hundred thirty dollars (~~\$630.00~~)(~~\$730.00~~).

(b) The Board incorporates by reference, including subsequent amendments and editions, "U.S. Pharmacopeia National Formulary USP XXXIII-NFXXVIII" and supplements, published by the U.S. Pharmacopeial Convention, Inc. Copies of this document may be obtained from The United States Pharmacopeial Convention, Inc., Attention: Customer Service, 12601 Twinbrook Parkway, Rockville, MD 20852, at a cost of eight-hundred fifty dollars (\$850.00).

(c) The Board incorporates by reference, including subsequent amendments and editions, "~~ASTM Standards on Engine Coolants,~~" "ASTM Volume 15.05 Engine Coolants and Related Fluids: Halogenated Organic Solvents and Fire Extinguishing Agents," published by ASTM International. Copies of this document may be obtained from ASTM International, 100 Bar Harbor Drive, West Conshohocken, PA 19428-2959, or _____ by _____ visiting <https://www.astm.org/BOOKSTORE/BOS/1505.htm> at a cost of ~~two hundred eleven dollars (\$211.00)~~ one hundred ninety dollars (\$190.00).

(d) The Board incorporates by reference, including subsequent amendments and editions, "EPA Manual of Chemical Methods for Pesticides and Devices" and supplements, published by AOAC. Copies of this document may be obtained online at no cost from the Environmental Protection Agency National Service Center for Environmental Publications at <http://nepis.epa.gov/EXE/ZyPURL.cgi?Dockey=2000YS3Y.txt>.

(e) The Board incorporates by reference, including subsequent amendments and editions, "Pesticide Analytical Manual," Volumes I and II, published by the United States Department of Health and Human Services, Food and Drug Administration. Copies of this document may be obtained online at no cost at <http://www.fda.gov/Food/ScienceResearch/LaboratoryMethods/PesticideAnalysisManualPAM/default.htm>.

(f) The Board incorporates by reference, including subsequent amendments and editions, "FDA Compliance Policy Guides," published by the United States Department of Health and Human Services, Food and Drug Administration. Copies of this document may be obtained online at no cost at <http://www.fda.gov/iceci/compliancemanuals/compliancepolicyguidancemanual/default.htm> or from the State Information Branch (HFC-151), Division of Federal-State Relations, US Food and Drug Administration, 5600 Fishers Lane, Room 12-07, Rockville, MD 20857.

(g) The Board incorporates by reference, including subsequent amendments and editions, "Bergey's Manual of Determinative Bacteriology," Lippincott, Williams & Wilkins Company,

Baltimore. Copies of this document may be obtained from the Lippincott, Williams & Wilkins Company, P.O. Box 1620, Hagerstown, MD 21741 at a cost of ~~one hundred thirty seven dollars and ninety nine cents (\$137.99)~~ one hundred forty five dollars and ninety nine cents (\$145.99).

(h) The Board incorporates by reference, including subsequent amendments and editions, "Microbiology Laboratory Guidebook," published by the United States Department of Agriculture, Food Safety and Inspection Service, Washington, DC. Copies of this document may be obtained online at no cost from ~~http://www.fsis.usda.gov/science/microbiological_Lab_Guidebook/~~ at no charge.<http://www.fsis.usda.gov>.

(i) The Board incorporates by reference, including subsequent amendments and editions, "FDA Bacteriological Analytical Manual," published by the United States Department of Health and Human Services, Food and Drug Administration. Copies of this document may be obtained online at [http://www.fda.gov/Food/FoodScience Research/LaboratoryMethods/ucm114664.htm](http://www.fda.gov/Food/FoodScience%20Research/LaboratoryMethods/ucm114664.htm) at no charge.

(j) The Board incorporates by reference, including subsequent amendments and editions, "Standard Methods for the Examination of Dairy Products," published by the American Public Health Association. Copies of this document may be obtained from the American Public Health Association Publication Sales, P.O. Box 933019, Atlanta, GA at a cost of ~~eighty five dollars (\$85.00)~~ eighty five dollars and fifty cents (\$87.50) for members and one hundred twenty five dollars (\$125.00) for non-members.

(k) The Board incorporates by reference, including subsequent amendments and editions, "Compendium of Methods for the Microbiological Examination of Foods," published by the American Public Health Association. Copies of this document may be obtained from the American Public Health Association Publication Sales, P.O. Box 933019, Atlanta, GA at a cost of ~~one hundred fifty dollars (\$150.00)~~ one hundred forty seven dollars and fifty cents (\$147.50).

(l) The Board incorporates by reference, including subsequent amendments and editions, "Bergey's Manual of Systematic Bacteriology," Springer Publishing, New York, NY. Copies of this document may be obtained from Springer Publishing, 233 Spring Street, New York, NY, 10013 at a cost of one hundred fifty nine dollars (\$159.00).

(m) The Board incorporates by reference, including subsequent amendments and editions, "Manual of Clinical Microbiology," published by the American Society for Microbiology. Copies of this document may be obtained from the American Society for Microbiology Press, PO Box

605, Herndon, VA 22070, at a cost of two hundred sixty-nine dollars and ninety-five cents (\$269.95).

(n) The Board incorporates by reference, including subsequent amendments and editions, "Standard Methods for the Examination of Water and Waste Water," published by American Public Health Association, American Water Works Association, and Water Pollution Control Federation. Copies of this document may be obtained from the American Public Health Association Publication Sales, P.O. Box 933019, Atlanta, GA at a cost of two hundred ninety-five dollars (\$295.00).

(o) The Board incorporates by reference, including subsequent amendments and editions, the following parts or sections of the Code of Federal Regulations, Title 21, Chapter I, as promulgated by the Commissioner of the Food and Drug Administration under the authority of the Federal Food, Drug, and Cosmetic Act:

	Part or	
	Section	Description of Part or Section
(1)	1.1	General
(2)	1.3	Labeling — Definitions
(3)	1.20	Presence of Mandatory Label Information
(4)	1.21	Failure to Reveal Material Facts
(5)	1.24	Exemptions from Required Label Statements
(6)	1.326	Who is Subject to this Subpart?
(7)	1.327	Who is Excluded from All or Part of the Regulations in this Subpart?
(8)	1.328	What Definitions Apply to this Subpart?
(9)	1.329	Do Other Statutory Provisions and Regulations Apply?
(10)	1.330	Can Existing Records Satisfy the Requirements of this Subpart?
(11)	1.337	What Information Must Non-transporters Establish and Maintain to Identify the Nontransporter and Transporter Immediate Previous Sources of Food?
(12)	1.345	What Information Must Non-transporters <u>Nontransporter</u> Establish and Maintain to Identify the Nontransporter and Transporter Immediate Subsequent Recipients of Food?

- (13) 1.352 What Information Must Transporters Establish and Maintain?
- (14) 1.360 What are the Record Retention Requirements?
- (15) 1.361 What are the Record Availability Requirements?
- (16) 1.362 What Records are Excluded from this Subpart?
- (17) 1.363 What are the Consequences of Failing to Establish, or Maintain Records or Make Them Available to FDA as Required by this Subpart?
- (18) 1.368 What are the Compliance Dates for this Subpart?
- (19) 2.25 Grain Seed Treated with Poisonous Substances; Color Identification to Prevent Adulteration of Human and Animal Food
- (20) 2.35 Use of Secondhand Containers for the Shipment or Storage of Food and Animal Feed
- (21) 7.1 Scope
- (22) 7.3 Definitions
- (23) 7.12 Guaranty
- (24) 7.13 Suggested Forms of Guaranty
- (25) 7.40 Recall Policy
- (26) 7.41 Health Hazard Evaluation and Recall Classification
- (27) 7.42 Recall Strategy
- (28) 7.45 Food and Drug Administration - Requested Recall
- (29) 7.46 Firm-initiated Recall
- (30) 7.49 Recall Communications
- (31) 7.50 Public Notification of Recall
- (32) 7.53 Recall Status Reports
- (33) 7.55 Termination of a Recall
- (34) 7.59 General Industry Guidance
- (35) 70 Color Additives
- (36) 73 Listing of Color Additives Exempt from Certification
- (37) 74 Listing of Color Additives Subject to Certification

- (38) 81 General Specifications and General Restrictions for
ProvisionedProvisional Color
Additives for Use in Foods, ~~Drugs~~Drugs, and Cosmetics
- (39) 82 Listing of Certified Provisionally Listed Colors and Specifications
- (40) 100 General
- (41) 101 Food Labeling
- (42) 102 Common or Usual Name for Nonstandardized Foods
- (43) 104 Nutritional Quality Guidelines for Foods
- (44) 105 Foods for Special Dietary Use
- (45) 106 Infant Formula ~~Quality Control Procedures~~ Requirements
Pertaining to Current Good
Manufacturing Practice, Quality Control Procedures, Quality
Factors, Records and Reports, and Notifications
- (46) 107 Infant Formula
- (47) 108 Emergency Permit Control
- (48) 109 Unavoidable Contaminants in Food for Human Consumption and
Food-Packaging
Material
- (49) 110 Current Good Manufacturing Practice in Manufacturing, Packing,
or Holding Human Food
- (50) 111 Current Good Manufacturing Practice in Manufacturing, Packaging,
Labeling, or Holding
Operations for Dietary Supplements
- (51) 112 Standards for the Growing, Harvesting, Packing, and Holding of
Produce for Human
Consumption
- (52) 113 Thermally Processed Low-Acid Foods Packaged in Hermetically
Sealed Containers
- (53) 114 Acidified Foods
- (54) 115 Shell Eggs

- (55) 117 Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Human Food
- (56) 118 Production, Storage, and Transportation of Shell Eggs
- (57) 120 Hazard Analysis and Critical Control Point (HACCP) Systems
- (58) 123 Fish and Fishery Products
- (59) 129 Processing and Bottling of Bottled Drinking Water (Except as amended by 02 NCAC 09C .0700 - Bottled Water)
- (60) 130 Food Standards: General
- (61) 131 Milk and Cream
- (62) 133 Cheeses and Related Cheese Products
- (63) 135 Frozen Desserts
- (64) 136 Bakery Products
- (65) 137 Cereal Flours and Related Products
- (66) 139 Macaroni and Noodle Products
- (67) 145 Canned Fruits
- (68) 146 Canned Fruit Juices
- (69) 150 Fruit Butters, Jellies, Preserves, and Related Products
- (70) 152 Fruit Pies
- (71) 155 Canned Vegetables
- (72) 156 Vegetable Juices
- (73) 158 Frozen Vegetables
- (74) 160 Eggs and Egg Products
- (75) 161 Fish and Shellfish (Except Section 161.30 and 161.130 through 161.145)
- (76) 163 Cacao Products
- (77) 164 Tree Nut and Peanut Products
- (78) 165 Beverages
- (79) 166 Margarine
- (80) 168 Sweeteners and Table Syrups

- (81) 169 Food Dressings and Flavorings
- (82) 170 Food Additives
- (83) 172 Food Additives Permitted for Direct Addition to Food for Human Consumption
- (84) 173 Secondary Direct Food Additives Permitted in Food for Human Consumption
- (85) 174 Indirect Food Additives: General
- (86) 175 Indirect Food Additives: Adhesives and Components of Coatings
- (87) 176 Indirect Food Additives: Paper and Paperboard Components
- (88) 177 Indirect Food Additives: ~~Indirect Food Additives:~~ Polymers
- (89) 178 Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers
- (90) 179 Irradiation in the Production, Processing and Handling of Food
- (91) 180 Food Additives Permitted in Food or in Contact with Food on an Interim Basis Pending
Additional Study
- (92) 181 Prior-Sanctioned Food Ingredients
- (93) 182 Substances Generally Recognized as Safe
- (94) 184 Direct Food Substances Affirmed as Generally Recognized as Safe
- (95) 186 Indirect Food Substances Affirmed as Generally Recognized as Safe
- (96) 189 Substances Prohibited from Use in Human Food
- (97) 190 Dietary Supplements
- (98) 200 General
- (99) 201 Labeling
- (100) 202 Prescription Drug Advertising
- (101) 210 Current Good Manufacturing Practice in Manufacturing, Processing, Packing or Holding
of Drugs; General
- (102) 211 Current Good Manufacturing Practice for Finished Pharmaceuticals
- (103) 225 Current Good Manufacturing Practice for Medicated Feeds
- (104) 226 Current Good Manufacturing Practice for Type A Medicated Articles

(105)	250	Special Requirements for Specific Human Drugs
(106)	290	Controlled Drugs
(107)	299	Drugs; Official Names and Established Names
(108)	300	General
(109)	310	New Drugs
(110)	312	Investigational New Drug Application
(111)	314	Applications for FDA Approval to Market New Drug
(112)	320	Bioavailability and Bioequivalence Requirements
(113)	330	Over-the-Counter (OTC) Human Drugs Which Are Generally Recognized as Safe and Effective and Not Misbranded
(114)	331	Antacid Products for Over-the-Counter (OTC) Human Use
(115)	332	Antiflatulent Products for Over-the-Counter Human Use
(116)	361	Prescription Drugs for Human Use Generally Recognized as Safe and Effective and Not Misbranded: Drugs Used in Research
(117)	369	Interpretive Statements Re: Warnings on Drugs and Devices for Over-the-Counter Sale
(118)	809	In Vitro Diagnostic Products for Human Use
(119)	812	Investigational Device Exemptions
(120)	820	Quality System Regulation
(121)	860	Medical Device Classification Procedures
(122)	861	Procedures for Performance Standards Development
(123)	870	Cardiovascular Devices
(124)	882	Neurological Devices
(125)	884	Obstetrical and Gynecological Devices
(126)	895	Banned Devices
(127)	500	General
(128)	501	Animal Food Labeling
(129)	502	Common or Usual Names for Nonstandardized Animal Foods

(130) 507 Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive

Controls for Food for Animals

(130)(131) 509 Unavoidable Contaminants in Animal Food and Food-Packaging Material

(131)(132) 510 New Animal Drugs

(132)(133) 511 New Animal Drugs for Investigational Use

(133)(134) 514 New Animal Drug Applications

(134)(135) 520 Oral Dosage Form New Animal Drugs

(135)(136) 522 Implantation or Injectable Dosage Form New Animal Drugs

(136)(137) 524 Ophthalmic and Topical Dosage Form New Animal Drugs

(137)(138) 526 Intramammary Dosage Form New Animal Drugs

(138)(139) 529 Certain Other Dosage Form New Animal Drugs

(139)(140) 556 Tolerances for Residues of New Animal Drugs in Food

(140)(141) 558 New Animal Drugs for Use in Animal Feeds

(141)(142) 570 Food Additives

(142)(143) 573 Food Additives Permitted in Feed and Drinking Water of Animals

(143)(144) 582 Substances Generally Recognized as Safe

(144)(145) 584 Food Substances Affirmed as Generally Recognized as Safe in Feed and Drinking

Water of Animals

(145)(146) 589 Substances Prohibited from Use in Animal Food or Feed

(146)(147) 700 General

(147)(148) 701 Cosmetic Labeling

(148)(149) 720 Voluntary Filing of Cosmetic Product Ingredient

Composition Statements

(149)(150) 740 Cosmetic Product Warning Statements

Copies of the Code of Federal Regulations may be obtained at no cost by accessing the website of the U.S. Government Printing Office at <http://www.gpoaccess.gov/cfr/index.html>.

(p) The Board incorporates by reference, including subsequent amendments and editions, "~~Tolerances and Exemptions from Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities,~~"for Pesticide Chemical Residues in Food," 40 C.F.R. Part 180. Copies of the Code of Federal Regulations may be obtained at no cost by accessing the website of the U.S. Government Printing Office at <http://www.gpoaccess.gov/cfr/index.html>.

(q) The Board incorporates by reference, including subsequent amendments and editions, "~~Definitions and Standards of Identity or Composition for Meats, Meat By-products, and Meat Food Products,~~"Composition," 9 C.F.R. Part 319. Copies of the Code of Federal Regulations may be obtained at no cost by accessing the website of the U.S. Government Printing Office at <http://www.gpoaccess.gov/cfr/index.html>.

(r) The Board incorporates by reference, including subsequent amendments and editions, "~~Definitions and Standards of Identity or Composition for Poultry and Poultry Products,~~"Composition," 9 C.F.R. Sections 381.155 through 381.170. Copies of the Code of Federal Regulations may be obtained at no cost by accessing the website of the U.S. Government Printing Office at <http://www.gpoaccess.gov/cfr/index.html>.

(s) The Board incorporates by reference, including subsequent amendments and editions, "Labels: Definitions; Required Features," ~~Title 9, 9 C.F.R. Part 317.2(1)~~Section 317.2 of the Code of Federal Regulations. Copies of Title 9 of the Code of Federal Regulations may be obtained ~~from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, at a cost of sixty-four dollars (\$64.00)~~at no cost by accessing the website of the U.S. Government Printing Office at <http://www.gpoaccess.gov/cfr/index.html>.

(t) The Board incorporates by reference, including subsequent amendments and editions, "Special Handling Label Requirements," ~~Title 9, 9 C.F.R. Part 381.125(b)~~Section 381.125 of the Code of Federal Regulations. Copies of the Code of Federal Regulations may be obtained at no cost by accessing the website of the U.S. Government Printing Office at <http://www.gpoaccess.gov/cfr/index.html>.

(u) The Board incorporates by reference, including subsequent amendments and editions, a document entitled, "Fresh Air '2000' - A Look At FDA's Medical Gas Requirements," published by the United States Department of Health and Human Services, Food and Drug Administration. A copy of this material may be obtained at no cost from the Food and Drug Protection Division of the North Carolina Department of Agriculture and Consumer Services.

- (v) The Board incorporates by ~~reference~~reference, including subsequent amendments and editions, the definition of "dietary supplement" found at 21 USC 321(ff).
- (w) The Board incorporates by ~~reference~~reference, including subsequent amendments and editions, the definition of "processed food" found at 21 USC 321(gg).
- (x) The Board incorporates by ~~reference~~reference, including subsequent amendments and editions, the definition of "major food allergen" found at 21 USC 321(qq).
- (y) The Board incorporates by ~~reference~~reference, including subsequent amendments and editions, the definition of "knowingly" or "knew" found at 21 USC 321(bb).
- (z) The Board incorporates by reference, including subsequent amendments and editions, the definition of "animal feed" found at 21 USC 321(w).

*History Note: Authority G.S. 106-139; 106-245.16; 106-245.22; 106-245.32; 106-267;
Eff. December 14, 1981;
Amended Eff. May 1, 2013; January 1, 2011; June 1, 2004; April 1, 2003; June 1,
1995; April 1, 1992; June 1, 1988; October 1, 1987;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest
Eff. March 22, 2015;
Amended Eff. November 1, 2018; May 1, 2018.*

02 NCAC 37 .0203 is proposed for amendment as follows:

02 NCAC 37 .0203 NEMATODE ADVISORY SERVICE

(a) Individuals desiring nematode analysis may obtain sample containers and instructions from the Agronomic Services Division, county extension office, farm supply dealers, Agronomic Division Regional Agronomists, or other local agricultural advisors. If plant-destructive nematodes are found, the best method of control will be recommended.

(b) ~~Fees~~ Per sample fees for those services, to be paid at the time of submission, are as follows:

- (1) Routine nematode assay - \$3.00.
- ~~(2) Nonresident nematode assay - \$10.00.~~
- ~~(3)~~(2) Research nematode assay - \$10.00.
- ~~(4)~~(3) Pinewood nematode assay - \$10.00.

(5)(4) Nematode species identification by molecular diagnosis - ~~\$10.00~~ \$20.00.

(5) Out-of-state surcharge - \$10.00

History Note: Authority G.S. 106-22(17);

Eff. July 17, 1981;

Temporary Amendment Eff. July 7, 1989 for a Period of 180 Days to Expire on January 2, 1990;

Amended Eff. June 1, 1990; January 2, 1990;

Agency did not readopt rule pursuant to G.S. 150B-21.3A by RRC established deadline of March 31, 2017;

Readopted Eff. December 19, 2017.

02 NCAC 58 .0105 is proposed for readoption with substantive changes as follows:

02 NCAC 58 .0105 EVALUATION OF APPLICATIONS

~~(a) Applicants for funding from the ADFPTF shall submit two unbound complete applications suitable for photocopying. Applications must be sent by Fed-Ex, UPS, certified mail, or hand-delivered to: NCDA&CS, NCADFP Trust Fund at 2 West Edenton Street, Raleigh, NC 27601.~~

~~(b) Two separate applications are online at <http://www.ncadfp.org/> or available from the Department as noted in Paragraphs (c) and (d) of this Rule.~~

(a) Applicants for funding from the ADFPTF shall submit a completed application.

(b) Applications and instructions shall be available online at <http://www.ncadfp.org/>.

(c) To be eligible for consideration for funding for agricultural conservation easements or agricultural agreements, applicants shall complete the Agricultural Development and Farmland Preservation Application Form for Conservation Easements and Agricultural Agreements which contain the following information:

- (1) identifying information;
- (2) a description of the type of organization of the applicant;
- (3) project affiliations, matching funds, and partnerships;
- (4) whether funds are for an agricultural conservation easement or an agricultural agreement and the term years;

- (5) current land value assessment, requested amount of funds, estimated easement value, project completion date;
- (6) operation management plans;
- (7) values relevant to the easement;
- (8) agricultural, horticultural, or forestry property inventory;
- (9) what transition plans are in place to continue operations for the future;
- (10) threats of conversion;
- (11) conservation and environmental concerns; and
- (12) listed attachments.

(d) To be eligible for consideration for funding for agricultural development programs, applicants shall complete the Agricultural Development and Farmland Preservation Application Form for Public and Private Enterprise Programs, which contain the following information:

- (1) identifying information;
- (2) a description of the type of organization of the applicant;
- (3) project affiliations, matching funds, and partnerships;
- (4) a description of goals, target audience, and success measurements; and
- (5) listed attachments.

(e) Each completed application shall be evaluated by the staff based on the information provided in the application and in accordance with the ADFPTF criteria described in this Rule.

(f) The staff shall review all applications for completeness. If an application is incomplete after the application deadline, the applicant may be asked to reapply for the next grant cycle, which will be publicly announced by the Commissioner on an annual basis.

(g) During the review and evaluation of proposals, the staff shall report to the Commissioner on any site visits that may be required for full consideration of the grant proposal.

(h) The Advisory Committee shall review the project evaluations and other relevant data prepared by the applicant and by ADFPTF staff. The Advisory Committee shall make recommendations to the Commissioner on projects for funding.

(i) The Commissioner and Advisory Committee shall consider the relative needs of the farmland preservation project and determine the proportion of available funds to be allocated for each eligible project.

(j) Grants shall be awarded contingent on the availability of sufficient funds to do so. Funds shall be conveyed to grantees through contracts with the Trust Fund. If the Commissioner determines that grant funds are not being used for the purpose for which they were awarded, the Trust Fund may cease making payments under the grant schedule until the problem has been resolved or may demand immediate return of any unspent money and interest from the grant. Grantees must reimburse the Trust Fund any funds that are determined to have not been spent for the purpose for which they were granted. Grantees must return any grant money which remains unspent at the conclusion of the grant project, with any interest earned on grant money.

(k) The following general criteria shall be used to evaluate conservation easement or agricultural agreement projects only:

- (1) parcel information;
- (2) planning for the future; and
- (3) site visits.

(l) The following general criteria shall be used to evaluate agricultural development programs only:

- (1) project description;
- (2) project implementation; and
- (3) applicant interview.

(m) The Commissioner and Advisory Committee shall also consider the following factors when evaluating projects:

- (1) the geographic distribution of projects;
- (2) the presence or absence of other funding sources;
- (3) the level of compliance with prior grant agreements;
- (4) the amount of funds available;
- (5) the amount of funds requested;
- (6) priority funding map; and
- (7) other relevant information in the application.

History Note: Authority G.S. 106-744;

Eff. January 1, 2008.

02 NCAC 58 .0106 is proposed for readoption with substantive changes as follows:

02 NCAC 58 .0106 GRANT AGREEMENT

- (a) Upon approval, a written agreement shall be executed between the grant recipient(s) and the Commissioner.
- (b) The agreement shall define the Commissioner's and grant recipient's responsibilities and obligations, the project period, project scope and the amount of grant assistance.
- (c) The approved application and support documentation shall become a part of the grant agreement.
- (d) The grant agreement may be amended upon mutual consent and approval by the Commissioner and the grant recipient(s). The grant recipient(s) shall submit a written request to the Commissioner.
- (e) Projects Grant payments shall be made only for activities within the grant contract period and projects may not begin until the Commissioner and grant recipient(s) sign the agreement.
- (f) The agreement shall include a requirement that, in any agricultural conservation easement funded by the ADFPTF, the State of North Carolina shall have the right to enforce the easement if the grantee of the easement fails to do so.
- (g) Grantees shall abide by the ADFPTF Monitoring Policies and Guidelines.

History Note: Authority G.S. 106-744;

Eff. January 1, 2008.

02 NCAC 58 .0107 is proposed for readoption with substantive changes as follows:

02 NCAC 58 .0107 REPORTING

- (a) Grant recipients shall submit written progress reports at six-month intervals or upon biannually for grants less than \$500,000 and quarterly for grants more than \$500,000 until completion of the project, whichever is sooner. Written reports shall describe the status of the project, progress toward achieving program objectives, notable occurrences and any problems encountered and steps taken to overcome the problems. Upon completion of the project, the successful applicant must make a final written report to the Commissioner which shall include project accomplishments and benefits, all expenditures by line item as established in the project budget, and verification of the number of hours or money in matching funds.

(b) The staff shall review the progress reports for completeness, which shall include a showing of how the project is meeting its stated goals and performance standards. If the staff finds that the report is deficient in showing how the project is meeting its stated goals and performance standards, the grantee shall be notified of the deficiency and must provide a changed and corrected report within 30 working days. If a corrected or changed report is not received within 30 working days, the Trust Fund may withhold the next grant payment.

(c) Grantees shall submit monitoring reports in accordance with the ADFPTF Monitoring Policies and Guidelines.

*History Note: Authority G.S. 106-744;
Eff. January 1, 2008.*

02 NCAC 58 .0108 is proposed for readoption with substantive changes as follows:

02 NCAC 58 .0108 RECORDS

Successful applicants must keep financial and other records of the project for a period of ~~three~~ five years, following completion of the project, or until audited. The records shall be made available to the Commissioner at his request. Recipients shall contact Trust Fund staff at the North Carolina Department of Agriculture and Consumer Services before destroying records or in the event that records are destroyed. The Trust Fund shall maintain and dispose of paper and electronic records in accordance with the approved Functional Schedule for North Carolina State Agencies, Program Record Retention and Disposition Schedule and Electronic Records and Imaging Policy.

*History Note: Authority G.S. 106-744;
Eff. December 1, 2007.*

02 NCAC 60B .0701 is proposed for amendment as follows:

SECTION .0700 – FOREST DEVELOPMENT PROGRAM

02 NCAC 60B .0701 ADMINISTRATION OF PROGRAM

(a) The manner and requirements of making application for cost sharing funds pursuant to the Forest Development Act are as follows:

- (1) Any eligible landowner may apply for program cost sharing funds.
- (2) Application may be made by completing the application forms furnished process as outlined by the ~~Division and returning it to one of the field offices of the Division.~~ Division. An ~~approved forest~~ A management plan relating to the application shall be on file with the North Carolina Forest Service before the application may be accepted. ~~Applications shall include identifying information from the landowner and consultant, a description of the practices needed, acres needed, prevailing rate, and a performance report.~~

(b) The Commissioner or his or her designee shall review ~~approve~~ completed applications. applications for funding consideration. ~~Funds shall be allocated from the Forest Development Fund to the landowner for cost sharing on a "first come, first served" basis, determined by the date of receipt of the application in the North Carolina Forest Service office in Raleigh, and until all available funds are encumbered.~~ Applicants who start or complete their project without prior Division approval shall not be eligible to receive funding.

(c) ~~At the beginning of each fiscal year, the~~ The Commissioner may designate a portion of funds for practices designed to encourage reforestation at reduced costs or for other special purposes in designated areas. ~~The designations shall be for the current fiscal year only. Funds may be designated for a "Plant Only" allocation and for a "Mountain Area" allocation. The amount of these allocations shall be based on the prior year's demand for these allocations, however, any increase of these allocations shall not exceed 50% of the previous year's allocation.~~ The determination to designate special funds and allocated amounts by the Commissioner shall be made in writing ~~not less than three months~~ prior to beginning of the fiscal year for which funds are designated.

(d) ~~Funds shall be allocated for replanting previously approved projects, when planting failure is the result of environmental or other conditions beyond the control of the landowner. Requests for replanting shall be made in the same manner as new requests and shall be approved in the order received.~~

~~(e)~~(d) G.S. 106-1016 limits a landowner to 100 acres of cost share funding approval per fiscal year. Cost share paid out in any one fiscal year may include funds approved in previous fiscal years.

~~(f)~~(e) ~~Cost-Sharing Payment to Landowner.~~ Cost-sharing payments shall be made upon certification by the Division of following satisfactory completion of the practice(s) as prescribed in the management plan. Determination of satisfactory completion shall include an assessment of the proper use of approved practices in relation to the silvicultural need of land, installation of appropriate best management practices to insure soil protection and water quality, and assurance that the installed practice is in compliance with any environmental regulations found in Article 4, G.S. 113A.

(g) ~~Withdrawal of Allotted Funds~~ Allocated funding for approved applications shall be withdrawn as follows:

- (1) Funds ~~allocated to an eligible landowner~~ may be withdrawn at the end of the first fiscal year ~~following the year~~ in which the funds were allotted if no work has been started. The landowner shall provide ~~suffieient~~ documentation to the Division for funds availability to ~~extend~~ continue into a second year.
- (2) Funds allocated may be withdrawn at the end of the second fiscal year ~~following the year of allocation~~ if the ~~practice has~~ practices have not been completed.
- (3) ~~Funds paid as "partial payment" must be repaid to the Forest Development Fund if the project is started but not completed within the allotted time.~~
- (4)(3) ~~Extensions.~~ A 12-month extension may be granted by the Division if the project cannot be completed due to adverse natural causes or unavailability of contractors to conduct practices.

(h) Eligible landowners may appeal disagreements, disapproval of applications, or decisions on unsatisfactory completion of silvicultural or environmental practices.

History Note: Authority G.S. 106-22; 106-1010; 106-1011; 106-1015; 106-1018;

Eff. August 8, 1978;

Amended Eff. August 1, 2002; July 1, 1986; October 1, 1984; August 1, 1982;

January 15, 1981;

Transferred from 15A NCAC 09C .0902 Eff. May 1, 2012;

Readopted Eff. April 1, 2018.