

The proposed readoptions to rules in 02 NCAC 59D and 02 NCAC 59H will be published in the North Carolina Register on 11/1/2017.

The comment period ends 1/15/18. Written comments may be submitted to Christina Waggett, Rule-making Coordinator, NC Department of Agriculture, 1001 Mail Service Center, Raleigh, NC 27699-1001. Christina.waggett@ncagr.gov.

Any person may request a public hearing on the proposed rules by submitting a request in writing no later than 11/16/17 to Christina Waggett, Rule-making Coordinator, 1001 Mail Service Center, Raleigh, NC 27699-1001.

The proposed rules were classified as “necessary with substantive public interest” during the periodic review and expiration of existing rules process and are now being readopted. The rules in 59H are being repealed and being combined with the rules in 59D to streamline the rules and to have all the rules for the Soil and Water Conservation Cost Share Programs in one place. The new adoptions of 59D .0109 and .0110 are necessary as part of combining these two subchapters. The rules in 59D layout the requirements for the cost-share programs.

SUBCHAPTER 59D - AGRICULTURE SOIL AND WATER CONSERVATION COST SHARE PROGRAM FOR NONPOINT SOURCE POLLUTION CONTROL PROGRAMS

SECTION .0100 - AGRICULTURE SOIL AND WATER CONSERVATION COMMISSION COST SHARE PROGRAM PROGRAMS

02 NCAC 59D .0101 PURPOSE

This Subchapter describes the operating procedures for the ~~division~~ Division under the guidance of the ~~commission~~ Commission implementing the Agriculture Cost Share Program for Nonpoint Source Pollution ~~Control~~ Control, the Community Conservation Assistance Program for Nonpoint Source Pollution Control, and the Agricultural Water Resources Assistance Program. Procedures and guidelines for participating districts are also described. The purpose ~~of~~ for the voluntary

program ~~is to reduce the delivery of the agricultural nonpoint source (NPS) pollution into the water courses of the State.~~ are as follows:

- (1) Agriculture Cost Share Program for Nonpoint Source Pollution Control is to reduce the delivery of agricultural nonpoint source (NPS) pollution into the water courses of the state.
- (2) Community Conservation Assistance Program is to reduce the delivery of nonpoint source pollution into the waters of the state.
- (3) Agricultural Water Resources Assistance Program is to assist famers and landowners to:
 - (a) identify opportunities to increase water use efficiency, availability and storage;
 - (b) implement best management practices to conserve and protect water resources;
 - (c) increase water use efficiency or
 - (d) increase water storage and availability for agricultural purposes.

History Note: Authority G.S. 106-840; 106-850; 139-4;

Eff. May 1, 1987;

Recodified from 15A NCAC 6E .0001 Eff. December 20, 1996;

Transferred from 15A NCAC 06E .0101 Eff. May 1, 2012.

02 NCAC 59D .0102 DEFINITIONS FOR SUBCHAPTER 59D

In addition to the definitions found in G.S. ~~143-215.74, 106-850 through G.S. 106-852,~~ the following terms used in this Subchapter have the following meanings:

- (1) ~~Agriculture~~ “Agricultural Nonpoint Source (NPS) Pollution Pollution” means pollution originating from a diffuse source as a result of agricultural activities related to crop production, production and management of poultry and livestock, land application of waste materials, and management of forestland incidental to agricultural production.

- (2) “Agricultural purposes” means agricultural activities related to crop production, production and management of poultry and livestock, land application of waste materials, and management of forestland incidental to agricultural production.
- ~~(2)~~(3) Allocation “Allocation” means the annual share of the state's appropriation for each program to participating districts.
- ~~(3)~~(4) Applicant “Application” means a person(s) who applies for best management practice cost sharing monies from the district. An applicant may also be referred to as a cooperator. “cooperator.” All entities, entitites with which the applicant is associated, including those in other counties, shall be considered the same applicant.
- ~~(4)~~(5) Average Costs “Average Costs” means the calculated cost, determined by averaging actual costs and current cost estimates necessary for best management practice implementation. Actual costs include labor, supplies, and other direct costs required for physical installation of a practice.
- ~~(5)~~(6) Best Management Practice (BMP) “Best Management Practice (BMP)” means a structural or nonstructural management based practice used singularly or in combination to reduce nonpoint source inputs to receiving waters address natural resource needs.
- (a) For the Agriculture Cost Share Program and the Community Conservation Assistance Program, BMPs shall reduce nonpoint source inputs to receiving waters.
- (b) For the Agricultural Water Resources Assistance Program, BMPs shall increase the storage, availability, and use efficiency of water for agricultural purposes.
- (7) “Commission” means the Soil and Water Conservation Commission
- ~~(6)~~(8) Conservation Plan of Operation (CPO) “Conservation Plan” means a written plan scheduling documenting the applicant's decisions concerning land use, and both cost shared and non-cost shared BMPs to be installed and maintained on the operating management unit.
- ~~(7)~~(9) Cost Share Agreement “Cost Share Agreement” means an annual or long term agreement between the applicant and the district which defines the BMPs to be cost

shared, rate and amount of payment, minimum practice life, and date of BMP installation. The agreement shall state that the recipient shall maintain and repair the practice(s) for the specified minimum life of the practice. The Cost Share Agreement shall have a maximum contract life of three years for BMP installation. The district shall perform an annual status review during the installation period.

~~(8)~~(10) ~~Cost Share Incentive (CSI)~~ “Cost Share Incentive (CSI)” means a predetermined fixed payment paid to an applicant for implementing a BMP in lieu of cost share.

~~(9)~~(11) ~~Cost Share Rate~~ “Cost Share Rate” means a cost share percentage paid to an applicant for implementing BMPs.

(12) “Department” means the North Carolina Department of Agriculture and Consumer Services.

(13) “Design practice” means an engineering practice as defined by the Natural Resources Conservation Service or Soil and Water Conservation Commission in their Program Detailed Implementation Plans.

~~(10)~~(14) ~~Detailed Implementation Plan~~ “Detailed Implementation Plan (DIP)” means the plan approved by the ~~commission~~Commission that specifies the guidelines for each program for the current program, fiscal year including BMPS that will be eligible for cost sharing and the minimum life expectancy of those practices. including:

- (a) annual program goals;
- (b) district and statewide allocations;
- (c) BMPs that will be eligible for cost sharing; and
- (d) the minimum life expectancy of those practices.

(15) “District Allocation Pool” means the annual share of the state’s appropriation for each program to be allocated to participating districts.

~~(11)~~(16) ~~District BMP~~ “District BMP” means a BMP ~~designated~~requested by a district and approved by the Division for evaluation purposes. ~~to reduce the delivery of agricultural NPS pollution and which is reviewed and approved by the Division to be technically adequate prior to funding.~~

(17) “Division” means the Division of Soil and Water Conservation.

- (12)(18) ~~Encumbered Funds~~ “Encumbered Funds” means monies from a district's allocation which ~~that~~ have been committed to an applicant after initial approval of the ~~obligated to an approved~~ cost share agreement.
- (13) ~~Full Time Equivalent (FTE) means 2,080 hours per annum which equals one full time technical position.~~
- (14)(19) ~~In-kind Contribution~~ “In-kind Contribution” means a contribution by the applicant towards the implementation of BMPs. In-kind contributions shall be approved by the district and can include but not be limited to labor, fuel, machinery use, and supplies and materials necessary for implementing the approved BMPs.
- (20) “Job Approval Authority” means the authority granted to individuals who are qualified to plan, design and verify installation or implementation of specific practices per practice standards approved by the Natural Resources Conservation Service or the Commission. This authority is either recognized or granted by the Natural Resources Conservation Service or the Commission.
- (15)(21) ~~Landowner~~ “Landowner” means any natural person or other legal entity, including a governmental agency, who holds either an estate of freehold (such as a fee simple absolute or a life estate) or an estate for years or from year to year in land, but ~~does~~ shall not include an estate at will or by sufferance in land. Furthermore, a governmental or quasi-governmental agency such as a drainage district or a soil and water conservation district, or any such agency, by whatever name called, exercising similar powers for similar purposes, can be a landowner for the purposes of ~~these Rules~~ the rules of this subchapter if the governmental agency holds an easement in land.
- (22) “Nonpoint source (NPS) Pollution” means pollution originating from a diffuse source.
- (16)(23) ~~Program Year~~ “Fiscal Year” means the period from July 1 through June 30 for which funds are allocated to districts.
- (17)(24) ~~Proper Maintenance~~ “Proper Maintenance” means that a practice(s) is being maintained such that the practice(s) is ~~sueessfully~~ performing the function for which it was originally implemented.

- (25) “Regional Allocation Pool” means the annual share of the state’s appropriation for each program allocated for applications ranked in the Division’s three regions as specified in the annual Detailed Implementation Plan.
- ~~(18)~~(26) ~~Soil Loss Tolerance (t) means the maximum allowable annual soil erosion rate to maintain the soil resource base, depending on soil type.~~ “Statewide Allocation Pool” means the annual share of the state’s appropriation for applications ranked at the state level as specified in the annual Detailed Implementation Plan.
- ~~(19)~~(27) ~~Strategy Plan~~ “Strategic Plan” means the annual plan for the N.C. Agriculture Cost Share Program for Nonpoint Source Pollution Control Soil and Water Conservation Commission Cost Share Programs to be developed by each district. The plan identifies ~~pollution treatment~~ natural resource needs and the level of cost sharing and technical assistance monies required to address those annual needs in the respective district.
- ~~(20)~~(28) ~~Technical Representative~~ “Technical representative” of the district means a person designated by the district to act on their behalf who participates in the planning, design, implementation and inspection of BMPs. ~~These practices shall be technically reviewed by the Division. The district chairman shall certify that the technical representative has properly planned, designed and inspected the BMPs.~~
- ~~(21)~~(29) ~~Unencumbered Funds~~ “Unencumbered funds” means the portion of the allocation to each district ~~which~~ that has not been committed for cost sharing.

History Note: Authority G.S. 106-840; 106-850; 139-3;

Eff. May 1, 1987;

Temporary Amendment Eff. September 23, 1996;

Recodified from 15A NCAC 6E .0002 Eff. December 20, 1996;

Amended Eff. April 1, 1997;

Temporary Amendment Expired June 13, 1997;

Amended Eff. March 1, 2008; July 1, 2004;

Transferred from 15A NCAC 06E .0102 Eff. May 1, 2012.

02 NCAC 59D .0103 AGRICULTURE COST SHARE PROGRAM FINANCIAL ASSISTANCE ALLOCATION GUIDELINES AND PROCEDURES

(a) The Commission shall allocate ~~the~~ cost share funds to ~~the~~ districts in ~~the~~ designated program areas for cost share payments and cost share incentive payments. ~~To~~ In order to receive fund allocations, each district designated eligible by the Commission shall submit an annual strategy plan to the Commission at ~~the beginning of each fiscal year.~~ by June 1 of each year. Funds may be allocated to each district for any or all of the following purposes: ~~cost share payments, cost share incentive payments, technical assistance, or administrative assistance.~~ Use of funds for technical and administrative assistance must follow the guidelines set forth in Rule .0106 of this Subchapter.

(b) Funds shall be allocated to the districts at the beginning of the fiscal year and whenever the Commission determines that sufficient funds are available to justify a reallocation. Districts allocations shall be ~~allocated monies~~ based on the identified level of agriculture-related agricultural nonpoint source pollution problems, the respective district's BMP installation goals as demonstrated in the ~~district~~ district's annual strategy strategic plan, and the district's record of performance to affect BMP installation by cooperating farmers. The allocation method used for disbursement of funds is based on the relative position of each respective district for those parameters approved by the Commission pursuant to Paragraph (g) of this Rule. Each district is assigned points for each parameter, and the points are totaled and proportioned to the total dollars available under the current program year funding according to the following formula:

- (1) Sum of Parameter Points = Total Points
- (2) Percentage Total Available Dollars
- Points Each District x Dollars Available = to Each District
- (3) The minimum allocated to a ~~particular~~ district shall be twenty thousand dollars (\$20,000) per program year, unless the district requests less than twenty thousand dollars (\$20,000).
- (4) If a district requests less than the dollars available to that district in Subparagraph (b)(2) of this Rule, then the excess funds beyond those requested by the district shall be allocated to the districts who did not receive their full requested allocation using the same methodology described in Subparagraph (b)(2) of this Rule.

(c) ~~In the initial allocation~~ 95 percent of the ~~total program funding~~ annual appropriation shall be allocated to ~~the~~ district accounts ~~in the initial allocation~~, administered by the Division. The Division shall retain five percent of the ~~total funding in a~~ annual appropriation as a contingency ~~fund~~ to be used to respond to an emergency or natural disaster. If the contingency funds are not needed to respond to an emergency, then ~~the contingency fund~~ they shall be allocated at the March meeting of the Commission, available for allocation after March 1.

(d) The Commission may recall funds allocated to a district ~~during a fiscal year~~ that have not been encumbered to an agreement at any time if it determines the recalled funds are needed to respond to an emergency or natural disaster.

(e) At any time a district may submit a revised ~~strategy~~ strategic plan and ~~apply to the Commission~~ for to request additional funds from the Commission.

(f) ~~EPO's Agreements~~ that encumber funds under the current year ~~must~~ shall be submitted to the Division by 5:00 p.m. on ~~the first Wednesday in June~~, June 30.

(g) ~~Districts~~ For the Agriculture Cost Share Program, districts shall be allocated funds based on their respective data for each of the following parameters:

- (1) Percentage of total acres of agricultural land in North Carolina that are in the respective district ~~(including cropland, hayland, pasture land, and orchards/vineyards)~~ as reported in the most recent edition of the North Carolina Agricultural Statistics, Census of Agriculture. The actual percentage shall be normalized to a 1-100 scale. (20%)
- (2) Percentage of total number of animal units in North Carolina that are in the respective district as reported in the most recent edition of the North Carolina Agricultural Statistics, Census of Agriculture and converted to animal units using the conversion factors approved by the USDA-Natural Resources Conservation Service. The actual percentage shall be normalized to a 1-100 scale. (20%)
- (3) Relative rank of the percentage of the county outside of municipal boundaries as defined by North Carolina Department of Transportation draining to waters ~~number of miles of stream identified as less than fully supporting due to agricultural nonpoint source pollution as reported in the state's 303(d) list, impaired or impacted on the most recent 305(b) report, and basin plan produced by the North Carolina Division Water Resources~~. (20%)

- (4) Relative rank of the percentage of the county draining to waters classified as Primary Nursery Areas, Outstanding Resource Waters, High Quality Waters, Trout waters on the current schedule of Water Quality Standards and Classifications, Shellfishing growing areas (open) as determined by the Division of Marine Fisheries, and Drinking Water Assessment Areas as determined by the Division of Water Resources, and Critical Water Supply on the current schedule of Water Quality Standards and Classifications. (10%)
- (5) — The percentage of cost share funds allocated to a district that are encumbered to contracts in the best three of the most recent four completed program years as reported on the NC Agriculture Cost Share Program Database. (10%)
- (6)(5) Percentage of program funds ~~encumbered to contracts~~ allocated to a district that are actually expended for installed BMPs in the ~~best~~ highest three of the most recent four ~~seven~~ year period for which the allowed time for implementing contracted BMPs has expired as reported ~~on~~ in the NC Agriculture Cost Share Contracting System. Program Database. (10%)(20%)
- (7)(6) Relative rank of the ~~average erosion rate for agricultural~~ number of acres of highly erodible land in the county as reported ~~in~~ by the National Resources Inventory, United States Department of Agriculture Farm Service Agency, unless the State Conservationist of the Natural Resources Conservation Service specifies that another information source would be more current and accurate. (10%)

History Note: Authority G.S. 106-840; 106-850; 139-4; 139-8;

Eff. May 1, 1987;

Recodified from 15A NCAC 06E .0003 Eff. December 20, 1996;

Amended Eff. April 1, 1997;

Temporary Amendment Eff. May 1, 2001;

Amended Eff. September 1, 2005; August 1, 2002;

Transferred from 15A NCAC 06E .0103 Eff. May 1, 2012.

02 NCAC 59D .0104 ~~BEST MANAGEMENT PRACTICES ELIGIBLE FOR COST SHARE PAYMENTS~~ COMMUNITY CONSERVATION ASSISTANCE PROGRAM ALLOCATION GUIDELINES AND PROCEDURES

~~(a) BMP's eligible for cost sharing will be restricted to those BMP's listed in the Detailed Implementation Plan approved by the commission for the current program year. BMP's shall meet the following criteria to be listed in the Detailed Implementation Plan:~~

- ~~(1) All eligible BMP's must be designed to reduce the input of agricultural nonpoint source pollution into the water courses of the state or as otherwise authorized by statute.~~
- ~~(2) Information establishing the average cost of the specified BMP must be available. District BMP's may use actual costs as indicated by receipts, if average costs are not available.~~
- ~~(3) Eligible BMP's shall have adequate technical specifications as set forth in Paragraph (b) of this Rule.~~

~~(b) BMP definitions and specifications are set forth periodically in the USDA Natural Resources Conservation Service Technical Guide, Section IV, Raleigh, North Carolina or by the division for district BMP's. BMP specifications appropriate for the current program year shall be met or exceeded in order for an applicant to qualify for cost sharing. Provisions for exceeding BMP design specifications by an applicant may be considered at the time of application with the district. The applicant shall assume responsibility for all costs associated with exceeding BMP design specifications.~~

~~(c) The minimum life expectancy of the BMP's shall be listed in the Detailed Implementation Plan. Practices designated by a district shall meet the life expectancy requirement established by the division for that district BMP.~~

(a) The Commission shall consider the total amount of funding available for allocation, relative needs of the program for BMP implementation, local technical assistance, and education to determine the proportion of available funds to be allocated for each eligible purpose. This determination shall be done prior to allocating funds to statewide, regional, and district allocation pools and the Division. Funds may be allocated for any or all of the following purposes:

- (1) cost share and cost share incentive payments;

- (2) technical and administrative assistance; and
- (3) statewide or local education and outreach activities.

The percentage of funding available for each purpose and each allocation pool shall be specified in the annual Detailed Implementation Plan based upon the recommendation of the Division and the needs expressed by the districts.

(b) District Allocations: Based on the availability of funds, the Commission shall allocate cost share funds from the district allocation pool to the districts. To receive fund allocations, each district shall request funds in their strategic plan.

(c) Funds for cost share and cost share incentive payments shall be allocated to the districts at the beginning of the fiscal year and whenever the Commission determines that funds are available in the district allocation pool to justify a reallocation. Districts shall be allocated monies based on the identified level of nonpoint source pollution problems and the respective district's BMP installation goals as demonstrated in the district's annual strategic plan. The allocation method used for disbursement of funds shall be based upon the score of each respective district for those parameters approved by the Commission pursuant to Subparagraph (7) of this Paragraph. The points each district scores on each parameter shall be totaled and proportioned to the total dollars available for district allocation under the current program year funding according to the following formula:

$$\begin{array}{rcl}
 (1) & \frac{\text{Sum of Parameter Points}}{\text{Points}} & = \text{Total} \\
 (2) & \frac{\text{Percentage Total}}{\text{Available Points Each District}} \times \frac{\text{Total Dollars}}{\text{Available}} & = \text{Dollars to Each District}
 \end{array}$$

(3) 95 percent of the program funding designated for district allocations shall be allocated to the district accounts in the initial allocation. The Division shall retain five percent of the total funding in a contingency fund to respond to an emergency or natural disaster.

(4) The Commission may recall funds allocated to a district that have not been encumbered to an agreement if it determines the recalled funds are needed to respond to an emergency or natural disaster.

- (5) At any time a district may submit a revised strategic plan and apply to the Commission for additional funds.
- (6) Agreements that encumber funds under the current year must be submitted to the Division by 5:00 p.m. on June 30.
- (7) Districts shall be allocated funds based on their respective data for each of the following parameters:
- (A) Relative rank of the percentage of the county draining to waters identified as impaired or impacted on the most recent Integrated Report produced by the North Carolina Division of Water Resources. This report is incorporated with subsequent amendments and editions, and may be accessed at no charge at <http://ncdenr.maps.arcgis.com/apps/webappviewer/index.html> (20 percent).
- (B) Relative rank of the percentage of the county draining to waters classified as Outstanding Resource Waters, High Quality Waters and Trout Waters or on the current schedule of Water Quality Standards and Classifications, and shellfish growing areas (open) as determined by the Division of Marine Fisheries. The classifications are incorporated with subsequent amendments and editions, and may be accessed at no charge at <http://ncdenr.maps.arcgis.com/apps/webappviewer/index.html>. The shellfish harvesting areas may be accessed at <http://portal.ncdenr.org/web/mf/shellfish-closure-maps>. (20 percent)
- (C) The percentage of each county covered by Phase I and Phase II requirements. (20 percent)
- (D) Relative rank of population density for the county. (20 percent)
- (E) Relative rank of the percentage of a county's land area that is located within drinking water assessment areas, as delineated by the Public Water Supply Section of the Division of Water Resources. The Public Water Supply assessment areas are incorporated with subsequent amendments and editions, and may be accessed at no charge at

<http://deq.nc.gov/about/divisions/water-resources/drinking-water/drinking-water-protection-program/mapping-applications>. (20 percent)

(F) The Commission may consider additional factors, such as data sources changes to the Subparagraphs in this Paragraph, as recommended by the Division of Soil and Water Conservation when making its allocations.

(d) Statewide and Regional Allocations: Based on the availability of funds, the Commission shall allocate cost share funds from the statewide and regional allocation pools. To receive fund allocations, each district designated eligible by the Commission shall submit applications to respective pools when solicited by the Division. The Division shall rank each application and recommend to the Commission for its approval an amount to allocate to each district corresponding to the highest-ranking applications.

History Note: Authority G.S. 106-850; 139-8;

Eff. May 1, 1987;

Recodified from 15A NCAC 6E .0004 Eff. December 20, 1996;

Amended Eff. January 1, 1998;

Transferred from 15A NCAC 06E .0104 Eff. May 1, 2012.

02 NCAC 59D .0105 COST SHARE AND INCENTIVE PAYMENTS AGRICULTURAL WATER RESOURCES ASSISTANCE PROGRAM FINANCIAL ASSISTANCE ALLOCATION GUIDELINES AND PROCEDURES

~~(a) Cost share and incentive payments may be made through Cost Share Agreements between the district and the applicant.~~

~~(b) For all practices except those eligible for CSI, the state shall provide a percentage of the average cost for BMP installation not to exceed the maximum cost share percentages shown in subdivisions (6), (8), and (9) of G.S. 143-215.74(b), and the applicant shall contribute the remainder of the cost. In kind contributions by the applicant shall be included in the applicants' cost share contribution. In kind contributions shall be specified in the agreement for cost sharing and shall be approved by the district.~~

~~(c) CSI payments shall be limited to a maximum of three years per farm.~~

~~(d) Average installation costs for each comparative area or region of the state and the amount of cost share incentive payments shall be updated and revised at least triennially by the Division for approval by the Commission.~~

~~(e) The total annual cost share payments to an applicant shall not exceed the maximum funding authorized in subdivisions (6) and (9) of G.S. 143-215.74(b).~~

~~(f) Cost share payments to implement BMPs under this program may be combined with other funding programs, as long as the combined cost share rate does not exceed the amount and percentages set forth in Paragraphs (b) and (e) of this Rule. For special funding programs where the applicant relinquishes all production capability on his or her agricultural land for at least 10 years, combined funding may equal up to 100 percent. Agriculture Cost Share Program funding shall not exceed the maximum cost share percentages shown in subdivisions (6), (8), and (9) of G.S. 143-215.74(b).~~

~~(g) Use of cost share payments is restricted to land located within the county approved for funding by the Commission. However, in the situation where an applicant's farm is not located solely within a county, the entire farm, if contiguous, shall be eligible for cost share payments.~~

~~(h) Cost share contracts used on or for local, state or federal government land must be approved by the Commission in order to avoid potential conflicts of interest and to ensure that such contracts are consistent with the purposes of this program.~~

~~(i) The district Board of Supervisors may approve Cost Share Agreements with cost share percentages or amounts less than the maximum allowable in subdivisions (6), (8), and (9) of G.S. 143-215.74(b) if:~~

~~(1) The Commission allocates insufficient cost share BMP funding to the district to enable it to award funding to all applicants;~~

~~(2) The district establishes other criteria in its annual strategy plan for cost sharing percentages or amounts less than those allowable in subdivisions (6), (8), and (9) of G.S. 143-215.74(b).~~

~~(j) For purposes of determining eligible payments under practice-specific caps described in the detailed implementation plan, the district board shall consider all entities with which the applicant is associated, including those in other counties, as the same applicant.~~

(a) The Commission shall consider the total amount of funding available for allocation and the relative needs of the program for BMP implementation to determine the proportion of available

contingency funds are not needed to respond to an emergency, then they shall be available for allocation after March 1.

(e) The Commission may recall funds allocated to a district that have not been encumbered to an agreement at any time if it determines the recalled funds are needed to respond to an emergency or natural disaster.

(f) At any time a district may submit a revised strategic plan to request additional funds from the Commission.

(g) Agreements that encumber funds under the current year must be submitted to the Division by 5:00 p.m. on June 30th.

(h) For the Agricultural Water Resources Assistance Program, districts shall be allocated funds based on their respective data for each of the following parameters:

- (1) Relative rank of the number of farms (total operations) that are in the respective district as reported in the Census of Agriculture (20%)
- (2) Relative rank of the total acres of land in farms that are in the respective district as reported in the Census of Agriculture (20%)
- (3) Relative rank of the Market Value of Sales that are in the respective district as reported in the Census of Agriculture (15%)
- (4) Relative rank of the amount of agricultural water use in the respective district as reported in the North Carolina Agricultural Water Use Survey (25%). Data from the most recent three surveys will be averaged to determine each district's rank.
- (5) Relative rank of population density as reported by the state demographer (20%)
- (6) The Commission may consider additional factors, such as data sources changes to the Subparagraphs in this Paragraph, as recommended by the Division of Soil and Water Conservation when making its allocations.

(i) Statewide and Regional Allocations: Based upon funding availability, the Commission shall allocate cost share funds from the statewide and regional allocation pools. To receive fund allocations, each district designated eligible by the Commission shall submit applications to respective pools when solicited by the Division. The Division shall rank each application and recommend to the Commission for its approval an amount to allocate to each district corresponding to the highest-ranking applications.

*History Note: Authority G.S. 106-840; 106-850; 139-4; 139-8;
Eff. May 1, 1987;
Temporary Amendment Eff. September 23, 1996;
Recodified form 15A NCAC 06E .0005 Eff. December 20, 1996;
Temporary Amendment Expired June 13, 1997;
Amended Eff. March 1, 2008; July 1, 2004; April 1, 1999; January 1, 1998;
Transferred from 15A NCAC 06E .*

02 NCAC 59D .0106 ~~TECHNICAL ASSISTANCE FUNDS~~ BEST MANAGEMENT PRACTICES ELIGIBLE FOR COST SHARE PAYMENTS

~~(a) The funds available for technical assistance shall be allocated by the commission based on the recommendation of the division and the needs as expressed by the district and needs to accelerate the installation of BMP's in the respective district. Each district may use these monies to fund new positions or to accelerate present technical assistance positions. Districts must provide an itemized budget to the division in order to qualify for technical assistance funds. Matching funds for district technical assistance shall be approved by the commission prior to any expenditure of funds. Budget revisions submitted by the districts may be approved by the NPS Section based on Paragraph (b) of this Rule. N. C. Agriculture Cost Share technical assistance funds may be used for each FTE technical position with the district matching at least 50 percent of the total. Priorities for funding positions shall be assigned based as follows:~~

- ~~(1) Subject to availability of funds and local match, provide support for one FTE technical position for every district.~~
- ~~(2) Subject to availability of funds and local match, provide support for one additional FTE technical position if the position is needed to further support program implementation. Priority for funding positions beyond one FTE per district shall be based on the following parameters:
 - ~~(A) Whether the position is presently funded by program technical assistance funds.~~
 - ~~(B) The number of program dollars encumbered to contracts in the highest three of the previous four completed program years, and~~
 - ~~(C) The number of program dollars actually expended for installed BMPs in the highest three years of the most recent four year period for which the allowed~~~~

time for implementing contracted BMPs has expired as reported on the NC Agriculture Cost Share Database.

~~(3) Subject to availability of funds and local match, provide support for additional FTE technical position if the position is needed to further accelerate treatment of identified critical nonpoint source pollution problem(s).~~

~~(b) Technical assistance funds may be used for salary, benefits, social security, field equipment and supplies, office rent, office equipment and supplies, postage, telephone service, travel and mileage. A maximum of two thousand five hundred dollars (\$2,500) per year for each FTE technical position is allowed for mileage charges.~~

~~(c) Technical assistance funds may not be used to fund technical assistance positions which do not meet the following minimum requirements:~~

~~(1) associated degree in engineering, agriculture, forestry or related field; or~~

~~(2) high school diploma with two years experience in the fields listed in Rule .0106(c)(1), of this Subchapter.~~

~~(d) Cost shared positions must be used to accelerate the program activities in the district. A district technician cost shared with program funds may work on other activities as delegated by the field office supervisor but the total hours charged to the program by field office personnel must equal or exceed those hours funded through the program. Also, these hours must be in addition to those hours normally spent in BMP planning and installation by district personnel.~~

~~(e) District technicians may be jointly funded by more than one district to accelerate the program in each participating district. Each district must be eligible for cost sharing in the program. Requests for funding (salary, FICA, insurance, etc.) of a shared position must be presented to the division by all concerned districts and the division shall cost share to the billing district at a 50-50 rate based on the portion of the FTE provided each respective district. A shared position must be officially housed in one specific district and cost share for support items (office rent, telephone, etc.) shall be paid to one district only.~~

~~(f) Funds, if available, shall be allocated to each participating district to provide for administrative costs under this program. These funds shall be used for clerical assistance and other related program administrative costs and shall be matched with in-kind funds of an equal amount from the district.~~

(a) BMPs eligible for cost sharing shall be restricted to those BMPs listed in the Detailed Implementation Plan approved by the Commission for the current fiscal year, except for District BMPs. BMPs shall meet the following criteria to be listed in the Detailed Implementation Plan:

- (1) all eligible BMPs shall be designed to meet the purpose of the program or shall be authorized by statute.
- (2) information establishing the average cost of the specified BMP shall be used, if available. District BMPs may use actual costs as indicated by receipts, if average costs are not available; and
- (3) eligible BMPs shall have adequate technical specifications as set forth in Paragraph (b) of this Rule.

(b) BMP definitions and specifications shall be determined by the Commission using the process outlined in 02 NCAC 59D .0103 through 59D .0105 or by the Division for district BMPs. For a contract to be eligible for payment, all cost shared BMPs shall meet or exceed the specifications in effect at the time the contract was approved. Provisions for exceeding BMP design specifications by an applicant may be considered at the time of application with the district. The applicant shall assume responsibility for all costs associated with exceeding BMP design specifications.

(c) The Division has authority to approve District BMPs for evaluation purposes. The BMP shall be requested by a district and meet the program purpose. The Division shall determine it to be technically adequate prior to funding.

(d) The minimum required maintenance of the BMPs shall be listed in the Detailed Implementation Plan or be established by the Division for District BMPs.

History Note: Authority G.S. 106-840; 106-850; 139-4; 139-8;

Eff. May 1, 1987;

Amended Eff. July 1, 1992;

Recodified from 15A NCAC 6E .0006 Eff. December 20, 1996;

Amended Eff. August 1, 2005; November 1, 1997;

Transferred from 15A NCAC 06E .0106 Eff. May 1, 2012.

02 NCAC 59D .0107 COST SHARE AGREEMENT AND INCENTIVE PAYMENTS

~~(a) The landowner shall be required to sign the agreement for all practices other than agronomic practices and land application of animal wastes. An applicant who is not the landowner may submit a long term written lease or other legal document, indicating control over the land in lieu of the landowner's signature, provided the control runs the life of the practice as listed in the respective Program Year's Implementation Plan. Signature on the agreement constitutes responsibility for BMP maintenance and continuation.~~

~~(b) As a condition for receiving cost share or cost share incentive payments for implementing BMP's, the applicant shall agree to continue and maintain those practices for the minimum life as set forth in the Detailed Implementation Plan, effective the date the BMP's are implemented.~~

~~(c) As a condition for receiving cost share payments, the applicant shall agree to submit a soil test sample for analysis and follow the fertilizer application recommendations as close as reasonably and practically possible. Soil testing shall be required a minimum of every two years on all cropland affected by cost share payments. Failure to soil test shall not constitute noncompliance with the cost share agreement.~~

~~(d) As a condition for receiving cost share payments for waste management systems, the applicant shall agree to have the waste material analyzed once every year to determine its nutrient content. If the waste is land applied, the applicant shall agree to soil test the area of application and to apply the waste as close as reasonably and practically possible to recommended rates. When waste is land applied, waste analysis and soil testing shall be conducted annually.~~

~~(e) The technical representative of the district shall determine if the practice(s) implemented have been installed according to specifications as defined for the respective program year in the USDA Natural Resources Conservation Service Technical Guide, Section IV, Raleigh, North Carolina, according to other specifications approved by the Commission pursuant to 02 NCAC 59G .0103, or according to specifications approved by the Division for district BMP's based on the criteria established in 02 NCAC 59G .0103(e). The district shall be responsible for making an annual spot check of five percent of all the cost share agreements to ensure proper maintenance. Waste management systems shall be included as part of the annual five percent check except for systems on farms without certified waste management plans. In those cases, the districts shall conduct annual status reviews for five years following implementation.~~

~~(f) If the technical representative of the district determines that a BMP for which program funds were received has been destroyed or has not been properly maintained, the applicant will be~~

~~notified that the BMP must be repaired or re-implemented within 30 working days. For vegetative practices, applicants are given one calendar year to re-establish the vegetation. The district may grant a prescribed extension period if it determines compliance can not be met due to circumstances beyond the applicants control.~~

~~(g) If the practices are not repaired or reimplemented within the specified time, the applicant shall be required to repay to the Division a prorated refund for cost share BMP's as shown in Table 1 and 100 percent of the cost share incentive payments received.~~

~~Table 1~~

~~PRORATED REFUND SCHEDULE FOR NONCOMPLIANCE
OF COST SHARE PAYMENTS~~

Percent Age of Practice Life	Percent Refund
0	100
10	95
20	89
30	82
40	74
50	65
60	55
70	44
80	31
90	17
100	0

~~(h) An applicant, who has been found in noncompliance and who does not agree to repair or reimplement the cost shared practices, and a District may jointly request the commission to informally mediate the case. To invoke this method of mediation, both parties must stipulate that the commission mediation is binding.~~

~~(i) An applicant shall have 180 days to make repayment to the Division following the final appeals process.~~

~~(j) The inability to properly maintain cost shared practices or the destruction of such practices through no fault of the applicant shall not be considered as noncompliance with the cost share agreement.~~

~~(k) When land under cost share agreement changes owners the new landowner shall be strongly encouraged by the district to accept the remaining maintenance obligation. If the new landowner does not accept the maintenance requirements in writing, then the original applicant shall be required to refund 100 percent of all CSI payments and a prorated portion of cost share payments in accordance with Table 1 in Paragraph (g) of this Rule.~~

(a) Cost share and incentive payments may be made through Cost Share Agreements between the district, Division and the applicant.

(b) For all practices except those eligible for Cost Share Incentives (CSI), the State of North Carolina shall provide a percentage of the average cost for BMP installation not to exceed the maximum cost share percentages shown in subdivisions (6), (8), and (9) of G.S. 106-850(b), and the applicant shall provide the remainder of the cost. In-kind contributions by the applicant shall be included in the applicants' cost share contribution. In-kind contributions shall be approved by the district and Division.

(c) CSI payments shall be limited to a maximum of three years per entity.

(d) Average installation costs for each comparative area or region of the state and the amount of cost share incentive payments shall be updated and revised at least triennially by the Division for approval by the Commission.

(e) The total annual cost share payments to an applicant shall not exceed the maximum funding authorized in subdivisions (6) and (9) of G.S106-850(b).

(f) Use of cost share payments is shall be restricted to land located within the county approved for funding by the Commission. However, in the situation where an applicant's farm is not located solely within a county, the entire farm, if contiguous, shall be eligible for cost share payments.

(g) Agriculture Cost Share Program and Agricultural Water Resources Assistance Program cost share contracts used on or for local, state or federal government land shall be approved by the Commission to avoid potential conflicts of interest and to ensure that such contracts are consistent with the purposes of these programs.

(h) The district Board of Supervisors may approve Cost Share Agreements with cost share percentages or amounts less than the maximum allowable in subdivisions (6), (8), and (9) of G.S. 106-850(b) if:

- (1) the Commission allocates insufficient cost share BMP funding to the district to enable it to award funding to all applicants; or
- (2) the district establishes other criteria in its annual strategic plan for cost sharing percentages or amounts less than those allowable in subdivisions (6), (8), and (9) of G.S. 106-850(b).

(i) For purposes of determining eligible payments under practice-specific caps described in the detailed implementation plan, the district board shall consider all entities with which the applicant is associated, including those in other counties, as the same applicant.

History Note: Authority G.S. 106-850; 139-4; 139-8;

Eff. May 1, 1987;

Amended Eff. July 1, 1992;

Recodified from 15A NCAC 6E .0007 Eff. December 20, 1996;

Amended Eff. June 1, 2008; April 1, 1999; November 1, 1997;

Transferred from 15A NCAC 06E .0107 Eff. May 1, 2012.

02 NCAC 59D .0108 ~~DISTRICT PROGRAM OPERATION~~ TECHNICAL ASSISTANCE FUNDS

~~(a) As a component of the annual strategy plan, the district shall prioritize both cropland and animal operations according to pollution potential. The district shall target technical and financial assistance to facilitate BMP implementation on the identified critical areas.~~

~~(b) Priority by the district may be given to implementing systems of BMP's which provide the most cost effective reduction of nonpoint source pollution.~~

~~(c) All applicants shall apply to the district and complete the necessary forms in order to receive cost share payments.~~

~~(d) The district shall review each application and the feasibility of each application. The district shall review and approve the evaluation and assign priority for cost sharing. All applicants shall be informed of cost share approval or denial.~~

~~(e) Upon approval of the application by the district, the applicant and the district shall enter into a cost share agreement. The cost share agreement shall list the practices to be cost shared with state funds. The agreement shall also include the average cost of the recommended practice(s), cost incentive payment of the practice(s), and the expected implementation date of the practice(s). The District shall develop CPO's, which shall become a part of the cost share agreement.~~

~~(f) Upon completion of practice(s) implementation, the technical representative of the district shall notify the district of compliance with design specifications.~~

~~(g) Upon notification, the district shall review the CPO. Upon approval, the district shall certify the practices in the CPO and notify the Division to make payment to the applicant.~~

~~(h) Upon receipt of a quarterly statement from the district, the Division shall reimburse to the district the appropriate amount for technical and clerical assistance.~~

~~(i) The district shall be responsible for and approve all BMP inspections as set forth in Rule .0107(e) of this Section to insure proper maintenance and continuation under the cost share agreement.~~

~~(j) The district shall keep appropriate records dealing with the program.~~

(a) The funds available for technical assistance shall be allocated by the Commission based on the recommendation of the division, the needs as expressed by the district, and the needs to accelerate the installation of BMPs in the respective district. The district shall provide at least 50 percent of the total matching funds for technical assistance.

(b) The Commission shall allocate technical assistance funds as described in their Detailed Implementation Plan (DIP). This allocation shall be made based on the implementation of conservation practices for which district employees provided technical assistance incorporating the following:

(1) Commission Cost Share Programs funded practices will be weighted at 100 percent;

(2) other local, state, federal and grant funded practices that meet the purpose requirements in 02 NCAC 59D .0101 will be weighted at a minimum of 25 percent as specified in the DIP;

(3) districts shall submit information on funded practices as specified in Subparagraph (2) of this Paragraph through their annual strategic plan;

(4) this allocation will be calculated using the best three of the most recent seven years;

and

(5) this allocation will be calculated once every three years, unless there is a change in technical assistance state appropriations.

(c) Technical assistance funds may be used for salary, benefits, social security, field equipment and supplies, office rent, office equipment and supplies, postage, telephone service, travel, mileage, and any other expense of the district in implementing Soil and Water Conservation Commission Cost Share Programs.

(d) Each district requesting technical assistance funding with the required 50 percent local match shall receive a minimum allocation of \$20,000 each year.

(e) If a district is not spending more on financial assistance funds on Commission Cost Share Programs than they receive for technical assistance, the district shall appeal to the Commission to receive technical assistance funding.

(f) All technical district employees shall obtain Job Approval Authority for two best management practices from the Commission or the United States Department of Agriculture Natural Resources Conservation Service within three years of being hired or July 1, 2018, whichever is later.

(1) One of the best management practices for which the employee has obtained Job Approval Authority shall be a design practice. Design practice means an engineering practice as defined by the Natural Resources Conservation Service of Soil and Water Conservation Commission in their Program Detailed Implementation Plan(s).

(2) The District Board of Supervisors may request a one-year extension for their employees in meeting the Job Approval Authority requirement for extenuating circumstances.

History Note: Authority G.S. 106-840; 106-850; 139-4; 139-8;

Eff. May 1, 1987;

Recodified from 15A NCAC 6E .0008 Eff. December 20, 1996;

Amended Eff. March 1, 2008; November 1, 1997;

Transferred from 15A NCAC 06E .0108 Eff. May 1, 2012.

02 NCAC 59D .0109 COST SHARE AGREEMENT

(a) The landowner shall be required to sign the agreement for all practices that affect change to the property. The signature on the agreement constitutes responsibility for BMP maintenance and continuation.

(b) The technical representative of the district shall determine if the practice(s) implemented have been installed according to practice standards as defined for the respective program year in the USDA-Natural Resources Conservation Service Technical Guide for North Carolina, according to other specifications approved by the Commission pursuant to 02 NCAC 59G .0103, or according to standards approved by the Division for district BMPs based on the criteria established in 02 NCAC 59G .0103(c).

(c) The district shall be responsible for making an annual spot check of five percent of all the cost share agreements to ensure proper maintenance. The Commission may specify additional spot check requirements for specific BMPs in the Detailed Implementation Plan.

(d) If the technical representative of the district determines that a BMP for which program funds were received has been destroyed or has not been properly maintained, the applicant shall be notified that the BMP shall be repaired or re-implemented within 30 working days. For vegetative practices, applicants shall be given one calendar year to re-establish the vegetation. The Division may grant a prescribed extension period if it determines compliance cannot be met due to circumstances beyond the applicants control.

(e) If the practices are not repaired or reimplemented within the specified time, the applicant shall be required to repay to the Division a prorated refund for cost share BMP's as shown in Table 1 and 100 percent of the cost share incentive payments received.

Table 1

PRORATED REFUND SCHEDULE FOR NONCOMPLIANCE
OF COST SHARE PAYMENTS

<u>Percent Age of Practice Life</u>	<u>Percent Refund</u>
<u>0</u>	<u>100</u>
<u>10</u>	<u>95</u>
<u>20</u>	<u>89</u>
<u>30</u>	<u>82</u>
<u>40</u>	<u>74</u>

50	65
60	55
70	44
80	31
90	17
100	0

(f) In the event that a contract has been found to be noncompliant and the applicant, does not agree to correct the non-compliance, the Division may invoke procedures to achieve resolution to the noncompliance, including any and all remedies available to it under the law.

(g) When land under cost share agreement changes, owners the new landowner shall be strongly encouraged by the district to accept the remaining maintenance obligation. If the new landowner does not accept the maintenance requirements in writing, then the original applicant shall be required to refund 100 percent of all CSI payments and a prorated portion of cost share payments in accordance with Table 1 in Paragraph (e) of this Rule.

History Note: Authority G.S. 106-850; 139-4; 139-8;

02 NCAC 59D .0110 DISTRICT PROGRAM OPERATION

(a) As a component of the annual strategic plan, the district shall prioritize resource concerns per the program purpose. The district shall target technical and financial assistance to facilitate BMP implementation on the identified critical areas.

(b) The district shall give priority to implementing systems of BMPs that provide the most cost-effective conservation practice for addressing priority resource concerns.

(c) All applicants shall apply to the district in order to receive cost share payments.

(d) The district shall review each application and the feasibility of each application. The district shall review and approve the evaluation and assign priority for cost sharing. All applicants shall be informed of cost share application approval or denial.

(e) Upon approval of the application by the district, the applicant, district, and the Division shall enter into a cost share agreement. The cost share agreement shall list the practices to be cost shared with state funds. The agreement shall also include the average cost of the recommended practice(s), cost incentive payment of the practice(s), and the expected implementation date of the

practice(s). The District shall develop a conservation plan that shall become a part of the cost share agreement.

(f) Upon completion of practice(s) implementation, the technical representative of the district shall notify the district board of compliance with design specifications.

(g) Upon notification, the district shall review the agreement and request for payment. Upon approval, the district shall certify the practices in the agreement and notify the Division to make payment to the applicant. The District Board of Supervisors shall certify that the individual signing the conservation plan and request for payment has proper job approval authority for the respective practice(s) before signing requests for payment for completed BMPs.

(h) The district shall be responsible for and approve all BMP inspections as set forth in Rule .0109(e) of this Section to insure proper maintenance and continuation under the cost share agreement.

(i) The district shall keep records dealing with the program per their district's document retention schedule.

History Note: Authority G.S. 106-840; 106-850; 139-4; 139-8;

02 NCAC 59H .0101 - .0108 are proposed to be readopted as repeals as follows:

02 NCAC 59H .0101 PURPOSE

02 NCAC 59H .0102 DEFINITIONS FOR SUBCHAPTER 59H

02 NCAC 59H .0103 ALLOCATION GUIDELINES AND PROCEDURES

**02 NCAC 59H .0104 BEST MANAGEMENT PRACTICES ELIGIBLE FOR COST
SHARE PAYMENTS**

02 NCAC 59H .0105 COST SHARE AND INCENTIVE PAYMENTS

02 NCAC 59H .0106 TECHNICAL ASSISTANCE FUNDS

02 NCAC 59H .0107 COST SHARE AGREEMENT

02 NCAC 59H .0108 DISTRICT PROGRAM OPERATION

History Note: Authority G.S. 106-840; 106-860; 139-4; 139-8