

**NORTH CAROLINA SOIL AND WATER CONSERVATION COMMISSION  
RALEIGH, NORTH CAROLINA  
BUSINESS SESSION AGENDA  
DRAFT**

**BUSINESS SESSION**

North Carolina Farm Bureau Federation  
Auditorium  
5301 Glenwood Avenue  
Raleigh, NC 27612  
April 5, 2017  
**9:00 a.m.**

**I. CALL TO ORDER**

The State Government Ethics Act mandates that at the beginning of any meeting the Chair reminds all the members of their duty to avoid conflicts of interest and inquire as to whether any member knows of any conflict of interest or potential conflict with respect to matters to come before the Commission. If any member knows of a conflict of interest or potential conflict, please state so at this time.

**II. PRELIMINARY – Business Meeting**

Welcome

Chairman John Langdon

**III. BUSINESS**

1. Approval of Agenda

Chairman John Langdon

2. Reading of Statements of Economic Interests Evaluations

Mr. Phillip Reynolds

3. Cost Share Programs Rule Revisions

Cost Share Committee

**IV. PUBLIC COMMENTS**

**V. ADJOURNMENT**



**NORTH CAROLINA  
SOIL & WATER CONSERVATION COMMISSION  
BUSINESS MEETING MINUTES  
April 5, 2017**

NC Farm Bureau Federation  
Auditorium  
5301 Glenwood Avenue  
Raleigh, NC 27612

Commission Members	Guests	
John Langdon	David Williams	Louise Hart
Wayne Collier	Julie Henshaw	Gavin Thompson
Chris Hogan	Kelly Hedgepeth	Jason Walker
Charles Hughes	Dietrich Kilpatrick	Brian Lannon
Ben Knox	Mike Willis	Charles Bass
Manly West	Helen Wiklund	Anne Coan
Bill Yarborough	Davis Ferguson	Keith Larick
Commission Counsel	Rob Baldwin	Chester Lowder
Phillip Reynolds	Kristina Fischer	

Ms. Anne Coan with the NC Farm Bureau welcomed the Soil & Water Commission and staff. Chairman John Langdon opened with prayer and called the meeting to order at 9:34 a.m. Chairman Langdon inquired whether any Commission members need to declare any conflict of interest, or appearance of conflict of interest, that may exist for agenda items under consideration, as mandated by the State Ethics Act. None were declared. Chairman Langdon welcomed everyone to the meeting.

As Cost Share Committee Chair, Mr. Langdon stated he had several conversations with the Cost Share Committee members and Commission members to discuss how to best revise Cost Share Programs rules. The purpose of this meeting is to discuss how to revise these rules. While having these discussions, it is important to consider how to write these revisions. The goal is to have rules that are tight enough to be sufficient, but not too limiting. The rules should have some flexibility.

1. **Approval of Agenda:** Chairman Langdon asked for approval on the agenda. Commissioner Hogan moved to approve the agenda and Commissioner Collier seconded. Motion carried.
2. **Reading of Statements of Economic Interests Evaluations:** Chairman Langdon recognized Mr. Phillip Reynolds. Mr. Reynolds stated, as of today, the Statements of Economic Interests have not been received for Mr. Willis and Mr. Kilpatrick. The Ethics Commission should have the appointments ready by the next Commission Meeting.

- 3. Cost Share Programs Rule Revisions:** Chairman Langdon asked the Committee to introduce themselves. The Committee members are:

John Langdon, Chair of Commission and Committee  
 Charles Bass, Franklin Soil and Water Conservation District, NC Ag Cost Share Specialist  
 Jason Walker, Yadkin Soil and Water Conservation District, District Director  
 Davis Ferguson, Division of Soil and Water Conservation, Regional Coordinator  
 Julie Henshaw, Division of Soil and Water Conservation, NPS Section Chief  
 Brian Lannon, Camden Soil and Water Conservation District, Cost Share Technician  
 Gavin Thompson, NRCS, District Conservationist

Ms. Julie Henshaw stated the Committee has worked long and hard over the last four years. The Committee is asking for the Commission's guidance and feedback on how to prepare the draft rule revisions. Ms. Henshaw referred to the PowerPoint presentation as well as the Agriculture Cost Share Program Rules and Community Conservation Assistance Program Rules. The goal is to bring a markup of the rules to the next Commission Meeting for action. These rules are the last set of Commission rules going through the re-adoption and revision process. These rules will have the most changes. It affects district allocations for both best management practices (BMPs) and financial support for district positions, which are the most controversial set of rules for re-adoption.

Ms. Henshaw stated the General Statute requires all rules adopted to be reviewed once every ten years and to make sure the rules are still necessary and within the Commission's authority. This review will be continuous and ensure the rules are current. The proposed schedule for Phase II: Rule Text Revisions was discussed. The rules could be approved by September 2017 and submitted to the Rules Review Commission for approval, which takes at least for 60 days. The earliest revised allocation rules would be used is for FY2019. Chairman Langdon asked for a suggested timeline from the Committee. Ms. Henshaw stated the Division will be short staffed and to reduce further delays, the sooner the Commission acts, the better. The Committee's plan is to bring the revisions to the Commission in May for action. The Committee reached out to the districts across the state to discuss the proposed rule revisions being discussed today.

The following five objectives were discussed:

- Rule format changes
- District BMP allocation parameters for ACSP, CCAP and AgWRAP (three separate allocation rules; one per program to match their purpose)
- Technical Assistance Allocations (the concept of paying for performance vs. paying for a position)
- Job Approval Authority (JAA) requirements for all technical employees
- Prepare schedule for reviewing draft rules

All Commission Cost Share Programs will appear in one rule series: 02 NCAC 59D with three parts in the purpose rule – one per program with a separate rule for each program's allocation parameters.

Commissioner Yarborough stated when the rules are in one basket, the Commission should leave room for some flexibility in the rules; the rules should not be tight. Also, are there ways to put exceptions in the rules? Jason Walker stated the Committee is leaving some flexibility in each program even though all under one rule. Commissioner Yarborough stated the rules are so strict. The Commission can do a lot of things with policy by responding to district needs. David Williams added the changes put in place for the CCAP allocation rule has a lot of flexibility built into that rule. The Commission has authority to allocate funds at the state, regional, or district level based on the funding available at any given year. The Commission can take actions in emergencies and be responsive to needs. The Committee needs to be aware of that need and the Commission fully expects the Committee will build more flexibility into the revised rules. The Commission can also help identify where there is an opportunity that may have been missed.

Ms. Henshaw presented the Ag Cost Share Program (ACSP) and Community Conservation Assistance Program (CCAP) rule suggestions for BMP allocations. The Commissioners and staff discussed the Commission's flexibility and authority. The districts want some certainty with what they will expect when it comes to allocations. Ms. Henshaw stated when it comes to the CCAP allocation rule, if the Commission were to do a district allocation there are set parameters that guide how those allocations are to be made.

Chairman Langdon called a recess at 10:30 a.m. The meeting reconvened at 10:45 a.m.

Ms. Henshaw presented the Agricultural Water Resources Assistance Program (AgWRAP) parameters for BMP allocations. These parameters are how the Commission chose to allocate funds to districts, not for the regional application rounds. There is no existing rule to be replaced for this program; as it is being run as a pilot program. The Committee is recommending using the parameters which were used to allocate funds this year. With these parameters, it would shift funds where agriculture is vital and water is needed to help with agriculture and where there may be competing interests with drinking water uses as well as agriculture.

Ms. Henshaw presented the current technical assistance funding and trends. The funds support 102.6 full-time equivalent positions (FTE) but the Commission is only providing support on average of 40.2% per FTE which is less than the 50% specified in the current technical assistance rule. A new methodology of allocating technical assistance funding was presented, i.e., paying for performance vs. people. This is a different way to prioritize technical assistance funding with the Committee's recommendation to fund district performance instead of a person, which aligns with the Commission's charge given to the Committee.

Two recommendations for the Commission to consider are:

1. Performance is based on dollar spent on BMPs installed in each county
  - a. Weight ACSP, CCAP, AgWRAP BMP expenditures at 100%, excluding engineering costs
  - b. Weight BMP expenditures by other funding sources at 50%

David Williams stated this is based on the past seven years and the allocation is based on your track record of producing. The Committee recommends counting the best three out of seven years.

2. Minimum technical assistance (TA) allocation is \$20,000/year
  - a. Districts would receive funding above \$20,000 based upon the amount of funding spent on BMPs in their county, compared to the total amount spent in the state
  - b. Maximum amount proposed currently is ~\$53,000 (amount of 2 FTEs + operating)

This is a different way to allocate limited TA resources

  - c. Increases in TA funding are needed in implementing the existing or suggested revisions
  - d. Difference is \$4,488 per county

The available allocation of the funds from the General Assembly is \$2.4M. The available allocation for supplemental technical assistance, the amount above \$20,000 per district, is \$448,778 or \$4,488 per county. This funding would operate like a grant to the district for administering cost share programs in their county.

Technical assistance allocations will be determined once every three years, unless there is a significant change in state appropriations, based on the district's performance during the best three of the last seven fiscal years. If allocations will be decreased, districts will receive a notice of the new allocation amount one year in advance. If a district is not spending more from the state Cost Share Programs on BMPs than they receive for technical assistance, the district must account for and justify why the district should continue to receive technical assistance support.

Ms. Henshaw presented a couple of scenarios and the potential methods for calculating performance. In addition, five options for technical assistance allocation scenarios were presented. The scenarios are from 2010-2016.

The Commissioners and staff continued to discuss the following items:

- allocation of funds for the districts,
- the five funding options,
- the purpose of technical assistance funding
- the availability of BMP funding from state, federal and other sources that the Legislature intended to go to the Cost Share Program, and
- the Commission and Committee needs to acknowledge the money going on the ground on the State funding side is decreasing and the money on the Federal funding side is increasing.

Deputy Director Williams stated the work is on the Federal side and most likely will increase going forward, however, it is difficult to say with a new Administration on the National level.

Commissioner Knox stated the trends should be posted at the Area Meetings this fall and at the Annual Meeting to show the BMP and technical assistance dollars, per Area.

Commissioner West stated it appears we want to account for what is on the ground and the work that is being done to get it on the ground regardless of where the money is coming from.

This sounds like the best option and with state cost share funding decreasing over time that leaves us with Option 1 or Option 2.

Chairman Langdon asked the Committee what are their preferences. The Committee was split between Options 1 and 3 but Option 3 being most popular and one thing the Committee is trying to accomplish is promoting cooperation within the offices among the districts to get the conservation on the ground and work cooperatively and use all our resources more efficiently. Ms. Henshaw added Option 3 is likely to be more politically palatable. Deputy Director Williams offered concurrence of support for Option 3.

Chairman Langdon asked if the Commission needs to take a vote and Ms. Henshaw stated the Committee only needs a consensus. The Commission will act once the Commission approves the rules at a future meeting. Chairman Langdon asked if the Commission is on the path towards Option 3. Commissioner West stated Options 3 and 4 should both be looked at, and based on the numbers, see which they prefer. Ms. Henshaw stated the Committee will do more quality assurance/quality control on the other funds incorporated in the calculation, and will send out a separate survey to districts to gather full information regarding other funds.

Chairman Langdon called a recess at 12:27 p.m. The meeting reconvened at 12:35 p.m.

Ms. Henshaw discussed retaining Job Approval Authority (JAA) requirements for technical employees which was discussed and approved by the Commission in 2010. The recommendation in 2010 was two BMPs within two years of effective date of the rule or of hire. One of the BMPs needed to be a design practice, i.e., an engineering BMP per NRCS or an item the Commission grants JAA through AgWRAP or CCAP. A list of the eligible design practices was provided. The Committee is requesting a change in the time frame. The original data in 2010 was for two BMPs within two years. The Committee is suggesting two BMPs within three years. There is less NRCS staff to help with the review process locally and after the Committee talked to new hires, they felt they could meet this requirement in three years. Another suggestion that the Committee added was the ability of the district board to request a one-year extension for their employees in meeting the JAA requirement, if there are extenuating circumstances.

Commissioner Yarborough stated this does not go far enough. Hurricane Matthew just hit the state. What kind of percentage of JAA does a district technician across the state have just for simple culvert design; less than 40%. There should be some kind of requirement, but it is for emergencies and if the districts were prepared for culvert designs as well as pond assessments, those districts could have put the \$12M that was allocated on the ground. Even if they cannot sign off on it, if they could do the evaluations. This could have been done very quickly, if those districts had those capacities.

The Committee's concern is for the new employee that have not been involved with Soil and Water Conservation, and it may take a year to understand the acronyms before they can work towards obtaining JAA.

Commissioner Yarborough stated there are employees that do not have JAA that have been working for years and we are saying it is okay to get two or three years and you worked ten years and do not have it now. There should be some minimum for an emergency.

Chairman Langdon called a recess at 12:45 p.m. for lunch. The meeting reconvened at 1:30 p.m.

Chairman Langdon asked for more comments on JAA. Deputy Director Williams stated the Conservation Action Team (CAT) will provide recommendations related to training, but this action can be independent of the Commission's rules. Chairman Langdon asked if the Commission is in consent at this point.

The last item Ms. Henshaw discussed was the draft schedule for reviewing the draft rules. The Committee will provide feedback received today and do the rule markups and come back to present in May. Per Ms. Henshaw, whenever the Commission approves the start of the rule making process for text revisions that is when the time starts.

Chairman Langdon asked if the Commissioners are prepared to act upon the markups in May or July? Commissioners Collier, Hogan, Hughes, West, and Knox are prepared to start the rule making process for text revisions in May as well as Mr. Kilpatrick and Mr. Willis.

Ms. Henshaw will be prepared to bring back the markups and appreciates the Commission's time.

Chairman Langdon stated it has been enlightening and a pleasure and appreciates the Committee's contribution to this process and staying in touch with the Commission and the staff.

Commissioner West applauded the Committee and they should be proud of the package brought back to the Commission to act on.

**Public Comments:**

**Adjournment:** Meeting adjourned at 1:37 p.m.



David B. Williams, Deputy Director  
Division of Soil & Water Conservation, Raleigh, N.C.



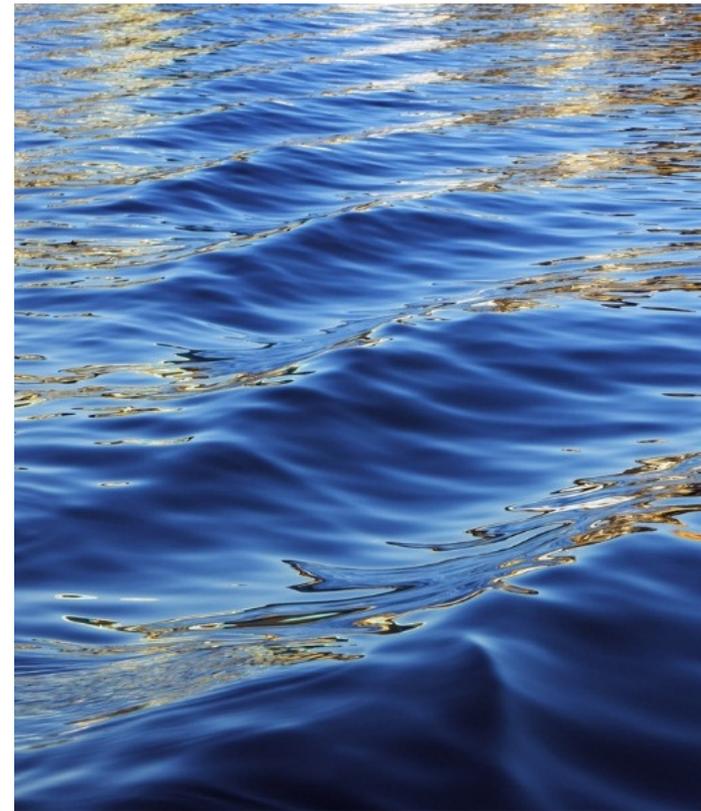
Helen Wiklund, Recording Secretary

***These minutes were approved by the North Carolina Soil & Water Conservation Commission on May 17, 2017.***



# Cost Share Programs Rule Revisions

Cost Share Committee Recommendations



# Purpose & Background of Cost Share Program Rule Revisions

- G.S. 150B-21.34 requires all rules adopted pursuant to G.S. 150 Article 2A be reviewed every 10 years to make sure the rules are still necessary and within the agencies authority and address programs that still exist.
- This review will be continuous and ensure that rules are current.
- All Commission rules are going through this process. The Cost Share Rules are the last in the process.

# Proposed Cost Share Program Rule Making Schedule: Phase II – Rule Text Revisions

Commission opens informal stakeholder process and public comment period.  
February – March 2017

Today's Worksession

Commission approves the start of the rule making process.  
TENTATIVE May 2017 SWCC Meeting or when SWCC takes action.

Formal public comment period for rule text revisions.  
TENTATIVE June – July 2017; or 60 days after rules approved.

Commission approves final rules TENTATIVE September 2017.  
Final approval from Rules Review Commission. TENTATIVE November 2017. Revised allocation rules used July 1, 2018 (FY2019).

# Cost Share Program Rule Revision Suggestions Prepared by the Commission's Cost Share Committee

Member	Affiliation
<a href="#">John Langdon</a> , Committee Chair	Soil and Water Conservation Commission Chair
<a href="#">Charles Bass</a>	Franklin Soil and Water Conservation District
<a href="#">Davis Ferguson</a>	Division of Soil and Water Conservation
<a href="#">Julie Henshaw</a>	Division of Soil and Water Conservation
<a href="#">Jason Walker</a>	Yadkin Soil and Water Conservation District
<a href="#">Brian Lannon</a>	Camden Soil and Water Conservation District
<a href="#">Renee Melvin</a> / <a href="#">Gavin Thompson</a>	Natural Resources Conservation Service

[http://www.ncagr.gov/SWC/commission/cost\\_share\\_committee.html](http://www.ncagr.gov/SWC/commission/cost_share_committee.html)

# Cost Share Committee Public Outreach on Rule Revisions

- Started this process in 2013 with a comprehensive survey regarding technical assistance funding. Results were used to draft original ideas for consideration.
- Discussed preliminary concepts with districts by holding 8 meetings across the state in summer and fall 2015. Committee revised suggestions based on district input.
- Committee presented recommendations and received approval by consensus of ideas by Soil and Water Conservation Commission in March 2016
- Held another round of 8 meetings Feb/March 2017 to gather input before the formal rulemaking process. Committee revised suggestions based on district input.
- Worksession today to obtain guidance on how to prepare draft rule revisions for Commission consideration at future meetings.

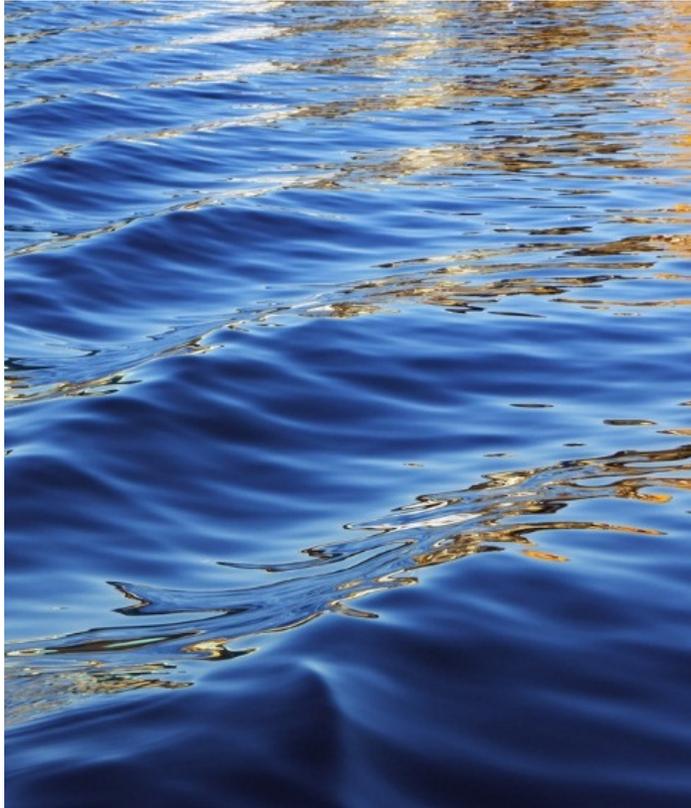
# Today's Objectives

1. Discuss rule format changes.
2. Review district BMP allocation parameters for ACSP, CCAP & AgWRAP  
Note: there will be three separate allocations rules; one per program to match their purpose
3. Discuss Technical Assistance Allocations  
The concept of paying for performance vs. paying for a position
4. Consider Job Approval Authority Requirements for all technical employees
5. Prepare schedule for reviewing draft rules



## 02 NCAC Subchapter 59D, 59H

### 1. *DRAFT* Rule Format Revisions





## Rule recommendations

All Commission Cost Share Programs will appear in one rule series: 02 NCAC 59D

Purpose rule will have parts per program

- A. Agriculture Cost Share Program
- B. Community Conservation Assistance Program
- C. Agricultural Water Resources Assistance Program

There will be a separate rule for each program's allocation.

This change will improve efficiency and reduce the number of rules that the Commission has to administer and maintain.

# Proposed New Rule Structure

02 NCAC 59D .0101: PURPOSE

02 NCAC 59D .0102: DEFINITIONS FOR SUBCHAPTER 59D

02 NCAC 59D .0103: ALLOCATION GUIDELINES AND PROCEDURES FOR THE  
AGRICULTURE COST SHARE PROGRAM

02 NCAC 59D .0104: ALLOCATION GUIDELINES AND PROCEDURES FOR THE COMMUNITY  
CONSERVATION ASSISTANCE PROGRAM

02 NCAC 59D .0105: ALLOCATION GUIDELINES AND PROCEDURES FOR THE  
AGRICULTURAL WATER RESOURCES ASSISTANCE PROGRAM

02 NCAC 59D .0106: BEST MANAGEMENT PRACTICES ELIGIBLE FOR COST SHARE  
PAYMENTS

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

02 NCAC 59D .0108: TECHNICAL ASSISTANCE FUNDS

02 NCAC 59D .0109: COST SHARE AGREEMENT

02 NCAC 59D .0110: DISTRICT PROGRAM OPERATION

Questions, Comments or Concerns with

***DRAFT* Rule Format Revisions**



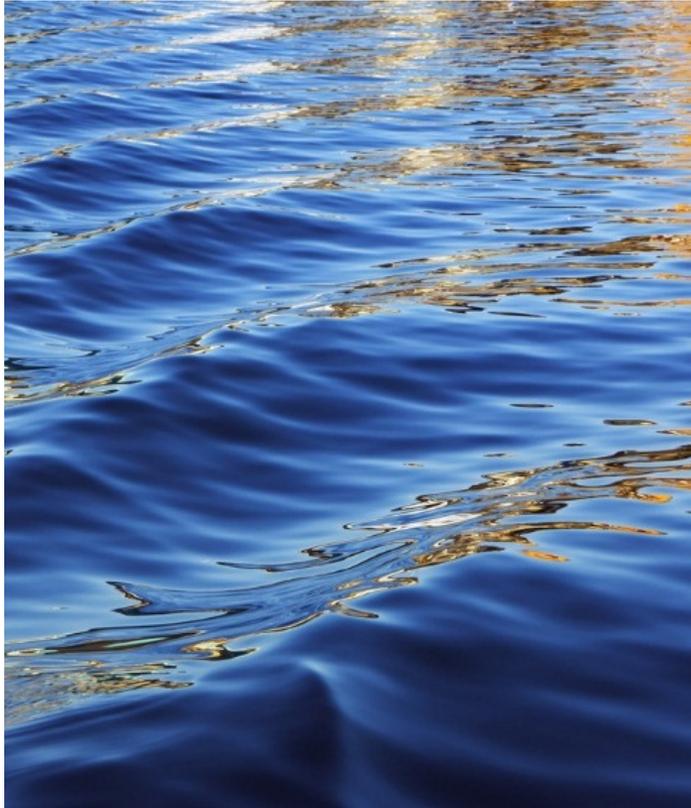
## 2. DRAFT District BMP Allocation

Parameters:

ACSP

CCAP

AgWRAP



# Agriculture Cost Share Program



**Purpose:** To reduce the delivery of agricultural nonpoint source pollution into the waters of the state.

# Agriculture Cost Share Program Rule Suggestions for BMP Allocations

*(District CS and II allocations in CS<sup>2</sup>)*

- Revise data sources from North Carolina Agricultural Statistics to US Census of Agriculture to include more types of commodities and acreage and animals grown in each county.
- Revise impaired waters and special watersheds parameters using best data to account for agricultural areas.
- Combine the performance parameters into one with the same combined weight. Instead of measuring amount encumbered and amount expended; the new parameter would be the percent of program funds installed for BMPs in a set period of time.

# Agriculture Cost Share Program: 02 NCAC 59D .0103

## ALLOCATION GUIDELINES AND PROCEDURES

Parameter	Weight
Proportion of NC Cropland/Pastureland in County	20%
Proportion of NC Animal Units in County	20%
Percent of County Draining to Impaired/Impacted Waters	20%
Percent of County Draining to Special Waters	10%
<del>The percentage of cost share funds allocated to a district that are encumbered to contracts in the highest three of the most recent four completed program years as reported on the NC Agriculture Cost Share Program Database.</del>	<del>10%</del>
Percentage of program funds <del>encumbered to contracts</del> allocated to a district that are <b>actually</b> 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 Program Database.	<del>10%</del> 20%
Rank of Acres of Highly Erodible Land	10%

Questions, Comments or Concerns with

***DRAFT* ACSP District BMP**

**Allocation Parameter Revisions**

# Community Conservation Assistance Program



**Purpose:** To reduce the delivery of nonpoint source pollution into the waters of the state.

# Community Conservation Assistance Program Rule for BMP Allocations

*(District CC allocations in CS<sup>2</sup>)*

- Allocation rule amended November 1, 2016. No significant changes projected.
- The Commission can now specify the amount of funding available for state, regional and district allocations in the annual CCAP Detailed Implementation Plan.
- Revised data sources for district allocations in the rule to reflect best available data.
- Added text to include *The Commission may consider additional factors as recommended by the Division of Soil and Water Conservation when making their allocations.*

# Community Conservation Assistance Program:

## 02 NCAC 59H .0103 ALLOCATION GUIDELINES AND PROCEDURES

Parameter	Weight
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.	20%
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.	20%
The percentage of each county covered by Phase I and Phase II requirements.	20%
Relative rank of population density for the county.	20%
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.	20%

Questions, Comments or Concerns with

***DRAFT* CCAP District BMP**

**Allocation Parameter Revisions**

# Agricultural Water Resources Assistance Program



**Purpose:** To assist farmers and landowners to:

- (a) identify opportunities to increase water use efficiency, availability & storage;
- (b) implement best management practices to conserve & protect water resources;
- (c) increase water use efficiency or
- (d) increase water storage & availability for agricultural purposes.

# Agricultural Water Resources Assistance Program Rule

## Suggestions for BMP Allocations

*(District AG allocations in CS<sup>2</sup>)*

- No existing rule to be replaced, as the program is currently operating as a pilot program. Recommend using the parameters used for FY2017 district allocations.
- Revise data sources from North Carolina Agricultural Statistics to US Census of Agriculture to include more types of commodities and acreage and animals grown in each county.
- Add text to include *The Commission may consider additional factors as recommended by the Division of Soil and Water Conservation when making their allocations.*

# Agricultural Water Resources Assistance Program

## ALLOCATION GUIDELINES AND PROCEDURES - Draft

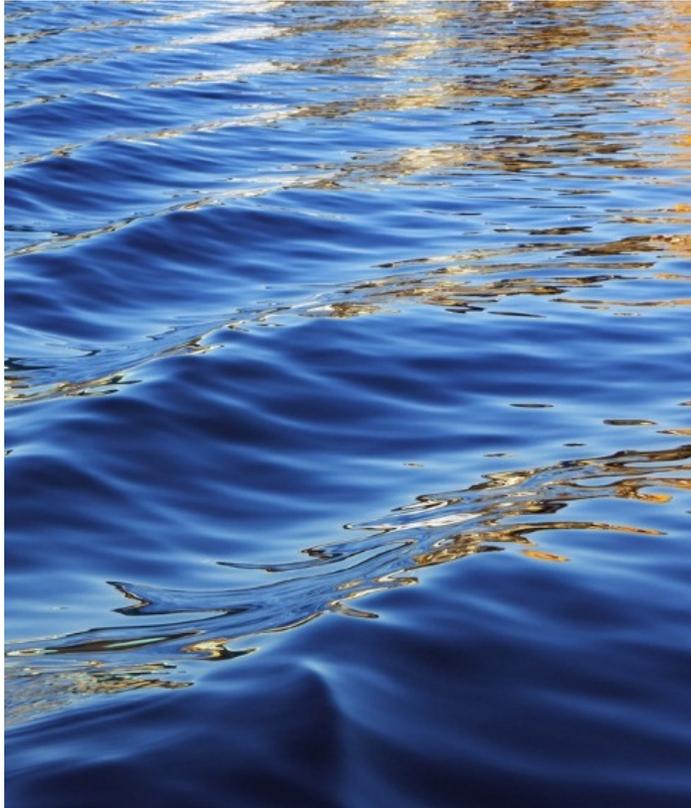
Parameter	Weight
Number of farms (total operations): Census of Agriculture	20%
Total acres of land in farms: Census of Agriculture	20%
Market Value of Sales: Census of Agriculture	15%
Agricultural Water Use: NCDA&CS Agricultural Statistics Division, average of most recent 3 NC Water Use Survey Data	25%
Population Density: State Demographics NC, Office of State Budget and Management, latest certified data available	20%

Questions, Comments or Concerns with

***DRAFT* AgWRAP District BMP  
Allocation Parameter Revisions**



### 3. Discuss Technical Assistance Allocations



# Current Technical Assistance Funding and Trends Over Time

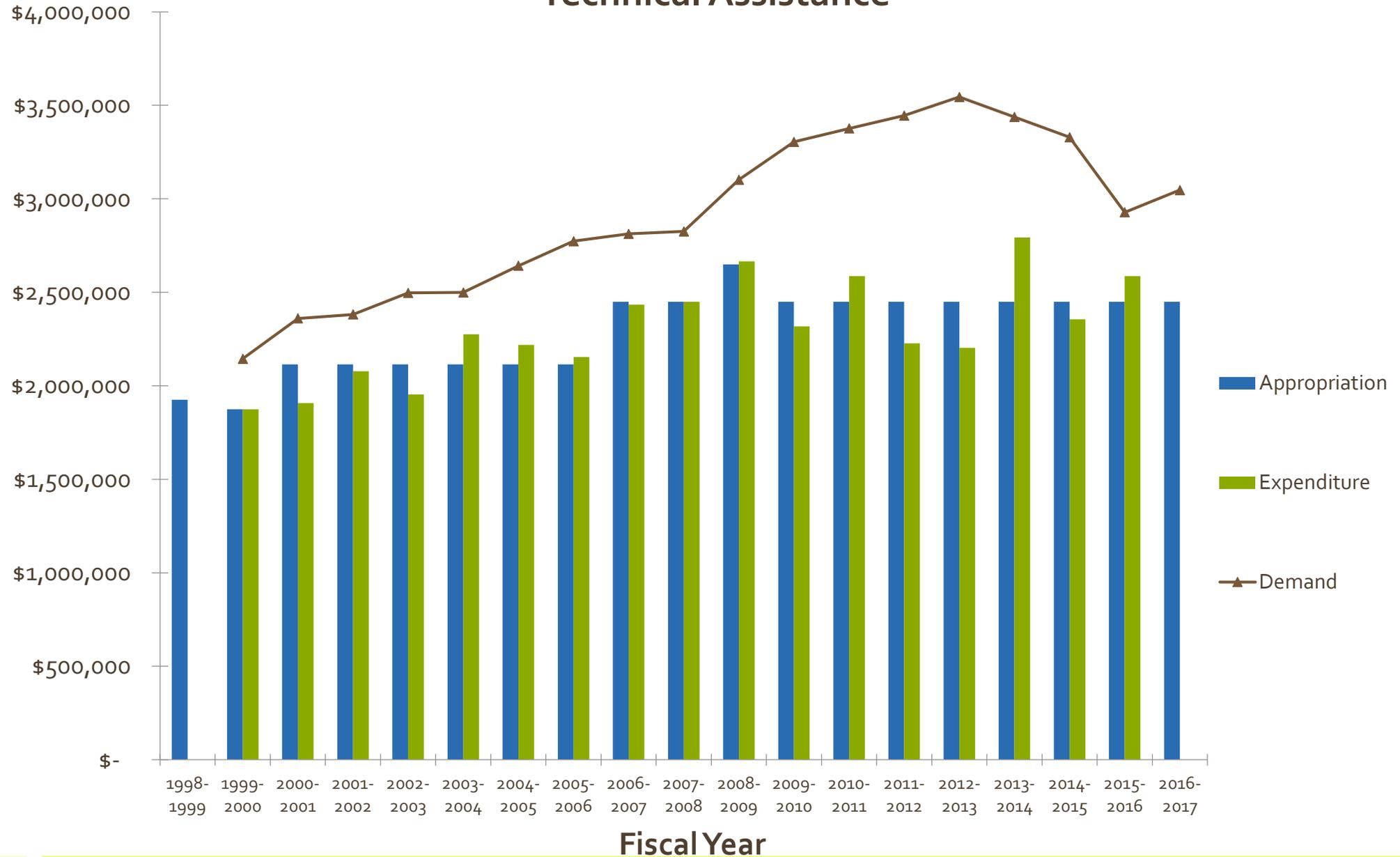
# Technical Assistance: Current Funding

- Funds support **102.6** full-time equivalent positions (FTE)
- Districts with more than 1 FTE:
  - Ashe= 1.6
  - Duplin = 2
  - Henderson = 1.5
  - Orange = 2
  - Johnston = 2
  - Sampson = 2
  - Wayne = 1.25
- Districts with less than 1 FTE:
  - Hoke = 0
  - Martin = 0
  - Pasquotank = 0.5
  - Polk = .75

# Technical Assistance: Current Funding

- On average, SWCC support is providing **40.2% match**; less than the 50% included in the current rule
- Only **8 FTEs** receive 50% match
- 46 FTEs receive the cap of \$25,500
- 56.6 FTEs receive less than the cap
- Average TA allocation is \$23,643; **range from \$17,550 - \$25,500**
- Districts requested increased funding and more equitable distribution of our *limited resources*.

# Appropriation, Expenditure, and Demand Technical Assistance



# Technical Assistance Funding Trend



# Methodology

## Paying for Performance vs. People

\*The number of FTEs currently supported is not a factor.

- The following slides include ideas on how this type of allocation could be calculated.
- Commission feedback is critical to understand how to best revise this rule.
- The Committee will draft rule revisions based on Commission intent.
- Some details may be able to be included in the Commission's Cost Share Program's Detailed Implementation Plan (DIP) adopted at the start of each fiscal year.

# How to Prioritize Technical Assistance Funding?

The committee considered the following options & others:

- Job Approval Authority held by district employees
- Difficulty of BMPs designed and funded in the district
- Technical certifications of district employees
- Trainings attended by district employees
- Dollars spent on conservation practices
- Hybrid of options

**Recommendation is to fund district performance instead of a person.** Aligns with the Commission charge given to Committee.



# Technical Assistance Rule Suggestions

Performance is based on dollars spent on BMPs installed in each county:

- **Weight ACSP, CCAP & AgWRAP BMP expenditures at 100%**, excluding engineering costs
- **Weight BMP expenditures by other funding sources at 50%**
  - Committee is developing a matrix to determine eligibility
  - Must be for water quality or quantity BMP implementation
  - District must have provided TA for BMPs installed
  - Projects outside of matrix will be evaluated by the Cost Share Committee
  - *This category will include federal farm bill programs (ex. EQIP) as well as grants secured by districts or other government entities*

# Technical Assistance Rule Suggestions

- **Minimum technical assistance (TA) allocation = \$20,000/year**
  - Districts would receive funding **above \$20,000** based upon the amount of funding spent on BMPs in their county, compared to the total amount spent in the state.
  - The maximum amount proposed currently is ~\$53,500 (the amount of 2 FTEs + operating)
- This is a different way to allocate limited TA resources
  - Increases in TA funding would be helpful in implementing the existing or suggested revisions to the rule.
  - **The difference is \$4,488 per county\***

# Technical Assistance Math

Recurring annual funding from the General Assembly =  
**\$2,448,778**

If every county in the state requests TA funding:

100 counties x \$20,000 minimum allocation = **\$2,000,000**

Available for allocation using proposed methodology =  
\$448,778 or \$4,488 per county

*Additional funds will be included based on special projects,  
grants and unexpended funds.*

# How Will Technical Assistance Allocations Work?

- TA allocations will be determined every three years, unless there is a significant change in state appropriations, based on the district's performance during the **best three of the last 7 fiscal years**.
- When allocations will be decreased, districts will receive notice of the new allocation amount one year in advance.
- If a district is not spending more from state cost share programs on BMPs than they receive for TA, they must account for and justify why they should continue to receive TA support.
  - The average of the last three years will be calculated when master agreements are completed.
  - The Commission will have the ability to reduce or defer TA funding.

# Scenarios for Technical Assistance Allocations

## Potential methods for calculating performance:

1. Weight other funding sources based on dollars spent per year.
2. Weight EQIP funding based on applications ranked. Apply the same dollar value to all ranked applications regardless of location, BMP or whether approved for funding.

Allocations using each method will be run using three different weights for outside funding:

50%, 25%, 0%

All scenarios weight Commission Cost Share Program funding at 100%

Questions, Comments or Concerns with  
Technical Assistance Allocation Ideas

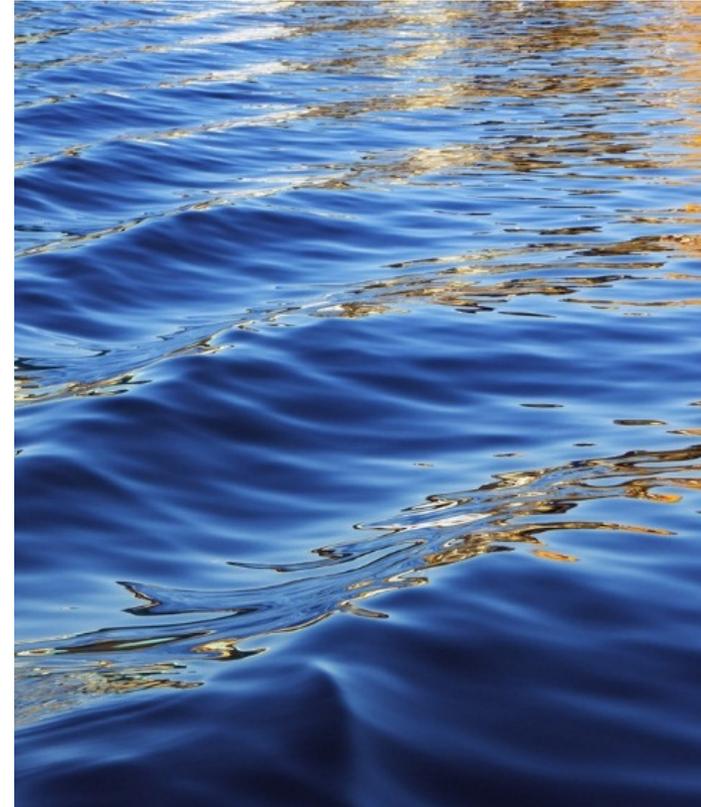
# Technical Assistance Allocation Scenarios

# Technical Assistance Allocation Scenarios

- Option 1: SWCC Cost Share Program Dollars Spent (100%) + Other Funds Dollars Spent (50%)
  - Option 2: SWCC Cost Share Program Dollars Spent (100%) + Other Funds Dollars Spent (25%)
- 
- Option 3: SWCC Cost Share Program Dollars Spent (100%) + EQIP funding based on applications ranked (50%)
  - Option 4: SWCC Cost Share Program Dollars Spent (100%) + EQIP funding based on applications ranked (25%)
- 
- Option 5: SWCC Cost Share Program Dollars Spent (100%)

# Questions, Comments or Concerns with Technical Assistance Allocation Scenarios

*Do you have a preferred scenario?*



**4. Consider Job Approval  
Authority Requirements for  
All Technical Employees**



## Technical Assistance Rule Suggestions

Retain the JAA requirement approved by Commission in 2010 in addition to the performance data.

*All technical district employee(s) shall obtain Job Approval Authority for a minimum of two best management practices from the Commission or the USDA Natural Resources Conservation Service within three years of being hired or within three years of the effective date of this rule, whichever is later. At least one of the best management practices for which the employee has obtained Job Approval Authority must be a design practice.*

*Design practice means an engineering practice as defined by the Natural Resources Conservation Service or the Agricultural Water Resources Assistance Program or Community Conservation Assistance Program Detailed Implementation Plan.*

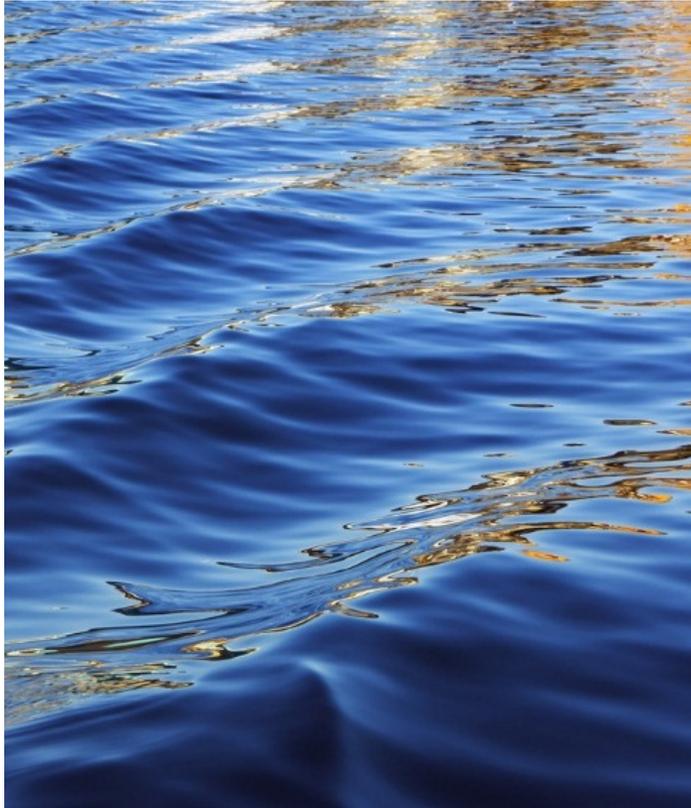
# Eligible Design Practices approved by Commission

- Pond Site Assessment
- Sediment Removal Planning and Certification
- Water Need Assessments
- CCAP: Backyard Rain Gardens (treats impervious areas < 2500 sq. ft.)
- CCAP: Backyard Wetlands (treats impervious areas < 2500 sq. ft.)
- CCAP: Cisterns (< 3,000 gal)
- CCAP: Critical Area Planting
- CCAP: Grassed Swales (if it falls under specific design thresholds)
- CCAP: Impervious Surface Conversion
- CCAP: Riparian Buffers
- CCAP: Streambank and Shoreline Protection

## **Ability to Request an Extension**

District Board of Supervisors may request a one-year extension for their employees in meeting the job approval authority requirement for extenuating circumstances.

Questions, Comments or Concerns with  
Job Approval Authority Requirements  
for all technical employees



## 5. Prepare Schedule for Reviewing Draft Rules



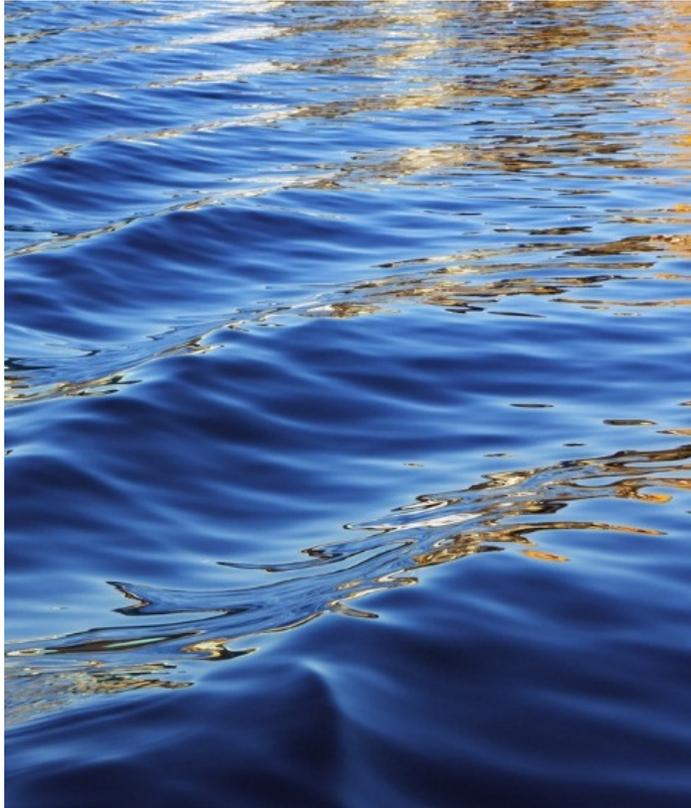
# Draft Schedule

- Commission approves to start the rule making process for text revisions: **TENTATIVE May 2017 or when the Commission takes action**
- Formal public comment period for rule text revisions: **TENTATIVE June – July 2017; or for 60 days after the Commission takes action**
- Commission approves final rules: **TENTATIVE September 2017**
- Final approval from Rules Review Commission. **TENTATIVE November 2017**
- **Revised allocation rules used July 1, 2018.** (FY2019)

# Recommendations on Schedule for Reviewing Draft Rules



**Thank you for your time and  
consideration today!**



## SUBCHAPTER 59D - AGRICULTURE COST SHARE PROGRAM FOR NONPOINT SOURCE POLLUTION CONTROL

### SECTION .0100 - AGRICULTURE COST SHARE PROGRAM

#### 02 NCAC 59D .0101 PURPOSE

This Subchapter describes the operating procedures for the division under the guidance of the commission implementing the Agriculture Cost Share Program for Nonpoint Source Pollution Control. Procedures and guidelines for participating districts are also described. The purpose of the voluntary program is to reduce the delivery of agricultural nonpoint source (NPS) pollution into the water courses of the state.

*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, the following terms used in this Subchapter have the following meanings:

- (1) Agriculture Nonpoint Source (NPS) 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) Allocation means the annual share of the state's appropriation to participating districts.
- (3) Applicant 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. All entities, with which the applicant is associated, including those in other counties, shall be considered the same applicant.
- (4) 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) 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.
- (6) Conservation Plan of Operation (CPO) means a written plan scheduling the applicant's decisions concerning land use, and both cost shared and non-cost shared BMPs to be installed and maintained on the operating unit.
- (7) 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) Cost Share Incentive (CSI) means a predetermined fixed payment paid to an applicant for implementing a BMP in lieu of cost share.
- (9) Cost Share Rate means a cost share percentage paid to an applicant for implementing BMPs.
- (10) Detailed Implementation Plan means the plan approved by the commission that specifies the guidelines for the current program, year including BMPs that will be eligible for cost sharing and the minimum life expectancy of those practices.
- (11) District BMP means a BMP designated by a district to reduce the delivery of agricultural NPS pollution and which is reviewed and approved by the Division to be technically adequate prior to funding.
- (12) Encumbered Funds means monies from a district's allocation which have been committed to an applicant after initial approval of the cost share agreement.
- (13) Full Time Equivalent (FTE) means 2,080 hours per annum which equals one full time technical position.

- (14) 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.
- (15) 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 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 if the governmental agency holds an easement in land.
- (16) Program Year means the period from July 1 through June 30 for which funds are allocated to districts.
- (17) Proper Maintenance means that a practice(s) is being maintained such that the practice(s) is successfully performing the function for which it was originally implemented.
- (18) Soil Loss Tolerance (t) means the maximum allowable annual soil erosion rate to maintain the soil resource base, depending on soil type.
- (19) Strategy Plan means the annual plan for the N.C. Agriculture Cost Share Program for Nonpoint Source Pollution Control to be developed by each district. The plan identifies pollution treatment needs and the level of cost sharing and technical assistance monies required to address those annual needs in the respective district.
- (20) 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) Unencumbered Funds means the portion of the allocation to each district which 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 ALLOCATION GUIDELINES AND PROCEDURES**

(a) The Commission shall allocate the cost share funds to the districts in the designated program areas. 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. 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 shall be allocated monies based on the identified level of agriculture-related nonpoint source pollution problems, the respective district's BMP installation goals as demonstrated in the district annual strategy 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		Total	Dollars Available
	Points Each	x	Dollars	=
				to

- |     | District  | Available | 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) 95 percent of the total program funding 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 be used to respond to an emergency or natural disaster. If the funds are not needed to respond to an emergency, then the contingency fund shall be allocated at the March meeting of the Commission.

(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 plan and apply to the Commission for additional funds.

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

(g) 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. 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 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 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, 305(b) report, and basin plan. (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, Shellfishing, 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) Percentage of program funds encumbered to contracts that are actually expended for installed BMPs in the best three 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 Program Database. (10%)
- (7) Relative rank of the average erosion rate for agricultural land in the county as reported in the National Resources Inventory, 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.*

(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.

*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**

(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.

*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 .0105 Eff. May 1, 2012.*

## **02 NCAC 59D .0106 TECHNICAL ASSISTANCE FUNDS**

(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.

*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**

(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(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. 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.

*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**

(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.

*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.*