

CHAPTER 59 - SOIL AND WATER CONSERVATION COMMISSION

SUBCHAPTER 59A - ORGANIZATION AND OPERATION

SECTION .0100 - GENERAL PROVISIONS

02 NCAC 59A .0101 OBJECTIVES

History Note: Authority G.S. 106-840;
Eff. February 1, 1976;
Amended Eff. August 1, 1982;
Transferred from 15A NCAC 06A .0101 Eff. May 1, 2012;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 19, 2015;
Repealed Eff. March 1, 2022.

02 NCAC 59A .0102 ADDRESS

The Division of Soil and Water Conservation, Department of Agriculture & Consumer Services is located at 216 West Jones Street, Raleigh, North Carolina 27603. The mailing address is 1614 Mail Service Center, Raleigh, North Carolina 27699-1614.

History Note: Authority G.S. 139-4; 106-840; 106-841;
Eff. February 1, 1976;
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Transferred from 15A NCAC 06A .0107 Eff. May 1, 2012;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 19, 2015;
Amended Eff. March 1, 2022.

02 NCAC 59A .0103 DEFINITIONS

As used in this Chapter:

- (1) "Association" means the North Carolina Association of Soil and Water Conservation Districts;
- (2) "Commission" means the Soil and Water Conservation Commission created by G.S. 106-840;
- (3) "Department" means the Department of Agriculture & Consumer Services;
- (4) "District" or "soil and water conservation district" means as defined in G.S. 139-3(5);
- (5) "Division" means the Division of Soil and Water Conservation;
- (6) "Public Law 83-566" means the Watershed Protection and Flood Prevention Act of 1954, P.L. 83-566, 68 Stat. 666 [codified at 16 U.S.C. 1001-07 (1976)];
- (7) "Supervisor" means one of the members of the governing body of a district.

History Note: Authority G.S. 139-4; 106-840;
Eff. September 1, 1982;
Amended Eff. June 1, 1990;
Transferred from 15A NCAC 06A .0108 Eff. May 1, 2012;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 19, 2015;
Amended Eff. March 1, 2022.

02 NCAC 59A .0104 SUPERVISOR VACANCIES

History Note: Authority, G.S. 106-840;
Eff. September 1, 1986;
Amended Eff. July 1, 1988;
Transferred from 15A NCAC 06A .0109 Eff. May 1, 2012;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 19, 2015;

Repealed Eff. March 1, 2022.

SECTION - .0200 SUPERVISOR TRAINING PROGRAM

02 NCAC 59A .0201 GENERAL

- (a) Supervisors shall receive training as set forth in this Section regarding soil, water, natural resources conservation, and the duties and responsibilities of Supervisors as set forth in Chapter 139, Article I, of the North Carolina General Statute.
- (b) The Commission shall provide oversight for the Supervisor Training Program, including both required and continuing training requirements. The Division shall approve specific training courses and related credits as outlined in the rules of this Section. The Commission shall retain authority to consider appeals of decisions to deny or limit credit for courses or events.

*History Note: Authority G.S. 106-840(a)(2); 106-841(g); 139-4(d)(13); 139-7.2;
Eff. March 1, 2022.*

02 NCAC 59A .0202 REQUIRED BASIC TRAINING

- (a) All Supervisors shall complete Basic Training for Soil and Water Conservation District Supervisors.
- (b) Participation in this required basic training course shall be completed within the first year of service as an elected or appointed Supervisor.
- (c) For Supervisors serving prior to December 2022, documentation of previous participation in this required basic training course shall meet the requirement as set forth in this Rule.
- (d) For Supervisors that are re-elected in December 2022 that have not previously participated in this required basic training course, participation shall be required in 2023 or at the next available offering.
- (e) The Commission shall review and approve the Basic Training curriculum annually and publish the approved curriculum on its website. The training shall include those topics set forth in G.S. 139-7.2.
- (f) Basic Training curriculum shall include the duties and responsibilities of district Supervisors.
- (g) Basic Training may be provided by the School of Government at the University of North Carolina at Chapel Hill or other qualified sources as outlined in Rule .0204(c)(3) of this Section.

*History Note: Authority G.S. 139-4(d)(13); 139-7.2;
Eff. March 1, 2022.*

02 NCAC 59A .0203 CONTINUING TRAINING REQUIREMENTS

- (a) All Supervisors shall obtain six Supervisor Training Credits per term of service as set forth in Rule .0204 of this Section.
- (b) Supervisor Training Credits earned for required training in Rule .0202 of this Subchapter shall be credited toward the requirements of this Rule.

*History Note: Authority G.S. 139-4(d)(13); 139-7.2;
Eff. March 1, 2022.*

02 NCAC 59A .0204 SUPERVISOR TRAINING CREDITS

- (a) Supervisor Training Credits shall be assigned as one credit being equal to one hour of instruction that deals with content relevant to the topics included in Paragraph (b) of this Rule. Credits are approved in 15-minute increments.
- (b) Credits shall be awarded for training that covers topics as outlined in G.S. 139-7.2(b).
- (c) Credits may be attained:
 - (1) At local board meetings when a presentation that meets the requirements set forth in Paragraph (b) of this Rule is delivered;
 - (2) At local board meetings using resource material that meets the requirements set forth in Paragraph (b) of this Rule;
 - (3) Through classroom training, field days, or events sponsored by the District, the Association, the Commission, the Division, the Natural Resources Conservation Service, or the School of Government at the University of North Carolina at Chapel Hill.
- (d) Other events or activities may be individually approved by the Commission when they meet the requirements of this Rule. Requests shall be submitted in writing to the Commission through the Division at the address provided in

Rule .0102 of this Section. Supervisors may submit a request for Supervisor Training Credit hours for training achieved beyond Subparagraphs (c)(1) – (3) of this Rule. Supervisor requests shall provide documentation for how the other events or activities meet requirements outlined in Paragraph (b) of this Rule.

(e) Credit shall not be given for the same course or resource materials more than two times in a given term.

(f) The record of credits earned shall be maintained by the Division. Awarded credits shall be posted on the Division website. Supervisors shall be responsible for verifying recorded credits for accuracy.

*History Note: Authority G.S. 139-4(d)(13); 139-7.2;
Eff. March 1, 2022.*

SECTION .0300 - SUPERVISOR REMOVAL

02 NCAC 59A .0301 SUPERVISOR REMOVAL PROCEDURES AND REPORTING

(a) District Supervisors may be removed by the Commission for neglect of duty, incompetence, or malfeasance pursuant to G.S. 139-7. Evidence of neglect of duty shall include the failure to attend three consecutive regularly scheduled district meetings, except when prevented by illness. Evidence of neglect of duty shall also include the failure of sitting Supervisors to meet training requirements set forth in Section .0200 of this Subchapter.

(b) District boards shall submit a Supervisor attendance report, annually, for all members. This report shall be delivered by January 31 of each year. Reports shall cover the time period beginning December 1 and ending November 30 of the previous year.

(c) Each District board shall notify the Commission in writing of any member that has failed to attend three consecutive regularly scheduled meetings, except when prevented by illness of the Supervisor. Notification from the District shall include explanation for non-attendance and the actions that the District board has taken to address the Supervisor's attendance.

(d) The Division shall provide to the Commission the following information:

- (1) training documentation of participants in Basic Training for Soil and Water Conservation District Supervisors by April 1 of each year; and
- (2) a summary of Supervisor Training Credits outlined in Rule .0204 of this Subchapter by February 1 of odd years.

(e) The Inquiry Committee outlined in Rule .0302 of this Section shall review documentation submitted to the Commission by the Districts and the Division, and shall take action as outlined in Rule .0302 of this Section.

(f) When the Inquiry Committee determines that neglect of duty, incompetence, or malfeasance has occurred in accordance with G.S. 139-7 and Rule .0302 of this Section, and refers the Supervisor to the Commission for a hearing, the Commission shall take hardship; including illness, financial and familial obligations, and circumstances beyond the control of the Supervisor, into consideration prior to removal from office for neglect of duty.

(g) At least 30 days prior to the consideration of removing a Supervisor from office, the Commission, through the Division, shall provide the Supervisor notice of the grounds for which removal is being considered. The Supervisor may provide a written response to the Commission within 15 days of receipt of the notice. Notice shall be provided as follows:

- (1) The copy of the notice shall be transmitted to the Supervisor by certified United States Mail, return receipt requested, or by any other means by which a delivery receipt can be provided. If the notice is returned undeliverable the Commission, through the Division, shall send notice to the Supervisor's last known address via United States Postal Service, First Class Mail.
- (2) The notice shall include the date, time, and location of the meeting at which removal will be considered, and inform the Supervisor of the opportunity to address the Commission.
- (3) The notice shall notify the Supervisor that the failure to submit a written response and failure to appear before the Commission may be considered evidence that the Supervisor does not object to being removed.
- (4) A copy of the notice shall be forwarded to the District board of which the Supervisor is a member. The copy of the notice may be transmitted to the District board electronically or by United States Postal Service, First Class Mail. The District board may submit information in support of, or opposition to, the Supervisor's removal.

(h) When the matter comes before the Commission, the Supervisor shall be allowed an opportunity to address the Commission and provide information regarding the matter. The time period for addressing the Commission shall be limited to 15 minutes.

(i) If the matter comes before the Commission at the request of a District board, then a member of the District board shall present the request to the Commission and shall provide the Commission with information in support of the request. Any information provided to the Commission to support a District board's request shall also be provided to the Supervisor.

(j) The Commission may hear information from Division staff and from the District board, including the District board's staff. As part of the hearing the Chair may allow other individuals to be heard regarding the matter before the Commission.

(k) If after considering the material before it the Commission acts to remove the Supervisor, the Commission shall notify the Supervisor in writing.

(l) In making its determination whether neglect of duty, incompetence, or malfeasance in accordance with G.S. 139-7 has occurred, the Commission shall consider the information in the record before it, including the information received during the hearing.

*History Note: G.S. 106-840; 139-7;
Eff. March 1, 2022.*

02 NCAC 59A .0302 INQUIRY COMMITTEE

(a) When a Supervisor is considered for removal for neglect of duty, incompetence, or malfeasance as set forth in G.S. 139-7, an Inquiry Committee shall take preliminary actions. Preliminary actions shall include the review of information submitted by the requesting District and the Supervisor whose removal is requested, or review of training documentation submitted by the Division.

(b) The Inquiry Committee shall be appointed by the Commission Chair when a Supervisor is considered for removal. The Inquiry Committee shall include three members. When making appointments to the Inquiry Committee the Commission Chair shall consider whether each member has a conflict of interest or whether other appropriate grounds exist that would prevent the member from serving on the Committee. In the event a member of the Inquiry Committee is unable to serve, the Commission Chair shall replace the member with another member of the Commission.

(c) Upon receipt of written notice from a District requesting removal of a supervisor or supervisor training documentation provided by the Division, the Inquiry Committee shall request a written explanation from the Supervisor. The Inquiry Committee, through the Division, shall request any supplemental information to be provided by the Supervisor in writing within 30 days. The request shall be transmitted to the Supervisor by certified United States Mail, return receipt requested, or by any other means by which a delivery receipt can be provided.

(d) After reviewing written documentation from the District and any written information provided by the Supervisor or training documentation submitted by the Division, the Inquiry Committee may:

- (1) Determine that neglect of duty, incompetence, or malfeasance has occurred, as determined on a case-by-case basis, and refer the Supervisor to a hearing by the Commission as set forth in Rule .0301 of this Section;
- (2) Determine that basic or continuing training requirements be extended by one year; or
- (3) Determine that a hearing is unnecessary and the matter will be closed without further action.

(e) In making the determination outlined in Paragraph (d) of this Rule, the Inquiry Committee shall take hardship, including illness, financial and the familial obligations, and circumstances beyond the control of the Supervisor, into consideration.

*History Note: Authority G.S. 106-840; 139-7.2;
Eff. March 1, 2022.*

SUBCHAPTER 59B - DISTRICT PROGRAMS: REORGANIZATION AND EXPENSES

02 NCAC 59B .0101 STEPS TO BE FOLLOWED IN DIVIDING LARGE DISTRICTS

The division of large districts shall proceed as follows:

- (1) Petition to divide the district submitted by the Board of District Supervisors to the commission;
- (2) District board notified of approval;
- (3) New board applies to the Secretary of State for certificate of organization:
 - (a) forms sent to supervisors by the commission;
 - (b) supervisors sign application, have it notarized, and return it to the commission;

- (c) Secretary of State issues certificate of organization;
- (4) Board of supervisors organized in accordance with North Carolina law;
 - (a) additional board members appointed by the commission upon recommendation of board members;
 - (b) chairman, vice-chairman, and secretary-treasurer elected;
- (5) Supervisors informed of their duties and responsibilities and of the availability of commission assistance;
- (6) District program and work plan developed;
- (7) District board formally adopts district program and work plan;
- (8) Basic memorandum of understanding signed by district and U.S. Department of Agriculture on form supplied by the commission;
- (9) Supplemental memorandum of understanding signed by district and U.S. Soil Conservation Service on form supplied by the Soil Conservation Service;
- (10) Memorandum of understanding signed by District and Division of Forestry on form supplied by the commission;
- (11) District annual plan of operations developed;
- (12) District supervisors now assume responsibility for the district program.

History Note: Authority G.S. 106-840; 139-14; Eff. February 1, 1976; Amended Eff. July 1, 1988; October 1, 1984; September 1, 1982; Transferred from 15A NCAC 06B .0101 Eff. May 1, 2012; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 19, 2015.

02 NCAC 59B .0102 AUTHORIZATION OF GENERAL EXPENSES FOR GRANT-MATCHING

Each district embracing a single county, and each county committee of a district embracing more than one county, has the authority to receive, from the "general expenses" category of the commission budget during any fiscal year a disbursement, calculated with reference to the amount appropriated to the district by the county. The following formula controls disbursement of funds:

Given:

appropriation = total appropriation by state legislature
 for this matching fund program
 base rate = $\frac{\text{appropriation}}{\text{number of counties in state}}$

$\frac{\text{number of counties in state}}{\text{number of counties in state}}$

x = amount received from county funds

y = amount of state funds commission will disburse to district

Group A = county programs receiving county funds less than or equal to the base rate

Group B = county programs receiving county funds greater than the base rate

Formula:

For any county program in Group A:

if $x < \text{base rate}$, then $y = x$

For any county program in Group B:

if $x > \text{base rate}$, then $y =$

$\frac{\text{appropriation} - \text{amount disbursed to Group A}}{\text{number of counties in Group B}}$

Example: If a state with three counties appropriated \$9000 for the matching fund program, and if County #1 appropriated no funds, County #2 \$3000, and County #3 \$25,000, then the commission's disbursement would proceed as follows:

County #1	0
County #2	\$3000

County #3 \$6000

History Note: Authority G.S. 106-840; 139-4(d);
 Eff. February 1, 1976;
 Amended Eff. November 1, 1978;
 Emergency Amendment Eff. September 11, 1980 for a Period of 120 Days to Expire January 8,
 1981;
 Emergency Amendment Made Permanent [with change] Eff. December 5, 1980;
 Amended Eff. September 1, 1982;
 Transferred from 15A NCAC 06B .0102 Eff. May 1, 2012;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September
 19, 2015.

02 NCAC 59B .0103 REQUIREMENT FOR DISBURSEMENTS

The commission shall not disburse "general expense" funds until the district submits an "Application", Form 203, requesting the funds, properly signed by the chairman of the district or of the county committee, and properly notarized and signed by a county official stipulating the amount of county funds appropriated for the district.

History Note: Authority G.S. 106-840; 139-4(d);
 Eff. February 1, 1976;
 Amended Eff. September 1, 1988; September 1, 1982;
 Transferred from 15A NCAC 06B .0103 Eff. May 1, 2012;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September
 19, 2015.

02 NCAC 59B .0104 LIMITATION OF FUNDS

The districts may not budget or spend general expense funds for:

- (1) supervisor travel and per diem in excess of those normally paid by the commission;
- (2) area dues;
- (3) state association dues; or
- (4) NACD dues.

History Note: Authority G.S. 106-840; 139-4(d);
 Eff. February 1, 1976;
 Amended Eff. September 1, 1982;
 Transferred from 15A NCAC 06B .0104 Eff. May 1, 2012;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September
 19, 2015.

SUBCHAPTER 59C - SMALL WATERSHED PROGRAM

SECTION .0100 - WATERSHED LOANS

02 NCAC 59C .0101 WATERSHED REVOLVING LOANS

(a) Eligibility. The commission may make loans to local sponsors of projects organized or in the process of organizing as:

- (1) a county watershed improvement program under G.S. 139-39:
 - (A) board of county commissioners; or
 - (B) watershed improvement commission appointed by county commissioners.
- (2) a drainage district under G.S. 156-54.

Loan eligibility accrues only after the applicant forms or begins the process of forming a legal organization, presents evidence of such formation or formation process to the commission and attains commission approval.

- (b) **Prior Approval.** The governing body of the sponsoring district or districts may approve a loan application by adopting an appropriate resolution at a regular meeting attended by a majority of the members, by entering the resolution in the official minutes of the meeting, and by attaching a certified copy to the loan application.
- (c) **Application.** The application for a loan shall be accompanied by:
- (1) a surety bond executed in favor of the commission in an amount equal to the face value of the loan;
 - (2) a statement of assurance from the board or boards of county commissioners that the commission shall not suffer loss in the event the local sponsors fail to meet the terms of the loan;
 - (3) a statement of assurance from other legal body, agency, or corporation, satisfactory to the commission, that the commission shall not suffer loss in the event the local sponsors fail to meet the terms of the loan.
- (d) **Use of Funds.** Principal expenses for which borrowed funds may be used include:
- (1) land classification;
 - (2) preparation of assessment rolls;
 - (3) legal and engineering fees;
 - (4) court costs;
 - (5) securing easements or other interests in land; and
 - (6) compensating landowners for damages caused by removal or by replacement of existing facilities.
- (e) **Loan Costs (To Borrower).** The commission shall not make interest or loan charges for the term of the loan specified in the contract, but may assess a penalty charge for late payment, calculated from the contract repayment date to the actual repayment date, at a rate of 1 percent of the outstanding balance for each month or fraction of a month.
- (f) **Amount of Loan.** The commission shall determine the amount of the loan and the length of the contract based on the merits of each individual application. In order to realize maximum benefits from the fifty thousand dollars (\$50,000) available for loan purposes, prospective borrowers shall give careful consideration to the following points as they prepare their loan applications:
- (1) the minimum amount necessary to meet the immediate needs of the district;
 - (2) actual need; and
 - (3) the shortest possible repayment schedule.
- (g) **Policy.** The commission shall manage these funds, and the watershed sponsors shall cooperate in sharing these funds, in order to render the greatest possible benefit to the state conservation program.

*History Note: Authority G.S. 106-840; 139-4(d);
 Eff. February 1, 1976;
 Amended Eff. August 1, 1982; December 5, 1980;
 Transferred from 15A NCAC 06C .0101 Eff. May 1, 2012;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 19, 2015.*

SECTION .0200 - WATERSHED APPLICATIONS

02 NCAC 59C .0201 APPLICATION PROCEDURE

The consideration of an application for planning assistance through P.L. 566 shall follow these steps:

- (1) Application received by the commission.
- (2) Field examination and study made by watershed planning staff and representatives of other agencies to determine feasibility of the project.
- (3) Representatives of the commission, and other agencies meet with local people in order to:
 - (a) outline local responsibilities in watershed program:
 - (i) inform local people of the project,
 - (ii) acquire necessary easement,
 - (iii) provide maintenance,
 - (iv) share cost on project;
 - (b) explain need for legal organization.
- (4) Commission representatives attending such meeting provide a written report to the commission regarding pertinent information secured during meeting.

- (5) Consideration of recommendations requested from the appropriate fish and wildlife agency, provided that the commission receives such recommendations within 30 days after the request.
- (6) The commission reviews the application, and either approves or disapproves it.
- (7) Application assigned high or low priority by the commission.

History Note: Authority G.S. 106-840; 139-4(d);
 Eff. February 1, 1976;
 Temporary Amendment [(4)(a)] Eff. March 17, 1982 for a Period of 120 Days to Expire on July 14, 1982;
 Amended Eff. August 1, 1982; July 14, 1982; December 5, 1980; November 1, 1978;
 Transferred from 15A NCAC 06C .0201 Eff. May 1, 2012;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 19, 2015.

SECTION .0300 - SMALL WATERSHED PLANS

02 NCAC 59C .0301 PROJECTS INVOLVING CHANNELIZATION

The commission will evaluate the necessity of channelization in watershed improvements or drainage projects after the completion of a preliminary report. The following process will be used:

- (1) The project sponsors shall notify the commission of the completed report.
- (2) The commission shall establish a date for a public hearing and designate a hearing officer(s) and a reporter in accordance with the requirements of G.S. 139-47(b).
- (3) A notice of the hearing shall be published.
- (4) During the hearing all parties will be provided an opportunity to present written or oral submissions. A complete record will be kept of the hearing. The parties have 30 days to submit their conclusions.
- (5) The hearing officer(s) reports to the commission and the channelization is approved or disapproved in accordance with the regulations of G.S. 139-47.

History Note: Authority G.S. 106-840;
 Eff. September 1, 1982;
 Amended Eff. October 1, 1984;
 Transferred from 15A NCAC 06C .0301 Eff. May 1, 2012;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 19, 2015.

02 NCAC 59C .0302 APPROVAL OF WORKPLANS

Approval of workplans shall be as follows:

- (1) The commission's review will be of completed workplans.
- (2) The division staff will determine if a workplan supplement constitutes changes necessary for the commission's review.
- (3) The commission may accept the operations and maintenance section of the workplan as the sponsors plan of operation or request a separate document.

History Note: Authority G.S. 106-840; 139-4(d)(8);
 Eff. September 1, 1982;
 Transferred from 15A NCAC 06C .0302 Eff. May 1, 2012;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 19, 2015.

02 NCAC 59C .0303 APPROVALS TO EXERCISE THE POWER OF EMINENT DOMAIN

A county and a watershed district may apply to the commission for approvals to exercise the power of eminent domain. Before the commission will approve an applicant's request to condemn land for a proper purpose, that applicant shall provide the commission the following information at least 30 days prior to a commission hearing:

- (1) a written statement with copies to the division and to the landowners involved, stating the applicant's purpose;

- (2) a resolution adopted by the local Soil and Water Conservation District supporting the acquisition and identifying each parcel by landowner and by specific watershed development site;
- (3) a written statement describing efforts made to secure a property interest in each parcel and a copy of the appraisal;
- (4) a map of the land needed from each specific landowner that shows:
 - (a) the location of the needed land in relation to the specific project site;
 - (b) the location of the needed land in relation to the landowner's total tract;
 - (c) the location of that portion of the land devoted to:
 - (i) the permanent pool;
 - (ii) the flood pool;
 - (iii) other purposes of water storage; if applicable,
 - (iv) the borrow area;
 - (v) the construction work area; and
 - (vi) recreational facilities.

*History Note: Authority G.S. 106-840; 139-4(d);
 Eff. September 1, 1982;
 Transferred from 15A NCAC 06C .0303 Eff. May 1, 2012;
 Readopted Eff. November 1, 2017.*

SECTION .0400 - SMALL WATERSHED GRANTS

02 NCAC 59C .0401 APPLICATIONS

- (a) An applicant shall submit the application for a project grant on Form 001G, "Application for State Grant Funds and Instruction", and shall complete Form 002Q, "Questionnaire for Determining Review Criteria".
- (b) An applicant shall submit the application and supporting documents to the commission in such form and in such number as specified in the application instructions.
- (c) An applicant shall complete the application form in full.
- (d) Upon the commission's request an applicant shall furnish information in addition to the information contained in the application and supporting documentation.
- (e) An applicant may amend a pending application any time prior to the final determination of the priority assigned the application.

*History Note: Authority G.S. 106-840; 139-4(d); 139-53;
 Eff. September 1, 1982;
 Transferred from 15A NCAC 06C .0401 Eff. May 1, 2012;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 19, 2015.*

02 NCAC 59C .0402 LAND RIGHTS ACQUISITION COSTS

- (a) State grants pursuant to Article 4 Chapter 139 may cover up to fifty percent of land rights acquisition costs for water retarding structure sites which include flood prevention and/or water supply, and for recreation sites. Such costs include:
 - (1) the actual costs of titles or easements for landrights for the following:
 - (A) flood retarding structure sites, and impoundment areas;
 - (B) water supply sites;
 - (C) recreational sites;
 - (D) access roads necessary for construction, operation, and maintenance of (A), (B), or (C) of this Paragraph; and
 - (E) "uneconomic remnants" as defined in Public Law 91-646;
 - (2) the following administration costs:
 - (A) cost of surveying; land rights taking lines;
 - (B) contract relocation advisory service and contract appraisal fees by qualified personnel;
 - (C) relocation assistance expenses;
 - (3) the following modification costs:
 - (A) public utilities;

- (B) public highways;
- (C) private roads;
- (D) floodproofing that would prevent additional land rights acquisition costs.

(b) Such costs do not include the following:

- (1) attorney fees;
- (2) land costs for title or easements acquired for purposes other than those stated in this Rule;
- (3) negotiator's or land rights agent's fees or salaries;
- (4) watershed administrator's fees or salaries;
- (5) watershed commissioner's or trustee's fees, salaries or expenses;
- (6) any fees, salaries, or expenses of an employee of the local sponsor;
- (7) any administrative costs not included in this Rule.

*History Note: Authority G.S. 106-840; 139-4(d); 139-54(1);
Eff. September 1, 1982;
Amended Eff. October 1, 1984;
Transferred from 15A NCAC 06C .0403 Eff. May 1, 2012;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 19, 2015.*

02 NCAC 59C .0403 ENGINEERING FEES

(a) State grants may cover up to fifty percent of the non-federal costs resulting from engineering fees and expenses, however, state grants may not cover any of the costs associated with Drainage District's engineers fees and expenses.

(b) State grants may not cover feasibility studies or other planning work.

(c) State grants may not cover construction inspection provided by the local sponsor when in addition to that provided by the Soil Conservation Service.

*History Note: Authority G.S. 106-840; 139-4(d); 139-54(2); 156-61; 156-71;
Eff. September 1, 1982;
Amended Eff. March 1, 1987;
Transferred from 15A NCAC 06C .0404 Eff. May 1, 2012;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 19, 2015.*

02 NCAC 59C .0404 WATER SUPPLY NEEDS

(a) State grants may cover up to fifty percent of non-federal project costs, incurred to fulfill future and present water supply needs in conjunction with watershed improvement works, as follows:

- (1) land rights acquisition costs as described in Rule .0402 of this Section; and
- (2) all structural construction costs related to the development of water supply.

(b) State grants shall not cover nonstructural costs; for example, the costs of constructing pumps, pump stations, and pipe lines.

*History Note: Authority G.S. 106-840; 139-4(d); 139-54(3);
Eff. September 1, 1982;
Transferred from 15A NCAC 06C .0405 Eff. May 1, 2012;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 19, 2015.*

02 NCAC 59C .0405 CONSTRUCTION COST FOR WATER MANAGEMENT PURPOSES

(a) State grants may cover up to 66 2/3 percent construction costs for water management (drainage and irrigation), excluding all land rights acquisition costs.

(b) The following are considered construction costs for water management:

- (1) public utilities relocation or modification costs; and
- (2) public and private road relocation or modification costs.

(c) The following are not considered construction costs for water management:

- (1) administrative costs;

- (2) construction inspection; and
- (3) legal fees.

History Note: Authority G.S. 106-840; 139-4(d); 139-54(5);
Eff. September 1, 1982;
Amended Eff. March 1, 1987;
Transferred from 15A NCAC 06C .0407 Eff. May 1, 2012;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 19, 2015.

02 NCAC 59C .0406 ELIGIBLE PROJECTS

- (a) Only projects developed under Public Law 83-566 that have a work plan published by the Soil Conservation Service, by cooperating governmental agencies, and by the local sponsors, and that have received approval from the federal government and from the commission, enjoy grant eligibility.
- (b) When other state funds are received by a project, the amount shared upon by the other state agency will be subtracted from the non-federal cost to determine the amount eligible for a commission grant. Only the portion of the other agency's funds used towards costs covered in Rules .0402, .0403, .0404, and .0405 in this Subchapter and other costs described in Article 4 Chapter 139 will be included in this computation.
- (c) If another state agency subsequently funds a project, the commission will make the necessary changes in its grant to ensure conformance with Paragraph (b) of this Rule.
- (d) The commission will take into consideration other private and public financial assistance sources such as a utility company, etc., when authorizing a grant. If additional funding occurs after the grant authorization, the commission may decrease its grant.

History Note: Authority G.S. 106-840; 139-4(d); 139-53;
Eff. September 1, 1982;
Amended Eff. October 1, 1984
Transferred from 15A NCAC 06C .0410 Eff. May 1, 2012;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 19, 2015.

02 NCAC 59C .0407 CONSIDERATIONS FOR REVIEWING APPLICATIONS

In reviewing grant applications for Small Watershed projects, the commission shall consider the financial resources of the sponsoring organization, as follows:

- (1) "cash on hand" to cover local project costs after receipt of state grant funds; or
- (2) local county commissioners' resolution promising to include the local share of matching funds in annual budgets; or
- (3) proof of FHA loan, additional grant funds, or any other reliable source of funds.

History Note: Authority G.S. 106-840; 139-4(d); 139-55;
Eff. September 1, 1982;
Amended Eff. October 1, 1984;
Transferred from 15A NCAC 06C .0411 Eff. May 1, 2012;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 19, 2015.

02 NCAC 59C .0408 APPROVAL AND DISAPPROVAL OF APPLICATIONS

- (a) The commission shall approve, approve in part, or disapprove each application received.
- (b) The commission shall notify each applicant of its decision within 90 days of receipt of the application.
- (c) Rejected applicants may reapply the following year.
- (d) The commission shall return rejected applications to the applicant.
- (e) The commission shall process approved applications according to the procedures set forth in this Section.

History Note: Authority G.S. 106-840; 139-4(d); 139-55;
Eff. September 1, 1982;
Transferred from 15A NCAC 06C .0412 Eff. May 1, 2012;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 19, 2015.

02 NCAC 59C .0409 PRIORITY CRITERIA

The commission shall determine the order in which approved applications shall receive state grant funds by evaluating the following criteria:

- (1) financial resources of the local sponsoring organizations: preference will be given to projects which offer the greatest assurance of the availability of funds for the local cost share;
- (2) nonstructural measures: projects which include non-structural measures in the work plan will be given preference for grant funds;
- (3) regional benefits: projects which provide benefits to an area greater than the project area or the area of jurisdiction of the approved applicant are preferred;
- (4) state-owned lands and properties: preference will be given to projects which include direct benefit to state-owned lands and properties;
- (5) geographic regions: it is the preference of the commission to balance grant awards across the regions of the state; to that end the geographic location of the current project and the location of projects with previous grants will be considered;
- (6) multipurpose uses: projects which include multiple purposes such as, flood prevention, water supply and recreation, will be given preference;
- (7) land treatment: preference will be given to projects which include land treatment in the project work plan;
- (8) authorization date: project work plans with the earliest authorization dates will be given preference;
- (9) EDA area: if the applicant's area is designated by the U.S. Department of Commerce, Economic Development Agency, as an Economic Development Area, the project will be shown preference;
- (10) engineering work: preference will be given to projects which have the engineering work completed or underway; and
- (11) other special considerations as determined by the commission.

History Note: Authority G.S. 106-840; 139-4(d); 139-56; Eff. September 1, 1982; Amended Eff. October 1, 1984; Transferred from 15A NCAC 06C .0414 Eff. May 1, 2012; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 19, 2015.

02 NCAC 59C .0410 PREREQUISITE FOR DISBURSEMENT OF GRANT FUNDS

(a) Land Rights. The grant recipient shall acquire all land rights involved in water retarding structure sites (including flood prevention, water supply or recreation) and recreation sites prior to disbursement of grant funds; however, the commission has the discretion to approve disbursement in the following situations:

- (1) The acquiring agency has not obtained all land rights, but has options to purchase those remaining, or has initiated eminent domain proceedings and will have funds on hand to complete the land rights acquisitions after disbursement.
- (2) The acquiring agency has reached a written agreement with a utility company or the Department of Transportation concerning the subsequent relocation of a public utility or a state road.
- (3) When a grant is from a time-limited reversionary fund, and upon evidence satisfactory to the Commission that the grant recipient will cover at least 50 percent of land rights acquisition costs. The Commission may make partial funds available as the grant recipient evidences financial ability to cover land rights acquisition costs at specific phases of development including but not limited to surveying, appraisal and purchase of individual parcels.

(b) Construction and Engineering:

- (1) The commission has the discretion to approve either lump sum or progressive grant disbursement payments for construction and engineering purposes. The commission shall evaluate the applicant's financial needs and other pertinent data to determine the manner of payment. However, the commission shall withhold at least 10 percent of the disbursement to insure satisfactory completion of construction/engineering works.

- (2) Prior to any disbursement for construction, the grant recipient shall certify on Form 004LR that it has acquired all necessary land rights in compliance with all applicable laws, rules, and regulations. The commission may accept an executed SCS-AS-78 Form in lieu of the commission's own form.
- (3) The commission may withhold any payments of state grant funds pending the completion of any required audits or inspections.

History Note: Authority G.S. 106-840; 139-4(d); 139-56;
 Eff. September 1, 1982;
 Temporary Amendment Eff. April 5, 1993 for a Period of 180 Days or until the Permanent Rule becomes Effective, Whichever is Sooner;
 Amended Eff. March 1, 1995; October 1, 1993; January 1, 1985; October 1, 1984;
 Transferred from 15A NCAC 06C .0417 Eff. May 1, 2012;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 19, 2015.

02 NCAC 59C .0411 AUDIT OF PROJECTS

- (a) The Commission shall require periodic audits for each grant project.
- (b) The Commission shall require the applicant to have the audit prepared by a qualified independent auditor.
- (c) In lieu of such audit, the Commission may accept any applicable audit by any other governmental unit.

History Note: Authority G.S. 106-840; 139-4(d); 139-56;
 Eff. September 1, 1982;
 Transferred from 15A NCAC 06C .0421 Eff. May 1, 2012;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 19, 2015.

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, the Community Conservation Assistance Program for Nonpoint Source Pollution Control, and the Agricultural Water Resources Assistance Program.

History Note: Authority G.S. 106-840; 106-850; 106-860; 139-4; 139-60;
 Eff. May 1, 1987;
 Recodified from 15A NCAC 6E .0001 Eff. December 20, 1996;
 Transferred from 15A NCAC 06E .0101 Eff. May 1, 2012;
 Readopted Eff. January 1, 2020.

02 NCAC 59D .0102 DEFINITIONS

In addition to the definitions found in G.S. 106-850 and 139-3, the following terms used in this Subchapter have the following meanings:

- (1) "Agricultural 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, livestock and aquaculture, 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.

- (3) "Allocation" means the annual share of the State's appropriation for each program to participating districts.
- (4) "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.
- (5) "Average Costs" means the calculated cost, determined by averaging actual costs and current cost estimates for best management practice implementation. Actual costs include labor, supplies, and other costs required for physical installation of a practice.
- (6) "Best Management Practice (BMP)" means a structural or nonstructural management based practice used singularly or in combination to 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.
- (8) "Conservation Plan" means a written plan documenting the applicant's decisions concerning land use, and both cost shared and non-cost shared BMPs to be installed and maintained on the management unit.
- (9) "Cost Share Agreement" means an agreement between the applicant and the district that 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.
- (10) "Cost Share Incentive (CSI)" means a predetermined fixed payment paid to an applicant for implementing a BMP in lieu of cost share.
- (11) "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 (NRCS) Technical Guide for North Carolina, which is incorporated by reference including all subsequent amendments and editions, and can be accessed for free at <http://efotg.sc.egov.usda.gov/#/>, or Soil and Water Conservation Commission list of BMPs that are acceptable for cost sharing. The list of BMPs shall be approved annually by the Commission and published in the Detailed Implementation Plan. .]
- (14) "Detailed Implementation Plan (DIP)" means the document published annually, including all Commission guidelines for each program for the current fiscal year 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.
- (16) "District BMP" means a BMP requested by a district and approved by the Division for evaluation purposes.
- (17) "Division" means the Division of Soil and Water Conservation.
- (18) "Encumbered Funds" means monies from a district's allocation that have been obligated by the district to a cost share agreement.
- (19) "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 labor, fuel, machinery use, and supplies and materials for implementing the approved BMPs.
- (20) "Fiscal Year" means the period from July 1 through June 30 for which funds are allocated to districts.
- (21) "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 granted by the Natural Resources Conservation Service or the Commission.

- (22) "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 shall not include an estate at will or by sufferance in land. A governmental or quasi-governmental agency such as a drainage district or a soil and water conservation district, or any such agency, exercising similar powers for similar purposes, can be a landowner for the purposes of the rules of this Subchapter if the governmental agency holds an easement in land.
- (23) "Nonpoint Source (NPS) Pollution" means pollution originating from a diffuse source.
- (24) "Proper Maintenance" means that a practice(s) is being maintained such that the practice(s) is performing the function for which it was originally implemented, as determined by the technical representative of the district or Division based upon the best management practice design and standard.
- (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.
- (26) "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.
- (27) "Strategic Plan" means the annual plan for the N.C. Soil and Water Conservation Commission Cost Share Programs to be developed by each district. The plan identifies natural resource needs and the level of cost sharing and technical assistance monies required to address those annual needs in the respective district.
- (28) "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.
- (29) "Unencumbered Funds" means the portion of the allocation to each district that has not been committed for cost sharing.

History Note: Authority G.S. 106-840; 106-850; 106-860; 139-3; 139-4; 139-8; 139-60; 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; Readopted Eff. January 1, 2020.

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

(a) The Commission shall allocate cost share funds to districts for cost share payments and cost share incentive payments. In order to receive fund allocations, each district shall submit an annual strategic plan to the Commission by June 1 of each year.

(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. District allocations shall be based on the identified level of agricultural nonpoint source pollution problems, the respective district's BMP installation goals as demonstrated in the district's annual strategic plan, and the district's record of performance to affect BMP installation by participating farmers. The allocation method used for disbursement of funds shall be 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 shall be assigned points for each parameter, and the points shall be 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 Points Each District	x	Total Dollars Available	= Dollars Available to Each District

- (3) The minimum allocated to a 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 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 annual appropriation shall be allocated to district accounts administered by the Division. The Division shall retain five percent of the annual appropriation as a contingency to be used to respond to an emergency or natural disaster. If the contingency funds are not needed to respond to an emergency, then they shall be available for allocation after March 1.
- (d) 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.
- (e) At any time a district may submit a revised strategic plan to request additional funds from the Commission.
- (f) Agreements that encumber funds under the current fiscal year shall be submitted to the Division by 5:00 p.m. on June 30.
- (g) For the Agriculture Cost Share Program for Nonpoint Source Pollution Control, 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 as reported in the most recent edition of the North Carolina Census of Agriculture. This report is incorporated by reference with all subsequent amendments and editions and may be accessed at no charge at www.agcensus.usda.gov. 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 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 at https://gis11.services.ncdot.gov/arcgis/rest/services/NCDOT_CityBdy_Poly/MapServer/0, draining to waters identified as impaired or impacted on the most recent Integrated Report a produced by the North Carolina Division Water Resources. This report is incorporated by reference with subsequent amendments and editions, and may be accessed at no charge at <https://deq.nc.gov/about/divisions/water-resources/planning/classification-standards/classifications>. (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, Shellfish Harvesting Areas (open) as determined by the Division of Marine Fisheries, and North Carolina Drinking Water Assessment Areas as determined by the Division of Water Resources. . All documents incorporated by reference may be accessed at no charge. The Classifications are incorporated by reference 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>. The Drinking Water Assessment Areas may be accessed at <http://deq.nc.gov/about/divisions/water-resources/drinking-water/drinking-water-protection-program/mapping-applications>. (10%)
 - (5) Percentage of program funds allocated to a district that are expended for installed BMPs in the highest three of the most recent seven-year period as reported in the NC Cost Share Contracting System. . (20%)
 - (6) Relative rank of the number of acres of highly erodible land in the county as reported by the 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; 106-860;139-4; 139-8;139-60; 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;
Readopted Eff. January 1, 2020.*

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

(a) The Commission shall consider the total amount of funding available for allocation and relative needs 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) 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 fiscal year funding according to the following formula:

(1)	Sum of Parameter Points		=	Total Points	
(2)	Percentage Total	x	Total Dollars	=	Dollars Available
	Points Each District		Available		to Each District

- (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 at any time 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 to request additional funds from the Commission.
- (6) Agreements that encumber funds under the current fiscal 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. (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 Harvesting Areas (open) as determined by the Division of Marine Fisheries. (20 percent)
 - (C) The percentage of each county covered by National Pollutant Discharge Elimination System Phase I and Phase II requirements found at <https://deq.nc.gov/about/divisions/water-resources/water-resources-permit-guidance/npdes-phase-i-phase-ii-stormwater-guidance>. (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. (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 when making its allocations.

(d) 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. 106-860; 139-8;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;
 Readopted Eff. January 1, 2020.*

**02 NCAC 59D .0105 AGRICULTURAL WATER RESOURCES ASSISTANCE PROGRAM
 FINANCIAL ASSISTANCE ALLOCATION GUIDELINES AND PROCEDURES**

(a) The Commission shall consider the total amount of funding available for allocation and the relative needs for BMP implementation to determine the proportion of available funds to be allocated to statewide, regional, and district allocation pools and the Division. 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) Based on funding availability, the Commission shall allocate cost share funds from the district allocation pool to the districts. To receive fund allocations, each district shall request an allocation 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 agricultural water use needs 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 on the relative position of each respective district for those parameters approved by the Commission pursuant to Paragraph (h) of this Rule. The points each district scores on each parameter shall be totaled and proportioned to the total dollars available for district allocation under the current fiscal year funding according to the following formula:

(1)	Sum of Parameter Points	=	Total Points	
(2)	Percentage Total		Total	Dollars Available
	Points Each	x	Dollars	=
	District		Available	to
				Each District

(3) The minimum district allocation shall be specified in the Detailed Implementation Plan.

(4) If a district requests less than the dollars available to that district in Subparagraph (b)(2) of this Rule, then the excess funds 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.

(d) In the initial allocation, 95 percent of the annual appropriation shall be allocated to district accounts administered by the Division. The Division shall retain five percent of the annual appropriation as a contingency to be used to respond to an emergency or natural disaster. If the 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 fiscal year must be submitted to the Division by 5:00 p.m. on June 30.

(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 when making its allocations.

(i) 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; 106-860; 139-4; 139-8; 139-60; 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; Readopted Eff. January 1, 2020.

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

(a) The Commission shall approve a list of BMPs that are acceptable for cost-sharing. The list of BMPs shall be approved annually and published in the DIP. The Commission may consider requests for additional BMPs at any time. The Commission shall consider the following criteria in approving BMPs:

- (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 follow technical specifications as set forth in Paragraph (b) of this Rule.

(b) BMP definitions and specifications shall be determined by the Commission 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 approving the agreement for 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; 106-860; 139-4; 139-8; 139-60; 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; Readopted Eff. January 1, 2020.

02 NCAC 59D .0107 COST SHARE AND INCENTIVE PAYMENTS

- (a) Cost share incentive (CSI) 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 shall fund a percentage of the average cost for BMP installation not to exceed the maximum cost share percentages shown in G.S. 106-850(b)(6), (8), and (9), and the applicant shall fund 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 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 G.S. 106-850(b)(6) and (9).
- (f) Use of cost share payments 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 Agreements 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 G.S. 106-850(b)(6), (8), and (9) 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 G.S. 106-850(b)(6), (8) and (9).
- (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;106-860; 139-4; 139-8; 139-60;
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;
Readopted Eff. January 1, 2020.*

02 NCAC 59D .0108 TECHNICAL ASSISTANCE FUNDS

- (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 its 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 as set forth in Rule .0101 of this Section 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 highest 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 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 three years of the effective date of this Rule, 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 outside of the employee's control.

*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;
Readopted Eff. January 1, 2020.*

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 agreement shall include a requirement for the landowner to be responsible 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 (NRCS) Technical Guide for North Carolina according to other specifications approved by the Commission, 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 compliance visit of five percent of all the cost share agreements to ensure proper maintenance. The Commission may specify additional compliance visit 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 business days. For vegetative practices, applicants shall be given one calendar year to re-establish the vegetation. The Division shall grant a one calendar year extension period if it determines compliance cannot be met due to circumstances beyond the applicant's control, such as weather.

(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 BMPs 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

- (f) In the event that a Cost Share Agreement has been found to be noncompliant and the applicant does not agree to correct the non-compliance, the Division shall invoke procedures to achieve resolution to the noncompliance.
- (g) When land under cost share agreement changes ownership the new landowner shall be 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;
Eff. January 1, 2020.

02 NCAC 59D .0110 DISTRICT PROGRAM OPERATION

- (a) Each district shall prioritize resource concerns for each program in its annual strategic plan. The district shall target technical and financial assistance to facilitate BMP implementation.
- (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 determine 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 Supervisors of compliance with design specifications.
- (g) Upon notification by the technical representative, 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 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(c) of this Section to ensure proper maintenance and continuation under the Cost Share Agreement.
- (i) The district shall keep records dealing with the program per its document retention schedule.

History Note: Authority G.S. 106-840; 106-850; 139-4; 139-8;
Eff. January 1, 2020.

SECTION .0200 – JOB APPROVAL AUTHORITY

02 NCAC 59D .0201 CRITERIA AND PROCEDURES FOR GRANTING JOB APPROVAL AUTHORITY

- (a) "Eligible individuals" means Soil and Water Conservation District employees, county employees working as staff for a Soil and Water Conservation District, and employees of the North Carolina Department of Agriculture and Consumer Services Division of Soil and Water Conservation.
- (b) Eligible individuals seeking Job Approval Authority (JAA) from the Commission shall receive agreement from their immediate supervisor. District staff shall also receive agreement from the chair of the Soil and Water Conservation District for whom they are employed.
- (c) Eligible individuals seeking JAA for a best management practice as defined by 02 NCAC 59D .0102(6) shall submit application to the Division for evaluation of technical competency. The application for JAA shall include:
- (1) name;
 - (2) contact information;
 - (3) JAA requested;
 - (4) signature of District Chair or Supervisor; and

- (5) proof of technical competency for the requested JAA including comparable JAA through USDA-NRCS, or applicable certification or submission of two completed practice designs.

The minimum technical competency requirements for each practice shall be listed in the applicable program's Detailed Implementation Plan (DIP) as defined in 02 NCAC 59D .0102(14).

(d) Eligible individuals who submit documentation of JAA issued by the USDA Natural Resources Conservation Service as part of the application described in Paragraph (c) of this Rule shall be granted equivalent JAA by the Commission, unless JAA has subsequently been rescinded due to factors identified in Paragraph (f) of this Rule.

(e) The Commission shall consider an eligible individual who is duly licensed as a professional engineer by the North Carolina Board of Examiners for Engineers and Surveyors as having JAA for any best management practice to which they affix their seal and signature to all designs and technical documents.

(f) The Commission may rescind an individual's JAA for any or all best management practices where the Commission determines that the individual fails to comply with the applicable practice standards, submits false data or is dishonest in the use of their JAA, taking into consideration the severity of the non-compliance, the extent and significance of any false data submitted, and the individual's history of non-compliance.

(g) Individuals no longer employed by the County, District, or Division shall have previously issued JAA reinstated if they are re-employed as an eligible individual and have subsequently complied with the requirements described in Paragraphs (b) and (c) of this Rule.

*History Note: Authority G.S. 106-840; 106-850; 139-3; 139-4(d)(9) and (14);
Eff. January 1, 2021.*

SUBCHAPTER 59E - PROCEDURES AND GUIDELINES TO IMPLEMENT THE NONDISCHARGE RULE FOR ANIMAL WASTE MANAGEMENT SYSTEMS

02 NCAC 59E .0101 PURPOSE

This Subchapter describes rules to implement the provisions of 15A NCAC 02T .1300 - Waste Not Discharged To Surface Waters: Animal Waste Management Systems, hereinafter called the Nondischarge Rule for Animal Waste Management Systems. The Soil and Water Conservation Commission sets forth these Rules for certification of animal waste management systems in accordance with 15A NCAC 02T .1300.

*History Note: Authority G.S. 106-840; 139-2; 139-4;
Temporary Adoption Eff. December 9, 1993 for a Period of 180 Days or Until the Permanent Rule
Becomes Effective, Whichever is Sooner;
Eff. March 1, 1994;
Transferred from 15A NCAC 06F .0101 Eff. May 1, 2012;
Readopted Eff. November 1, 2017.*

02 NCAC 59E .0102 DEFINITIONS

The terms used in this Subchapter shall be as defined in G.S. 139-3; G.S. 106-840; G.S. 106-850; G.S. 143-15.10B; 15A NCAC 02T .0103; 02 NCAC 59D .0102; and as follows:

- (1) "Certification" means a statement from a technical specialist that an animal waste management plan complies with 15A NCAC 02T .1300 and G.S. 143-215.10C and that a technical specialist has approved the plan as required by G.S. 143-215.10C(d).
- (2) "Certified Crop Advisor" means an individual who has obtained and maintained the Certified Crop Advisor Credential from the American Society of Agronomy.
- (3) "DWR" means the Division of Water Resources of the Department of Environmental Quality.
- (4) "Interagency Nutrient Management Committee" means a committee represented by the Agronomics Division of the NC Department of Agriculture and Consumer Services, the Division of Water Resources of the NC Department of Environmental Quality, the North Carolina Cooperative Extension Service – Department of Soil and Crop Sciences, and the Natural Resources Conservation Service (NRCS) of the United States Department of Agriculture to provide uniform nutrient management recommendations based on scientific data and research.

- (5) "Technical Specialist" means an individual designated by the Commission to certify that the planning, design, and implementation of BMPs, including all or part of an animal waste management plan, meet the standards and specifications of the Commission or NRCS.

*History Note: Authority G.S. 106-840; 106-850; 139-4;
Temporary Adoption Eff. December 9, 1993 for a Period of 180 Days or Until the Permanent Rule Becomes Effective, Whichever is Sooner;
Eff. March 1, 1994;
Transferred from 15A NCAC 06F .0102 Eff. May 1, 2012;
Readopted Eff. November 1, 2017.*

02 NCAC 59E .0103 REQUIREMENTS FOR CERTIFICATION OF WASTE MANAGEMENT PLANS

- (a) An animal waste management plan shall not be deemed approved as required by G.S. 143-215.10C(d) unless a technical specialist certifies that the system is designed and installed to properly collect, treat, store, or apply animal waste as required by G.S. 143-215.10C and 15A NCAC 02T .1300.
- (b) The certification shall be made by a technical specialist and shall confirm that the best management practices (BMPs) contained in the animal waste management plan meet applicable standards and specifications pursuant to Rule .0104 of this Subchapter. BMPs in an existing system shall not be required to meet current standards and specifications as established by the Commission as long as the system is certified to be nondischarging as required in G.S. 143-215.10C.
- (c) More than one technical specialist may be consulted for the design of BMPs and installation of BMPs. A technical specialist shall certify only parts of the animal waste management plan within their approved designated category pursuant to 02 NCAC 59G .0104 and for which they are technically competent. The technical specialist shall provide a copy of the certification to the owner or operator of the animal waste management system.
- (d) Any modification of an animal waste management plan shall be certified by a technical specialist.
- (e) A change in the cropping pattern as a result of weather-caused delays after application of animal waste shall not require the owner to obtain a new certification, as long as the owner followed the application rates set forth in the certified waste management plan and no discharge occurs to surface waters.
- (f) The certifying technical specialist and the District shall not be required to spot check or otherwise assure proper maintenance and operation of an animal waste management system installed to meet the certification requirements pursuant to G.S. 143-215.10C.

*History Note: Authority G.S. 106-840; 106-850; 139-4;
Temporary Adoption Eff. December 9, 1993 for a Period of 180 Days or Until the Permanent Rule Becomes Effective, Whichever is Sooner;
Eff. March 1, 1994;
Transferred from 15A NCAC 06F .0103 Eff. May 1, 2012;
Readopted Eff. November 1, 2017.*

02 NCAC 59E .0104 APPROVED BEST MANAGEMENT PRACTICES (BMPS)

- (a) The Commission will approve a list of BMPs that are acceptable as part of an approved animal waste management plan. The list of BMPs will be approved annually (by August 1) and revised as needed during the year by the Commission.
- (b) Pursuant to 15A NCAC 02T .1300, incorporated by reference with subsequent amendments and additions, a BMP or system of BMPs designed and installed for an animal waste management plan at the time of certification shall either:
- (1) meet the standards and specifications of the US Department of Agriculture Natural Resources Conservation Service (NRCS) Technical Guide, Section IV, Raleigh, North Carolina, incorporated by reference with subsequent amendments and additions, or standards and specifications otherwise determined by the Commission; or
 - (2) meet the Swine Waste System Performance Standards pursuant to 15A NCAC 02T .1307 and follow the approval process described in 15A NCAC 02T .1308.

A copy of the NRCS Technical Guide can be found at no cost at https://efotg.sc.egov.usda.gov/efotg_locator.aspx?map=US.

- (c) BMPs approved for use in the Agriculture Cost Share Program for Nonpoint Source Pollution Control shall be deemed approved for the purpose of this Rule.

(d) Land application BMPs that follow the nutrient management standard contained in the Section IV of the NRCS Technical Guide or as recommended by the Agronomic Division of the North Carolina Department of Agriculture and Consumer Services (predictive Soil Test Report and predictive Waste Analysis Report) shall be deemed approved. In cases where NC agronomic rates are not established for a specific crop or vegetative type, application rates may be determined by the NC Interagency Nutrient Management Committee. With concurrence from a NCDA&CS Regional Agronomist, a voting member of the NC Agricultural Consultants Association (NCACA), or a Certified Crop Advisor (CCA), a technical specialist may use plant and tissue analysis to justify additional nitrogen and extend the application period.

(e) Exemptions from the minimum buffer requirements for animal waste storage and treatment facilities and animal concentration areas shall be approved if no other siting options are available and the BMP installed as an equivalent control is designed to prevent the discharge of pollutants except during a storm event more severe than a 25-year, 24-hour storm event.

*History Note: Authority G.S. 106-840; 106-850; 139-4;
Temporary Adoption Eff. December 9, 1993 for a Period of 180 Days or Until the Permanent Rule Becomes Effective, Whichever is Sooner;
Eff. March 1, 1994;
Transferred from 15A NCAC 06F .0104 Eff. May 1, 2012;
Readopted Eff. November 1, 2017.*

02 NCAC 59E .0105 TECHNICAL SPECIALIST DESIGNATION

*History Note: Authority G.S. 106-840; 106-850; 139-4;
Temporary Adoption Eff. December 9, 1993 for a Period of 180 Days or Until the Permanent Rule Becomes Effective, Whichever is Sooner;
Eff. March 1, 1994;
Transferred from 15A NCAC 06F .0105 Eff. May 1, 2012;
Repealed Eff. November 1, 2017.*

SUBCHAPTER 59F – CONSERVATION RESERVE ENHANCEMENT PROGRAM (CREP) – STATE PORTION OF THE PROGRAM

SECTION .0100 - CONSERVATION RESERVE ENHANCEMENT PROGRAM (CREP) -- STATE PORTION OF THE PROGRAM

02 NCAC 59F .0101 OBJECTIVES

(a) The North Carolina Conservation Reserve Enhancement Program (CREP) is a state/federal/local partnership that combines existing federal Conservation Reserve Program (CRP) funding and state funding from various sources, including the Agriculture Cost Share Program (ACSP), to take environmentally sensitive land out of crop production. For purposes of this Rule the generic term "CREP" references either the federal portion or the combined federal and state portions of the program. The combined federal and state portion of CREP is referred to as NC-CREP. Under CREP, landowners may voluntarily enroll eligible land in 10-year, 15-year, 30-year or permanent agreements or contracts. The Commission operates the state portion of NC CREP program as the lead agency for the State of North Carolina (State), and may from time to time delegate activities to the Division.

(b) The program objectives for the Commission, which are the same as those of the multi-agency CREP team, are the following: to reduce agricultural non-point source pollution; to enroll eligible land in 10-year, 15-year, 30-year or permanent easements or leases; to encourage voluntary sign-ups for the program; and to enhance ecological aspects and wildlife habitat of areas near watercourses.

(c) The Division, or its agent, shall seek eligible applicants for enrollment into the program in accordance with the United States Department of Agriculture's 2-CRP Manual. Landowner payments shall be made in accordance with state and federal requirements, and shall be subject to the availability of funds.

(d) The applicable standards, rules, regulations, and practices of the Natural Resource Conservation Service (NRCS) NRCS Field Office Technical Guide, the United States Department of Agriculture's 2-CRP Manual, the Division of Forest Resources, 15A NCAC 09C .0400 and the Ecosystem Enhancement Program, G.S. 143-214.8 are

incorporated herein by reference, and such incorporation includes subsequent amendments and editions of the referenced material. Likewise, the provisions of the United States Department of Agriculture's 2-CRP Manual are incorporated herein by reference, and such incorporation includes subsequent amendments and editions of the referenced material. Copies of all of these materials are available at the offices of the Division, and the cost of any copies shall not exceed ten cents (\$.10) per page.

*History Note: Authority G.S. 106-840; 106-850(a); 139-4;
Temporary Adoption Eff. October 1, 2000;
Eff. August 1, 2002;
Amended Eff. December 1, 2006; July 1, 2004;
Transferred from 15A NCAC 06G .0101 Eff. May 1, 2012;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 19, 2015.*

02 NCAC 59F .0102 ELIGIBILITY

(a) Persons may offer to enroll acreage to CREP at any time within the enrollment period or any extension thereof. Acreage enrolled into the CREP is referred to as "CREP Enrollments." Acreage enrolled into NC-CREP is referred to as NC-CREP Enrollments. In order to be enrolled into the CREP, all of the following shall be met:

- (1) the producer eligibility requirements within the United States Department of Agriculture's 2-CRP Manual;
- (2) the cropland and marginal pasture land requirements within the United States Department of Agriculture's 2-CRP Manual;
- (3) Acreage offered is eligible under the United States Department of Agriculture's 2-CRP Manual and applicable NRCS standards, and is suitable for the intended practice; and
- (4) Producer accepts the maximum payment rate based on the payment formula described in Rule .0105 of this Section.

(b) The Commission may refuse enrollment where water quality benefits do not justify the payments, or where the acquisition is impractical or nuisance conditions exist on the land.

(c) The following acreage is ineligible to be enrolled in CREP:

- (1) federally-owned land unless the applicant has a prior written lease for the time frame in which the land is under the Conservation Reserve Program (CRP);
- (2) land on which a federal agency restricts the use in a mortgage or an easement;
- (3) acreage permanently under water, including acreage currently enrolled in CRP;
- (4) land currently enrolled in other federal programs and still under lifespan requirements;
- (5) land already enrolled in CRP; or
- (6) acreage withdrawn, terminated or otherwise released from the CRP after enrollment and before the contract expiration date.

(d) For the NC-CREP, landowners may enroll into one of the enrollment options included in the United States Department of Agriculture's 2-CRP Manual. 30-year contract or easement;

(e) Existing forested buffers may be enrolled under NC-CREP according to the limitations in the United States Department of Agriculture's 2-CRP Manual.

(f) An unmanageable field remnant may qualify for enrollment subject to the conditions in the United States Department of Agriculture's 2-CRP Manual.

(g) Landowners may switch from a 30-year contract/easement to one of the permanent easement options or may enroll additional land under the payment schedule existing at the time of the change in enrollment.

(h) Eligibility for the CREP shall be determined by the local District, Farm Service Agency (FSA), NRCS and the Division. An eligible applicant may enter into the federal agreements (10-years to 15-years), as well as the State agreements (30-year or permanent). Persons and land qualifying for the federal portion of CREP may also be qualified for enrollment under NC-CREP. Any landowner enrolling 10 acres or greater per tract, regardless of the length of enrollment, must enter into a 30-year or permanent State agreement.

*History Note: Authority G.S. 106-840; 106-850(a); 139-4;
Temporary Adoption Eff. October 1, 2000;
Eff. August 1, 2002;
Amended Eff. December 1, 2006; July 1, 2004;
Transferred from 15A NCAC 06G .0102 Eff. May 1, 2012;*

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 19, 2015.

02 NCAC 59F .0103 CONSERVATION PLAN

(a) A conservation plan is required for all CREP Enrollments. The conservation plan is a record of the applicant's decisions and supporting information for the treatment of a unit of land or water as a result of the planning process that meets the NRCS Field Office Technical Guide quality criteria for each natural resource and that addresses economic and social considerations. The plan shall describe the schedule of operations and activities required to solve identified natural resource concerns. Conservation plans shall be prepared according to all applicable federal, state and local environmental laws, executive orders, and rules. The conservation plan shall be consistent with any conservation easement protecting the enrollment area. This applies regardless of eligibility for cost-share funds. Participants shall also agree to establish and maintain approved practices according to the conservation plan of operations and forest management plans, for the duration of the agreement. Practices included in the conservation plan must cost-effectively achieve a reduction in soil erosion and nutrient transport. All forestry management practices must be completed according to a forestry management plan approved by a registered forester. The Division and the Commission may review conservation plans at any time while CREP agreements are effective.

(b) All CREP Enrollments must provide interception of water from the crop or pasture land into the enrollment area. All CREP Enrollments must maintain a contiguous buffer with the water course. Enrollments of wetland restoration areas shall be accepted only if enrollments shall be in trees, in those areas where trees would be the natural cover. The riparian forested buffer or wetland practice may include an outer buffer layer of native grasses between cropped areas and the trees, as specified in the practice criteria.

Hydrologic restoration to the greatest extent practicable shall occur on all NC-CREP Enrollments. Hydrologic restoration to the greatest extent practicable means to improve/increase hydrology and to retain water to the maximum extent as long as there are no adverse impacts to non-enrolled lands. This may be accomplished through the following means: creating sheet flow; reducing concentrated flow areas; blocking or filling artificial drainage; or using water control structures in conjunction with buffers. All shall meet or exceed appropriate NRCS standards. Water infiltration and retention shall be maximized on non-hydric soils by creating sheet flow and by reducing concentrated flow areas. Plans shall provide for improved wildlife habitat. The establishment of CREP practices shall be:

- (1) consistent with conservation compliance provisions;
- (2) at the participant's own expense;
- (3) included in the approved conservation plan;
- (4) approved by the local District; and
- (5) subject to FSA and Division approval where applicable.

(c) 30-year contracts/easements and permanent easements for which the participant chooses the timber harvest option shall require a minimal impact zone adjacent to the qualifying waterbody. A Minimal Impact Zone is a zone measured from the top of the stream bank for which tree removal is restricted to removal of dead trees and practices necessary to prevent pest or disease infestation or to maintain health of individual trees. Timber management and harvesting may be allowed in the remaining portion of the CREP enrollment as outlined in the contract/easement.

(d) A modification to an approved conservation plan must be in the best interest of CREP, and consistent with any conservation easement protecting the enrollment area. Such plans shall be revised as needed. Circumstances necessitating a revision include but are not limited to:

- (1) adding or revising a CREP practice;
- (2) substituting CREP practices;
- (3) scheduling reapplication of a CREP practice;
- (4) reflecting change in ownership; or
- (5) implementing other non-cost shared conservation measures, if producer agrees to install according to the approved conservation plan on CREP land already seeded to an acceptable cover.

History Note: Authority G.S. 106-840; 106-850(a); 139-4; Temporary Adoption Eff. October 1, 2000; Eff. August 1, 2002; Amended Eff. December 1, 2006; July 1, 2004; Transferred from 15A NCAC 06G .0103 Eff. May 1, 2012; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 19, 2015.

02 NCAC 59F .0104 APPROVING STATE AGREEMENTS

(a) Final approval for all NC-CREP agreements shall be the responsibility of the Division. Thirty-year and permanent agreements require recording of a conservation easement or conservation lease in the appropriate county registry. The intent is to provide that the NC-CREP Enrollment Area shall be protected for the life of the signed agreement. The Division shall provide a mechanism to acquire and record easements and leases for NC-CREP. The Division shall provide a survey where needed to develop legal description of the easement area. Conservation easements and leases entered into shall be consistent with the requirements of the Department of Administration and with 01 NCAC 06B .0210.

(b) For approval under NC-CREP, the Division must receive:

- (1) the State CREP form signed by the local District and the applicant;
- (2) a copy of landowner's deed(s) to the land to be enrolled;
- (3) a completed conservation easement(s) or lease(s);
- (4) latitude and longitude coordinates locating the easement or lease site; and
- (5) descriptions (maps, surveys, directions to site, etc.) identifying the easement or lease site.

(c) Under a CREP 30-year or permanent conservation easement or lease, the title of the land still resides with the landowner. The landowner may use the land under the conservation easement or lease in a manner that does not violate the conditions and terms of the easement or lease. The conservation easement or lease does not restrict the owner from selling or devising the land, however the easement or lease shall run with the land and remain an encumbrance thereon. The State must be allowed access to monitor the NC-CREP conservation easement or lease area.

History Note: Authority G.S. 106-840; 106-850(a); 139-4; Temporary Adoption Eff. October 1, 2000; Eff. August 1, 2002; Amended Eff. December 1, 2006; July 1, 2004; Transferred from 15A NCAC 06G .0104 Eff. May 1, 2012; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 19, 2015.

02 NCAC 59F .0105 PAYMENT

(a) The NC-CREP combines federal and state funding to achieve the goals of the program. For that reason, the eligible person may receive two separate payments (i.e. federal and state) to meet expectations set by the applicable contracts.

(b) The State payment shall be dependent on the length of the contract signed. The State payment shall consist of a one-time bonus payment for executed contracts for 30-year and permanent enrollments that require a conservation easement or lease. The State shall also pay a portion of cost-sharable practices implemented within the guidelines of the ACSP subject to availability of funds to the District. Any agricultural cost share payments shall be consistent with all Commission requirements, including those in 02 NCAC 59D .0101-.0108.

(c) For enrollments involving the ACSP, all cost-share practices are subject to terms and policies as set forth in the ACSP rules and best management practices manual. State cost-share percentages, listed below, shall be dependent on the length of enrollment. All payments involving ACSP funds shall require approval of the local District Board of Supervisors, and are subject to the availability of funds to the District.

10 year	25 percent
15 year	30 percent
30 year	40 percent
permanent agreement	50 percent

(d) The maximum one-time bonus payment under NC-CREP that an eligible person can receive shall be limited by the maximum payment allowed under the federal payment. The payment for enrollment of land in 30-year or permanent conservation easements or leases shall be made once the conservation easement or lease is executed by the State and a technical representative has determined that the participant is actively engaged in the applicable practices.

(e) The formula for payment of the one-time State bonus shall be as established in the 2-CRP Manual, subject to the availability of funds.

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

Temporary Adoption Eff. October 1, 2000;
Eff. August 1, 2002;
Amended Eff. December 1, 2006; July 1, 2004;
Transferred from 15A NCAC 06G .0105 Eff. May 1, 2012;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 19, 2015.

02 NCAC 59F .0106 NONCOMPLIANCE WITH CREP AGREEMENT

(a) If noncompliance with any CREP agreement is determined, the landowner shall return the enrolled area to the condition that meets the guidelines of the CREP upon receiving written notification of noncompliance from the Division. The notice shall include:

- (1) a detailed description of the enrolled area;
- (2) a description of the area in noncompliance;
- (3) recommended measures to correct the noncompliance; and
- (4) a schedule for correcting the noncompliance.

The Division shall not reimburse any expense incurred to correct the noncompliance. If the noncompliance involves a cost-shared practice that is within the state cost share contract maintenance period, then the requirements in 02 NCAC 59D .0107 shall be followed.

(b) From the date of the notice of noncompliance, the landowner shall be given 30 days to reply in writing to the Division with a plan to correct the noncompliance. The Division shall work with the landowner to ensure that the plan meets the CREP objectives. After a plan is approved in writing by the Division, the landowner shall correct the noncompliance within 90 days after the date of approval. For vegetative practices, applicants shall re-establish vegetation within one year after the date of approval. An extension may be granted by the Division if it is determined that compliance cannot be met due to circumstances beyond the landowner's control.

History Note: Authority G.S. 106-840; 106-850(a); 139-4;
Temporary Adoption Eff. October 1, 2000;
Eff. August 1, 2002;
Transferred from 15A NCAC 06G .0106 Eff. May 1, 2012;
Readopted Eff. November 1, 2017.

SUBCHAPTER 59G - APPROVAL OF TECHNICAL SPECIALISTS AND BMPS FOR WATER QUALITY PROTECTION

02 NCAC 59G .0101 PURPOSE

This Subchapter describes criteria and procedures for the Soil and Water Conservation Commission to approve water quality technical specialists and to approve Best Management Practices (BMPs) for use in water quality protection programs. These criteria and procedures are intended for use by the Commission if technical specialists or BMPs are needed in conjunction with actions by the Environmental Management Commission.

History Note: Authority G.S. 106-840; 139-4;
Temporary Adoption Eff. October 22, 2001;
Eff. April 1, 2003;
Transferred from 15A NCAC 06H .0101 Eff. May 1, 2012;
Readopted Eff. November 1, 2017.

02 NCAC 59G .0102 DEFINITIONS

When used in this Subchapter:

- (1) "Best Management Practice" (BMP) means a structural or nonstructural management practice used singularly or in combination to reduce nonpoint source inputs to receiving waters.
- (2) "Certified Animal Waste Management Plan" means the animal waste management plan certified by a technical specialist as required in 15A NCAC 02T .1300 Animal Waste Management Systems.

- (3) "Commission" means the Soil and Water Conservation Commission.
- (4) "EMC" means the Environmental Management Commission.
- (5) "Land application" means providing nutrients to a receiving crop by spraying, spreading, or injecting inorganic fertilizer or animal waste (including liquid, solid, or sludge) pursuant to a certified nutrient or animal waste management plan.
- (6) "NCCES" means the North Carolina Cooperative Extension Service.
- (7) "NRCS" means the Natural Resources Conservation Service of the United States Department of Agriculture.
- (8) "Nutrient management" means managing the amount, source, placement, form, and timing of nutrients to ensure adequate fertility for plant production and to minimize the potential for water quality impairment.
- (9) "Technical Specialist" means an individual designated by the Commission to certify that the planning, design and implementation of BMPs, including all or part of an animal waste management plan, meet the standards and specifications of the Commission or NRCS.
- (10) "Technical specialist designation category" means a category specified in 02 NCAC 59G .0104(a).
- (11) "Water management" means control of water levels in the soil profile, including the use of flashboard risers or other similar structures to meet crop water needs and reduce nutrient loss.

History Note: Authority G.S. 106-840; 139-4;
 Temporary Adoption Eff. October 22, 2001;
 Eff. April 1, 2003;
 Transferred from 15A NCAC 06H .0102 Eff. May 1, 2012;
 Readopted Eff. November 1, 2017.

02 NCAC 59G .0103 APPROVAL OF BEST MANAGEMENT PRACTICES (BMPS)

- (a) The Commission may approve individual BMPs or systems of BMPs in conjunction with water quality protection programs for agriculture and other nonpoint sources.
- (b) Approved BMPs shall meet the technical standards of the USDA Natural Resources Conservation Service Field Office Technical Guide, Section IV, Raleigh, North Carolina, incorporated by reference with subsequent amendments and additions, except as specified in Paragraph (c) of this Rule. A copy of the NRCS Technical Guide can be found at no cost at https://efotg.sc.egov.usda.gov/efotg_locator.aspx?map=US.
- (c) The Commission shall approve alternative BMPs Practices, Technical or Performance Specifications, and Operation and Maintenance requirements if any of the following criteria are met:
 - (1) If no existing USDA technical standard exists for water quality protection benefits equivalent to the benefits achieved by an approved BMP as established in Paragraph (a) of this Rule;
 - (2) If an existing USDA technical standard includes design or installation requirements for purposes other than those necessary for water quality protection; or
 - (3) If there is a need for additional operator flexibility to reduce the initial cost of installing or implementing the BMP while providing water quality protection benefits equivalent to the benefits achieved by an approved BMP as established in Paragraph (a) of this Rule.
- (d) In approving BMPs, the Commission shall consider technical input from persons engaged in agriculture or experienced in nonpoint source management.

History Note: Authority G.S. 106-840; 139-4;
 Temporary Adoption Eff. October 22, 2001;
 Eff. April 1, 2003;
 Transferred from 15A NCAC 06H .0103 Eff. May 1, 2012;
 Readopted Eff. November 1, 2017.

02 NCAC 59G .0104 APPROVAL OF WATER QUALITY TECHNICAL SPECIALISTS

- (a) Technical specialists shall be designated in one or more of the following categories:
 - (1) The Structural Animal Waste category provides for the approval of the design and installation of lagoons, storage ponds, dry stacks, and other similar structures. This category also includes the design and installation of a spillway in conjunction with the decommissioning of a lagoon or storage pond.
 - (2) The Waste Utilization Plan/Nutrient Management category provides for:

- (A) Development of land application plans, including crop acreages available to meet nutrient and hydraulic loading rates, application windows, determination of animal waste nutrient amounts, and other similar determinations such as evaluation of fields for phosphorous loss and field buffers;
 - (B) Confirmation of storage volumes, exterior lots, and cropping systems;
 - (C) Development and establishment of buffers and verification of land application setbacks;
 - (D) Certification of the land application component of a USDA Comprehensive Nutrient Management Plan;
 - (E) Authority to approve nutrient management plans to comply with Rule .0105 of this Subchapter; and
 - (F) Decommissioning of a lagoon or storage structure other than the design or installation of a spillway.
- (3) The Runoff Control category provides for the approval of the design and installation of erosion control BMPs.
 - (4) The Irrigation Equipment category provides for the approval of the design and installation of irrigation systems to include pipe size, pump horsepower, nozzle size, and system layout including required land application setbacks.
 - (5) The Wettable Acres category provides for the determination of irrigated acreage in accordance with a Certified Animal Waste Management Plan.
 - (6) The Inorganic Fertilizer/Nutrient Management category provides for approval of river basin nutrient management plans in compliance with Rule .0105 of this Subchapter for inorganic fertilizer only.
 - (7) The Water Management category provides for the approval of the design and installation of subsurface water management systems.
- (b) The Commission shall designate the following individuals who meet the criteria and training requirements of this Rule as technical specialists:
- (1) Individuals to whom the NRCS has assigned approval authority to conduct the activities specified in a technical specialist category described in Paragraph (a) of this Rule;
 - (2) Professional engineers subject to the "The NC Engineering and Land Surveying Act" for the categories of Structural Animal Waste, Waste Utilization Plan/Nutrient Management, Runoff Control, Irrigation Equipment and Water Management; or
 - (3) Individuals not included in Subparagraph (b)(1) and (b)(2) who meet the criteria in Paragraph (c) of this Rule.
- (c) Technical Specialists other than those described in Subparagraphs (b)(1) and (b)(2) of this Rule shall meet the following criteria and training requirements:
- (1) Criteria for each technical specialist designation category shall be the following:
 - (A) Irrigation Equipment category requires designation as an irrigation designer by the National Irrigation Association or three years experience in the design of irrigation systems for waste application.
 - (B) Wettable Acres category requires holding either the Waste Utilization Plan/Nutrient Management or Irrigation Equipment designation.
 - (C) Waste Utilization Plan/Nutrient Management and the Inorganic Fertilizer/Nutrient Management categories require either three years experience in nutrient management, a four year degree in agronomy or related field, or a combination of this education and experience totaling four years.
 - (D) Structural Animal Waste, Runoff Control, and Water Management categories are reserved only for those individuals who meet the requirements of Subparagraphs (b)(1) or (b)(2) of this Rule.
 - (2) Training requirements shall be the following:
 - (A) For all categories except Inorganic Fertilizer/Nutrient Management category, NC Rules and Regulations Governing Animal Waste Management Systems taught by the Division or Department of Environmental Quality and advertised through the Division website.
 - (B) For the category of Waste Utilization Plan/Nutrient Management and Inorganic Fertilizer/Nutrient Management, North Carolina Nutrient Management Course taught by the Division, NCCES, or the NRCS and the North Carolina Nutrient Management

Software Course taught by the Division or the NCCES, and advertised through the Division website.

(C) For the category of Wettable Acres, the North Carolina Wettable Acres Course taught by the NCCES and advertised through the Division website.

(d) All individuals requesting technical specialist designation shall provide to the Division an "Application for Designation for Technical Specialist" and evidence of expertise, skills, and training required for each designation category. A list of three references who can attest to the applicant's technical competence shall accompany the application.

(e) All individuals requesting technical specialist designation shall be determined by the Commission to meet the requirements of this Rule in order to be approved by the Commission for designation. Applicants shall be notified in writing of the Commission's actions.

(f) Professional Engineers included in Subparagraph (b)(2) of this Rule who are licensed after April 1, 2003, shall attend the North Carolina Nutrient Management Course, the North Carolina Nutrient Management Software Course, and the NC Rules and Regulations Governing Animal Waste Management Systems in order to use the Waste Utilization Plan/Nutrient Management designation.

(g) A technical specialist shall perform services only in areas of the technical specialist's designated category and technical competence.

(h) The Division shall maintain a database and make available the names of designated technical specialists and their designated categories on the Division's website.

(i) Technical Specialists shall complete six hours of training approved by the Commission during each three-year period following initial designation or each three-year period following the effective date of this Rule.

(j) Upon a finding by the Commission that the work of a technical specialist designated pursuant to this Rule fails to comply with the requirements of 15A NCAC 02T .1300, this Subchapter, or the NRCS Technical Guide, or that a technical specialist has submitted false data in the course of his or her work, the Commission may withdraw its designation of the technical specialist in any or all categories, taking into consideration the severity of non-compliance, the extent and significance of any false data submitted, and the specialist's history of non-compliance. In addition, technical specialist designation shall be rescinded by the Commission for failure to complete the approved additional training by the end of each three-year period.

(k) When the Commission makes findings regarding the work of a technical specialist designated under Subparagraph (b)(1) of this Rule, the Commission shall forward these findings to the respective agency with the request that the agency provide documentation that their technical specialist has received training to correct deficiencies in the area of concern to retain a designation. If the agency fails to provide such documentation, the Commission may withdraw its designation of the technical specialist for any or all categories.

*History Note: Authority G.S. 106-840; 139-4;
Temporary Adoption Eff. October 22, 2001;
Eff. April 1, 2003;
Transferred from 15A NCAC 06H .0104 Eff. May 1, 2012;
Readopted Eff. November 1, 2017.*

02 NCAC 59G .0105 APPLICATION OF BMP APPROVAL AND TECHNICAL SPECIALIST DESIGNATION TO WATER QUALITY PROTECTION PROGRAMS

Approved BMPs or systems of BMPs and technical specialist designations by the Commission under this Subchapter shall satisfy the requirements of:

- (1) The Neuse Basin Rule in 15A NCAC 02B .0238(8)(b)(x) and (c)(i) and 15A NCAC 02B .0239(2)(a) and (b);
- (2) The Tar-Pamlico Rule in 15A NCAC 02B .0256 and 15A NCAC 02B .0257(f)(2); and
- (3) Other applicable water quality protection rules to address agricultural nonpoint source impacts, as adopted by the EMC or other commissions, that include agricultural BMP development or implementation of the technical specialist designation by the Commission.

*History Note: Authority G.S. 106-840; 139-4;
Temporary Adoption Eff. October 22, 2001;
Eff. April 1, 2003;
Transferred from 15A NCAC 06H .0105 Eff. May 1, 2012;
Readopted Eff. November 1, 2017.*

SUBCHAPTER 59H – COMMUNITY CONSERVATION ASSISTANCE PROGRAM FOR NONPOINT SOURCE POLLUTION CONTROL

SECTION .0100 – COMMUNITY CONSERVATION ASSISTANCE PROGRAM

02 NCAC 59H .0101 PURPOSE

History Note: Authority G.S. 106-840; 106-860; 139-4; 139-8;
Eff. December 1, 2007;
Transferred from 15A NCAC 06I .0101 -.0102 Eff. May 1, 2012;
Amended Eff. November 1, 2016;
Repealed Eff. January 1, 2020.

02 NCAC 59H .0102 DEFINITIONS FOR SUBCHAPTER 59H

History Note: Authority G.S. 106-840; 106-860; 139-4; 139-8;
Eff. December 1, 2007;
Transferred from 15A NCAC 06I .0101 -.0102 Eff. May 1, 2012;
Amended Eff. November 1, 2016;
Repealed Eff. January 1, 2020.

02 NCAC 59H .0103 ALLOCATION GUIDELINES AND PROCEDURES

History Note: Authority G.S. 106-840; 106-860; 139-4; 139-8;
Eff. January 1, 2008;
Transferred from 15A NCAC 06I .0103 Eff. May 1, 2012;
Amended Eff. November 1, 2016;
Repealed Eff. January 1, 2020.

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

History Note: Authority G.S. 106-840; 106-860; 139-4; 139-8;
Eff. December 1, 2007;
Transferred from 15A NCAC 06I .0104 - .0106 Eff. May 1, 2012;
Repealed Eff. January 1, 2020.

02 NCAC 59H .0105 COST SHARE AND INCENTIVE PAYMENTS

History Note: Authority G.S. 106-840; 106-860; 139-4; 139-8;
Eff. December 1, 2007;
Transferred from 15A NCAC 06I .0104 - .0106 Eff. May 1, 2012;
Repealed Eff. January 1, 2020.

02 NCAC 59H .0106 TECHNICAL ASSISTANCE FUNDS

History Note: Authority G.S. 106-840; 106-860; 139-4; 139-8;
Eff. December 1, 2007;
Transferred from 15A NCAC 06I .0104 - .0106 Eff. May 1, 2012;
Repealed Eff. January 1, 2020.

02 NCAC 59H .0107 COST SHARE AGREEMENT

History Note: Authority G.S. 106-860; 139-4; 139-8;
Eff. June 1, 2008;
Transferred from 15A NCAC 06I .0107 Eff. May 1, 2012;
Repealed Eff. January 1, 2020.

02 NCAC 59H .0108 DISTRICT PROGRAM OPERATION

History Note: Authority G.S. 106-840;
Eff. March 1, 2008;
Transferred from 15A NCAC 06I .0108 Eff. May 1, 2012;
Repealed Eff. January 1, 2020.