

15A NCAC 02R .0602 NUTRIENT OFFSET PAYMENT RATES FOR THE NC DIVISION OF MITIGATION SERVICES

(a) For the purposes of this Rule, the term "cost" or "costs" means the costs of the NC Division of Mitigation Services, hereinafter in this Rule the "Program," associated with nutrient offset projects in a given rate area, as described in this Rule.

(b) The Program shall calculate and publish general offset payment rates applicable to each river basin where Commission rules allow such nutrient offsets and premium watershed rates for specific watersheds as identified in Paragraph (d) of this Rule. All rates shall be based on the per-pound nutrient reduction costs incurred by the Program in those watersheds.

(c) Payment rates shall be developed for nitrogen, phosphorus, or other nutrients as dictated by Commission rules for each river basin. Rates shall be published on the Division's website (<https://deq.nc.gov/about/divisions/mitigation-services>).

(d) Premium Watershed Rates. The Program shall apply premium watershed rates to:

- (1) The Neuse 03020201 cataloging unit below the Falls watershed, the Jordan Lake watershed, and the Falls Lake watershed; and
- (2) Any eight-digit cataloging unit or smaller watershed that is subject to nutrient management rules where costs are 33 percent greater than costs in the larger watershed or river basin where that cataloging unit is located.

The initial rate for a premium watershed with fewer than two nutrient reduction projects that have reached the design stage shall be the highest rate in effect under the Program for the applicable nutrient. The initial rate shall be revised for a premium watershed in the quarter following a quarter in which at least two nutrient reduction projects in that watershed have reached design stage.

(e) Once an area has been established as an area with premium watershed rates, it shall remain a premium watershed rate area.

(f) Rate Adjustment Frequency. Rates shall be adjusted quarterly whenever the rate calculation set forth in Paragraph (g) of this Rule exceeds the existing rate by at least 10 percent. The rates shall also be adjusted annually. Annual calculations and adjusted rates shall be published by June 15 on the Program's website <http://deq.nc.gov/about/divisions/mitigation-services>, and shall become effective July 1. Any quarterly rate adjustments shall become effective on the first day of October, January, or April, as applicable, and shall be published on the same website two weeks prior to that date. The rate shall be adjusted within two business days if the Program suspends acceptance of payments at the current rate pursuant to 15A NCAC 02B .0240(e)(2).

(g) Payment rates for each nutrient shall be determined for a rate area using the following equation and presented in per-pound values:

$$ActualCostRate = \frac{ActualCosts_{PresentDay}}{TotalPoundsOffset_{PresentDay}} + AdjustmentFactor$$

Where:

- (1) "Actual Costs_{PresentDay}" means the sum of all costs adjusted for inflation as described in this Subparagraph. Costs shall mean project costs and administrative costs and shall include the costs of completed projects, terminated projects, and projects in process. At the time the rate is set, all completed land acquisition contracts and expenditures shall be adjusted to present-day values using the current North Carolina Department of Agriculture and Consumer Services' Agricultural Statistics Farm Real Estate Values. All other completed contracts and expenditures shall be adjusted to present-day values using the annual composite USACE Civil Works Construction Cost Index. Future land acquisition contract costs for projects in process shall be calculated using the Program's per-credit contract costs of the same type adjusted to the inflated future value at the time the contracts will be encumbered using the North Carolina Department of Agriculture and Consumer Services' Agricultural Statistics Farm Real Estate Values. All other future contracts shall be calculated using the Program's per-credit contract costs of the same type adjusted to the inflated future value at the time the contracts will be encumbered using the current composite USACE Civil Works Construction Cost Index. For projects in process where the contract type has not been determined, the cost of the project shall be calculated using the Program's average per pound cost adjusted to the future inflated value at the time the project will be initiated. Future year annual inflation rates shall be drawn from the USACE Civil Works Construction Cost Index. If not available from either source, they shall be calculated using the average annual percentage change over the last three-year period;

- (2) As used in this Rule:
- (A) "Project Costs" means the total costs associated with development of nutrient reduction projects including identification, land acquisition, project design, project construction, monitoring, maintenance, and long-term stewardship;
 - (B) "Administrative Costs" means costs associated with administration of the Program including staffing, supplies, and rent; and
 - (C) The "costs for projects in process" means the sum of expenditures of project contracts to date, contracted cost to complete existing contracts, and the projected cost of future contracts needed to complete those projects required to fulfill Program nutrient reduction obligations in the rate area;
- (3) "Total Pounds Offset_{PresentDay}" means the total number of pounds of a nutrient reduced by the Program's projects in the rate area at the time of calculation. If the Total Pounds Offset_{PresentDay} for an existing or completed project is reduced, the Actual Costs_{PresentDay} for that existing or completed project shall be proportionally adjusted:
- (A) The Adjustment Factor shall be calculated using the following formula:

$$\text{Adjustment Factor} = \frac{(\text{Actual Costs} - \text{Actual Receipts})}{\text{Number of Pounds Paid During Adjustment Period}}$$

The Adjustment Factor shall be applied only in those calculation periods where actual costs are calculated to be greater than actual receipts. The Adjustment Factor shall not comprise more than 60 percent of the overall rate;
 - (B) "Actual Costs" shall be the same as Actual Costs_{PresentDay} as defined in Subparagraph (1) of this Paragraph, except that the existing contracts and completed land acquisitions are not adjusted for inflation;
 - (C) "Actual Receipts" means the sum of all offset payments made to the Program in the rate area at the time of calculation; and
 - (D) "Number of Pounds Paid during Adjustment Period" means the average number of pounds of a nutrient paid to the Program over the last three years in the rate area multiplied by the adjustment period. If no payments have been made to the Program in a rate area, the number of pounds paid shall be 1,000 pounds until greater than 1,000 pounds have been purchased in that rate area.
- (4) Adjustment Period shall be one to four years, determined as follows for a rate area:
- (A) One year if Actual Costs exceed Actual Receipts by less than five percent;
 - (B) Two years if Actual Costs exceed Actual Receipts by five percent or more but less than 15 percent;
 - (C) Three years if Actual Costs exceed Actual Receipts by 15 percent or more but less than 25 percent; and
 - (D) Four years if Actual Costs exceed Actual Receipts by 25 percent or more.
- (h) If individual projects produce more than one type of nutrient reduction, the project costs shall be prorated for each nutrient being offset by the project.
- (i) If an applicant is required to reduce more than one nutrient type and chooses to use the Program to offset nutrients, the applicant shall make a payment pursuant to 15A NCAC 02B .0240(e)(3) for each nutrient type.

History Note: Authority G.S. 143-214.1; 143-214.20; 143-214.21; S.L. 1995-572; S.L. 2006-215; S.L. 2007-438; S.L. 2009-337; S.L. 2009-484; S.L. 2009-486; Eff. September 1, 2010; Transferred from 15A NCAC 02B .0274 Eff. May 1, 2015; Readopted Eff. March 1, 2018.