

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Agriculture

RULE CITATION: 02 NCAC 60B .0701

DEADLINE FOR RECEIPT: Friday, January 11, 2019

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

It appears that this Rule is under the authority of the Commissioner, not the Board (see G.S. 106-1013). What is the basis for this determination of Board authority?

In (a)(2), how will this be outlined and where? What authority do you have to determine it outside of rulemaking?

On lines 11 and 12, what are the contents of the application, especially given the deletion on lines 12-14? G.S. 150B-2(8a)(d) states that while a form itself does not need to be in rule or law, the contents must be.

In (b), line 16, what do you mean by consideration?

In (c), line 20, what are the circumstances that will cause the Commissioner do this?

On line 25, what are "special funds"? What are "allocated amounts"?

On line 25, how will the written determination then be communicated?

In (e), line 33, what is "satisfactory completion"? Does your regulated public know because of the use of the term in G.S. 106-1014 and 1016?

On line 33, who will make this determination?

On line 34, what is the "proper" use?

On line 35, I recommend replacing "insure" with "ensure"

In (g)(3), line 10, do you mean "shall" instead of "may"? If not, under what circumstances will the Division not grant the extension when the project cannot be completed due to natural causes or unavailability of contractors?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel

Date submitted to agency: January 3, 2019

02 NCAC 60B .0701 is amended as published in 33:02 NCR 90-91 as follows:

SECTION .0700 – FOREST DEVELOPMENT PROGRAM

02 NCAC 60B .0701 ADMINISTRATION OF PROGRAM

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

(1) Any eligible landowner may apply for program cost sharing funds.

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

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

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

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

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

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

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

2 (1) Funds ~~allocated to an eligible landowner~~ may be withdrawn at the end of the first fiscal year
3 ~~following the year~~ in which the funds were allotted if no work has been started. The landowner
4 shall provide ~~sufficient~~ documentation to the Division for funds availability to ~~extend~~ continue
5 into a second year.

6 (2) Funds allocated may be withdrawn at the end of the second fiscal year ~~following the year of~~
7 ~~allocation~~ if the ~~practice has~~ practices have not been completed.

8 ~~(3) Funds paid as "partial payment" must be repaid to the Forest Development Fund if the project is~~
9 ~~started but not completed within the allotted time.~~

10 ~~(4)(3) Extensions.~~ A 12-month extension may be granted by the Division if the project cannot be
11 completed due to adverse natural causes or unavailability of contractors to conduct practices.

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

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

16 *Eff. August 8, 1978;*

17 *Amended Eff. August 1, 2002; July 1, 1986; October 1, 1984; August 1, 1982; January 15, 1981;*

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

19 *Readopted Eff. April 1, 2018. 2018;*

20 *Amended Eff. February 1, 2019.*