

REQUEST FOR TECHNICAL CHANGE

AGENCY: Commissioner of Agriculture

RULE CITATION: 02 NCAC 58 .0105

DEADLINE FOR RECEIPT: Friday, January 11, 2019

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

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:

In (b), what are the contents of this application? G.S. 150B-2(8a)(d) requires the substantive contents of a form to be in rule or law.

In (c), line 11 and elsewhere the term is used, what is an "agricultural agreement"? I see that other terms in this Rule are defined in G.S. 106-744, but I don't see this term defined anywhere. Does your regulated public know?

In (c), line 13, insert a comma after "Agreements"

And so that I am clear – this is one form, not two?

In (c)(1), line 14, and elsewhere the term is used, what is "identifying information"?

In (c)(7), line 22, who determines what is "relevant"?

In (c)(12), line 27, and (d)(5), line 35, what are the "listed attachments"?

In (e), line 36, and elsewhere the term is used, what do you mean by "staff"? Staff of whom?

In (f), Page 2, line 2, do you mean "shall" instead of "may"?

Also on line 2, "publicly announced" how?

In (h), line 6, who will determine what is "relevant"?

In (j), lines 12 and 13, do you mean "shall" instead of "may"? If not, then under what circumstances will the Commissioner not take these actions?

On line 13, define "immediate"

On line 14, determined by whom?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: January 3, 2019

On line 15, replace “which” with “that”

In (m)(6), line 32, what is the “priority funding map”? Who creates this? Where is it found?

In (m)(7), line 33, who will determine what is “relevant”?

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 58 .0105 is readopted as published in 33:02 NCR 89 as follows:

02 NCAC 58 .0105 EVALUATION OF APPLICATIONS

~~(a) Applicants for funding from the ADFPTF shall submit two unbound complete applications suitable for photocopying. Applications must be sent by Fed Ex, UPS, certified mail, or hand delivered to: NCDA&CS, NCADFP Trust Fund at 2 West Edenton Street, Raleigh, NC 27601.~~

~~(b) Two separate applications are online at <http://www.ncadfp.org/> or available from the Department as noted in Paragraphs (c) and (d) of this Rule.~~

(a) Applicants for funding from the ADFPTF shall submit a completed application.

(b) Applications and instructions shall be available online at <http://www.ncadfp.org/>.

(c) To be eligible for consideration for funding for agricultural conservation easements or agricultural agreements, applicants shall complete the Agricultural Development and Farmland Preservation Application Form for Conservation Easements and Agricultural Agreements which contain the following information:

- (1) identifying information;
- (2) a description of the type of organization of the applicant;
- (3) project affiliations, matching funds, and partnerships;
- (4) whether funds are for an agricultural conservation easement or an agricultural agreement and the term years;
- (5) current land value assessment, requested amount of funds, estimated easement value, project completion date;
- (6) operation management plans;
- (7) values relevant to the easement;
- (8) agricultural, horticultural, or forestry property inventory;
- (9) what transition plans are in place to continue operations for the future;
- (10) threats of conversion;
- (11) conservation and environmental concerns; and
- (12) listed attachments.

(d) To be eligible for consideration for funding for agricultural development programs, applicants shall complete the Agricultural Development and Farmland Preservation Application Form for Public and Private Enterprise Programs, which contain the following information:

- (1) identifying information;
- (2) a description of the type of organization of the applicant;
- (3) project affiliations, matching funds, and partnerships;
- (4) a description of goals, target audience, and success measurements; and
- (5) listed attachments.

(e) Each completed application shall be evaluated by the staff based on the information provided in the application and in accordance with the ADFPTF criteria described in this Rule.

(f) The staff shall review all applications for completeness. If an application is incomplete after the application deadline, the applicant may be asked to reapply for the next grant cycle, which will be publicly announced by the Commissioner on an annual basis.

(g) During the review and evaluation of proposals, the staff shall report to the Commissioner on any site visits that may be required for full consideration of the grant proposal.

(h) The Advisory Committee shall review the project evaluations and other relevant data prepared by the applicant and by ADFPTF staff. The Advisory Committee shall make recommendations to the Commissioner on projects for funding.

(i) The Commissioner and Advisory Committee shall consider the relative needs of the farmland preservation project and determine the proportion of available funds to be allocated for each eligible project.

(j) Grants shall be awarded contingent on the availability of sufficient funds to do so. Funds shall be conveyed to grantees through contracts with the Trust Fund. If the Commissioner determines that grant funds are not being used for the purpose for which they were awarded, the Trust Fund may cease making payments under the grant schedule until the problem has been resolved or may demand immediate return of any unspent money and interest from the grant. Grantees must reimburse the Trust Fund any funds that are determined to have not been spent for the purpose for which they were granted. Grantees must return any grant money which remains unspent at the conclusion of the grant project, with any interest earned on grant money.

(k) The following general criteria shall be used to evaluate conservation easement or agricultural agreement projects only:

- (1) parcel information;
- (2) planning for the future; and
- (3) site visits.

(l) The following general criteria shall be used to evaluate agricultural development programs only:

- (1) project description;
- (2) project implementation; and
- (3) applicant interview.

(m) The Commissioner and Advisory Committee shall also consider the following factors when evaluating projects:

- (1) the geographic distribution of projects;
- (2) the presence or absence of other funding sources;
- (3) the level of compliance with prior grant agreements;
- (4) the amount of funds available;
- (5) the amount of funds requested;
- (6) priority funding map; and
- (7) other relevant information in the application.

History Note: Authority G.S. 106-744;
Eff. January 1, ~~2008~~-2008;
Amended Eff. February 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Commissioner of Agriculture

RULE CITATION: 02 NCAC 58 .0106

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:

In (b), line 6, insert a comma after "scope"

In (c), line 7, what is "support documentation"?

In (d), line 8, why can't you just end the sentence after "approval"? Why do you need "by the Commissioner and the grant recipient(s)" given that you have "mutual" on line 8?

On line 9, what will the grant recipient be submitting a request for? It appears you are missing language here.

In (e), line 10, the addition of "projects" after "period and" is new and should be underlined.

In (g), what authority do you have to implement policies and guidelines outside of rulemaking? Are these exempt from rulemaking pursuant to G.S. 150B-2(8a)(g)?

Assuming you have authority for this Paragraph, where are these found?

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 58 .0106 is readopted as published in 33:02 NCR 90 as follows:

02 NCAC 58 .0106 GRANT AGREEMENT

(a) Upon approval, a written agreement shall be executed between the grant recipient(s) and the Commissioner.

(b) The agreement shall define the Commissioner's and grant recipient's responsibilities and obligations, the project period, project scope and the amount of grant assistance.

(c) The approved application and support documentation shall become a part of the grant agreement.

(d) The grant agreement may be amended upon mutual consent and approval by the Commissioner and the grant recipient(s). The grant recipient(s) shall submit a written request to the Commissioner.

(e) Projects Grant payments shall be made only for activities within the grant contract period and projects may not begin until the Commissioner and grant recipient(s) sign the agreement.

(f) The agreement shall include a requirement that, in any agricultural conservation easement funded by the ADFPTF, the State of North Carolina shall have the right to enforce the easement if the grantee of the easement fails to do so.

(g) Grantees shall abide by the ADFPTF Monitoring Policies and Guidelines.

History Note: Authority G.S. 106-744;

Eff. January 1, ~~2008~~. 2008;

Amended Eff. February 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Commissioner of Agriculture

RULE CITATION: 02 NCAC 58 .0107

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:

In (a), line 5, end the sentence after "project." You no longer need "whichever is sooner" given the deletion on line 4.

On line 6, what are "notable occurrences"? Who determines this?

Also on line 6, insert a comma after "occurrences"

On line 7, what is a "successful" applicant? Does your regulated public know?

On line 8, replace "which" with "That"

In (b), line 11, and elsewhere the term is used, who is this "staff"?

On lines 14 and 15, replace "working" with "business"

On line 15, do you not mean "Commissioner" rather than "Trust Fund" as that is who will be denying payment?

On line 15, do you mean "shall" instead of "may"? If not, then state in the Rule the circumstances under which the Commissioner will not withhold payment to a grantee who has not corrected the deficiency.

In (c), what authority do you have to implement policies and guidelines outside of rulemaking? Are these exempt from rulemaking pursuant to G.S. 150B-2(8a)(g)?

Assuming you have authority for this Paragraph, where are these found?

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 58 .0107 is readopted as published 33:02 NCR 90 as follows:

02 NCAC 58 .0107 REPORTING

(a) Grant recipients shall submit written progress reports ~~at six-month intervals or upon~~ biannually for grants less than \$500,000 and quarterly for grants more than \$500,000 until completion of the project, whichever is sooner. Written reports shall describe the status of the project, progress toward achieving program objectives, notable occurrences and any problems encountered and steps taken to overcome the problems. Upon completion of the project, the successful applicant must make a final written report to the Commissioner which shall include project accomplishments and benefits, all expenditures by line item as established in the project budget, and verification of the number of hours or money in matching funds.

(b) The staff shall review the progress reports for completeness, which shall include a showing of how the project is meeting its stated goals and performance standards. If the staff finds that the report is deficient in showing how the project is meeting its stated goals and performance standards, the grantee shall be notified of the deficiency and must provide a changed and corrected report within 30 working days. If a corrected or changed report is not received within 30 working days, the Trust Fund may withhold the next grant payment.

(c) Grantees shall submit monitoring reports in accordance with the ADFPTF Monitoring Policies and Guidelines.

History Note: Authority G.S. 106-744;

Eff. January 1, ~~2008~~. 2008;

Amended Eff. February 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Commissioner of Agriculture

RULE CITATION: 02 NCAC 58 .0108

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:

On line 4, what is "successful" here? Does your regulated public know?

On line 5, who will conduct this audit?

On line 5, please either state "his or her" or "upon request"

And under what circumstances will this request be made?

On line 6, you refer to "Trust Fund staff" and this is the only time you use this phrase in the Chapter. Elsewhere in this document when I'd inquired to the identify of staff, were you referring to these individuals?

On line 7, shouldn't you replace "Trust Fund" with "Commissioner" as he is the one administering the fund?

On line 9, who created this schedule? The State Archives within the Department of Cultural and Natural Resources? Please incorporate this by reference using G.S. 150B-21.6.

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 58 .0108 is readopted as published in 33:02 NCR 90 as follows:

02 NCAC 58 .0108 RECORDS

Successful applicants must keep financial and other records of the project for a period of ~~three~~ five years, following completion of the project, or until audited. The records shall be made available to the Commissioner at his request. Recipients shall contact Trust Fund staff at the North Carolina Department of Agriculture and Consumer Services before destroying records or in the event that records are destroyed. The Trust Fund shall maintain and dispose of paper and electronic records in accordance with the approved Functional Schedule for North Carolina State Agencies, Program Record Retention and Disposition Schedule and Electronic Records and Imaging Policy.

*History Note: Authority G.S. 106-744;
 Eff. December 1, ~~2007~~. 2007.
 Amended Eff. February 1, 2019.*