

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: Soil and Water Conservation Commission

RULE CITATION: All Rules submitted in 02 NCAC 59D

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☐ Lack of statutory authority
 - ☒ Unclear or ambiguous
 - ☐ Unnecessary
 - ☐ Failure to comply with the APA
 - ☐ Extend the period of review

COMMENT:

The agency submitted 18 readopted rules in Subchapters 59D and 59H for RRC review at its January 2019 meeting. Staff requested multiple technical changes, including ones to address issues of ambiguity. At the January meeting, the RRC granted an extension of the period of review for both Subchapters pursuant to G.S. 150B-21.10(3). G.S. 150B-21.13 states that when the RRC grants this extension, it is required to take an action or approve or object to the Rule within 70 days.

The agency has completed the changes requested for the rules in Subchapter 59H, and they are before the Commission today. Staff is recommending approval of these Rules, and notes there is a delayed effective date of January 1, 2020.

The agency's staff has worked on making the requested changes to 59D. However, agency staff would like to take the rewritten rules to the agency before submitting them to RRC for approval. The Soil and Water Conservation Commission is scheduled to meet at the end of March, meaning the rewritten rules will not be available for the RRC's March meeting.

As the technical changes to the Rules in 02 NCAC 59D addressed apparent ambiguities, staff recommends objection to those Rules for ambiguity, as noted in the individual Requests for Technical Changes for those Rules.

Amanda J. Reeder
Commission Counsel
Issued March 18, 2019

02 NCAC 59H .0101 and .0102 are repealed through readoption as published in 32:09 NCR 803-808 as follows:

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

SECTION .0100 – COMMUNITY CONSERVATION ASSISTANCE PROGRAM

02 NCAC 59H .0101 PURPOSE

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, 2010.*

02 NCAC 59H .0103 is repealed through readoption as published in 32:09 NCR 803-808 as follows:

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 - .0106 are repealed through readoption as published in 32:09 NCR 803-808 as follows:

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

02 NCAC 59H .0105 COST SHARE AND INCENTIVE PAYMENTS

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 is repealed through readoption as published in 32:09 NCR 803-808 as follows:

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 is repealed through readoption as published in 32:09 NCR 803-808 as follows:

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.



STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

Mailing address:
6714 Mail Service Center
Raleigh, NC 27699-6700

Street address:
1711 New Hope Church Rd
Raleigh, NC 27609-6285

January 17, 2019

Chrissy Waggett
Soil and Water Conservation Commission
Sent via email only to: Christina.Waggett@ncagr.gov

Re: Extension of the Period of Review for Rules 02 NCAC 59D .0101 - .0110 and 59H .0101 - .0108

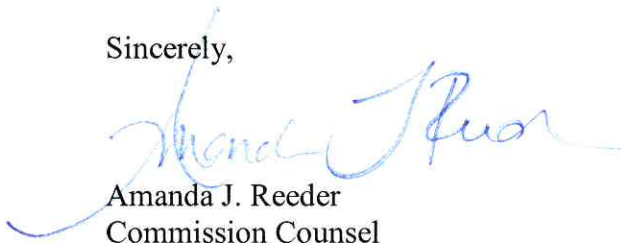
Dear Mrs. Waggett:

At its meeting this morning, the Rules Review Commission extended the period of review for the above-captioned rules in accordance with G.S. 150B-21.10. They did so in response to a request from the Soil and Water Conservation Commission to extend the period in order to allow the agency to address the requested technical changes and submit the rewritten rules at a later meeting.

Pursuant to G.S. 150B-21.13, when the Commission extends the period of review, it is required to approve or object to rules or call a public hearing on the same within 70 days.

If you have any questions regarding the Commission's actions, please let me know.

Sincerely,



Amanda J. Reeder
Commission Counsel

cc: Tien Cheng, Department of Agriculture

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Burgos, Alexander N

Subject: FW: Request for Extended Period of Review

From: Waggett, Christina

Sent: Friday, January 11, 2019 1:04:05 PM

To: Reeder, Amanda J

Subject: Request for Extended Period of Review

Amanda,

The Soil and Water Commissioner respectfully requests an extended period of review for the rules in 02 NCAC 59D and H. An extension would allow staff to better incorporate and work through the many technical changes. In addition, staff would like to meet with you in order to discuss the requests and get clarification on several items.

Thanks,
Chrissy

Chrissy Waggett | Federal Liaison | NC Dep't of Agriculture & Consumer Services | 919-707-3008 (direct) | 919-414-1350 (cell) | www.ncagr.gov

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Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Soil and Water Conservation Commission

RULE CITATION: 02 NCAC 59D .0101

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:

What is the purpose of this Rule?

On lines 12-13 and elsewhere the program is referenced, what is the statutory authority for the Agricultural Water Resources Assistance Program? Is it G.S. 139-8(b)? If so, I suggest you add G.S. 139-8 to the History Note. And I also recommend adding G.S. 139-60 to the History Note, assuming you are relying upon that, as well.

On line 13, what is the purpose of the sentence "Procedures and guidelines for participating districts are also described." I suggest deleting it.

*In (1), this is a restatement of G.S. 106-850(b)(1). Why do you need to repeat it here?
On lines 17 and 19, if "state" means "NC" please capitalize the term.*

In (2), this is a restatement of G.S. 106-860(b)(1). Why do you need to repeat it here?

In (3), what is your statutory authority for this program? Is it G.S. 139-8? 139-60? If so, add that to the History Note.

In (3)(a), line 21, what do you mean by "identify"?

On line 21, insert a comma after "availability"

In (3)(b), line 22, what are these practices?

In (3)(c), line 23, insert a semicolon after "efficiency" As this was published correctly in the Register, you do not need to show it as a change. Simply do it.

In the History Note, since it appears you are relying upon G.S. 106-860 for the Community Conservation Assistance Program for Nonpoint Source Pollution Control, please add this citation to the History Note.

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

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 59D .0101 is readopted with changes as published in 32:09 NCR 793 as follows:

**SUBCHAPTER 59D - ~~AGRICULTURE~~ SOIL AND WATER CONSERVATION COST SHARE
PROGRAM FOR NONPOINT SOURCE POLLUTION CONTROL PROGRAMS**

**SECTION .0100 - ~~AGRICULTURE~~ SOIL AND WATER CONSERVATION COMMISSION COST SHARE
PROGRAM PROGRAMS**

02 NCAC 59D .0101 PURPOSE

This Subchapter describes the operating procedures for the ~~division~~ Division under the guidance of the ~~commission~~ Commission implementing the Agriculture Cost Share Program for Nonpoint Source Pollution ~~Control~~. Control, the Community Conservation Assistance Program for Nonpoint Source Pollution Control, and the Agricultural Water Resources Assistance Program. Procedures and guidelines for participating districts are also described. The purpose purposes of for the voluntary program programs is to reduce the delivery of the agricultural nonpoint source (NPS) pollution into the water courses of the State. are as follows:

- (1) Agriculture Cost Share Program for Nonpoint Source Pollution Control is to reduce the delivery of agricultural nonpoint source (NPS) pollution into the water courses of the state.
- (2) Community Conservation Assistance Program is to reduce the delivery of nonpoint source pollution into the waters of the state.
- (3) Agricultural Water Resources Assistance Program is to assist famers and landowners to:
 - (a) identify opportunities to increase water use efficiency, availability and storage;
 - (b) implement best management practices to conserve and protect water resources;
 - (c) increase water use efficiency or
 - (d) increase water storage and availability for agricultural purposes.

*History Note: Authority G.S. 106-840; 106-850; 139-4;
Eff. May 1, 1987;
Recodified from 15A NCAC 6E .0001 Eff. December 20, 1996;
Transferred from 15A NCAC 06E .0101 Eff. May 1, 2012. 2012;
Readopted eff. February 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Soil and Water Conservation Commission

RULE CITATION: 02 NCAC 59D .0102

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, G.S. 106-850 contains definitions, but G.S. 106-851-852 do not. Why are you citing to them here? Did you mean instead to cite to G.S. 139-3?

The definitions in (1) and (2) are very similar. Is this on purpose? In (1), line 7, should "agricultural activities" be "agricultural purposes"?

In (3), line 13; Page 2, (14), line 16, (15), line 19; Page 3, (25), line 13, (26), line 18 (both places), capitalize "state" if you mean NC.

In (4), line 17, what is "associated"?

In (5), line 19, who makes this determination and averages the costs?

On line 20, who decides what is "necessary"?

On line 21, what are "direct" costs? Does your regulated public know?

In (6)(a) and (b), these restate Rule .0101. However, they are in different order. Why do you need them both places? If you do, shouldn't they be worded in the same order both places?

Also, what is your authority for the program in (6)(b)? Is it G.S. 139-8? G.S. 139-60? If so, I suggest you add that to your History Note.

In (7), line 29, end the sentence with a period. As you published it correctly in the Register, you do not need to show this as a change; simply do it.

In (9), line 33, what is "long term"? And I think the term should be hyphenated.

On line 34, replace "which" with "that"

On line 36, specified where and by whom?

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

In (9), Page 2, line 2 and elsewhere the term is used, I take it your regulated public knows what the “district” is?

In (10), line 3, “predetermined” how and by whom?

In (13), should these be incorporated by reference using G.S. 150B-21.6? If not, then you need to set out what they say within a rule.

In (14), what is the Commission’s authority to set this plan outside of rulemaking? Or is this a contract between the Commission and the body receiving the funds?

In (18), line 26, approved by whom? The Commission?

In (19), line 32, delete “but not limited to”

On line 32, who determines what is “necessary”?

In (20), line 35, insert a comma after “design”

What are you saying in (20)? Specifically, what do you mean by the sentence on lines 36-37? Are you saying that the authority must be both granted and recognized by one of the two entities?

In (21), Page 3, line 4, delete “Furthermore” and state “A governmental or...”

On line 5, I think you can delete “by whatever name called,”

On line 7, capitalize “Subchapter” As you published it correctly in the Register, you do not need to show it as a change; simply do it.

In (23), please put this term in alphabetical order. You can do this simply by renumbering it, or you can physically move the definition.

In (24), what does this mean? Who determines this and based upon what?

In (25), line 14, what are these regions? Are they only set out in the DIP and can they change every year?

In (28), line 25, is the term being defined “Technical representative of the district”? If so, please put the whole term into the quotation marks. If it’s not, then delete “of the district” and state “Technical representative” mean a person designated by the district...”

Please review the History Note and update it with additional statutory references now that you are combining these rules with 59H.

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 59D .0102 is readopted with changes as published in 32:09 NCR 794-795 as follows:

02 NCAC 59D .0102 DEFINITIONS FOR SUBCHAPTER 59D

In addition to the definitions found in G.S. 143-215.74, ~~106-850~~ through G.S. 106-852, the following terms used in this Subchapter have the following meanings:

- (1) ~~Agriculture~~ “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 and livestock, 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.
- ~~(2)(3)~~ Allocation “Allocation” means the annual share of the state's appropriation for each program to participating districts.
- ~~(3)(4)~~ Applicant “Application” “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.~~ “cooperator.” All ~~entities, entitles~~ with which the applicant is associated, including those in other counties, shall be considered the same applicant.
- ~~(4)(5)~~ Average Costs “Average Costs” means the calculated cost, determined by averaging actual costs and current cost estimates necessary for best management practice implementation. Actual costs include labor, supplies, and other direct costs required for physical installation of a practice.
- ~~(5)(6)~~ Best Management Practice (BMP) “Best Management Practice (BMP)” means a structural or nonstructural management based practice used singularly or in combination to ~~reduce nonpoint source inputs to receiving waters~~ 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
- ~~(6)(8)~~ Conservation Plan of Operation (CPO) “Conservation Plan” means a written plan ~~scheduling~~ documenting the applicant's decisions concerning land use, and both cost shared and non-cost shared BMPs to be installed and maintained on the ~~operating-management~~ unit.
- ~~(7)(9)~~ Cost Share Agreement “Cost Share Agreement” means an annual or long term agreement between the applicant and the district which defines the BMPs to be cost shared, rate and amount of payment, minimum practice life, and date of BMP installation. The agreement shall state that the recipient shall maintain and repair the practice(s) for the specified minimum life of the practice. The Cost

Share Agreement shall have a maximum contract life of three years for BMP installation. The district shall perform an annual status review during the installation period.

~~(8)(10)~~ ~~Cost Share Incentive (CSI)~~ “Cost Share Incentive (CSI)” means a predetermined fixed payment paid to an applicant for implementing a BMP in lieu of cost share.

~~(9)(11)~~ ~~Cost Share Rate~~ “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 or Soil and Water Conservation Commission in their Program Detailed Implementation Plans.

~~(10)(14)~~ ~~Detailed Implementation Plan~~ “Detailed Implementation Plan (DIP)” means the plan approved by the ~~commission~~ Commission that specifies the guidelines for each program for the current ~~program~~, fiscal year including BMPS that will be eligible for cost sharing and the minimum life expectancy of those practices, 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.

~~(11)(16)~~ ~~District BMP~~ “District BMP” means a BMP ~~designated~~ requested by a district and approved by the Division for evaluation purposes, to reduce the delivery of agricultural NPS pollution and which is reviewed and approved by the Division to be technically adequate prior to funding.

~~(17)~~ “Division” means the Division of Soil and Water Conservation.

~~(12)(18)~~ ~~Encumbered Funds~~ “Encumbered Funds” means monies from a district's allocation ~~which that~~ have been ~~committed to an applicant after initial approval of the~~ obligated to an approved cost share agreement.

~~(13)~~ ~~Full Time Equivalent (FTE)~~ means 2,080 hours per annum ~~which equals one full time technical position.~~

~~(14)(19)~~ ~~In-kind Contribution~~ “In-kind Contribution” means a contribution by the applicant towards the implementation of BMPs. In-kind contributions shall be approved by the district and can include but not be limited to labor, fuel, machinery use, and supplies and materials necessary for implementing the approved BMPs.

~~(20)~~ “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 either recognized or granted by the Natural Resources Conservation Service or the Commission.

~~(15)~~(21) ~~Landowner~~ “Landowner” means any natural person or other legal entity, including a governmental agency, who holds either an estate of freehold (such as a fee simple absolute or a life estate) or an estate for years or from year to year in land, but ~~does-shall~~ not include an estate at will or by sufferance in land. Furthermore, a governmental or quasi-governmental agency such as a drainage district or a soil and water conservation district, or any such agency, by whatever name called, exercising similar powers for similar purposes, can be a landowner for the purposes of ~~these Rules~~ the rules of this subchapter if the governmental agency holds an easement in land.

(22) “Nonpoint ~~[source]~~ Source (NPS) Pollution” means pollution originating from a diffuse source.

~~(16)~~(23) ~~Program Year~~ “Fiscal Year” means the period from July 1 through June 30 for which funds are allocated to districts.

~~(17)~~(24) ~~Proper Maintenance~~ “Proper Maintenance” means that a practice(s) is being maintained such that the practice(s) is ~~successfully~~ performing the function for which it was originally implemented.

(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.

~~(18)~~(26) ~~Soil Loss Tolerance (t) means the maximum allowable annual soil erosion rate to maintain the soil resource base, depending on soil type.~~ “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.

~~(19)~~(27) ~~Strategy Plan~~ “Strategic Plan” means the annual plan for the N.C. ~~Agriculture Cost Share Program for Nonpoint Source Pollution Control~~ Soil and Water Conservation Commission Cost Share Programs to be developed by each district. The plan identifies ~~pollution treatment~~ natural resource needs and the level of cost sharing and technical assistance monies required to address those annual needs in the respective district.

~~(20)~~(28) ~~Technical Representative~~ “Technical representative” of the district means a person designated by the district to act on their behalf who participates in the planning, design, implementation and inspection of BMPs. ~~These practices shall be technically reviewed by the Division. The district chairman shall certify that the technical representative has properly planned, designed and inspected the BMPs.~~

~~(21)~~(29) ~~Unencumbered Funds~~ “Unencumbered Funds” [funds] means the portion of the allocation to each district ~~which~~ that has not been committed for cost sharing.

*History Note: Authority G.S. 106-840; 106-850; 139-3;
Eff. May 1, 1987;
Temporary Amendment Eff. September 23, 1996;
Recodified from 15A NCAC 6E .0002 Eff. December 20, 1996;
Amended Eff. April 1, 1997;*

1 *Temporary Amendment Expired June 13, 1997;*
2 *Amended Eff. March 1, 2008; July 1, 2004;*
3 *Transferred from 15A NCAC 06E .0102 Eff. May 1, ~~2012~~ 2012;*
4 *Readopted Eff. February 1, 2019.*
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REQUEST FOR TECHNICAL CHANGE

AGENCY: Soil and Water Conservation Commission

RULE CITATION: 02 NCAC 59D .0103

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 6, what is the process to be “designated eligible”?

On line 7, I believe the term is now “strategic” plan.

In (b), line 12, how will the Commission make this determination and what is “sufficient”? Will it be based upon Paragraph (c)?

On line 13, “identified” by whom?

On line 15, what is “cooperating”? Do you mean “participating” based upon G.S. 106-851?

On lines 16 and 17, I suggest replacing “is” with “shall be”

On line 17, how do Paragraphs (b) and (g) work together?

On line 18, replace “are” with “shall be”

In (b)(4), line 27, I suggest you delete “beyond those requested by the district” as unnecessary.

In (c), line 30, insert a comma after “allocation”

On line 31, so that I’m clear – are all district accounts administered by the Division?

On line 34, how will the process work? Will the districts need to reapply for additional allocations? Is this addressed by Paragraph (e)? If so, consider inserting a cross-reference.

In (d), line 36, what will this determination be based upon and who will be responding to the disaster? The Commission or the Department?

In (f), Page 2, what does this mean? What is the “current” year, given that the fiscal year begins June 30?

In (g), line 3, should this be “Agriculture Cost Share Program for Nonpoint Source Pollution Control”

Amanda J. Reeder
Commission Counsel

Date submitted to agency: January 3, 2019

In (g)(1), is this census an outside source that can be incorporated by reference using G.S. 150B-21.6? If not, what is this?

In (g)(3), line 14, defined by the NC DOT where?

In (g)(4), line 26, please use the full name of the document that you gave on line 23, "Water Quality Standards and Classifications."

On line 28, please use the full name of the document "Shellfish Growing Areas" and on line 29, state the cost to access it or if it can be accessed at no charge. If all three documents incorporated by reference here are available at no charge, you can simply have a sentence on line 31 that states "All documents incorporated by reference may be accessed at no charge."

On line 29, please use the name you used on line 24, "Drinking Water Assessment Areas"

In (g)(5), Page 3, line 2, what is this system?

In (g)(6), line 3, who determines "highly erodible"?

On lines 5-6, what is your authority to allow the State Conservationist to make this determination outside of Rule?

Please review the History Note and update it with additional statutory references now that you are combining these rules with 59H.

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

02 NCAC 59D .0103 is readopted with changes as published in 32:09 NCR 795-796 as follows:

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

(a) The Commission shall allocate ~~the cost share funds to the districts in the designated program areas, for cost share payments and cost share incentive payments. To~~ In order to receive fund allocations, each district designated eligible by the Commission shall submit an annual strategy plan to the Commission at the beginning of each fiscal year, by June 1 of each year. Funds may be allocated to each district for any or all of the following purposes: cost share payments, cost share incentive payments, technical assistance, or administrative assistance. Use of funds for technical and administrative assistance must follow the guidelines set forth in Rule .0106 of this Subchapter.

(b) Funds shall be allocated to the districts at the beginning of the fiscal year and whenever the Commission determines that sufficient funds are available to justify a reallocation. Districts allocations shall be ~~allocated monies~~ based on the identified level of ~~agriculture related~~ agricultural nonpoint source pollution problems, the respective district's BMP installation goals as demonstrated in the ~~district~~ district's annual ~~strategy~~ strategic plan, and the district's record of performance to affect BMP installation by cooperating farmers. The allocation method used for disbursement of funds is based on the relative position of each respective district for those parameters approved by the Commission pursuant to Paragraph (g) of this Rule. Each district is assigned points for each parameter, and the points are totaled and proportioned to the total dollars available under the current program year funding according to the following formula:

- | | | | | |
|-----|---|---|--------------|-------------------|
| (1) | Sum of Parameter Points | = | Total Points | |
| (2) | Percentage Total | | Total | Dollars Available |
| | Points Each | x | Dollars | = to |
| | District | | Available | Each District |
| (3) | The minimum allocated to a particular district shall be twenty thousand dollars (\$20,000) per program year, unless the district requests less than twenty thousand dollars (\$20,000). | | | |
| (4) | If a district requests less than the dollars available to that district in Subparagraph (b)(2) of this Rule, then the excess funds beyond those requested by the district shall be allocated to the districts who did not receive their full requested allocation using the same methodology described in Subparagraph (b)(2) of this Rule. | | | |

(c) In the initial allocation 95 percent of the total program funding annual appropriation shall be allocated to the district accounts in the initial allocation, administered by the Division. The Division shall retain five percent of the total funding in a annual appropriation as a contingency fund to be used to respond to an emergency or natural disaster. If the contingency funds are not needed to respond to an emergency, then the contingency fund they shall be allocated at the March meeting of the Commission, available for allocation after March 1.

(d) The Commission may recall funds allocated to a district ~~during a fiscal year~~ that have not been encumbered to an agreement at any time if it determines the recalled funds are needed to respond to an emergency or natural disaster.

(e) At any time a district may submit a revised strategy strategic plan and ~~apply to the Commission for~~ to request additional funds from the Commission.

(f) ~~CPO's Agreements~~ that encumber funds under the current year ~~must~~ shall be submitted to the Division by 5:00 p.m. on ~~the first Wednesday in June, June 30.~~

(g) ~~Districts For the Agriculture Cost Share Program,~~ districts shall be allocated funds based on their respective data for each of the following parameters:

(1) Percentage of total acres of agricultural land in North Carolina that are in the respective district ~~(including cropland, hayland, pasture land, and orchards/vineyards)~~ as reported in the most recent edition of the North Carolina ~~Agricultural Statistics, Census of Agriculture.~~ The actual percentage shall be normalized to a 1-100 scale. (20%)

(2) Percentage of total number of animal units in North Carolina that are in the respective district as reported in the most recent edition of the North Carolina ~~Agricultural Statistics, 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 draining to waters number of miles of stream identified as less than fully supporting due to agricultural nonpoint source pollution as reported in the state's 303(d) list, impaired or impacted on the most recent Integrated Report [305(b) report,] and basin plan 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 <http://ncdenr.maps.arcgis.com/apps/webappviewer/index/html>. (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]~~ Waters on the current schedule of Water Quality Standards and Classifications, ~~Shellfishing [growing areas]~~ Shellfish Growing Areas (open) as determined by the Division of Marine Fisheries, and Drinking Water Assessment Areas as determined by the Division of Water Resources, ~~and Critical Water Supply on the current schedule of Water Quality Standards and Classifications.~~ 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 Public Water Supply assessment areas may be accessed at <http://deq.nc.gov/about/divisions/water-resources/drinking-water/drinking-water-protection-program/mapping-applications>. (10%)

(5) ~~The percentage of cost share funds allocated to a district that are encumbered to contracts in the best three of the most recent four completed program years as reported on the NC Agriculture Cost Share Program Database.~~ (10%)

~~(6)~~ (5) Percentage of program funds ~~encumbered to contracts~~ allocated to a district that are actually expended for installed BMPs in the ~~best~~ highest three of the most recent ~~four~~ seven-year period ~~for~~

1 ~~which the allowed time for implementing contracted BMPs has expired as reported on in the NC~~
2 ~~Agriculture Cost Share Contracting System. Program Database. (10%)(20%)~~

3 (7)(6) Relative rank of the ~~average erosion rate for agricultural~~ number of acres of highly erodible land in
4 the county as reported ~~in by the National Resources Inventory, United States Department of~~
5 ~~Agriculture Farm Service Agency~~, unless the State Conservationist of the Natural Resources
6 Conservation Service specifies that another information source would be more current and accurate.
7 (10%)
8

9 *History Note: Authority G.S. 106-840; 106-850; 139-4; 139-8;*
10 *Eff. May 1, 1987;*
11 *Recodified from 15A NCAC 06E .0003 Eff. December 20, 1996;*
12 *Amended Eff. April 1, 1997;*
13 *Temporary Amendment Eff. May 1, 2001;*
14 *Amended Eff. September 1, 2005; August 1, 2002;*
15 *Transferred from 15A NCAC 06E .0103 Eff. May 1, 2012, 2012;*
16 *Readopted eff. February 1, 2019.*
17
18

REQUEST FOR TECHNICAL CHANGE

AGENCY: Soil and Water Conservation Commission

RULE CITATION: 02 NCAC 59D .0104

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:

What is this Rule addressing that Rule .0103 does not? If these are funding mechanisms for different programs, you must state that in the Rule; you cannot rely upon the name of the Rule to address this.

In (a), line 21, what is the "program"?

On line 22, is this the availability of the local technical assistance?

On line 22, what do you mean by "education"?

On line 23, capitalize "Statewide"

On line 24, what are "district allocation pools"? The terms "Statewide" and "regional allocation pools" are defined in Rule .0102, but this term is not.

In (a)(3), capitalize "Statewide"

On lines 28-29, what is your authority to do this outside of rulemaking?

In (b), line 30, delete "District Allocations:" and just state "Based upon..."

In (c)(4), what will this determination be based upon and who will be responding to the disaster? The Commission or the Department?

In (c)(5), how will this work? Does this address what is happening in (c), Page 1, lines 33-34?

In (c)(6), what does this mean? What is the "current" year, given that the fiscal year begins June 30?

In (c)(7)(A), you already incorporated this document by reference in Rule .0103 and do not need to do this again.

In (c)(7)(B), are these documents the ones already incorporated by reference in .0103(g)(4)? If so, please be sure that they have the same names. Also, do not reincorporate the documents.

Amanda J. Reeder
Commission Counsel

Date submitted to agency: January 3, 2019

In (c)(7)(C), what are Phase I and II, and where are these requirements set forth?

In (c)(7)(E), do not reincorporate this document by reference.

In (c)(7)(G), Page 3, what is your authority for this to occur outside of rulemaking?

Assuming you have it, on line 2, can't you just state "Division" based upon the definition in Rule .0102?

Also, upon what basis will the Division make these recommendations?

In (d), line 4, delete "Statewide and Regional Allocations:" and just state "Based..."

On line 5, capitalize "Statewide"

On line 6, solicited how? And how will this be determined?

On line 6, upon what basis will the Division rank the application?

Please review the History Note and update it with additional statutory references now that you are combining these rules with 59H.

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 59D .0104 is readopted with changes as published in 32:09 NCR 797-798 as follows:

02 NCAC 59D .0104 BEST MANAGEMENT PRACTICES ELIGIBLE FOR COST SHARE PAYMENTS
COMMUNITY CONSERVATION ASSISTANCE PROGRAM ALLOCATION
GUIDELINES AND PROCEDURES

(a) ~~BMP's eligible for cost sharing will be restricted to those BMP's listed in the Detailed Implementation Plan approved by the commission for the current program year. BMP's shall meet the following criteria to be listed in the Detailed Implementation Plan:~~

(1) ~~—— All eligible BMP's must be designed to reduce the input of agricultural nonpoint source pollution into the water courses of the state or as otherwise authorized by statute.~~

(2) ~~—— Information establishing the average cost of the specified BMP must be available. District BMP's may use actual costs as indicated by receipts, if average costs are not available.~~

(3) ~~—— Eligible BMP's shall have adequate technical specifications as set forth in Paragraph (b) of this Rule.~~

~~(b) BMP definitions and specifications are set forth periodically in the USDA Natural Resources Conservation Service Technical Guide, Section IV, Raleigh, North Carolina or by the division for district BMP's. BMP specifications appropriate for the current program year shall be met or exceeded in order for an applicant to qualify for cost sharing. Provisions for exceeding BMP design specifications by an applicant may be considered at the time of application with the district. The applicant shall assume responsibility for all costs associated with exceeding BMP design specifications.~~

~~(c) The minimum life expectancy of the BMP's shall be listed in the Detailed Implementation Plan. Practices designated by a district shall meet the life expectancy requirement established by the division for that district BMP.~~

(a) The Commission shall consider the total amount of funding available for allocation, relative needs of the program 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) District Allocations: 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 [program] fiscal year funding according to the following formula:

- (1)
$$\frac{\text{Sum of Parameter Points}}{\text{Total Points}} = \frac{\text{Total Dollars Available}}{\text{Dollars Available to Each District}}$$
- (2)
$$\frac{\text{Percentage Total}}{\text{Points Each District}} \times \text{Total Dollars Available} = \text{Dollars Available to Each District}$$
- (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 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 and apply to the Commission for additional funds.
- (6) Agreements that encumber funds under the current 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. This report is incorporated with subsequent amendments and editions, and may be accessed at no charge at <http://ncdenr.maps.arcgis.com/apps/webappviewer/index.html> (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 growing areas (open) as determined by the Division of Marine Fisheries. The classifications are incorporated 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>. (20 percent)
 - (C) The percentage of each county covered by Phase I and Phase II requirements. (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. The Public Water Supply assessment areas are incorporated with subsequent amendments and editions, and may be accessed at no charge at <http://deq.nc.gov/about/divisions/water-resources/drinking-water/drinking-water-protection-program/mapping-applications>. (20 percent)

1 (F) The Commission may consider additional factors, such as data sources changes to the
2 Subparagraphs in this Paragraph, as recommended by the Division of Soil and Water
3 Conservation when making its allocations.

4 (d) Statewide and Regional Allocations: Based on the availability of funds, the Commission shall allocate cost share
5 funds from the statewide and regional allocation pools. To receive fund allocations, each district designated eligible by
6 the Commission shall submit applications to respective pools when solicited by the Division. The Division shall rank
7 each application and recommend to the Commission for its approval an amount to allocate to each district corresponding
8 to the highest-ranking applications.

9
10 *History Note: Authority G.S. 106-850; 139-8;*
11 *Eff. May 1, 1987;*
12 *Recodified from 15A NCAC 6E .0004 Eff. December 20, 1996;*
13 *Amended Eff. January 1, 1998;*
14 *Transferred from 15A NCAC 06E .0104 Eff. May 1, ~~2012~~ 2012;*
15 *Readopted Eff. February 1, 2019.*
16

REQUEST FOR TECHNICAL CHANGE

AGENCY: Soil and Water Conservation Commission

RULE CITATION: 02 NCAC 59D .0105

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:

What is this Rule addressing that Rules .0103 and .0104 do not? If these are funding mechanisms for different programs, you must state that in the Rule; you cannot rely upon the name of the Rule to address this.

What specific authority are you relying upon to create that program? Is it G.S. 139-8(b)? G.S. 139-60? If so, I suggest you add that to your History Note.

In (a), Page 2, line 3, On line 24, what are "district allocation pools"? The terms "Statewide" and "regional allocation pools" are defined in Rule .0102, but this term is not.

On lines 4-5, what is your authority to set this outside of rulemaking?

In (b), line 6, delete "District Allocations:" and just state "Based upon..."

In (c), line 9, when will this happen? Will this be based upon what happens in Paragraph (d)? If so, consider inserting a cross-reference.

On line 10, "identified" by whom and how? Is this all going to be based upon the district's strategic plan?

In (c)(3), what authority do you have to set this outside of rulemaking? I note that Rule .0103(b)(3) sets an amount.

In (c)(4), line 22, I suggest you delete "beyond those requested by the district" as unnecessary.

In (d), line 25, insert a comma after "allocation"

On line 25, so that I'm clear – are all district accounts administered by the Division?

In (e), line 30, what will this determination be based upon and who will be responding to the disaster? The Commission or the Department?

In (g), what does this mean? What is the "current" year, given that the fiscal year begins June 30? Also, why do you have "30th" here and "30" in the other rules?

Amanda J. Reeder

Commission Counsel

Date submitted to agency: January 3, 2019

In (h)(2) through (3) and (h)(5), insert a period at the end of the sentence to be consistent with (h)(4) and Rule .0103.

In (h)(6), what is your authority for this to occur outside of rulemaking?

Assuming you have it, on line 10, can't you just state "Division" based upon the definition in Rule .0102?

Also, upon what basis will the Division make these recommendations?

In (i), line 12, delete "Statewide and Regional Allocations:" and just state "Based..."

On line 13, capitalize "Statewide"

On line 14, solicited how? And how will this be determined?

On line 14, upon what basis will the Division rank the application?

Please review the History Note and update it with additional statutory references now that you are combining these rules with 59H.

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

02 NCAC 59D .0105 is readopted with changes as published in 32:09 NCR 798-799 as follows:

02 NCAC 59D .0105 COST SHARE AND INCENTIVE PAYMENTS AGRICULTURAL WATER
RESOURCES ASSISTANCE PROGRAM FINANCIAL ASSISTANCE
ALLOCATION GUIDELINES AND PROCEDURES

~~(a) Cost share and incentive payments may be made through Cost Share Agreements between the district and the applicant.~~

~~(b) For all practices except those eligible for CSI, the state shall provide a percentage of the average cost for BMP installation not to exceed the maximum cost share percentages shown in subdivisions (6), (8), and (9) of G.S. 143-215.74(b), and the applicant shall contribute the remainder of the cost. In kind contributions by the applicant shall be included in the applicants' cost share contribution. In kind contributions shall be specified in the agreement for cost sharing and shall be approved by the district.~~

~~(c) CSI payments shall be limited to a maximum of three years per farm.~~

~~(d) Average installation costs for each comparative area or region of the state and the amount of cost share incentive payments shall be updated and revised at least triennially by the Division for approval by the Commission.~~

~~(e) The total annual cost share payments to an applicant shall not exceed the maximum funding authorized in subdivisions (6) and (9) of G.S. 143-215.74(b).~~

~~(f) Cost share payments to implement BMPs under this program may be combined with other funding programs, as long as the combined cost share rate does not exceed the amount and percentages set forth in Paragraphs (b) and (e) of this Rule. For special funding programs where the applicant relinquishes all production capability on his or her agricultural land for at least 10 years, combined funding may equal up to 100 percent. Agriculture Cost Share Program funding shall not exceed the maximum cost share percentages shown in subdivisions (6), (8), and (9) of G.S. 143-215.74(b).~~

~~(g) Use of cost share payments is restricted to land located within the county approved for funding by the Commission. However, in the situation where an applicant's farm is not located solely within a county, the entire farm, if contiguous, shall be eligible for cost share payments.~~

~~(h) Cost share contracts used on or for local, state or federal government land must be approved by the Commission in order to avoid potential conflicts of interest and to ensure that such contracts are consistent with the purposes of this program.~~

~~(i) The district Board of Supervisors may approve Cost Share Agreements with cost share percentages or amounts less than the maximum allowable in subdivisions (6), (8), and (9) of G.S. 143-215.74(b) if:~~

~~(1) The Commission allocates insufficient cost share BMP funding to the district to enable it to award funding to all applicants;~~

~~(2) The district establishes other criteria in its annual strategy plan for cost sharing percentages or amounts less than those allowable in subdivisions (6), (8), and (9) of G.S. 143-215.74(b).~~

~~(j) For purposes of determining eligible payments under practice specific caps described in the detailed implementation plan, the district board shall consider all entities with which the applicant is associated, including those in other counties, as the same applicant.~~

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

$$\begin{array}{rclclcl} \text{(1)} & \text{Sum of Parameter Points} & = & \text{Total Points} & & \\ \text{(2)} & \text{Percentage Total} & & \text{Total} & \text{Dollars Available} & \\ & \text{Points Each} & \times & \text{Dollars} & = & \text{to} \\ & \text{District} & & \text{Available} & & \text{Each District} \end{array}$$

(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 beyond those requested by the district shall be allocated to the districts who did not receive their full requested allocation using the same methodology described in Subparagraph (b)(2) of this Rule.

(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 year must be submitted to the Division by 5:00 p.m. on June 30th.

(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%)

1 (2) Relative rank of the total acres of land in farms that are in the respective district as reported in the
2 Census of Agriculture (20%)

3 (3) Relative rank of the Market Value of Sales that are in the respective district as reported in the Census
4 of Agriculture (15%)

5 (4) Relative rank of the amount of agricultural water use in the respective district as reported in the North
6 Carolina Agricultural Water Use Survey (25%). Data from the most recent three surveys will be
7 averaged to determine each district's rank.

8 (5) Relative rank of population density as reported by the state demographer (20%)

9 (6) The Commission may consider additional factors, such as data sources changes to the Subparagraphs
10 in this Paragraph, as recommended by the Division of Soil and Water Conservation when making its
11 allocations.

12 (i) Statewide and Regional Allocations: Based upon funding availability, the Commission shall allocate cost share funds
13 from the statewide and regional allocation pools. To receive fund allocations, each district designated eligible by the
14 Commission shall submit applications to respective pools when solicited by the Division. The Division shall rank each
15 application and recommend to the Commission for its approval an amount to allocate to each district corresponding to the
16 highest-ranking applications.

17
18 *History Note: Authority G.S. 106-840; 106-850; 139-4; 139-8;*
19 *Eff. May 1, 1987;*
20 *Temporary Amendment Eff. September 23, 1996;*
21 *Recodified form 15A NCAC 06E .0005 Eff. December 20, 1996;*
22 *Temporary Amendment Expired June 13, 1997;*
23 *Amended Eff. March 1, 2008; July 1, 2004; April 1, 1999; January 1, 1998;*
24 *Transferred from 15A NCAC 06E .0105 Eff. May 1, ~~2012~~ 2012;*
25 *Readopted Eff. February 1, 2019.*
26
27

REQUEST FOR TECHNICAL CHANGE

AGENCY: Soil and Water Conservation Commission

RULE CITATION: 02 NCAC 59D .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 (a), Page 2, line 12, approved how? And what is the authority to do this outside of rulemaking?

And is Paragraph (a) applicable to all BMPs? Or not District BMPs?

In (a)(1), how will this be determined and by whom?

End line 16 with a semicolon, not a period.

In (a)(2), line 17, simply delete the hyphen between "if" and "available"

On line 18, retain "available; and" as you had the Rule when you published it.

In (a)(3), line 19, what is "adequate"

In (b), lines 20-21, I do not understand this cross-reference. Those rules establish the funding formula.

On line 21, how will the Division outline this process? Is this set forth in another Rule or law? If not, what is your authority to do so outside of rulemaking?

On line 21, why is "district" lowercase here, but not on line 13?

On lines 21-22, should "cost-shared" be hyphenated?

What are you conveying on lines 22-23? Considered by whom?

In (c), line 25, what are "evaluation purposes"?

On line 26, what is "technically adequate"? Based upon what?

On line 26, what do you mean by "funding"? Before releasing the funds or before the Commission will approve the application?

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

Please review the History Note and update it with additional statutory references now that you are combining these rules with 59H.

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 59D .0106 is readopted as published in 32:09 NCR 799-800 as follows:

02 NCAC 59D .0106 ~~TECHNICAL ASSISTANCE FUNDS BEST MANAGEMENT PRACTICES~~
ELIGIBLE FOR COST SHARE PAYMENTS

~~(a) The funds available for technical assistance shall be allocated by the commission based on the recommendation of the division and the needs as expressed by the district and needs to accelerate the installation of BMP's in the respective district. Each district may use these monies to fund new positions or to accelerate present technical assistance positions. Districts must provide an itemized budget to the division in order to qualify for technical assistance funds. Matching funds for district technical assistance shall be approved by the commission prior to any expenditure of funds. Budget revisions submitted by the districts may be approved by the NPS Section based on Paragraph (b) of this Rule. N. C. Agriculture Cost Share technical assistance funds may be used for each FTE technical position with the district matching at least 50 percent of the total. Priorities for funding positions shall be assigned based as follows:~~

~~(1) — Subject to availability of funds and local match, provide support for one FTE technical position for every district.~~

~~(2) — Subject to availability of funds and local match, provide support for one additional FTE technical position if the position is needed to further support program implementation. Priority for funding positions beyond one FTE per district shall be based on the following parameters:~~

~~(A) — Whether the position is presently funded by program technical assistance funds.~~

~~(B) — The number of program dollars encumbered to contracts in the highest three of the previous four completed program years, and~~

~~(C) — The number of program dollars actually expended for installed BMPs in the highest three years of the most recent four year period for which the allowed time for implementing contracted BMPs has expired as reported on the NC Agriculture Cost Share Database.~~

~~(3) — Subject to availability of funds and local match, provide support for additional FTE technical position if the position is needed to further accelerate treatment of identified critical nonpoint source pollution problem(s).~~

~~(b) Technical assistance funds may be used for salary, benefits, social security, field equipment and supplies, office rent, office equipment and supplies, postage, telephone service, travel and mileage. A maximum of two thousand five hundred dollars (\$2,500) per year for each FTE technical position is allowed for mileage charges.~~

~~(c) Technical assistance funds may not be used to fund technical assistance positions which do not meet the following minimum requirements:~~

~~(1) — associated degree in engineering, agriculture, forestry or related field; or~~

~~(2) — high school diploma with two years experience in the fields listed in Rule .0106(c)(1), of this Subchapter.~~

~~(d) Cost shared positions must be used to accelerate the program activities in the district. A district technician cost shared with program funds may work on other activities as delegated by the field office supervisor but the total hours~~

1 charged to the program by field office personnel must equal or exceed those hours funded through the program. Also,
2 these hours must be in addition to those hours normally spent in BMP planning and installation by district personnel.
3 (e) District technicians may be jointly funded by more than one district to accelerate the program in each participating
4 district. Each district must be eligible for cost sharing in the program. Requests for funding (salary, FICA, insurance,
5 etc.) of a shared position must be presented to the division by all concerned districts and the division shall cost share to
6 the billing district at a 50-50 rate based on the portion of the FTE provided each respective district. A shared position
7 must be officially housed in one specific district and cost share for support items (office rent, telephone, etc.) shall be
8 paid to one district only.

9 (f) Funds, if available, shall be allocated to each participating district to provide for administrative costs under this
10 program. These funds shall be used for clerical assistance and other related program administrative costs and shall be
11 matched with in-kind funds of an equal amount from the district.

12 (a) BMPs eligible for cost sharing shall be restricted to those BMPs listed in the Detailed Implementation Plan approved
13 by the Commission for the current fiscal year, except for District BMPs. BMPs shall meet the following criteria to be
14 listed in the Detailed Implementation Plan:

15 (1) all eligible BMPs shall be designed to meet the purpose of the program or shall be authorized by
16 statute.

17 (2) information establishing the average cost of the specified BMP shall be used, if available. District
18 BMPs may use actual costs as indicated by receipts, if average costs are not available; and

19 (3) eligible BMPs shall have adequate technical specifications as set forth in Paragraph (b) of this Rule.

20 (b) BMP definitions and specifications shall be determined by the Commission using the process outlined in 02 NCAC
21 59D .0103 through 59D .0105 or by the Division for district BMPs. For a contract to be eligible for payment, all cost
22 shared BMPs shall meet or exceed the specifications in effect at the time the contract was approved. Provisions for
23 exceeding BMP design specifications by an applicant may be considered at the time of application with the district. The
24 applicant shall assume responsibility for all costs associated with exceeding BMP design specifications.

25 (c) The Division has authority to approve District BMPs for evaluation purposes. The BMP shall be requested by a
26 district and meet the program purpose. The Division shall determine it to be technically adequate prior to funding.

27 (d) The minimum required maintenance of the BMPs shall be listed in the Detailed Implementation Plan or be established
28 by the Division for District BMPs.

29
30 *History Note: Authority G.S. 106-840; 106-850; 139-4; 139-8;*

31 *Eff. May 1, 1987;*

32 *Amended Eff. July 1, 1992;*

33 *Recodified from 15A NCAC 6E .0006 Eff. December 20, 1996;*

34 *Amended Eff. August 1, 2005; November 1, 1997;*

35 *Transferred from 15A NCAC 06E .0106 Eff. May 1, 2012; 2012;*

36 *Readopted Eff. February 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Soil and Water Conservation Commission

RULE CITATION: 02 NCAC 59D .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), Page 2, line 25, what are "cost share and incentive payments" if they are not CSI?

On line 25, insert a comma after "Division"

In (b), line 27, just use "State"

And how will this be provided?

On line 29, and elsewhere in the Rule that you cite to subsections of G.S. 106-850(b), replace the citation with "G.S. 106-850(b)(6), (8), or (9)"

In (c), you state that the payments will be limited to three years per entity; but in Rule .0102(9), you state that the agreements shall be limited to three years. Should these say the same thing? If not, what is the difference between the agreement and the "entity" and what is the "entity" here?

In (d), line 33, please capitalize "State"

On line 34, do you need to retain "at least"? If you do, it's fine, but I wanted to ask because rules set the minimum.

Also on line 34, how will this approval occur?

In (f), Page 3, line 1, simply remove the "is" that you did not publish in the Register.

On lines 2-3, who will determine if the farm is contiguous?

In (g), line 4, what are "cost share contracts"? Should the term be "cost share agreements" based upon the defined term in Rule .0102(9)?

On line 5, please capitalize "State" assuming you mean NC.

On line 5, approved based upon what? Is it solely that there are no conflicts of interest and that the contract is consistent with the purpose?

Amanda J. Reeder
Commission Counsel

Date submitted to agency: January 3, 2019

In (i), lines 13-14, should "Detailed Implementation Plan" be capitalized?

And what authority are you relying upon to determine the caps outside of rulemaking?

On line 14, who is the district board? Does your regulated public know?

On line 14, what are "entities" in this context?

On line 15, what do you mean by "same" applicant? What does this sentence mean?

Please review the History Note and update it with additional statutory references now that you are combining these rules with 59H.

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 59D .0107 is readopted as published in 32:09 NCR 800-801 as follows:

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

~~(a) The landowner shall be required to sign the agreement for all practices other than agronomic practices and land application of animal wastes. An applicant who is not the landowner may submit a long term written lease or other legal document, indicating control over the land in lieu of the landowner's signature, provided the control runs the life of the practice as listed in the respective Program Year's Implementation Plan. Signature on the agreement constitutes responsibility for BMP maintenance and continuation.~~

~~(b) As a condition for receiving cost share or cost share incentive payments for implementing BMP's, the applicant shall agree to continue and maintain those practices for the minimum life as set forth in the Detailed Implementation Plan, effective the date the BMP's are implemented.~~

~~(c) As a condition for receiving cost share payments, the applicant shall agree to submit a soil test sample for analysis and follow the fertilizer application recommendations as close as reasonably and practically possible. Soil testing shall be required a minimum of every two years on all cropland affected by cost share payments. Failure to soil test shall not constitute noncompliance with the cost share agreement.~~

~~(d) As a condition for receiving cost share payments for waste management systems, the applicant shall agree to have the waste material analyzed once every year to determine its nutrient content. If the waste is land applied, the applicant shall agree to soil test the area of application and to apply the waste as close as reasonably and practically possible to recommended rates. When waste is land applied, waste analysis and soil testing shall be conducted annually.~~

~~(e) The technical representative of the district shall determine if the practice(s) implemented have been installed according to specifications as defined for the respective program year in the USDA Natural Resources Conservation Service Technical Guide, Section IV, Raleigh, North Carolina, according to other specifications approved by the Commission pursuant to 02 NCAC 59G .0103, or according to specifications approved by the Division for district BMP's based on the criteria established in 02 NCAC 59G .0103(e). The district shall be responsible for making an annual spot check of five percent of all the cost share agreements to ensure proper maintenance. Waste management systems shall be included as part of the annual five percent check except for systems on farms without certified waste management plans. In those cases, the districts shall conduct annual status reviews for five years following implementation.~~

~~(f) If the technical representative of the district determines that a BMP for which program funds were received has been destroyed or has not been properly maintained, the applicant will be notified that the BMP must be repaired or re-implemented within 30 working days. For vegetative practices, applicants are given one calendar year to re-establish the vegetation. The district may grant a prescribed extension period if it determines compliance can not be met due to circumstances beyond the applicants control.~~

~~(g) If the practices are not repaired or reimplemented within the specified time, the applicant shall be required to repay to the Division a prorated refund for cost share BMP's as shown in Table 1 and 100 percent of the cost share incentive payments received.~~

Table 1

PRORATED REFUND SCHEDULE FOR NONCOMPLIANCE

~~OF COST SHARE PAYMENTS~~

Percent Age of Practice Life	Percent Refund
0	100
10	95
20	89
30	82
40	74
50	65
60	55
70	44
80	31
90	17
100	0

~~(h) An applicant, who has been found in noncompliance and who does not agree to repair or reimplement the cost shared practices, and a District may jointly request the commission to informally mediate the case. To invoke this method of mediation, both parties must stipulate that the commission mediation is binding.~~

~~(i) An applicant shall have 180 days to make repayment to the Division following the final appeals process.~~

~~(j) The inability to properly maintain cost shared practices or the destruction of such practices through no fault of the applicant shall not be considered as noncompliance with the cost share agreement.~~

~~(k) When land under cost share agreement changes owners the new landowner shall be strongly encouraged by the district to accept the remaining maintenance obligation. If the new landowner does not accept the maintenance requirements in writing, then the original applicant shall be required to refund 100 percent of all CSI payments and a prorated portion of cost share payments in accordance with Table 1 in Paragraph (g) of this Rule.~~

(a) Cost share and incentive 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 of North Carolina shall provide a percentage of the average cost for BMP installation not to exceed the maximum cost share percentages shown in subdivisions (6), (8), and (9) of G.S. 106-850(b), and the applicant shall provide 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 at least triennially by the Division for approval by the Commission.

(e) The total annual cost share payments to an applicant shall not exceed the maximum funding authorized in subdivisions (6) and (9) of G.S.106-850(b).

1 (f) Use of cost share payments is shall be restricted to land located within the county approved for funding by the
2 Commission. However, in the situation where an applicant's farm is not located solely within a county, the entire farm, if
3 contiguous, shall be eligible for cost share payments.

4 (g) Agriculture Cost Share Program and Agricultural Water Resources Assistance Program cost share contracts used on
5 or for local, state or federal government land shall be approved by the Commission to avoid potential conflicts of interest
6 and to ensure that such contracts are consistent with the purposes of these programs.

7 (h) The district Board of Supervisors may approve Cost Share Agreements with cost share percentages or amounts less
8 than the maximum allowable in subdivisions (6), (8), and (9) of G.S. 106-850(b) if:

9 (1) the Commission allocates insufficient cost share BMP funding to the district to enable it to award
10 funding to all applicants; or

11 (2) the district establishes other criteria in its annual strategic plan for cost sharing percentages or amounts
12 less than those allowable in subdivisions (6), (8), and (9) of G.S. 106-850(b).

13 (i) For purposes of determining eligible payments under practice-specific caps described in the detailed implementation
14 plan, the district board shall consider all entities with which the applicant is associated, including those in other counties,
15 as the same applicant.

16
17 *History Note: Authority G.S. 106-850; 139-4; 139-8;*
18 *Eff. May 1, 1987;*
19 *Amended Eff. July 1, 1992;*
20 *Recodified from 15A NCAC 6E .0007 Eff. December 20, 1996;*
21 *Amended Eff. June 1, 2008; April 1, 1999; November 1, 1997;*
22 *Transferred from 15A NCAC 06E .0107 Eff. May 1, ~~2012~~ 2012;*
23 *Readopted Eff. February 1, 2019.*
24

REQUEST FOR TECHNICAL CHANGE

AGENCY: Soil and Water Conservation Commission

RULE CITATION: 02 NCAC 59D .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:

In (a), line 26, what is "technical assistance"?

On line 27, please capitalize "Division"

On line 27, what are the "needs to accelerate the installation"? Who determines these needs?

On line 28, I take it you need to retain "at least" here?

In (b), line 29, what do you mean by "their"? Who is the "their"? The Commission? If so, shouldn't it be "its"?

On line 29, why do you have "Detailed Implementation Plan (DIP)" given the definition in Rule .0102(14)? Why not just state "DIP" here?

On line 31, provided technical assistance to whom?

In (b)(1), line 32, what are the "Commission Cost Share Programs" you are referring to here? Note the same question for (e), Page 2, line 8.

In (b)(2), line 33, capitalize "State"

Also on line 33, insert a comma after "federal"

On lines 33-34, consider stating "Rule .0101 of this Section"

What is intended in (b)(3)?

In (b)(4), line 37, what are the "best" years? Who determines this, based upon what?

Also, who will calculate the allocation?

In (b)(5), Page 2, who will calculate this allocation?

How will one know there is a change in the appropriations?

Amanda J. Reeder
Commission Counsel

Date submitted to agency: January 3, 2019

On line 2, please capitalize "State"

In (c), line 5, what are "Soil and Water Conservation Commission Cost Sharing Programs"? Should this be the same language in (b)(1) and (e), line 8?

In (d), line 7, I take it you need to retain "minimum" here?

In (e), line 8, what are "financial assistance funds"?

What does Paragraph (e) convey? Does your regulated public understand this?

In (f)(1), line 14, insert "Design practice" in quotation marks, since you are defining the term. Therefore, it will look like this: "... design practice. "Design practice" means..."

Lines 15-16, what is this Plan? Where is it located? Should this be incorporated by reference using G.S. 150B-21.6?

In (f)(2), line 17, who is the "District Board of Supervisors"?

On line 18, define "extenuating circumstances"

Please review the History Note and update it with additional statutory references now that you are combining these rules with 59H.

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

02 NCAC 59D .0108 is readopted with changes as published in 32:09 NCR 802 as follows:

02 NCAC 59D .0108 DISTRICT PROGRAM OPERATION TECHNICAL ASSISTANCE FUNDS

~~(a) As a component of the annual strategy plan, the district shall prioritize both cropland and animal operations according to pollution potential. The district shall target technical and financial assistance to facilitate BMP implementation on the identified critical areas.~~

~~(b) Priority by the district may be given to implementing systems of BMP's which provide the most cost effective reduction of nonpoint source pollution.~~

~~(c) All applicants shall apply to the district and complete the necessary forms in order to receive cost share payments.~~

~~(d) The district shall review each application and the feasibility of each application. The district shall review and approve the evaluation and assign priority for cost sharing. All applicants shall be informed of cost share approval or denial.~~

~~(e) Upon approval of the application by the district, the applicant and the district shall enter into a cost share agreement. The cost share agreement shall list the practices to be cost shared with state funds. The agreement shall also include the average cost of the recommended practice(s), cost incentive payment of the practice(s), and the expected implementation date of the practice(s). The District shall develop CPO's, which shall become a part of the cost share agreement.~~

~~(f) Upon completion of practice(s) implementation, the technical representative of the district shall notify the district of compliance with design specifications.~~

~~(g) Upon notification, the district shall review the CPO. Upon approval, the district shall certify the practices in the CPO and notify the Division to make payment to the applicant.~~

~~(h) Upon receipt of a quarterly statement from the district, the Division shall reimburse to the district the appropriate amount for technical and clerical assistance.~~

~~(i) The district shall be responsible for and approve all BMP inspections as set forth in Rule .0107(e) of this Section to insure proper maintenance and continuation under the cost share agreement.~~

~~(j) The district shall keep appropriate records dealing with the program.~~

(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 their Detailed Implementation Plan (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 in 02 NCAC 59D .0101 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 best 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 on 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 [July 1, 2018,] 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.

*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~~ 2012;
Readopted Eff. February 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Soil and Water Conservation Commission

RULE CITATION: 02 NCAC 59D .0109

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, what do you mean by “constitutes responsibility”? If you want to state that the agreement shall include a requirement for the landowner to be responsible for BMP maintenance and continuation, state that.

On line 5, what is the difference between “maintenance” and “continuation”?

In (b), line 7, is there supposed to be a hyphen between “USDA” and “Natural”?

On line 8, please incorporate this guide using G.S. 150B-21.6.

On line 10, I do not understand the cross-reference. I do not see that 59G .0103(c) is confined to districts only.

In (c), line 11, what is a “spot check”?

On lines 12-13, are these going to be different for each district or applicant?

In (d), line 16, replace “working” with “business”

On line 17, do you mean “shall” rather than “may”? If not, then please state in Rule circumstances under which the Division determines that the compliance cannot be met due to circumstances beyond the applicant’s control, but will still not grant the extension.

On line 17, what is “prescribed”? How will this be communicated?

On line 18, what are these circumstances?

In (f), Page 2, line 1, what is the “contract” here?

On line 1, found by whom to be noncompliant?

Also on line 1, delete the comma after “applicant”

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

On line 2, do you mean “shall” rather than “may”? If not, when will the Division not invoke procedures to achieve resolution for the noncompliance?

On line 3, what are these remedies? Why do you need “including any and all remedies available to it under the law”?

In (g), line 4, delete or define “strongly”

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

02 NCAC 59D .0109 is adopted with changes as published in 32:09 NCR 802-803 as follows:

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 signature on the agreement constitutes responsibility 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 Technical Guide for North Carolina, according to other specifications approved by the Commission pursuant to 02 NCAC 59G .0103, 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 spot check of five percent of all the cost share agreements to ensure proper maintenance. The Commission may specify additional spot check 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 working days. For vegetative practices, applicants shall be given one calendar year to re-establish the vegetation. The Division may grant a prescribed extension period if it determines compliance cannot be met due to circumstances beyond the applicants control.

(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 BMP's as shown in Table 1 and 100 percent of the cost share incentive payments received.

Table 1
PRORATED REFUND SCHEDULE FOR NONCOMPLIANCE
OF COST SHARE PAYMENTS

Percent Age of Practice Life	Percent Refund
0	100
10	95
20	89
30	82
40	74
50	65
60	55
70	44
80	31
90	17
100	0

1 (f) In the event that a contract has been found to be noncompliant and the applicant, does not agree to correct the non-
2 compliance, the Division may invoke procedures to achieve resolution to the noncompliance, including any and all
3 remedies available to it under the law.

4 (g) When land under cost share agreement [~~changes, owners~~] changes ownership the new landowner shall be strongly
5 encouraged by the district to accept the remaining maintenance obligation. If the new landowner does not accept the
6 maintenance requirements in writing, then the original applicant shall be required to refund 100 percent of all CSI
7 payments and a prorated portion of cost share payments in accordance with Table 1 in Paragraph (e) of this Rule.

8
9 *History Note: Authority G.S. 106-850; 139-4; 139-8;*

10 *Eff. February 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Soil and Water Conservation Commission

RULE CITATION: 02 NCAC 59D .0110

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), what do you mean by “per the program purpose”? Is this as set forth in Rule .0101?

On line 5, what are “identified critical areas”? Identified by whom?

In (b), line 7, who determines what the “most cost-effective” practices are? Based upon what?

On line 8, what is a “priority resource”?

In (c), how will this application process work? Does your regulated public know?

In (d), line 10, what do you mean by “feasibility” of the applicant? And should it state “and determine the feasibility...”?

In (e), line 14, capitalize “State”

In (f), lines 18-19, should “district board” be capitalized? Or is this distinct from the “District Board of Supervisors” on lines 21022?

In (g), line 20, notification by whom?

On line 22, define “proper”

On line 23, I note that you have the term “job approval authority” capitalized in Rule .0108(f). I prefer it lowercase, but ask that you be consistent with the capitalization across these Rules.

In (h), line 24, I do not understand the cross-reference. Should this be .0109(c)?

On line 25, please replace “insure” with “ensure”

In (i), line 26, replace “their districts” with “its”

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

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 59D .0110 is adopted as published in 32:09 NCR 803 as follows:

02 NCAC 59D .0110 DISTRICT PROGRAM OPERATION

(a) As a component of the annual strategic plan, the district shall prioritize resource concerns per the program purpose. The district shall target technical and financial assistance to facilitate BMP implementation on the identified critical areas.

(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 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 compliance with design specifications.

(g) Upon notification, 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 proper 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(e) of this Section to insure proper maintenance and continuation under the cost share agreement.

(i) The district shall keep records dealing with the program per their district's document retention schedule.

*History Note: Authority G.S. 106-840; 106-850; 139-4; 139-8;
Eff. February 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Soil and Water Conservation Commission

RULE CITATION: 02 NCAC 59H – All Rules Submitted

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:

Please include a History Note for these repeals with an effective date. Please note, as you are only changing the History Note, you will not include "with changes" in the Introductory Statement.

Note that some of these are consecutive repeals that became effective the same day and are being repealed, so they should be combined. For example:

02 NCAC 59H .0101 PURPOSE
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. February 1, 2019.*

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 59H .0101 - .0108 are readopted as repeals as published in 32:09 NCR 803-808 as follows:

02 NCAC 59H .0101 PURPOSE

02 NCAC 59H .0102 DEFINITIONS FOR SUBCHAPTER 59H

02 NCAC 59H .0103 ALLOCATION GUIDELINES AND PROCEDURES

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

02 NCAC 59H .0105 COST SHARE AND INCENTIVE PAYMENTS

02 NCAC 59H .0106 TECHNICAL ASSISTANCE FUNDS

02 NCAC 59H .0107 COST SHARE AGREEMENT

02 NCAC 59H .0108 DISTRICT PROGRAM OPERATION

History Note: Authority G.S. 106-840; 106-860; 139-4; 139-8