

# Title 15

## DEPARTMENT OF AGRICULTURE

### Subtitle 01 OFFICE OF THE SECRETARY

#### Chapter 05 Cost Sharing—Water Pollution Control Program

Authority: Agriculture Article, §§2-103, 8-703, 8-704, and 8-803.1, Annotated Code of Maryland; Chapter 306, Maryland Laws of 1982 (Uncodified)

#### **.01 General.**

This chapter explains the State's cost sharing program to assist eligible applicants in implementing certain agricultural practices which will lessen water pollution caused by nutrients, sediment, animal wastes, or agricultural chemicals. Under this program, grants are made to farmers for the primary purpose of conserving soil and water resources and for protecting or restoring the environment for the public benefit.

#### **.02 Definitions.**

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

- 1) "Best management practice" means a conservation or pollution control practice that manages soil loss due to farming practices or manages animal wastes or agricultural chemicals so as to minimize movement into the surface waters of the State.
- 2) "County Soil Survey" means a report developed by the United States Department of Agriculture, Natural Resource Conservation Service, for each county which identifies soil types.
- 3) "Critical condition" means a condition on land where there is or there may be a high potential for the movement of pollutants from nutrients, sediment, animal wastes, or agricultural chemicals into the waters of the State.
- 4) "Department" means the State Department of Agriculture.
- 5) "District" means a soil conservation district.
- 6) "Eligible cost" means a capital expenditure for installing, purchasing, or constructing a best management practice, including, but not limited to, the cost of pollution control equipment, animal waste facilities, water control structures, diversion facilities, sediment basins or grade stabilization structures, establishing permanent vegetative cover, or a contour, strip-cropping, terrace, or conservation tillage system of farming. It does not include the cost of land or interests in land, or the costs of operating or maintaining best management practices.
- 7) "Geographic area" means a watershed or major portion of a watershed which contains or has a high potential for containing priority areas.
- 8) "Nutrient management plan" means a plan prepared by a State-certified nutrient management consultant to manage the amount, placement, timing, and application of animal waste, fertilizer, biosolids, sewage sludge, or other plant nutrients in order to prevent pollution and to maintain the productivity of the soil. Requirements for plan content, recommendations, maintenance, updates, and record keeping are further defined under COMAR 15.20.08.

- 9) "Person" means an individual, partnership, corporation, trust, or other business enterprise which as an owner, landlord, or tenant, participates in the operation of a farm.
- 10) "Pooling agreement" means a written agreement between persons approved by the Secretary, to perform best management practices and which is intended to solve a mutual pollution problem on different farms.
- 11) "Priority area" means an area where a critical condition exists.
- 12) "Project" means a project to prevent or control agriculturally related nonpoint source water pollution by establishing best management practices on a farm.
- 13) "Secretary" means the Secretary of Agriculture or his designee.
- 14) "Waters of the State" means both surface and underground waters within the boundaries of the State subject to its jurisdiction, including that portion of the Atlantic Ocean within the boundaries of the State, the Chesapeake Bay and its tributaries, and all ponds, lakes, rivers, streams, public ditches, tax ditches, and public drainage systems within the State, other than those designed and used to collect, convey, or dispose of sanitary sewage.

### **.03 Program Eligibility—Priority and Geographic Areas for Water Pollution Control.**

- A. A person who operates a farm in a priority area as designated in this regulation is eligible to apply for financial assistance for one or more projects under the State's cost share program for water pollution control.
- B. The following geographic areas within this State are identified by watershed name and watershed segment number because they are likely to contain priority areas for water pollution control:
  - 1) The following watersheds in the Middle Potomac River Basin:
    - a) Double Pipe Creek (02-14-03-04),
    - b) Upper Monacacy River (02-14-03-03),
    - c) Catoctin Creek (02-14-03-05),
    - d) Lower Monacacy River (02-14-03-02),
    - e) Direct drainage to the Potomac River between the Monocacy and Shenandoah Rivers (02-14-03-01);
  - 2) The following watersheds in the Upper Potomac River Basin:
    - a) Antietam Creek (02-14-05-02),
    - b) Conococheague Creek (02-12-05-04);
  - 3) The Seneca Creek Watershed in the Potomac River Washington Metro Area (02-14-02-08);
  - 4) The Deer Creek Watershed in the Lower Susquehanna River Basin (02-12-02-02);
  - 5) The Sassafras River Watershed in the Elk River Basin (02-13-06-10);
  - 6) The following watersheds in the Chester River Basin:
    - a) Miles River (02-13-05-02),
    - b) Wye River (02-13-05-03),
    - c) Middle Chester River (02-13-05-09),
    - d) Upper Chester River (02-13-05-10);
  - 7) The following watersheds in the Pocomoke River Basin:
    - a) Nassawango Creek (02-13-02-05),
    - b) Lower Pocomoke River (02-13-02-02),
    - c) Manokin River (02-13-02-08),
    - d) Upper Pocomoke River (02-13-02-03),
    - e) Dividing Creek (2-13-02-04);
  - 8) The following watersheds in the Choptank River Basin:
    - a) Upper Choptank (02-13-04-04),
    - b) Lower Choptank (02-13-04-03),

- c) Tuckahoe Creek (02-13-04-05);
- 9) The following watersheds in the Nanticoke/Wicomico River Basin:
  - a) Lower Wicomico (02-13-03-01),
  - b) Nanticoke River (02-13-03-05),
  - c) Marshy Hope Creek (02-13-03-06),
  - d) Wicomico Creek (02-13-03-03),
  - e) Transquaking River (02-13-03-08);
- 10) The South Branch Patapsco Watershed in the Patapsco River Basin (02-13-09-08);
- 11) The following reservoir watersheds:
  - a) Loch Raven (02-13-08-05),
  - b) Prettyboy (02-13-08-06),
  - c) Liberty (02-13-09-07); and
- 12) All watersheds in the Patuxent River Basin (02-13-11-xx).

C. State Cost Share Funds Shall be Made Available Only in a Priority Area.

- 1) A priority area is an area:
  - a) Within a geographic area located within 1,000 feet of the surface waters of the State where critical conditions exist;
  - b) Within a geographic area located more than 1,000 feet from the surface waters of the State provided a severe agricultural pollution problem exists;
  - c) Outside a geographic area located within 1,000 feet of the surface waters of the State where critical conditions exist; or
  - d) Outside a geographic area located more than 1,000 feet from the surface waters of the State provided a severe agricultural pollution problem exists.
- 2) In determining the existence of critical conditions, the Department shall place emphasis on evidence that water runoff is carrying or has the potential to carry any pollutants from nutrients, sediment, animal wastes, or agricultural chemicals to the waters of the State. In addition, the Department shall consider the following criteria in designating a priority area:
  - a) Whether the area has a serious soil loss due to sheet, rill, gully, or wind erosion;
  - b) Whether the area has severely eroded soils as designated by erosion symbol 3 in the county soil survey;
  - c) Whether the area is designated as a land use capability class IIIe or higher, including all areas in class C slopes or greater, as designated by the county soil survey;
  - d) Whether the area is included in a land use capability subclass S, as designated by the county soil survey; and
  - e) Whether critical conditions exist near the surface waters of the State.
- 3) The following documents are incorporated by reference. They are available for review at each soil conservation district office. These documents are:
  - a) Soil Survey of Allegany County;
  - b) Soil Survey of Anne Arundel County;
  - c) Soil Survey of Baltimore County;
  - d) Soil Survey of Calvert County;
  - e) Soil Survey of Caroline County;
  - f) Soil Survey of Carroll County;
  - g) Soil Survey of Cecil County;
  - h) Soil Survey of Charles County;
  - i) Soil Survey of Dorchester County;
  - j) Soil Survey of Frederick County;
  - k) Soil Survey of Garrett County;

- l) Soil Survey of Harford County;
- m) Soil Survey of Howard County;
- n) Soil Survey of Kent County;
- o) Soil Survey of Montgomery County;
- p) Soil Survey of Prince George's County;
- q) Soil Survey of Queen Anne's County;
- r) Soil Survey of St. Mary's County;
- s) Soil Survey of Somerset County;
- t) Soil Survey of Talbot County;
- u) Soil Survey of Washington County;
- v) Soil Survey of Wicomico County; and
- w) Soil Survey of Worcester County.

D. A landowner who engages in an agricultural operation is eligible to receive cost share assistance for the preparation and the implementation of a nutrient management plan project provided that landowner is a State-certified nutrient management consultant or uses technical assistance from a private State-certified and licensed nutrient management consultant.

E. Any nutrient management plan project shall comply with the following:

- 1) If the person is using commercial fertilizer, as defined by Agriculture Article, §6-201(f), Annotated Code of Maryland, the plan shall be based on both nitrogen and phosphorus as limiting nutrients; or
- 2) If the person is using animal manure, the plan:
  - a) May be based on nitrogen as the only limiting nutrient if developed before July 1, 2004, and
  - b) Shall be based on phosphorus as the limiting nutrient in accordance with COMAR 15.20.07.

F. A person receiving cost share assistance for nutrient management plan development shall implement the plan in accordance with deadlines set forth in COMAR 15.20.07.04.

#### **.04 Application Procedures.**

- A. A person may apply for cost sharing funds for a project on a Departmental request form provided by each local district.
- B. Upon request by the applicant, the district shall complete a project technical determination form which shall include an approximate project cost figure. For projects other than nutrient management plans, the district shall recommend whether a critical condition exists on a farm. Cost figures for nutrient management plan development may be calculated by a State-certified and licensed nutrient management consultant using State-designated flat rates.
- C. The district shall forward both forms to the Department for review.

#### **.05 Application Review and Approval.**

- A. The Department To Approve or Disapprove an Application.
  - 1) If the Department approves a project, it shall base the amount of State cost sharing on:
    - a) The existence of a critical condition;

- b) Water quality improvements to be achieved, with consideration given to the cumulative effect of other projects on the same body of water;
- c) The estimated reduction of soil loss;
- d) The estimated reduction of pollution from animal waste;
- e) The estimated economic benefit to the participating farmer from use of the best management practice; and
- f) Use of the most cost effective best management practice.
- g) The Department shall disapprove an application for any of the following reasons:
- h) The application is incomplete or does not comply with these regulations;
- i) The applicant's land is not a farm or is not used for agricultural purposes;
- j) The application is for a farm where a critical condition does not exist;
- k) The applicant has requested cost sharing funds to re-establish an agricultural practice which has deteriorated due to the negligence or mismanagement of the applicant;
- l) The application is for a project which is already under construction; or
- m) No available funds.

B. Within 30 days, the Department shall notify both the applicant and the district if an application is approved, and the applicant shall be notified of the estimated State cost sharing amount for the project and the applicant's required matching amount.

### **.06 Technical Assistance by the District.**

Upon application approval and notice by the Department, the applicant shall request the district to prepare or approve all design, construction, maintenance, or other plans for the project. The district shall provide any necessary layout and construction supervision. The district shall prepare a technical report along with its final estimate of project cost and send it to the applicant and to the Department.

### **.07 Cost Sharing Agreement.**

A. After a technical report of the project has been submitted to the Department by the district, the Department, with the approval of the Board of Public Works (when proceeds of State bonds are used to finance the State share), the district and the applicant shall execute an agreement. The agreement, among other things, shall obligate the applicant to:

- 1) Establish, construct, or install one or more best management practices in accordance with district technical specifications;
- 2) Maintain the best management practice for its expected life span;
- 3) Bind any successor in title for the life of the project as specified in the agreement;
- 4) Provide any required funds for the project; and
- 5) Grant the Department, if it requests, a security interest in any equipment, structures, or similar items purchased with State cost sharing funds.

B. Before the Department executes a cost sharing agreement with a farm tenant, it shall obtain the consent of the landlord to the terms and conditions of the agreement.

### **.08 Project Establishment.**

A. After all parties execute a cost sharing agreement, and upon notice to the local district by the applicant, an applicant shall begin the approved project.

- B. The applicant shall be responsible for all steps in completing the project, including, but not limited to, obtaining any necessary permits and the services of contractors, or obtaining any necessary materials or equipment to complete project construction.
- C. The applicant shall provide the Department with a copy of the nutrient management plan immediately upon its final preparation when submitting a claim for payment for cost share assistance.

### **.09 Project Supervision.**

- A. A district shall periodically inspect the construction or installation of any project to ensure that it complies with district technical specifications.
- B. An applicant shall agree to allow district and U.S. Department of Agriculture ----- Natural Resource Conservation Service representatives reasonable access to the project site for the purpose of site inspection and for reviewing the applicant's project records.
- C. In order to verify implementation of the nutrient management plan project, the applicant shall agree to allow a Department representative access to the:
  - 1) Project site; and
  - 2) Applicant's project records.

### **.10 Distribution of Cost Sharing Funds.**

- A. A person who executes a cost sharing agreement shall do all of the following before making a claim for payment to the Department:
  - 1) A person shall document all eligible costs on an itemized statement and submit it to the district for approval. Each itemized cost shall be supported by payment receipts or unpaid invoices from vendors. Each receipt shall be signed by the person who executes a cost share agreement and certified that each cost is true and correct to the best of that person's knowledge;
  - 2) Each payment receipt or unpaid invoice shall show the following:
    - a) Vendor, or vendors names;
    - b) Type of material, labor, or equipment used on the project; and
    - c) The unit cost paid for the item, the total amount paid to the vendor, and the date payment was received.
  - 3) The total amount of any claim for payment shall be shown clearly on a separate line on the face of the receipt. If receipts include items which were not used on the approved project, a person shall delete those items and adjust any total on the receipt.
- B. After a project has been completed, a person shall complete a departmental claim for payment form, which is available from a district.
- C. The district shall certify to the Department that the project meets all applicable standards and specifications. The district shall also certify to the Department that a person's claim for payment properly represents all eligible costs. Only a State-certified nutrient management consultant may certify that a nutrient management plan meets all applicable standards and specifications.
- D. The Department shall distribute cost sharing funds only after it has determined that the project or best management practice has been established, or in the case of equipment, structures, or similar items, that it has been received and properly installed.

E. Distribution.

- 1) The Department may distribute cost sharing funds for a project up to 100 percent of eligible costs, subject to the restrictions in §E (2)—(4) of this regulation.
- 2) Single Projects other than Animal Waste Storage or Treatment Projects.
  - The payment made under this program for a single non-waste storage or treatment project not covered by a pooling agreement may not exceed \$150,000.
  - The payment for a single non-waste storage or treatment project covered by a pooling agreement may not exceed \$200,000.
  - No farm limit requirement.
- 3) Animal Waste Storage or Treatment Projects
  - a) The payment made under this program for *a single* animal waste storage or treatment project may not exceed \$200,000.
  - b) The total payment made for all animal waste storage or treatment projects located on a farm or farms that a person owns, operates, or in which the person has a controlling interest may not exceed \$450,000 whether the person installed the project, or a predecessor-in-title installed the project. This rule does not apply to an animal waste storage or treatment project that is no longer subject to an active agreement with the Department.
  - c) The payment for an animal waste storage or treatment project:
    - (i) *Shall address an existing resource concern; and*
    - (ii) *If it is for a start-up poultry or livestock operation or the expansion of a poultry or livestock operation, may not exceed 50 percent of the eligible cost.*
- 4) *Nutrient Management Plans*: The payment made under this program for a nutrient management plan may be for up to 87.5 percent of eligible costs, which may include soil, plant tissue, and manure analysis. Payment made for the nutrient management plan project is not included in the maximum total cost share allowed per person.

- F. If total cost sharing funds available from all sources exceed the State's maximum cost share rate for a project, the State's share shall be adjusted or prorated so as not to exceed the State's rate.
- G. If actual costs are less than the estimated costs contained in the agreement, the payment may not exceed the cost share rate based on the actual costs.
- H. If actual costs are more than the estimated costs contained in the agreement, the payment may be based on the actual cost if the Department approves the overrun and if funds are available.
- I. Payment may be made either to the person when the person has advanced money, or directly to a vendor or contractor in accordance with the agreement.

## **.11 Project Monitoring.**

- A. After the Department has distributed cost sharing funds, the district or the Department shall monitor projects to see if they are maintained in accordance with the agreement. Any violations shall be reported by the district to the Department.
- B. The district shall maintain a complete record of technical assistance provided to persons under the cost sharing program. These records will be available to the Department upon request.

## **.12 Failure to Establish or Maintain Best Management Practices.**

If a person fails to establish, install, construct, or maintain a best management practice in accordance with any agreement executed with the Department, that person shall be liable for the full amount of State cost sharing funds paid for any practice that was not implemented or maintained. However, a person is not liable for inadequate maintenance or destruction of a best management practice if caused by an act of nature that could not be reasonably anticipated.



## *Administrative History*

**Effective date: June 6, 1983 (10:11 Md. R. 978)**

Regulation .02B amended as an emergency provision effective November 1, 2000 (27:23 Md. R. 2145); amended permanently effective February 5, 2001 (28:2 Md. R. 100)

Regulation .02M adopted and .03B, C amended as an emergency provision effective January 29, 1986 (13:4 Md. R. 393); emergency status expired May 15, 1986; adopted permanently effective July 13, 1986 (13:14 Md. R. 1635)

Regulation .02 amended as an emergency provision effective October 23, 1998 (25:24 Md. R. 1771); amended permanently effective February 8, 1999 (26:3 Md. R. 175)

Regulation .03D—F adopted as an emergency provision effective October 23, 1998 (25:24 Md. R. 1771); adopted permanently effective February 8, 1999 (26:3 Md. R. 175)

Regulations .03B and .10E amended as an emergency provision effective February 7, 1992 (19:4 Md. R. 469); amended permanently effective August 3, 1992 (19:15 Md. R. 1393)

Regulation .03D—F amended as an emergency provision effective November 1, 2000 (27:23 Md. R. 2145); amended permanently effective February 5, 2001 (28:2 Md. R. 100)

Regulation .04B amended as an emergency provision effective October 23, 1998 (25:24 Md. R. 1771); amended permanently effective February 8, 1999 (26:3 Md. R. 175)

Regulation .05A amended as an emergency provision effective October 23, 1998 (25:24 Md. R. 1771); amended permanently effective February 8, 1999 (26:3 Md. R. 175)

Regulation .08C adopted as an emergency provision effective October 23, 1998 (25:24 Md. R. 1771); adopted permanently effective February 8, 1999 (26:3 Md. R. 175)

Regulation .09C adopted as an emergency provision effective October 23, 1998 (25:24 Md. R. 1771); adopted permanently effective February 8, 1999 (26:3 Md. R. 175)

Regulation .10C, E amended as an emergency provision effective October 23, 1998 (25:24 Md. R. 1771); amended permanently effective February 8, 1999 (26:3 Md. R. 175)

Regulation .10E amended as an emergency provision effective August 24, 1995 (22:19 Md. R. 1469); emergency status extended at 22:26 Md. R. 2028; amended permanently effective January 15, 1996 (23:1 Md. R. 35)

Regulation .10E amended effective April 19, 1999 (26:8 Md. R. 618)

Regulation .10E amended as an emergency provision effective October 1, 1999 (26:20 Md. R. 1543); amended permanently effective February 21, 2000 (27:3 Md. R. 327)

Regulation .10E amended as an emergency provision effective November 1, 2000 (27:23 Md. R. 2145); amended permanently effective February 5, 2001 (28:2 Md. R. 100)

Regulation .10E amended as an emergency provision effective August 15, 2006 (33:18 Md. R. 1503); amended permanently effective December 18, 2006 (33:25 Md. R. 1952)

Regulation .10E amended effective December 24, 2012 (39:25 Md. R. 1615)