

SECTION 1

1.2 ATCP 50 CHANGES IN THE NM STANDARD AND COST-SHARING

Introduction

The proposed changes in the rule will update the technical standard used for Nutrient Management (NM) cost-sharing, moving from the 2005 NRCS 590 standard to the 2015 standard, and increase the cost-share rate for NM plans developed under the new standard from \$7 to \$10 per acre per year for four years. The revisions to ATCP 50 are expected to be effective in January 2018.

Key Points

The following are the key points regarding the transition to the new requirements for NM cost-sharing:

- In 2017, NM cost-share contracts may be signed to provide no more than \$7 per acre per year for four years (or \$28 per acre), and landowners and operators must submit a checklist that shows compliance with the NRCS 590 standards (2005).
- The county may not make annual payments up to the higher rate of \$10 per acre until the revised rule becomes effective.
- The proposed revision to ATCP 50 creates no legal obligation for a county to make additional payments to a landowner and operator who has signed a contract providing cost-share payments at a lower rate to come into compliance with state nutrient management standards [NR 151.07 or ATCP 50.04(3)].
 - For landowners and operators who signed NM cost-share contracts in 2017, counties have the option to provide a transition payment, typically at the rate of up to \$3 per acre for four years or \$12 per acre, to cover the additional costs of meeting the new 590 standard. This option only applies to landowners and operators who signed contracts in 2017 and no other grant year.
- NM cost-share contracts extended from 2017 to 2018 must be accompanied by a change order that requires the operators and landowners to comply with the 2015 NRCS 590 standard. For each project covered by an extension request, a county is responsible for offering additional cost-sharing, typically at the rate \$3 per acre for four years (or \$12 per acre), to cover the increased costs of meeting the 2015 590 standard.
- In 2018, NM cost-share contracts may be signed to provide no more than \$10 per acre per year for four years (or \$40 per acre), and landowners and operators must submit a checklist that shows compliance with the 2015 NRCS 590 standard.
 - For cost-share contracts signed in 2018 or extended from 2017, DATCP will not provide any reimbursement if the county submits a nutrient management checklist showing compliance with the 2005 NRCS standard.

Detailed Overview of Transition in NM Standard and Cost-Sharing

Here is a detailed overview of the transition in nutrient management cost-sharing (including notes and DATCP commitments) organized into three sections:

Section I: Grant Year 2017

- 1) In grant year 2017, counties may sign cost-share nutrient management contracts with operators and landowners for no more than \$7 per acre per year for four years or \$28 per acre.
 - a) Counties may continue to voluntarily cost-share at a lower rate than \$28 per acre, but must still secure continuing compliance from landowners.
 - b) Counties that wish to cost-share at the higher rate of \$10 per acre per year for four years (or \$40 per acre) may do either of the following:
 - i) Sign a change order that modifies the original cost-share contract by requiring compliance with the 2015 NRCS 590 standard and increasing cost-sharing up to \$10 per acre per year for four years (or \$40 per acre), contingent on the revisions to ATCP 50 becoming effective. See section I.3. below for requirements for change orders involving projects that are not extended, and section I.4 below for change orders involving projects that are extended.
 - ii) Wait until 2018 to sign a cost-share contract providing \$40 per acre. See section II.1 below.

Note: DATCP encourages counties to use all options available to spend their 2017 SEG allocations by signing contracts to cost-share nutrient management plans.

Note 2: Counties may include the following contingency language in their 2017 cost-share contracts to address the possibility of making higher payments:
The county may provide up to \$12 per acre (\$3 per acre for four years) as additional cost-sharing if the landowner consents to a change order to increase the cost-share amount and agrees to comply with the 2015NRCS 590 standard. The county will make a good faith effort to secure the funds necessary to increase the cost-share payment; however, the county is not obligated to fulfill this commitment if the revision of ATCP 50.42(2)(g) does not become effective or the county cannot secure additional cost-share funds.
- 2) If the county signs a NM cost-share contract with operators and landowners in 2017 and no change order is executed, the county must complete the project by December 31, 2017 and submit a reimbursement by February 15, 2018. The county may seek reimbursement for no more than \$28 per acre and must submit a NM plan checklist [ARM-LWR-480 (06/10)] showing compliance with the 2005 NRCS 590 Standard.

Note: Landowners and operators receiving a payment of \$28 per acre or less may receive an additional payment as provided in Section III.
- 3) If the county signs a NM cost-share contract with operators and landowners in 2017, the parties must execute a change order to obtain reimbursement at the higher rate (up to \$40 per acre) in 2017. The following conditions must be satisfied for DATCP to make payment:
 - a) The revised ATCP 50 must be effective. If the ATCP 50 revisions do not become effective in 2017, the county may extend the cost-share contract.
 - b) The change order must require a nutrient management plan that meets the 2015 NRCS 590 Standard.
 - c) A NM plan checklist [ARM-LWR-480 (2017)] must be completed and submitted with a DATCP reimbursement request prior to February 15, 2018 (An extension may be requested if this deadline cannot be met).

- d) Counties are responsible for ensuring that they have adequate funds to cover the increased costs by using their 2017 allocation or securing additional funds through 2017 transfers.
Note: DATCP will improve the change order form to accurately record these transactions and facilitate the transition to a higher flat rate for cost-sharing.
- 4) If the county signs a NM cost-share contract in 2017, and the project is not completed by December 31, 2017, the county may extend the cost-share contract into 2018 only if the county meets the following requirements:
- a) The county and all landowners and operators agree to a change order that requires compliance with NRCS 590 standard (2015).
 - b) The county offers all landowners and operators increased cost-sharing to provide a minimum additional payment of \$12 per acre, and one of the following outcomes is documented:
 - i) If the landowners and the operator accept the increased cost-sharing, the change order must reflect this increase in cost-sharing.
 - ii) If the landowners and operators decline the increased cost-sharing, they must agree that they will implement the 2015 NRCS 590 standard without receiving the maximum cost-sharing and will remain in compliance with the 2015 NM standard after the four years of cost-sharing.
 - c) The county includes the change order with its extension request or submits the change order by March 15, 2018.
 - d) Counties are responsible for ensuring that they have adequate funds to cover the increased costs of extended projects.
 - i) Counties will be expected to use the following options to cover these increased costs associated with the higher cost-share rate: (1) use their 2017 allocation or secure additional funds through 2017 transfers, and/or (2) use their 2018 allocation or secure additional funds through 2018 transfers.
- Note:** Contracts may need to be adjusted if the rule revision is not adopted in 2018.

Section II: Grant Year 2018

- 1) Starting in 2018, DATCP will implement the higher cost-share rate of \$10 per acre per year for four years (or \$40 per acre), based on the assumption that revisions to ATCP 50 will be effective in 2018. Counties should sign cost-share contracts that pay landowners and operators up to \$40 per acre only if cost-sharing has not been previously provided for land covered by the NM plan.
 - a) Counties may continue to voluntarily cost-share at a rate lower than \$40 per acre, but must still secure continuing compliance from landowners.
 - b) DATCP cost-share funds cannot be used to pay for development of NM plans that meet the 2005 NRCS 590 standard.
- 2) If the county signs a NM cost-share contract with operators and landowners in 2018, the following requirements must be met to receive DATCP reimbursement:
 - a) The cost-share contract must require a nutrient management plan that meets the 2015 NRCS 590 Standard.
 - b) A NM plan checklist [ARM-LWR-480 (2017)] must be completed and submitted with a DATCP reimbursement request prior to February 15, 2019, unless the project is extended for one year.
 - c) DATCP will pay no more than \$40 per acre as reimbursement.
Note: Payment of the higher rate is contingent on adoption of the revised ATCP 50.

Section III: Option for Making Transition Payments in 2018

- 1) At their discretion, counties may offer transition payments to landowners and operators who signed NM cost-share contracts in 2017 to cover the increased costs of complying with the 2015 NRCS 590 Standard .
- 2) In deciding to exercise this option, counties should carefully consider the following factors:
 - a) The proposed revision to ATCP 50 creates no legal obligation to make additional payments to landowners and operators who already are required by virtue of cost-share payments to comply with state nutrient management standards [NR 151.07 or ATCP 50.04(3)].
 - b) Counties need to determine whether providing additional cost-sharing is consistent with notices of continuing compliance issued to landowners when they received DATCP cost-share payments from 2007 to the present.
 - c) Counties need to determine whether providing additional cost-sharing is consistent with requirements imposed on landowners in local ordinances (e.g. manure storage permits).
 - d) Counties need to determine how the current compliance status of a landowner affects eligibility for additional cost-share payments.
 - e) Counties need to have adequate documentation of 2017 cost-sharing to determine how much cost-sharing to provide as a transition payment.
 - f) Counties need to ensure that transition payments do not compromise implementation of annual work plan activities or impede progress in implementing new NM plans. Every dollar spent on a transition payment is a dollar not spent on cost-sharing new acres.
- 3) If a county elects to make transition payments under this section, the following requirements must be met to receive DATCP reimbursement:
 - a) A cost-share contract in 2017 must be modified using a change order (developed consistent with Section I 3) or 4) or new cost-share contracts must be signed in 2018 to make additional payment.
 - b) The cost-share contract or change order must require a nutrient management plan that meets the 2015 NRCS 590 Standard.
 - c) A NM plan checklist [ARM-LWR-480 (2017)] must be completed and submitted with a DATCP reimbursement request prior to February 15, 2019.
 - d) DATCP cannot pay more than \$3 per acre per year for four years (or \$12 per acre) as a transition payment unless the county provides documentation showing that the landowner or operator received DATCP NM cost-sharing at a rate of less than \$28 per acre.
 - i) DATCP may require the county provide documentation showing that cost-sharing was previously provided for the land covered by the NM plan.