

## SECTION 2

### 2.8 NUTRIENT MANAGEMENT COST-SHARING-FREQUENTLY ASKED QUESTIONS

1. What is the primary use of DATCP SEG cost-share funds?
  - A. DATCP awards counties grant funds from its annual SEG appropriation for the purpose of implementing nutrient management (“NM”). Counties should use these grant funds primarily to provide cost-sharing to farmers for nutrient management plans (“NMPs”).
  
2. What is the DATCP cost-sharing rate for NMPs?
  - A. Starting in 2018, ATCP 50 authorizes a cost-share rate of \$10 per acre per year for four years (or \$40 per acre) if all of the following conditions are satisfied:
    - The landowner or operator develops a nutrient management plan that meets the NRCS technical guide nutrient management standard 590 (December, 2015) (“2015 NRCS 590 Standard”).
    - The county submits a NM plan checklist [ARM-LWR-480 (Rev. 6/22/17)] completed by a qualified nutrient management planner.
    - The landowner is provided a notice of continuing compliance and agrees to maintain the NMP following the four-year cost-share period. While counties may use other county notices as templates, they should make sure that any notice conforms to DATCP guidelines set forth in Section 2.10 Guidance For Required Notice of Continuing Compliance of the SWRM Working Manual.
  
3. Can some of a county’s SEG grant be used to pay for practices other than NMPs?
  - A. Yes, in limited circumstances. A county may use 25 percent of its annual SEG grant funding to cost-share cover crops, reduced tillage and other soil erosion control\nutrient loss reduction practices that support a NMP. The following conditions must be satisfied before DATCP will reimburse a county for this expenditure:
    - The landowner agrees to remain in compliance with the soil erosion control standard (NR 151.02) and the NM standard (NR 151.08) for as long as the land is farmed;
    - The landowner submits a NMP checklist covering the cropland where the soft practice is installed; and
    - The county documents that the cost-shared “soft” practice is required to meet “T” or other requirement of the NRCS 590 standard, and is the most cost-effective approach to meeting the NRCS 590 requirement.

In addition, a select number of counties identified by DATCP in the allocation plan or grant contract may use a portion of their annual SEG grants to pay for manure storage or “hard practices” with DATCP approval.

4. May counties voluntarily cost-share NMPs at a rate lower than \$40 per acre?
  - A. Yes; however, DATCP recommends that landowners or operators receive the full amount of the cost-share payment to avoid any questions concerning their future compliance obligations. In the event that a county proceeds with an offer at a reduced rate, the county must meet all of the requirements listed in the answer to question no. 2 to receive a DATCP reimbursement. In addition to initialing the acknowledgement in the cost-share contract, a landowner must sign a separate written notice in which the landowner specifically acknowledges the obligation of continuing compliance even though the landowner has received less than the legally-required cost-sharing. A copy of the signed notice must be submitted to DATCP with the reimbursement request.
  
5. May a county provide DATCP make-up cost-sharing to a landowner or operator who was provided a lower \$7 per acre rate under a prior cost-share contract?
  - A. Only landowners and operators who signed a cost-share contract in 2017 are eligible to receive additional cost-sharing to increase payments to the \$10 per acre rate. Landowners and/or operators must sign a 2018 cost-share contract that requires that the NMP comply with the 2015 NRCS 590 Standard. DATCP will not pay more than \$3 per acre per year for four years (or \$12 per acre) as a make-up payment unless the county provides documentation showing that the landowner or operator received DATCP NM cost-sharing at a rate of \$28 per acre or less.
  
6. What factors should a county consider in deciding to provide make-up payments to landowners and operators who received 2017 DATCP cost-sharing?
  - A. Counties need to evaluate:
    - The impact of providing payments given that changes to ATCP 50 create 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 NM standards [NR 151.07 or ATCP 50.04(3)].
    - 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.
    - Whether providing additional cost-sharing is consistent with requirements imposed on landowners in local ordinances (e.g. manure storage permits).
    - How the current compliance status of a landowner affects eligibility for additional cost-share payments.
    - Whether making additions payments compromises 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.
  
7. Should pastures be included in NMPs cost-shared with DATCP funds?
  - A. Yes. Farmers receiving DATCP cost-sharing for NMPs must include pastures stocked at an average animal unit density greater than one, and pastures that

receive mechanically-applied manure or fertilizers. To receive payment, the NM checklist must include the cropland and pastured acres covered by the NMP.

8. Can a county provide an operator cost-sharing for a NMP without adding the owner of rented land to the cost-share contract?
  - A. No. Landowners must sign the cost-share contract to give permission for the practice to be installed on their land and also to acknowledge the obligation to continue compliance with the NM requirements after the cost-share contract ends. Since an operator does not own the land where the NMP is implemented, the operator cannot consent to the practice nor make the long-term commitment to keep the land in compliance with the NM performance standard.
  
9. May a county offer NM cost-sharing without requiring continuing compliance from a landowner?
  - A. No. Landowners, including an operator who owns land, must agree to comply with NM requirements after the four-year contract period. This compliance requirement continues as long as the land is farmed.

The county must provide written notice to each landowner (including the operator who owns land) concerning the NM requirements that apply after the four-year contract. The county should follow DATCP guidelines in developing a notice, and may use actual notices developed by other counties as models, but should consult with their corporation counsel prior to using the notice. County staff should present the notice to landowners as part of a face-to-face meeting to answer questions from landowners. The county may choose to have the landowner sign the notice and retain the signed notice in the county file as a record that the landowner received it. When executing the cost-share contract with a landowner, the county must have the landowner initial the contract provision where the landowner acknowledges receipt of the continuing compliance notice.
  
10. Can a county sign one contract that includes one grant recipient and multiple landowners?
  - A. No. DATCP requires that a separate contract be signed with each landowner who has land covered by a NMP. The operator and grant recipient must sign each contract using Exhibit A1.
  
11. What are the simplified notarization requirements for NM cost-share contracts?
  - A. It is not necessary to notarize the signatures on cost-share contracts unless the contracts will be recorded. DATCP has developed a **Landowner/Grant Recipient Notarization Table** (Section 2.12) that explains in detail the streamlined notarization requirements for all cost-share contracts.
  
12. Can a county offer NM cost-sharing for fewer than four years?
  - A. No. For example, a county cannot make three years of payments at \$10/ac. It must make four years of payments in a lump sum of \$40/ac to ensure future compliance with the state NM performance standard.

13. If a county's annual allocation does not provide sufficient SEG cost-sharing for NM plan that covers all the acres on a farm, may a farmer prepare a NMP that only covers the cost-shared acres?
- A. No, the farmer must develop a NMP that covers the entire farm including pastures (see No. 7 above). Counties may use future grant allocations to provide cost-sharing for the acres not cost-shared in the first contact.
14. In providing cost-share dollars for a NMP, can a county pay for acres located outside the county?
- A. Yes, the county may provide NM cost-sharing for land in an adjoining county covered by a NMP. Before making such arrangements, the county should contact the neighboring county to establish if the land was previously cost-shared and determine if the neighboring county wants to use its own funds to pay for the acres located in that county. If a county elects to offer cost-sharing for a NMP that includes acres located outside the county, the county may face limitations regarding recording the cost-share contract and enforcing the cost-share contract.
15. If a county faces challenges in identifying farmers willing to accept cost-share dollars for NMPs, what can the county do to implement the NM performance standard?
- A. Counties should not apply for SEG funds if they do not have a demonstrated need (e.g. a list of farmers ready to accept NM cost-sharing) or a strategy to engage farmer participation. In lieu of seeking cost-sharing, counties may wish to apply for funds to provide NM education to farmers. DATCP offers Nutrient Management Farmer Education (NMFE) grants annually to counties and other eligible grant recipients for this purpose. While most farmers who participate in training classes are expected to develop NMPs that meet the NRCS 590 standard, they do not have to agree to continuing compliance in order to participate in the class and receive financial support for soil testing and stipends.
16. What must a landowner or grant recipient do to comply with nutrient management requirements?
- A. They must provide the county an updated NMP Checklist annually or otherwise demonstrate that they meet the following requirements from ATCP 50 and the 2015 NRCS 590 Standard:
- Follow a NMP that is updated annually as required.
  - Test soil through a DATCP certified laboratory.
  - Control all soil erosion on land receiving nutrients (meet "T", control ephemeral rills and gullies).
  - Keep annual records of manure and fertilizer applications.
  - Take manure and legume credits that comply with ATCP 50 and the NRCS 590 standard
17. Does a county have a responsibility to review NM checklists submitted as part of DATCP cost-share requirements?
- A. Yes, each county is responsible for reviewing NM checklists submitted to DATCP to verify compliance with the requirements in s. 50.04 of the

- administrative code, and requesting any documentation to substantiate a checklist response where appropriate. This requirement is now part of county's annual grant contract with DATCP. Counties that need assistance to complete this review, should contact NM staff at DATCP.
18. How should a county monitor a landowner's or grant recipient's performance during the four-year period of NM cost-share contract?
- A. The county should request that the nutrient management planner or the landowner/operator submit a NMP Checklist each year to monitor compliance during the cost share contract and beyond. In addition, a copy of the each year's NMP Checklist should be forwarded to Sue Porter at DATCP to help document annual progress statewide in implementing NM performance standard.
19. What should a county do if a landowner or operator does not update a NMP after receiving four years of DATCP cost-sharing for NMP?
- A. The most realistic option may be working with the farmer to encourage participation in a training class so that the farmer can develop the knowledge and skills to write or update a NMP on his or her own. This approach provides farmers with a pathway to achieve compliance, while avoiding the alternative of enforcement actions based on violations of the cost-share contract, ordinance, or state law. The prospect of enforcement may serve as a motivational tool, but counties may need to take additional actions. The enforcement options available to a county depend on number of factors including legal requirements in county ordinances, DNR cooperation, and support from the corporation counsel.
20. How should a county describe and track the property covered by a NMP in the cost-share contract?
- A. A county should only provide a legal description of the acres cost-shared in the individual contract. The county should develop its own GIS or other system to track the specific parcels covered by the cost-share contract. Tracking compliance on a parcel level is important for documenting FPP compliance and informing new landowners of their compliance responsibilities.
21. How does the 50% cost-share cap affect cost-sharing of NMPs on land owned by local governments?
- A. Counties cannot offer flat rate cost-sharing for NMPs developed for government-owned cropland, and may only provide cost-sharing to cover 50% of the costs incurred for one year. The local government is responsible for contributing 50% of the project costs, and cannot receive cost-sharing for more than year. Since counties are reimbursing local governments for actual costs incurred, they must collect copies of receipts documenting soil testing and other plan development costs.
22. Under ATCP 50, farmers have been historically required to develop and maintain NMPs for 10 years if they receive cost-share dollars for manure storage systems. How have recent rules changes affected a farmer's responsibility particularly if the farmer adds animals during the 10-year maintenance period of a cost-shared manure storage structure?

- A. If a farmer adds animals, the farmer may need to expand the storage capacity of the structure to handle the greater volume of manure, or as an alternative, spread rather than store the additional manure as part of a revised NMP that meets the 2015 NRCS 590 Standard. A revised plan may require an increased land base to accommodate the added manure. Changes to ATCP 50 also require that the county cost-share storage capacity based on the farm's inability to comply with the farm's NMP to store the manure produced over a normal period of 30 to 365 days. Also manure from a cost-shared storage facility can only be applied to non-frozen soils in compliance with a NMP under s. ATCP 50.04 (3).
23. Besides cost-sharing for manure storage, are there other instances when a farmer must prepare a NMP in order to receive cost-sharing for another conservation practice?
- A. Yes. Farmers must submit a NMP, even if no additional cost-sharing is provided, if they receive:
- \$25,000 or more in DATCP cost-share payments for a ***barnyard runoff control system (ATCP 50.64)***.
  - DATCP cost-sharing for a ***feed storage runoff control system (ATCP 50.705)*** that will collect runoff from a feed storage area over 1 acre in size and that runoff is not transferred to a manure storage system.
  - DATCP cost-sharing for ***manure storage system closure (ATCP 50.63)*** and ***milking center waste control systems (ATCP 50.77)***, and the land application of waste is a necessary component of the main cost-shared practice.
24. When can farmers be required to develop and follow a NMP without cost-sharing?
- A. Farmers must prepare and follow a NMP if they:
- Accept cost-sharing for NM for a period of four years (See question No. 2 for higher flat rates established in 2018).
  - Are regulated under a DNR Wisconsin pollution discharge elimination system (WPDES) permit.
  - Receive a tax credit through the farmland preservation program (except for farmers with older individual agreements).
  - Secure a local permit for a manure storage structure or livestock facility siting.
  - Required to respond to a grossly negligent discharge.