

II. SWCD/NRCS Responsibilities

A. District Responsibilities

1. **Memorandum of Agreement**

a. ***Participation***

A district may indicate interest in administering the cost-share program in their county by entering into a Memorandum of Agreement (MOA) between the district and the commission. Only soil and water conservation districts that indicate an active interest in administering the cost-share program in their county can participate. Each fiscal year the commission allocates funds to districts that have a current MOA. Participation in the cost-share program by the district board is entirely voluntary.

b. ***District Termination***

A district may terminate the MOA at any time by notifying the commission in writing and releasing any unobligated cost-share funds. Funds obligated to cooperators remain obligated until released by the cooperator or until the termination date is reached.

c. ***Commission Termination***

The commission may terminate the MOA at any time by notifying the district in writing of the reasons for termination. A district's blatant disregard for the rules and/or policies of the program, and/or proven fraudulent acts in the administration of the program may be considered by the commission as grounds for termination. Funds obligated to cooperators would then be handled in the same manner as when a district terminates the MOA.

2. **Board Responsibilities for Approval of Cost-Share**

When discussing cooperator information, conservation practices, and conservation plans for the state cost-share and/or federal programs during board meetings, the district board must go into closed session.

- When the district board goes into closed session the board will cite the following: "to discuss legal, confidential, or privileged matters under section 610.021(14) which are otherwise protected from disclosure by law."
- When in closed session the district board can discuss cooperator names, conservation practices, conservation plans and farm/field locations as needed. Once the board has completed their discussion in closed session, the board will vote to end the closed session.
- When back in open session, the board will vote to approve the cost-share contracts, change orders and contract payments, and also federal conservation plans. When approving these documents in open session, only the contract number and cost-share amount can be mentioned.

a. ***Board Approval***

The district board of supervisors approves cost-share assistance for a cooperator by signing and dating the cost-share contract. A district can never use any type of provisional approval, such as pre-approval or tentative approval.

1) Delegation of Approval

The district board cannot delegate the approval or disapproval of cost-share forms. District supervisors cannot approve their own cost-share forms. The approval or disapproval of cost-share forms must be completed by a district board member and documented in the district board meeting minutes.

2) Approval between Meetings

The district board may authorize board members to approve forms between board meetings. The board should specify conditions when a board member can approve forms without a quorum. The cost-share forms approved between board meetings must be reviewed at the next board meeting and documented in the minutes.

b. ***Documentation of Approval***

1) Minutes must identify the following:

- a) The cost-share form on which action was taken (contract, change order, contract payment)
- b) Date of action
- c) Dollar amount
- d) Contract number

2) The Board Meeting Contracts Approved, Board Meeting Change Orders Approved, and Board Meeting Contract Payments Approved reports may be printed from MoSWIMS with a date range set from the previous board meeting date to the current board meeting date and used as an attachment to the minutes.

c. ***Starting a Practice***

Cost-share assistance is not authorized for practices installed or started prior to board approval of the contract. A practice has been started when the required components of the practice have been applied or fabricated to an extent that they cannot be returned for a complete refund. Taking a soil test does not constitute starting a practice.

d. ***Beyond Minimum and Necessary Extents***

In instances where a cooperator desires to complete the practice beyond the minimum and necessary extents, the added extents need to be reported on the contract, but will not be used to determine the cost-share assistance to be made available to the cooperator. Cost-share is determined by entering a contract maximum equal to the minimum and necessary designed extents.

3. **Overpayments**

If the cooperator receives a cost-share payment for more than the amount that should have been received, in accordance with state statute, the overpayment cannot be forgiven. The cooperator must repay the overpayment to the state, since the overpayment would be considered a gift if the cooperator were to keep it.

a. ***Overpayment Recovery***

If an error is found in the cost-share payment amount, the board is required to recover the overpayment. The district informs the cooperator of the error and requests reconciliation of overpayment be made in one of two ways:

- 1) A money order or check made payable to “Department of Natural Resources” for the amount of the overpayment written within 30 days of notification and sent to:

State of Missouri
Department of Natural Resources
Soil and Water Conservation Program
P.O. Box 176
Jefferson City, MO 65102-0176

- 2) The cooperator may choose to have the overpayment deducted from a future cost-share contract. The cooperator must apply for another practice within one year of notification of the overpayment. If the contract for the practice is not approved by the board within the year, the cooperator will have 30 days from the end of the one-year grace period to repay the state.

b. ***Commission Action***

The district must inform the commission if the cooperator fails to pay within the time stipulated. The commission will issue a letter that requests repayment within 30 days. If payment is not received within 30 days, the commission may refer the matter to the Attorney General’s Office.

4. **Practice Alternatives**

The most appropriate practice alternative will be made available to the district board by technical staff.

5. **Maintenance Agreements**

a. ***Responsibility***

The cooperator who receives cost-share payment remains responsible for the maintenance of the practice, even upon change of ownership, unless the responsibility is transferred in writing and recorded on the property deed. The cooperator must maintain the practice in accordance with NRCS standards and specifications and commission policies for the lifespan of the practice. Cost-share must be refunded if the cooperator alters the practice in any way that decreases its effectiveness during its maintenance life.

b. ***Recording***

1) **General Information**

- a) The maintenance agreement is a legal document filed with the county’s Recorder of Deeds after payment is issued to the cooperator. The maintenance agreement states that if the practice is altered in any way that decreases its effectiveness during its maintenance life, a prorated amount of cost-share will be refunded.
- b) District boards have the option to record maintenance agreements. By recording maintenance agreements, the maintenance lifespan of the practice is associated with the property deed.

- c) Maintenance agreements can be recorded at any time during the maintenance life of the practice. A copy of the “Maintenance Agreement” form is available in the Appendix.

2) MoSWIMS

Enter maintenance information in MoSWIMS once the maintenance agreement has been recorded and a contract payment is created. For additional information about recording maintenance agreement information in MoSWIMS, consult the “Maintenance Information” section of “Additional Functions” in the MoSWIMS District Office Training Manual.

3) Quarterly Report

Any costs incurred by the district for maintenance agreement(s) are eligible from the Administrative Grant or be paid by the cooperator.

- a) Attach any receipts to the Administrative ledger of the quarterly report.

6. **Maintenance Agreement Violations**

The district board has the responsibility to follow up on cost-share practices to see that they are maintained for the life of the practice. If the board approves cost-share on land owned in another district, the district board that approves the practice is responsible for ensuring that the practice is maintained. Practices not maintained cannot perform their intended function, and the cooperator is not complying with the maintenance agreement as stated on the contract.

a. **Responsibilities**

The board must contact a cooperator when a maintenance violation is identified and request that the cooperator correct the problem. The board will provide the cooperator with a date by which the maintenance violation must be corrected at the cooperator’s own expense and the practice restored to meet NRCS standards and specifications and commission policies. Before establishing the deadline for the correction, the board should evaluate the long-term effect of the violation on the continued success of the practice. The date the board gives the cooperator should be based upon a reasonable and fair estimate of the time required to correct the problem(s). If the cooperator does not correct the violation prior to the date stipulated by the board, the cooperator cannot participate in cost-share.

b. **Repayment Calculation**

The amount of the repayment will be prorated over the lifespan of the practice. The contract payment displays the practice’s maintenance life and may be obtained from MoSWIMS. Contact your district coordinator for assistance in calculating repayment amounts.

To calculate repayment:

- 1) Multiply the number of years of the practice’s *maintenance life* by 12. This is the total *months in the lifespan*.
- 2) Divide the cost-share *amount received* by the number of *months in the lifespan* to get the *cost-share per month*.
- 3) Calculate the *remaining months* of maintenance life: Start with the first day of the month payment was made and count through the last day of the month the maintenance violation was found. Subtract this number from the total *months in the lifespan* to get the *remaining months*.

- 4) Calculate the *repayment amount*: Multiply the *cost-share per month* by the *remaining months*.
- c. ***District Request for Repayment***
 - 1) The district board of supervisors demands repayment by certified mail, return receipt requested, of the appropriate amount to “Department of Natural Resources” by check or money order within 30 days of receipt and sent to:
State of Missouri
Department of Natural Resources
Soil and Water Conservation Program
P.O. Box 176
Jefferson City, MO 65102-0176
 - 2) The district should enter a note into the appropriate MoSWIMS contract.
Enter a “Maintenance Notes” note type that states a maintenance violation occurred and the repayment amount made.
- d. ***Cooperator Request of Commission Review***

Within the 30-day period, the cooperator may request the commission review the demand for repayment. The request for a review must be in writing. The review shall be conducted at a regularly-scheduled commission meeting, allowing an adequate opportunity for the cooperator to present arguments in support of the request. The cooperator’s arguments may be presented by the cooperator, by a representative, or in writing.
- e. ***Commission Request of Funds***

Following the review, if the commission determines that no violation has occurred, or that extenuating circumstances justify the cooperator’s position, the demand for repayment shall be withdrawn and the commission shall notify the cooperator of the decision. If the commission determines the violation did occur, it shall notify the cooperator by certified mail, return receipt requested and shall renew the demand for repayment.
- f. ***Recovery of Funds***

If repayment is not received within 30 days of the cooperator’s receipt of the commission’s request for repayment, the commission may refer the matter to the Attorney General’s Office for recovery of funds.
7. **Fraud**

The commission may consider denying future funds if district boards knowingly accept fraudulent documentation or participate in fraudulent activity.
8. **Cost-Share Document Retention**
 - a. All cost-share documentation must be retained for a minimum of three full fiscal years. Documentation less than three years old must be easily accessible.
 - b. Documentation for practices with a maintenance life of more than three years must be kept for the maintenance life of the practice. Documentation more than three years old can be moved to a more remote location.
 - c. A map and associated report from the Mapping tool showing the completed practice must be attached in MoSWIMS prior to contract payment submission.

The mapping requirements for contract payments are listed in Section V. for each available practice.

- d. The districts should not retain any ACH/EFT forms due to the confidential information on the forms.

B. Technical Responsibilities

1. District Assistance

The Natural Resources Conservation Service (NRCS), Missouri Department of Conservation (MDC) or district technician is responsible for providing technical assistance to districts to make appropriate decisions when approving cost-share practices. Cost-share decisions are to be made using the best technical information and facts the district has available.

2. Design and Certification

- a. The NRCS, MDC and/or district technician is responsible for the technical aspects of the cost-share program and will ensure that practices are designed and installed according to NRCS standards and specifications and in compliance with commission policy. Technical staff will provide the district with the components and the minimum extents for the practice.
- b. Technical staff will report the number of units completed and certify that the practice meets the technical requirements necessary for the practice to function as intended.

3. Minimum and Necessary Extents

The practice chosen shall be designed according to NRCS standards and specifications, and be in compliance with commission policy. Technical staff shall present the board with the minimum and necessary extents required to implement the practice.

4. Conservation Plans

Cooperators are required to have an approved conservation plan prior to board approval of a cost-share contract. A conservation plan can be prepared for a single field or the entire farm. An approved plan is one that is developed by the cooperator working with technical staff, and then signed and dated by a member of the district board. District board meeting minutes must reflect conservation plan approvals. When the district board approves conservation plans, cooperator names cannot be listed in the minutes. A general statement such as “the district board approves conservation plans” should be shown in your minutes.