

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 1142

3/27 Craig Lindeke will send appropriately dated Revisor's Certif. rec'd 3/28

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 3-22-85
DATE FOR REVIEW 3-31-85
DATE DUE 4-5-85

Adopted w/a hearing
Adopted w/o hearing ✓
Temporary rule

Approved 4/5/85 (CDS) Disapproved Returned to Agency

Resubmitted Due
Approved Disapproved Returned to Agency

Date filed w/Secretary of State 4-9-85 Revisor approved ✓ 3/26 disapproved

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✓ Rule as Adopted

✓ Rule as Proposed see SR.

date of approval predates date of submission to Atty. Gen.

✓ Order Adopting 3.12.85 Date

✓ Notice of Intent to Solicit Outside Opinion SR. 12.20.82

? Order for rulemaking dated prior to authorizing resolution and signed by person other than person named in Resolution
N/A date of Hearing

Ok - ratified by order adopting. CDS

✓ Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
✓ Sufficiency contains sm. biz statement.

✓ Affidavit of Mailing Notice or rulemaking
1.8.85 At least 30 days prior to hearing/adoption

✓ Mailing list Certificate

✓ Publication in State Register
1.14.85 At least 30/~~20~~ days prior to ~~hearing~~/adoption

N/A Hearing Examiner's Report

Chief Hearing Examiner's Report(s)
Approving H.E.'s Report
Approving agency action

✓ Agency's Findings of Fact

N/A LCRAR Report or agency Affidavit

✓ Certificate of Board's Resolution Adopting Rules

✓ Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness contains statement of inapplicability to small biz

N/A Petition for Adoption of a Rule

✓ Record (includes transcript or tape, exhibits, comments received by agency, requests for a hearing, and other relevant materials)

✓ Certificate of Compliance w/Rulemaking Procedures

N/A Affidavit of Mailing Notice of Submission to Attorney General

✓ Notice of Submission to the Attorney General

To: Larry.

Date: 3/27/85

Re: Dept of Agriculture – Soil + Water Conservation Board
Cost Share.

Rules as Adopted

p. 5 line 19 · 0100 subpt. 20b

This section contains the phrase "including but not limited to" without appropriate criteria. Please note that these rules contain many instances of the same phrase in existing language. O.K. – phrase refers only to examples of technical prof. services performed after specifically referring to M.S.– established qualifications for the RPE. –LOS.

p. 18, line 22 · 2100, subpt 4

The modification to this section changes the way costs are to be determined. This would seem to make the Rule fundamentally different.

check: p. 6 l. 10

p. 15 – Substantial Change Issue

(1) – cost sharing authorized for a per acre rate not in excess of $11. Can have combined State-fed. assistance

(2) " " equipment and labor costs involved in marking individual strip lines. Incorp. by ref. of cost stds. estab. by U of M Ag. Extn. Serv. Guide. No combined State and fed. assistance

Reg. Corps
Soil & Water.
6-3767

R – $11 approximate rate allowed in fed. cost-sharing program. Arbitrary – may in some case be more than 100% reimb. or substantially less. So, want local rate estab. based on reasonable cost guide – will vary throughout State.

Strip cropping is used very little in program

No objection – to benefit of people, not detriment.

Comb. State – Fed – Fed. is $11.00 rate

SF-00006-03

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

Office Memorandum

TO: Judith Wehrwein
Administration - Finance Division
Office of the Attorney General

DATE: 03/22/85

FROM: Carol Milligan, Management Analyst
Planning Division

PHONE: 296-6909

SUBJECT: Review of Rules Governing the Soil and Water Conservation Board's Cost-Share Program (Minnesota Rules 8400.0100-8400.2800)

The Department of Agriculture adopted the above-mentioned rules pursuant to Minnesota Statutes, sections 14.22-14.28. Enclosed with this memorandum are the documents which are required to be submitted to the Attorney General for review prior to final approval of the rule. A list of the documents is attached for your convenience.

The Department fulfilled the requirements of Minnesota Statutes, section 14.115, subd. 4, by notifying small businesses of the expected impact of the rule. Such notice was given in the Notice of Intent to Adopt Rules Without Public Hearing. The requirements of subd. 2 are dealt with in the Statement of Need and Reasonableness.

The Department received comments which resulted in changes to the rule as proposed. The changes are outlined in the Findings of Fact and Conclusions. The Department did not receive any requests for a public hearing or requests for notification when these documents were submitted to the Attorney General.

If you have questions, please contact me.

CM:cb

Attachment

cc: Jim Nichols, Commissioner
Rollin Dennistoun, Ph.D., Deputy Commissioner
Jon Murphy, Special Assistant Attorney General
Craig Lindeke, Office of Revisor of Statutes
Gerald Heil, Director, Planning Division
Ronald Nargang, Director, Soil and Water Conservation Board
Greg Larson, Program Specialist, Soil and Water Conservation Board

RECEIVED
MAR 22 1985
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

PLANNING DIVISION
DEPARTMENT OF AGRICULTURE

LIST OF ATTACHED DOCUMENTS

A. Rule as Adopted (Original and three copies).

B. Order Adopting the Rule (two copies).

C. Certificate of Board's Resolution Adopting Rule (one copy).

D. Notice of Intent to Solicit Outside Opinion (one copy).

E. Order for Notice of Intent to Adopt Rule Without Public Hearing (one copy).

F. Certificate of Board's Authorizing Resolution.

G. Notice of Intent to Adopt a Rule Without Public Hearing (one copy).

H. Affidavit of Mailing Notice of Intent to Adopt a Rule Without Public Hearing (one copy).

I. Mailing List Certificate (one copy).

J. Rule as Proposed (one copy).

K. Findings of Fact and Conclusions (one copy).

L. Statement of Need and Reasonableness (one copy).

M. Written Comments Received (one copy).

N. Certificate of Compliance with Rulemaking Procedures (one copy).

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : WAYNE HAGLIN
Chairman, Soil & Water Conservation Board

DATE: 4-9-85

ATTN: JON MURPHY, Special Assistant Attorney General

FROM : LARRY D. STARNS LDS
Special Assistant Attorney General

PHONE: 297-3493

SUBJECT: In the Matter of the Proposed Rules of the Department of Agriculture Governing Cost Share Programs to Soil and Water Conservation Districts (Minnesota Rules 8400.0100-8400.2800)

The above-referenced rule has been approved as to its legality by the Attorney General on April 5, 1985.

Enclosed is the agency's copy of the approved rule. This office has already filed two copies of the approved rule with the Secretary of State, who will forward one copy to the Revisor of Statutes. The fourth copy is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submission or comments received by the agency and any extra copies of documents which the agency submitted to the Attorney General.

In order for a permanent rule without a hearing to become effective, your agency must publish a notice of adoption in the State Register in accordance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

If you have any questions in this regard, please contact me.

LDS:sz

Enclosures

cc: Executive Director
Legislative Commission to Review
Administrative Rules

Chief Administrative Law Judge
Office of Administrative Hearings

AG copy

Department of Agriculture
Planning Division
Soil and Water Conservation Board

Adopted Amendments to the Soil and Water Conservation Board's Cost Share

Rules as Adopted

8400.0100 DEFINITIONS.

Subpart 1. **Scope.** For purposes of parts 8400.0100 to 8400.2900, the definitions in this part, in addition to those in Minnesota Statutes, chapter 40, apply.

Subp. 1a. **Adequately protected.** "Adequately protected" means that soil erosion and other factors that influence the sustained productive use of the resource base are within acceptable limits, which are achieved through the use of soil and water conservation practices. With respect to soil erosion, the loss may not exceed "T."

Subp. 2. [Unchanged.]

Subp. 3. **Annual plan.** "Annual plan" means a plan prepared by the district pursuant to Minnesota Statutes, section 40.07, subdivision 9, and according to the most recent version of the Guidelines for Soil and Water Conservation District Comprehensive and Annual Plans published by the state board. That publication is subject to frequent change, is available at the State Law Library, and is incorporated by reference.

Subp. 4. **Approved practice.** "Approved practice" means a soil and water conservation practice which qualifies for state cost-sharing and which has been approved by the state board.

Subp. 5. **Area conservationist.** "Area conservationist" means the area conservationist of the Soil Conservation Service.

Subp. 6. **Assigned Soil Conservation Service personnel.** "Assigned Soil Conservation Service personnel" means the district conservationist or Soil Conservation Service personnel designated by the area conservationist to provide need and performance certification to the program.

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Subp. 7. [See Repealer.]

Subp. 7a. **Class I-IV soil.** "Class I-IV soil" means soil generally suitable for field crop production according to United States Department of Agriculture Handbook No. 210, "Land Capability Classification" (Washington, D.C., September, 1961). That publication is not subject to frequent change, is available at the St. Paul Public Library, and is incorporated by reference. Soil in Class I has few limitations that restrict their use while Class IV soil has very severe limitations that require very careful management.

Subp. 8. **Comprehensive plan.** "Comprehensive plan" means a long-range plan prepared by the district pursuant to Minnesota Statutes, section 40.07, subdivision 9 and according to the most recent version of the Guidelines for Soil and Water Conservation District Comprehensive and Annual Plans published by the state board. That publication is subject to frequent change, is available in the State Law Library, and is incorporated by reference.

Subp. 8a. **Descriptive maps.** "Descriptive maps" means computer-generated maps prepared by the land management information center of the State Planning Agency and provided to districts depicting high priority wind and water erosion and sedimentation areas. These maps are a tool for the district to identify high priority problem areas. These maps can and should be supplemented by the district as needed to more accurately reflect high priority erosion and sedimentation problems.

Subp. 9. **District.** "District" means a soil and water conservation district organized under Minnesota Statutes, chapter 40.

Subp. 10. **District board.** "District board" means the five supervisors of a district authorized to carry out the functions of the district.

Subp. 11. **District conservationist.** "District conservationist" means the district conservationist of the Soil Conservation Service.

Subp. 12. **District cooperator.** "District cooperator"

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means a land occupier who has requested the assistance of a district in controlling conservation problems. The request must be formalized by the signing of a district cooperator's agreement provided by the state board and approved by the district board.

Subp. 13. **District technician.** "District technician" means a district employee or county employee assigned to the district who possesses expertise in the design and application of soil and water conservation practices.

Subp. 14. **Enduring practice.** "Enduring practice" means a soil and water conservation practice which is designed for an effective life of ten years or more.

Subp. 14a. **Feedlot model.** "Feedlot model" means the analytical model contained in "An Evaluation System To Rate Feedlot Pollution Potential," publication no. ARM-NC-17, of the Agricultural Research Service of the United States Department of Agriculture (Peoria, Illinois, April 1982), designed for programmable hand-held calculators and used to determine the pollution potential rating of an animal feedlot. That publication is not subject to frequent change, is available at the State Law Library, and is incorporated by reference.

Subp. 15. **Field Office Technical Guide.** "Field Office Technical Guide" means the document providing standards and specifications for technical requirements of soil and water conservation practices as provided by the Soil Conservation Service and adopted by the district board.

Subp. 16. [Unchanged.]

Subp. 16a. **High priority erosion problems.** "High priority erosion problems" means areas where erosion from wind or water is occurring on Class I-IV soils equal to or in excess of 2 x T tons per acre per year or any area within 300 feet of a water course or within 1,000 feet of a water basin or wetland eroding by water in excess of T tons per acre per year. The water basin, wetland, or water course must be classified by the Department of Natural Resources as a protected water. Erosion problems occurring on nonshoreland areas in excess of T but less

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than 2 x T tons per acre per year are classified as secondary priority.

Subp. 16b. **High priority water quality problems.** "High priority water quality problems" means areas where sediment, nutrients, chemicals, or other pollutants discharge to Department of Natural Resources designated protected waters or to a sinkhole or ground water so as to impair their quality or usefulness, including high priority feedlots and sedimentation problems.

"High priority feedlots" means feedlots where the pollution potential rating from the feedlot model is greater than or equal to one and which ~~is~~ are discharging pollutants to Department of Natural Resources designated protected waters or to a sinkhole or shallow soils overlying fractured or cavernous bedrock or within 100 feet of a water well. Feedlots not meeting these criteria are not eligible for cost-sharing assistance except as provided in part 8400.2600, subpart 3.

"High priority sedimentation problems" means areas within 300 feet of a water course or 1,000 feet of a water basin or wetland where the water erosion rate exceeds three tons per acre per year or areas where the districts can show that sediment delivery occurs from a watershed or direct conveyance structure such as a storm sewer or paved outlet channel discharging to these waters. The water basin, wetland, or water course must be classified by the Department of Natural Resources as a protected water. Sedimentation problems not meeting these criteria are not eligible for cost-sharing assistance.

Subp. 17. [See Repealer.]

Subp. 18. **Land occupier.** "Land occupier" means a person, firm, or corporation, including the governments of this state and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of the state, who possess lands lying within a district organized under Minnesota Statutes, chapter 40, whether as owner, lessee, renter, tenant, or otherwise, including, during the life of a practice, successors of a land occupier who received a cost-share payment. This

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definition also includes the federal government.

Subp. 19. **Nonproduction practice.** "Nonproduction practice" means a soil and water conservation practice which is installed or applied to control soil erosion or sedimentation or to protect or improve water quality. Practices installed or applied primarily to bring land into production or to increase the short-term productivity are not eligible for cost-sharing.

Subp. 20. [Unchanged.]

Subp. 20a. **Protected water.** "Protected water" means those water basins, water courses, and wetlands, as defined in Minnesota Statutes, section 105.37, on the inventory of public waters and wetlands under Minnesota Statutes, section 105.391, subdivision 1, and identified on a protected waters and inventory map available in a county auditor's office.

Subp. 20b. **Registered professional engineer.** "Registered professional engineer" means a person who practices professional engineering within the meaning of Minnesota Statutes, sections 326.02 to 326.15, and who performs technical professional services such as, but not limited to, the planning, designing, or inspecting of the construction of erosion, sediment control, or water quality protection or improvement measures. A registered professional engineer may be designated by a district board and may use criteria in a recognized technical procedure to design, install, and certify practices which qualify for state cost-sharing.

? what else

Subp. 20c. **Shallow soils overlying fractured or cavernous bedrock.** "Shallow soils overlying fractured or cavernous bedrock" means areas where the soil depth or texture in conjunction with the condition of the bedrock will not provide treatment of agricultural waste sufficient to protect groundwater quality. Determination of these areas is made on an individual project basis by assigned Soil Conservation Service personnel or a registered professional engineer. Actual determination may be done by the district technician.

Subp. 20d. **Sinkhole.** "Sinkhole" means a depression or hole in the earth's surface caused by dissolving of underlying

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limestone; drainage is through joints and fractures in underlying bedrock.

Subp. 21. **Soil and water conservation practice.** "Soil and water conservation practice" means structural or vegetative practices applied to the land for the purpose of controlling soil erosion, sediment, agricultural waste, or other water pollutants.

Subp. 22. [Unchanged.]

Subp. 22a. **Special project.** "Special project" means a conservation project including but not limited to a demonstration project, accelerated watershed or water quality project, long-term conservation agreement, planning technique, or nonstructural erosion or sediment control or water quality protection or improvement measure. Special projects may address nonshoreland secondary priority erosion problems and are submitted to the state board according to "Guidelines for Special Projects" published by the state board. That publication is subject to frequent change, is available in the State Law Library, and is incorporated by reference.

Subp. 23. **State board.** "State board" means the state Soil and Water Conservation Board created in Minnesota Statutes, section 40.03.

Subp. 24. [See Repealer.]

Subp. 25. **T.** "T" means soil loss tolerance which is the maximum level of soil erosion that will permit a high level of crop productivity to be sustained economically and indefinitely. In Minnesota, "T" ranges from one to five tons per acre per year depending on the particular soil characteristics. "T" values for Minnesota soils are provided in the Field Office Technical Guide.

Subp. 26. **2 x T.** "2 x T" means soil erosion at the rate of two times T.

8400.0200 AUTHORITY.

Minnesota Statutes, chapter 40, authorizes the state Soil and Water Conservation Board, in cooperation with the soil and water conservation districts, to administer a program of

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cost-sharing with land occupiers on the installation of soil and water conservation practices. Parts 8400.0100 to 8400.2900 provide procedures and criteria to be followed by the state board in allocating cost-sharing funds to districts, and standards and guidelines which the district boards shall use in allocating funds to land occupiers.

8400.0300 ESTABLISHING APPROVED PRACTICES.

The state board, in consultation with the districts, shall maintain a list of practices which are eligible for cost-share funds and a schedule of maximum rates. The list is contained in parts 8400.2000 to 8400.2700 and the schedule in parts 8400.2800 and 8400.2900. Changes to the list and schedule must be made pursuant to Minnesota Statutes, chapter 14.

8400.0400 CRITERIA FOR APPROVED PRACTICES.

Practices approved by the state board must meet the criteria in items A to C.

A. Their primary purpose must be the control of soil erosion or sedimentation, or protection or improvement of water quality.

B. They must be enduring in nature. All practices cost-shared under this program must be designed for a minimum effective life of ten years.

C. They must be nonproduction practices.

8400.0600 ALLOCATION OF FUNDS.

Subpart 1. **Comprehensive plan.** Before the state board can allocate cost-share funds to a district it must first approve the district's comprehensive plan, including its most recent amendment and the annual work plan which includes the application for needed cost-share funds. The plans must be in a format required by the state board.

Subp. 2. [See Repealer.]

Subp. 3. **Review criteria.** The state board shall review all district applications for cost-share funds with respect to the following criteria:

A. the extent of high priority erosion or water

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quality problems in the district as outlined in the district comprehensive and annual plans;

B. priorities for the control of soil erosion or water quality problems as established in the program plan of the state board;

C. historical success of the district in applying soil and water conservation practices;

D. availability of cost-share funds from other sources; and

E. readiness of the district to effectively use the funds.

The state board shall review all district applications for special project funds with respect to criteria established in the most recent version of the Guidelines for Special Projects published by the state board. That publication is subject to frequent change, is available in the State Law Library, and is incorporated by reference.

Subp. 4. **Grants.** Following review and approval of the annual and comprehensive plans, the state board shall allocate to districts in the form of grants at least 70 percent of the cost-sharing funds available statewide for conservation practices to address high priority erosion or water quality problems. ~~At least 50 percent of the cost-sharing funds available statewide must be allocated for conservation practices to control high priority erosion problems. Up to 20 percent of the cost-sharing funds available statewide may be used to control high priority water quality problems.~~ The remaining cost-share funds may be allocated by the board to districts for technical and administrative assistance or special projects. ~~Technical and administrative assistance grants shall be based on the extent of high priority erosion and water quality problems in each district and the demonstrated interest of the district in identifying and addressing those problems.~~ Technical and administrative assistance grants may be used for controlling secondary priority nonshoreland erosion problems.

8400.0700 MONITORING.

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For the purpose of monitoring the progress of the program and use of funds, the state board shall receive from each district an annual report of the year's accomplishments by a date deemed reasonable by the state board. The state board may require additional special reports deemed necessary by the state board to monitor the cost-sharing program. The reports must be on forms provided by the state board.

8400.0900 ADMINISTRATION OF FUNDS.

Following receipt of grant funds from the state board, a district is responsible for administration of the funds in accordance with Minnesota Statutes, chapter 40 and all other applicable laws. The district board may make all decisions concerning use of these funds in accordance with parts 8400.0100 to 8400.2900.

As a condition to receiving grant funds from the state board, the district shall ensure compliance with the maintenance provisions of part 8400.1700 and Minnesota Statutes, chapter 40 by monitoring all cost-share contracts made with land occupiers.

Prior to considering any applications from land occupiers for cost-share assistance, the district board shall establish the cost-share ~~or flat~~ rates for practices to be installed under the program, which may not exceed the maximum rates established by the state board. This decision shall be based on the following factors:

A. the extent of high priority erosion or water quality problems in the district as outlined in the district comprehensive and annual plans;

B. advice of technical experts familiar with the district;

C. cost-share rates currently in effect under the agricultural conservation program administered by the United States Agricultural Stabilization and Conservation Service and other assistance programs;

D. district priorities as established in the districts' comprehensive and annual plans; and

E. cost-share funds available.

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8400.1000 APPLICATION FOR FUNDS BY LAND OCCUPIERS.

Land occupiers seeking assistance under this program shall apply to the districts on forms provided by the state board and available from the district office. Each application must be filled out in its entirety. The application must be signed by the land occupier and if the land occupier is not the owner it must also bear the owner's signature. Applications must be submitted not later than June 1 to be considered for cost-sharing from the funds available for the current fiscal year. After initial priority screening by the district board, assigned Soil Conservation Service personnel or a registered professional engineer are responsible for making a determination of need and cost estimate. Actual determination of need and cost estimate may be done by the district technician. Additional information on the desired practice which may be required by the district board in its consideration of the application shall be included.

8400.1100 GROUP PROJECT.

A situation may arise where the cooperation of several land occupiers is required to solve a conservation problem. The district may share the cost of such a group project if all of the land occupiers are eligible as individuals and the practices satisfy the criteria of the program. The land occupiers must reach agreement on a division of payments and designate a group spokesperson. The spokesperson must be identified on the group cooperator agreement and shall file all forms with the district and negotiate all project details with the district. Checks for the district share of the practice shall be issued to the group members based on the division of payment plan prepared by the group.

8400.1200 LAND IN MORE THAN ONE DISTRICT.

If a project involves land in more than one district, application must be made to the district containing the most land benefited by the practice.

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8400.1300 CRITERIA FOR DISTRICT BOARD REVIEW.

Criteria for district board review:

A. The applicant must be a district cooperator.

B. The practice needed to solve the problem must be on the list of approved practices.

C. The primary purpose of the requested practice must be the control of soil erosion or sedimentation, or the protection or improvement of water quality. In cases where the primary purpose is questionable, the district board shall make a determination of the acceptability of the application. Additionally, the district board shall make determination of the need for supplemental practices to protect any practice installed under this program, such as fencing of water impoundment structures. If the district board determines that supplemental practices are necessary, it shall authorize cost-sharing for their installation.

D. The requested practice must be consistent with district plans and priorities.

E. The practice must be maintained by the land occupier, who is responsible for operation and maintenance of practices applied under this program.

F. Priority consideration shall be given to land occupiers or groups of land occupiers who demonstrate the ability to meet matching requirements. Cost-share funds may not be used for repair of practices installed solely with private or federal cost-sharing funds.

G. The practice must comply with the technical requirements of the Field Office Technical Guide. For practices not included in the Field Office Technical Guide, other recognized technical procedures may be used to design, install, and certify practices.

8400.1400 DISTRICT APPROVAL.

Subpart 1. **General.** After completion of a priority determination and cost estimate, the district board shall either approve or deny the application. If it is approved, the district board shall instruct the chairman or acting chairman to

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sign the application. Once it is signed, the application becomes the contract between the district and land occupier and serves as the authorization for work to proceed on the practice. Practices begun prior to district approval are ineligible for financial assistance. If it is denied, the district board shall notify the land occupier in writing within 30 days after board action of the reason for denial of the application. Changes in any provisions of the contract are subject to review and approval by the district board.

Subp. 2. **High priority problems.** In order to ensure compliance with part 8400.0600, subpart 4, the district board shall approve only those applications that involve the high priority problems for which they received funds. ~~The district board may allocate high priority water quality funds for high priority erosion projects, but not the converse.~~ FF

8400.1405 STARTING AND COMPLETION DEADLINES.

Subpart 1. **Time limit; cancellation.** Projects not started within 18 months after district board approval must be canceled unless an amendment to the project has been approved by the district board. Projects not completed within two calendar years after initial approval must be canceled.

Subp. 2. **Partial payment.** In cases where weather or other unanticipated circumstances beyond the control of the land occupier, force postponement of certification of completion until the following construction season, the state board or its authorized representative may authorize a district board to issue a partial payment for the work that has been completed. The following conditions must be met before the state board or its authorized representative will consider authorizing a partial payment:

A. The anticipated completion date will be in compliance with subpart 1.

B. The completed work meets the requirements of part 8400.1300, item G.

C. The state board's authorized representative must review the work and concur in the payment decision.

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Subp. 3. **Payment conditions.** If the state board or its authorized representative authorizes a partial payment under subpart 2, the following conditions apply:

A. Payment percentages must comply with part 8400.2800.

B. The balance of the project must be paid by the district board upon the satisfactory completion of the total project.

C. All expenses incurred in correcting damage caused to the project by virtue of its incompletion must be borne by the land occupier.

D. Land occupiers receiving partial payments must complete the project within a time deemed reasonable by the district board.

E. Land occupiers not completing partially paid projects are violating part 8400.1700 and shall be directed to return the amount of financial assistance received.

F. Partial payment authorizations shall not be construed as precedent setting. Every request will be considered by the state board or it authorized representative on its own merits.

Subp. 4. **Denial.** If the state board or its authorized representative denies a request for partial payment under subpart 2, the district board shall be notified within 30 days of the reasons for denial of the request.

8400.1500 DISTRICT RECORDS.

The district shall maintain a current ledger of all cost-share contracts on forms provided by the state board. The ledger must specify the land occupiers with whom the district has contracted, the practices involved, the status of construction, and a total of funds encumbered.

8400.1600 PAYMENTS.

Subpart 1. **Construction of practice.** Construction of practices must be monitored by the district board to ensure compliance with part 8400.1300, item G. Upon completion,

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assigned Soil Conservation Service personnel or a registered professional engineer shall certify whether or not the practice has been satisfactorily performed, including a certification that the practice meets the requirements of part 8400.1300, item G. No certification shall be made until all specifications have been satisfied. Exceptions must be in accordance with part 8400.1405, subpart 2. Upon certification of completion, the land occupier shall contact the district for payment and shall present documentation of all costs incurred in the installation of the practice in the form of receipts or invoices.

Subp. 2. **In-kind services.** In-kind services provided by the land occupier such as, but not limited to, earth work, seedbed preparation, and seeding may be credited toward the land occupier's share of the total cost of the practice. The district board shall determine whether charges for in-kind services are practical and reasonable.

Subp. 3. **Actual cost differing from estimated cost.** In cases where the actual cost of the practice exceeds the estimated cost, the district may only share the approved percentage of the estimated cost, except when an amendment to the cost-share contract has been approved. Because of extreme circumstances such as, but not limited to, weather and unforeseen geologic conditions, it may be desirable to increase the estimated cost, or postpone the starting or completion date of the practice. These changes must be approved by the supervisors in advance of completion of the work with an amendment to the cost-share contract covering the changes. Amendments may not be authorized for providing final cost-sharing percentages in excess of the originally approved percentage or additional money for projects that were knowingly underfunded at the time of approval. Amendments may not be authorized after final approval of payment has been made on the original contract. Where the actual cost is less than the estimated cost, the district shall only share the approved percentage of the actual cost of the practice. The district board shall review the receipts or invoices provided by the land

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occupier to determine the actual cost of the practice. When the district determines that all claims are practical and reasonable, it shall authorize issuance of a check for the district share of the practice. If the district board determines that certain claims are not justified, it shall notify the land occupier in writing of the unjustified claims within 30 days. The district board shall then authorize the issuance of a check for the district share of the justified claims.

8400.1700 MAINTENANCE.

The land occupier is responsible for operation and maintenance of practices applied under this program to ensure that their conservation objective is met and the effective life of ten or more years is achieved. Should the land occupier fail to maintain the practices during their effective life, the land occupier is liable for the amount of financial assistance received for their installation. The district board may authorize the removal of a practice installed under this program provided the land occupier can show good cause for removal of the practice. The land occupier is not liable for cost-share assistance received if the failure was caused by reasons beyond the land occupier's control, or if soil and water conservation practices are applied at the land occupier's expense which provide equivalent protection of the soil and water resources. In no case shall a district provide cost-share assistance to a land occupier for the reapplication of practices which were removed by the land occupier during their effective life or failed due to improper maintenance.

8400.1800 APPEALS.

If a land occupier feels he has been treated unfairly, he may request that the district board review its decision. Should the land occupier and the district board reach an impasse, the land occupier may petition in writing for a hearing before the state board. If it grants the hearing, which shall be informal, the state board or a referee appointed by it shall hear all

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testimony offered, and shall accept written testimony for ten days after the hearing. The referee, if one is used, shall report his findings and recommendation to the state board, which shall within 60 days of the hearing date make its decision on the appeal, upholding, reversing, or amending the decision of the district board.

8400.1950 VARIANCES.

If a district board feels that a particular requirement of parts 8400.0100 to 8400.2900 prevents an erosion or sedimentation control or water quality project from being installed, a request for a variance may be filed with the director of the state board. The request must be in writing and contain:

A. the name and address of the district board making the request and the signature of the district chairperson;

B. the nature of the variance being sought, including an identification of the applicable rule from which the variance is sought, the time period for which it is sought, and the reason for seeking the variance;

C. a statement of alternatives for dealing with the installation of the affected project if the variance is not granted; and

D. a statement of the effects on applicable natural resources and the public if the variance is granted.

Variance requests must be submitted to the director at least 30 days prior to the state board meeting at which the variance is requested to be heard. Within 45 days after the meeting, the state board must approve or deny the variance request and provide written notification of the decision to the applicant. A variance will not be granted if it is in conflict with any statute. The state board may grant a variance upon such conditions as it may prescribe.

If a variance has been granted by the state board, the district board holding the variance may file with the state board at any time a written request for modification or amendment of the variance. The request for modification or

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amendment, and the state board's consideration of the request, shall comply with requirements of this part.

8400.2000 APPROVED PRACTICE: EROSION CONTROL STRUCTURES.

Subpart 1. **Definition.** "Erosion control structure" means existing language a structure such as, but not limited to, floodwater retarding or multipurpose dams designed to provide temporary storage of floodwater, control the release rate of water providing downstream channel stability, or impound water.

Subp. 2. **Purpose.** The purpose of an erosion control structure is to control soil erosion or to protect or improve water quality. An erosion control structure may provide multiple benefits including, but not limited to, water supply for livestock, recreation, flood control, channel stability, wildlife habitat, and fire prevention.

Subp. 3. **Applicability.** Erosion control structures may be used on any lands where they are necessary for the control of soil erosion or water quality protection or improvement.

Subp. 4. **Policies.** Cost-sharing is authorized:

A. only for the construction of erosion control structures that provide for reduction of soil erosion or water quality protection or improvement;

B. for the installation of livestock watering facilities in conjunction with erosion control structures only if the facilities are necessary for the proper management and protection of the structure as determined by the district board;

C. for permanent fencing of an erosion control structure as determined by the district board;

D. for tree and shrub plantings adjacent to the structure and seeding necessary to stabilize an erosion control structure and adjacent critical areas, including, whenever possible, the use of those species that provide wildlife habitat and visual enhancement;

E. for erosion control structures which provide multiple benefits if the primary benefit is soil erosion control or water quality protection or improvement;

F. for temporary materials and seedings necessary to

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properly stabilize an erosion control structure during construction; and

G. for erosion control dams and ponds if a minimum of 50 percent of the contributing drainage area above the proposed project is adequately protected.

8400.2100 APPROVED PRACTICE: STRIPCROPPING.

Subpart 1. **Definition.** "Stripcropping" means the development and application of a cropping system for a farming unit which provides for planting row crops with the contour where practicable and incorporates alternate strips of row crops, close ~~sown~~ grown crops, sod crops, or fallow.

Subp. 2. **Purpose.** The purpose of stripcropping is to establish a system of farming with contour ~~or~~, field, or wind stripcropping to control soil erosion or protect or improve water quality. Stripcropping may provide additional benefits to wildlife.

Subp. 3. **Applicability.** Stripcripping may be used on any lands where it is necessary for the control of soil erosion or water quality protection or improvement.

Subp. 4. **Policies.** Cost-sharing is authorized for ~~a per acre rate not to exceed $11 whether solely state cost shared or in combination with federal cost sharing~~ equipment and labor costs involved in the marking of individual strip lines. Equipment and labor costs must not exceed equivalent total costs as listed in "Custom Rate Estimates for Minnesota," published annually by the University of Minnesota Agricultural Extension Service, and available in county agricultural extension offices. That publication is adopted by reference.

A project is not eligible for state cost-share assistance if federal cost-share funds are used on the same project.

FF ? substantial change

8400.2200 APPROVED PRACTICE: TERRACES.

Subpart 1. **Definition.** "Terrace" means an earth embankment, or a combination ridge and channel constructed across the slope at the required spacing.

Subp. 2. **Purpose.** Terraces are constructed to:

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A. reduce erosion;

B. reduce sediment content in runoff water;

C. intercept and conduct surface runoff at a nonerosive velocity to a stable outlet;

D. prevent gully development;

E. reduce flooding; or

F. protect or improve water quality.

Terraces may provide additional benefits by creating wildlife habitat and retaining runoff for moisture conservation.

Subp. 3. **Applicability.** Terraces may be used on any lands where they are needed for the control of soil erosion or water quality protection or improvement.

Subp. 4. **Policies.** Cost-sharing is authorized:

A. for construction necessary to properly establish terraces, including earthwork, material, and seedings if necessary;

B. for temporary materials and seedings necessary to properly stabilize terraces during construction; and

C. for tile systems necessary for the establishment and operation of the terraces, including the outlet which shall be limited to 300 feet below the last terrace in a system.

8400.2300 APPROVED PRACTICE: DIVERSIONS.

Subpart 1. **Definition.** "Diversion" means a channel with a supporting ridge on the lower side constructed across the slope.

Subp. 2. **Purpose.** The purpose of a diversion is to divert water away from erosive areas <u>or areas that pose a threat to water quality</u> to areas where it can be used or disposed of safely. Diversions may provide additional benefit to wildlife.

Subp. 3. **Applicability.** A diversion may be used where:

A. runoff from higher lying areas is eroding cropland, pastureland, or farmsteads, or is needed to support conservation practices such as terraces or stripcropping in the control of erosion or sedimentation;

B. surface and shallow subsurface flow is damaging sloping upland or contaminating ground or surface water; or

C. it is required as a part of a pollution abatement

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system, or to control erosion or sedimentation on urban or developing areas and construction sites.

Subp. 4. **Policies.** Cost-sharing is authorized:

A. for tile systems necessary for the establishment and operation of diversions;

B. for construction necessary to properly establish diversions including earthwork, materials, and seedings;

C. for temporary materials and seedings necessary to properly stabilize diversions during construction; and

D. for permanent fencing of diversions as determined by the district board.

8400.2400 APPROVED PRACTICE: STORMWATER CONTROL SYSTEMS.

Subpart 1. **Definition.** "Stormwater control system" means a practice or system of practices such as, but not limited to, existing language grassed waterways, water and sediment control basins, and grade stabilization structures installed to convey storm runoff to a constructed or natural outlet in a nonerosive manner. This practice does not apply when the primary purpose is drainage to expand or improve crop production or making the cropping system more convenient.

Subp. 2. **Purpose.** The purpose of a stormwater control system is to provide a means of regulating or removing runoff to control erosion or protect or improve water quality. Additional benefit may be provided through creation of wildlife habitat.

Subp. 3. **Applicability.** A stormwater control system may be used on all lands by using vegetative or structural measures for control of erosion or protection or improvement of water quality.

Subp. 4. **Policies.** Cost-sharing is authorized:

A. For the construction of practices required in a complete stormwater control system. These practices include, existing language but are not limited to a lined waterway or outlet, detention ponds, vegetative filter strips, permanent sod cover, and permanent vegetation including trees, shrubs, and grasses. At least 80 percent of the contributing drainage area above grassed waterways on land owned or controlled by the applicant, must be

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adequately protected.

B. For tile systems necessary for the establishment and operation of stormwater control systems, including the outlet, which is limited to 300 feet below the end of the waterway.

C. For temporary materials and seedings necessary to properly stabilize a stormwater control system during construction.

D. For permanent fencing of stormwater control systems as determined by the district board.

8400.2500 APPROVED PRACTICE: FIELD WINDBREAKS.

Subpart 1. **Definitions.** "Field windbreak" means a strip or belt of trees, shrubs, or grass barriers established within or adjacent to a field.

Subp. 2. **Purpose.** The primary purpose of a field windbreak is to reduce wind erosion. Additional benefits may be the protection of crops, livestock, and wildlife, increased moisture conservation by controlling snow deposition, and beautification and enhancement of the landscape.

Subp. 3. **Applicability.** Field windbreaks may be used in or around open fields which need protection against wind erosion. Additional benefits may be realized from the creation of wildlife habitat.

Subp. 4. **Policies.** Cost-sharing is authorized for site preparation, planting materials, planting, chemicals for weed control, and other applicable costs necessary to establish a field windbreak. The land occupier is responsible for controlling competitive vegetation for two years following planting and must bear the cost of control.

Cost-sharing is prohibited for plantings installed primarily for farm beautification, protection of buildings or livestock, energy conservation, or other uses where erosion control is not the primary purpose.

8400.2600 APPROVED PRACTICE: ANIMAL WASTE CONTROL SYSTEMS.

Subpart 1. **Definition.** "Animal waste control system"

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means a planned agricultural waste management system to contain and manage liquid and solid wastes including runoff from concentrated animal waste (feedlot) areas with ultimate disposal in a manner which does not degrade soil or water resources. This practice includes systems for safe disposal of livestock wastes through use of soil and plants.

Subp. 2. **Purpose.** Agricultural waste management systems are used to manage wastes in rural areas in a manner which prevents or minimizes degradation of soil and water resources and protects public health and safety. These systems are planned to preclude discharge of pollutants to surface or ground water and, to the fullest practicable extent, recycle wastes through soil and plants.

Subp. 3. **Applicability.** Animal waste control systems may be used ~~in any animal confinement area for which the feedlot evaluation model has been applied and a potential pollution hazard has been determined to exist~~ with any high priority feedlot or where the land occupier was cited by the Minnesota Pollution Control Agency or other situations where that agency determines there is a potential feedlot pollution hazard. FF

Subp. 4. **Policies.** Cost-sharing is authorized for:

A. All structures and permanent shrubs, trees, or grasses necessary to store animal wastes or control stormwater runoff from animal confinement areas including storage facilities, diversions, waste storage ponds, and waterways. A complete system, controlling discharge of runoff from animal confinement areas to waters of the state, is required.

B. Tile systems necessary for the establishment and operation of an animal waste control system.

C. Temporary materials and seedings necessary to properly stabilize an animal waste control system during construction.

D. Permanent fencing of an animal waste control system as determined by the district board.

Cost-sharing is prohibited on any costs normally incurred in the management of an animal confinement area. This includes

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buildings, yards, permanent or portable pumps, tank wagons, loaders, stackers, and similar items.

Holding tanks, collection basins, waste conveying pipe, and other animal waste facilities are eligible for cost-sharing if the district board determines that they are necessary to protect water quality and if the entire system needed to control pollution is installed.

A holding tank which will become an integral part of a building is eligible for cost-sharing if there is no other feasible alternative available for controlling pollution. The district board, with technical review completed by technicians available to it, shall make the final decision concerning the cost-sharing eligibility of such a system. For purposes of determining the cost-share payment, the cost of the building foundation and the cost of the building is not eligible for cost-sharing. The cost attributable to the foundation shall be represented by the top four feet of the storage tank walls.

8400.2700 APPROVED PRACTICE: CRITICAL AREA STABILIZATION.

Subpart 1. **Definition.** "Critical area stabilization" means planting permanent vegetation such as trees, shrubs, vines, grasses, or legumes or placing rock cover on highly erodible or severely eroded sites or in areas where vegetation is needed to protect or improve water quality.

Subp. 2. **Purpose.** The purpose of critical area stabilization is to provide permanent vegetative or rock cover to stabilize the soil, to control erosion or to protect or improve water quality. Additional benefit may be gained by improving wildlife habitat and enhancing natural beauty.

Subp. 3. **Applicability.** Critical area stabilization may be used on sediment-producing, highly erodible, or severely eroded areas or in areas where vegetation is needed to protect or improve water quality, such as, but not limited to, abandoned mine spoil, construction sites, and denuded or gullied areas where vegetation is difficult to establish.

Subp. 4. **Policies.** Cost-sharing for stabilizing streambank, lakeshore, and roadside areas must be addressed with

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the approved practice in part 8400.2705.

Cost-sharing is authorized for:

A. earthwork, materials, seed, and seedings and other associated costs necessary to stabilize the area;

B. temporary materials and seedings necessary to stabilize the area during construction; and

C. permanent fencing of the area as determined by the district board.

8400.2705 APPROVED PRACTICE: STREAMBANK, LAKESHORE, AND ROADSIDE STABILIZATION.

Subpart 1. **Definition.** "Streambank, lakeshore, and roadside stabilization" means stabilizing and protecting streambank, lakeshore, and roadside areas against erosion by vegetative or structural means.

Subp. 2. **Purpose.** The purpose of streambank, lakeshore, and roadside stabilization is to control erosion or protect or improve water quality.

Subp. 3. **Applicability.** Streambank, lakeshore, and roadside stabilization may be used on eroding or sediment producing areas on streambank, lakeshore, or roadside sites where vegetative or structural measures are needed to correct the problem.

Subp. 4. **Policy.** Cost-sharing is authorized for:

A. earthwork, materials, seed, and seedings necessary to stabilize the area;

B. temporary materials and seedings necessary to stabilize the area during construction; and

C. permanent fencing of the area as determined by the district board.

Permanent fencing may be used as the sole remedy if it is determined by the district board to be the most practical solution, except that fencing of property boundaries and roads is ineligible for cost-sharing.

Subp. 5. **Cost-sharing limit.** Cost-sharing may not exceed 50 percent of total eligible project costs.

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8400.2800 MAXIMUM RATES.

The maximum percent of the total cost of a practice installed to control a high priority erosion or water quality problem that may be funded by state cost-share funds is 75 percent except ~~where a flat rate is authorized~~ as stated in part 8400.2100, subpart 4. The maximum percent of the total cost of a practice installed to control a secondary priority nonshoreland erosion problem that may be funded by state cost-share funds is 50 percent except ~~where a flat rate is authorized~~ as stated in part 8400.2100, subpart 4. State cost-share funds may be matched with federal money or other state funds except as stated in part 8400.2100, subpart 4. The combined state and federal amount may not exceed the maximum rates in this part or part 8400.2705, subpart 5.

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REPEALER. Minnesota Rules, parts 8400.0100, subparts 7, 17, and 24; and 8400.0600, subpart 2 are repealed.

EFFECTIVE DATE. These rules are effective July 1, 1985.

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
APR 9 1985
Joan Anderson Growe
Secretary of State
10:45 AM

APPROVED AS TO LEGALITY
April 5, 1985
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

In the Matter of the Proposed Rules
of the Department of Agriculture
Governing Cost Share Programs To Soil
and Water Conservation Districts
(Minnesota Rules 8400.0100 - 8400.2800)

ORDER ADOPTING
RULES

Notice of the Soil and Water Conservation Board's intent to adopt the above-entitled rules without a public hearing was published in the State Register on January 14, 1985, and was sent by United States mail to all persons on the list maintained by the department pursuant to Minnesota Statutes, Section 14.22 on January 8, 1985. After affording interested and affected persons an opportunity to submit comments for 30 days after Notice, receiving fewer than 25 written requests for a public hearing within the 30 day comment period, reviewing and considering the comments, and determining the need for and reasonableness of the above-captioned rules,

NOW, THEREFORE, IT IS ORDERED that these rules identified as the Rules Governing Cost Share Programs to Soil and Water Conservation Districts adopted this 12th day of March, 1985, pursuant to authority vested in me by Minnesota Statutes, section 40.036.

STATE OF MINNESOTA

Wayne Haglin

WAYNE HAGLIN
CHAIRMAN
SOIL AND WATER CONSERVATION BOARD

Soil and Water Conservation Board

Department of Agriculture

Notice of Intent to Solicit Outside Opinion Regarding Proposed Amendments to Rules Governing the Allocation of Funds to Soil and Water Conservation Districts for the Installation of Erosion, Sedimentation, or Water Quality Improvement Practices

Notice is hereby given that the Soil and Water Conservation Board is seeking information or opinions from sources outside the agency in preparing to amend rules governing the allocation of funds to Soil and Water Conservation Districts for the installation of erosion, sedimentation, or water quality improvement practices. The promulgation of these rules is authorized by Laws 1982, ch. 512, section 13, which requires the agency to adopt rules including the scope and content of Soil and Water Conservation District comprehensive and annual plans; standards and methods for identifying high priority erosion, sedimentation and water quality problems; the share of the cost of conservation practices to be paid from state money; and procedures for implementing a pilot program of contacting land occupiers with high priority erosion problems.

The Board requests information and comments concerning the subject matter of these proposed amendments to the rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing.

Written statements of information and comment may be addressed to:

Greg Larson
Soil and Water Conservation Board
Department of Agriculture
90 West Plato Boulevard
St. Paul, MN 55107

Oral statements of information and comment will be received during regular business hours over the phone at (612) 296-3767, and in person at the above address.

All statements of information and comment must be received by January 15, 1983. Any written material received by the Board shall become part of the record.

December 9, 1982

Vernon F. Reinert
Executive Director

OFFICIAL NOTICES

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

Department of Agriculture Agronomy Services Division

Notice of Special Local Need (SLN) Registration for Princep 4G

Pursuant to Minnesota Statutes, section 18A.23, and 3 MCAR § 1.0338 B., the Minnesota Department of Agriculture (MDA), on December 3, 1982, issued a Special Local Need (SLN) Registration for Princep 4G, manufactured by Ciba-Geigy Corporation, Greensboro, N.C.

The Commissioner of Agriculture, based upon information in the application, has deemed it in the public interest to issue such a registration, and has deemed that the information in the application indicates that the pesticide does not have the potential for unreasonable adverse environmental effects.

In addition to the uses prescribed on the product label, this Special Local Need (SLN) Registration permits the use of this product on "tree plantations for timber" and would add Black Walnut to the list of tree species where this product could be used.

The application and other data required under Minnesota Statutes, sections 18A.22, subdivision 2(a-d), 18A.23, and 40 CFR 162.150-162.158, subpart B, relative to this registration (identified as SLN No. MN82-0014) is on file for inspection at:

Minnesota Department of Agriculture
Agronomy Services Division
Pesticide Control Section
90 West Plato Boulevard
Saint Paul, Minnesota 55107
Telephone: (612) 296-8547

A federal or state agency, a local unit of government, or any person or group of persons filing with the commissioner a petition that contains the signatures and addresses of 500 or more individuals of legal voting age has thirty (30) days to file written objections with the Commissioner of Agriculture regarding the issuance of this Special Local Need Registration. Upon receipt of such objections and when it is deemed in the best interest of the environment or the health, welfare, and safety of the public, the Commissioner of Agriculture shall order a hearing pursuant to Minnesota Statutes, Chapter 15, for the purpose of revoking, amending, or upholding this registration.

December 3, 1982.

Mark W. Seetin, Commissioner

Soil and Water Conservation Board Department of Agriculture

Notice of Intent to Solicit Outside Opinion Regarding Proposed Amendments to Rules Governing the Allocation of Funds to Soil and Water Conservation Districts for the Installation of Erosion, Sedimentation, or Water Quality Improvement Practices

Notice is hereby given that the Soil and Water Conservation Board is seeking information or opinions from sources outside the agency in preparing to amend rules governing the allocation of funds to Soil and Water Conservation Districts for the installation of erosion, sedimentation, or water quality improvement practices. The promulgation of these rules is authorized by Laws 1982, ch. 512, section 13, which requires the agency to adopt rules including the scope and content of Soil and Water Conservation District comprehensive and annual plans; standards and methods for identifying high priority erosion, sedimentation and water quality problems; the share of the cost of conservation practices to be paid from state money; and procedures for implementing a pilot program of contacting land occupiers with high priority erosion problems.

The board requests information and comments concerning the subject matter of these proposed amendments to the rules.

Interested or affected persons or groups may submit statements of information or comment orally or in writing. Written statements of information and comment may be addressed to:

Greg Larson
Soil and Water Conservation Board
Department of Agriculture
90 West Plato Boulevard
St. Paul, MN 55107

Oral statements of information and comment will be received during regular business hours over the phone at (612) 296-3767, and in person at the above address.

All statements of information and comment must be received by January 15, 1983. Any written material received by the Board shall become part of the record.

December 9, 1982

Vernon F. Reinert
Executive Director

Department of Energy, Planning and Development Energy Division

Notice of Intent to Solicit Outside Opinion on Rules Relating to Heat Loss, Lighting and Climate Control in the State Building Code

Notice is hereby given that the Department of Energy, Planning and Development, Energy Division is seeking information and opinions from sources outside the division in preparing revisions to the State Building Code, 2 MCAR §§ 1.16001-16006. The authority for these rules is contained in Minn. Stat. § 116H.12, subd. 4 (1980), (Laws of Minnesota 1982, Chapter 563 Section 9).

Pursuant to this statute, the DEPD, Energy Division, is considering revisions to the State Building Code, including:

1. Replacement of adoption of ASHRAE Standard 90-75 by reference with adoption of ASHRAE Standards 90A-1980 and 90B-1980, by reference with the exceptions as noted below.

2. Replacement of insulation requirements for one- and two-family dwellings in the Minnesota Building Code with the requirements of the current Department of Housing and Urban Development (HUD) Minimum Property Standards for One-Two Family Dwellings.

3. Replacement of insulation requirements for all multi-family residential structures in the Minnesota Building Code with the requirements of the current HUD Minimum Property Standards for Multi-Family Housing.

4. Modification of ventilation requirements specified by the Minnesota Building Code to conform with the requirements of ASHRAE Standard 62-1981.

5. Including the minimum requirements for water heater efficiencies of ASHRAE Standard 90A-1980, Section 7.

Any person with information, comments or questions on the subject of the proposed rules should submit them either orally or in writing before January 31, 1983. Address correspondence to:

Department of Energy, Planning and Development
Energy Division
980 American Center Building
150 E. Kellogg Blvd.
St. Paul, MN 55101
Attn: Bruce Nelson
(612) 296-8279

The division expects to publish proposed rules in February, 1983. Written materials received will be made part of the record in the event that rules are proposed.

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

In the Matter of the Proposed Amendments to the Rules of the Department of Agriculture Governing Cost Share Programs to Soil and Water Conservation Districts

(Minnesota Rules 8400.0100 - 8400.2800)

ORDER FOR NOTICE OF INTENT TO ADOPT RULES WITHOUT PUBLIC HEARING

IT IS ORDERED this 26th day of December, 1984, that a Notice of Intent to Adopt Rules Without Public Hearing in the above-entitled matter be given to all persons who have registered their names with the Minnesota Department of Agriculture for that purpose and be published in the State Register.

STATE OF MINNESOTA

Jim Nichols

Commissioner of Agriculture

CERTIFICATE OF BOARD'S

AUTHORIZING RESOLUTION

I, Wayne Haglin, do hereby certify that I am a member and the Chairman of the Board of Soil and Water Conservation, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Board of Soil and Water Conservation duly and properly called and held on the 8th day of January, 1985, that a quorum was present at said meeting, that a majority of those present voted for the resolution and that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> "RESOLVED, that Wayne Haglin, Chairman of the Board of Soil and Water Conservation, be and he hereby is granted the authority and directed to sign an Order of the Board directing that Notice be given of the Board's intent to adopt without a public hearing rules governing Cost Share Programs to Soil and Water Conservation Districts to sign the Notice thereof, and to perform any and all acts incidental thereto. In the event a public hearing becomes necessary, he hereby is granted the authority and directed to call a hearing for the purpose of promulgating said rules as well as perform any and all acts incidental thereto, including but without being limited to signing an Order for Hearing and Notice of Hearing as well as acting as the Board's representative at all hearings."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 8th day of January, 1985.

Wayne C. Haglin

Wayne Haglin
Chairman of the Board

Attest by one other Board member

Department of Agriculture

Soil and Water Conservation Board

In the Matter of the Proposed Amendments to the Rules Governing Cost Share Programs to Soil and Water Conservation Districts (Minnesota Rules 8400.0100 - 8400.2800).

Notice of Intent to Amend Rules Without a Public Hearing

Notice is hereby given that the Minnesota Department of Agriculture proposes to amend the above-entitled rules without a public hearing. The Commissioner of Agriculture has determined that the proposed adoption of these amendments will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, Sections 14.22-14.28 (1982).

Persons interested in these rules are encouraged to submit comment in support of or in opposition to the proposed amendments, and shall have 30 days to do so. Each comment should identify the portion of the proposed amendments addressed, the reason for the comment, and any change proposed. The proposed amendments may be modified if the modifications are supported by the data and views submitted to the department and do not result in a substantial change in the proposed language.

Unless 25 or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. Persons requesting a public hearing should state their name and address, and are encouraged to identify the portion of the proposed rules addressed, the reason for the request, and any proposed change. In the event a public hearing is required, the department will proceed according to the provisions of Minnesota Statutes, Sections 14.11-14.20 (1982).

Persons who wish to submit comments or a written request for a public hearing should submit them to: Gerald Heil, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107, (612) 296-1486.

Authority to adopt these rules is contained in Minnesota Statutes, Section 40.036, Subds. 3 and 4. Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed amendments and identifies the data and information relied upon to support the proposed amendments has been prepared and is available upon request from Mr. Heil.

Upon adoption of the final amended rules without a public hearing, the proposed rules, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as adopted, should submit a written statement of such request to Mr. Heil.

The Soil and Water Conservation Board is authorized by Minnesota Statutes, Section 40.036, Subds. 3 and 4 to adopt rules specifying procedures and criteria for allocating funds to districts for cost sharing contracts.

The proposed amendments to the cost-share program rules were required by the legislature in 1982 to direct available cost-share program funds to priority areas of the state. Changes were also made to insure that Soil and Water Conservation Districts plan and implement priority cost-share programs in a manner consistent with state soil and water resource priorities and statewide resource plans.

The proposed amendments will not impose small business as defined in Minnesota Statutes, Section 14.115, because these rules relate to the local administration of a state program.

One free copy of this Notice and the proposed rules are available and may be obtained by contacting Mr. Heil.

Date: December 26, 1984

STATE OF MINNESOTA

Jim Nichols

Commissioner of Agriculture

In the Matter of the Proposed
Amendments to the Rules of the
Department of Agriculture
Governing Cost Share Programs to
Soil and Water Conservation Districts
(Minnesota Rules 8400.0100 - 8400.2800)

AFFIDAVIT OF
MAILING

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Marie Skerbitz, being first duly sworn, deposes and says:

That on the 8th day of January, 1985, at the City of St. Paul, County of Ramsey, State of Minnesota, he/she served the attached Notice of Intent to Adopt Rules Without a Public Hearing by depositing in the State of Minnesota Central Mail System for United States mailing at said City of St. Paul, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who have requested that their names be placed on file with the Minnesota Department of Agriculture for the purpose of receiving notice of the proposed adoption of rules by this Department.

DIANE M. WINDHAM
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES NOVEMBER 1, 1990

Marie A. Skerbitz

Subscribed and sworn to before me
this 8th day of January, 1985.

Diane M. Windham

STATE OF MINNESOTA

COUNTY OF RAMSEY

CERTIFICATE

In the Matter of the Proposed Amendments
to the Rules of the Department of
Agriculture Governing Cost Share Programs
to Soil and Water Conservation
(Minnesota Rules 8400.0100 - 8400.2800)

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minn. Stat. § 14.14, subd. 1, that their names be placed on file with and maintained by the Minnesota Department of Agriculture for the purpose of receiving notice of the proposed adoption of rules by this Department is accurate and complete as of 2:00 p.m., this 8th day of January, 1985.

Carol Milligan

PROPOSED RULES

Pursuant to Minn. Stat. of 1982, §§ 14.22, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless 25 or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules; and
4. that the rule may be modified if the modifications are supported by the data and views submitted.

If, during the 30-day comment period, 25 or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

Pursuant to Minn. Stat. §§ 14.29 and 14.30, agencies may propose emergency rules under certain circumstances. Proposed emergency rules are published in the *State Register* and, for at least 25 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Agriculture
Planning Division
Soil and Water Conservation Board

Proposed Amendments to the Soil and Water Conservation Board's Cost Share

Notice of Intent to Amend Rules without a Public Hearing

Notice is hereby given that the Minnesota Department of Agriculture proposes to amend the above-entitled rules without a public hearing. The Commissioner of Agriculture has determined that the proposed adoption of these amendments will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, Sections 14.22-14.28 (1982).

Persons interested in these rules are encouraged to submit comment in support of or in opposition to the proposed amendments, and shall have 30 days to do so. Each comment should identify the portion of the proposed amendments addressed, the reason for the comment, and any change proposed. The proposed amendments may be modified if the modifications are supported by the data and views submitted to the department and do not result in a substantial change in the proposed language.

Unless 25 or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. Persons requesting a public hearing should state their name and address, and are encouraged to identify the portion of the proposed rules addressed, the reason for the request, and any proposed change. In the event a public hearing is required, the department will proceed according to the provisions of Minnesota Statutes, Sections 14.11-14.20 (1982).

Persons who wish to submit comments or a written request for a public hearing should submit them to: Gerald Heil, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107, (612) 296-1486.

Authority to adopt these rules is contained in Minnesota Statutes, Section 40.036, Subds. 3 and 4. Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed amendments and identifies the data and information relied upon to support the proposed amendments has been prepared and is available upon request from Mr. Heil.

Upon adoption of the final amended rules without a public hearing, the proposed rules, this notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as adopted, should submit a written statement of such request to Mr. Heil.

The Soil and Water Conservation Board is authorized by Minnesota Statutes, Section 40.036, Subds. 3 and 4 to adopt rules specifying procedures and criteria for allocating funds to districts for cost sharing contracts.

The proposed amendments to the cost-share program rules were required by the legislature in 1982 to direct available cost-share program funds to priority areas of the state. Changes were also made to insure that Soil and Water Conservation Districts plan and implement priority cost-share programs in a manner consistent with state soil and water resource priorities and statewide resource plans.

The proposed amendments will not impact small business as defined in Minnesota Statutes, Section 14.115, because these rules relate to the local administration of a state program.

One free copy of this notice and the proposed rules are available and may be obtained by contacting Mr. Heil.

December 26, 1984

Jim Nichols
Commissioner of Agriculture

Rules as Proposed

8400.0100 DEFINITIONS.

Subpart 1. Scope. For purposes of parts 8400.0100 to 8400.2900, the ~~following~~ definitions in this part, in addition to those in Minnesota Statutes, chapter 30, ~~shall~~ apply.

Subp. 1a. Adequately protected. "Adequately protected" means that soil erosion and other factors that influence the sustained productive use of the resource base are within acceptable limits, which are achieved through the use of soil and water conservation practices. With respect to soil erosion, the loss may not exceed "T."

Subp. 2. [Unchanged.]

Subp. 3. Annual plan. "Annual plan" means a plan prepared by the district pursuant to Minnesota Statutes, section 40.07, subdivision 9, and according to the most recent version of the Guidelines for Soil and Water Conservation District Comprehensive and Annual ~~Planning~~ Plans published by the state board. That publication is subject to frequent change, is available at the State Law Library, and is incorporated by reference.

Subp. 4. Approved practice. "Approved practice" means a soil and water conservation practice which qualifies for state cost-sharing and which has been approved by the state board.

Subp. 5. Area conservationist. "Area conservationist" means the area conservationist of the ~~USDA~~ Soil Conservation Service.

Subp. 6. Assigned ~~SCS~~ Soil Conservation Service personnel. "Assigned ~~SCS~~ Soil Conservation Service personnel" means the district conservationist or ~~USDA~~ Soil Conservation Service personnel designated by the area conservationist to provide need and performance certification to the program.

Subp. 7. [See Repealer.]

Subp. 7a. Class I-IV soil. "Class I-IV soil" means soil generally suitable for field crop production according to United States Department of Agriculture Handbook No. 210, "Land Capability Classification" (Washington, D.C., September, 1961). That publication is not subject to frequent change, is available at the St. Paul Public Library, and is incorporated by reference. Soil in Class I has few limitations that restrict their use while Class IV soil has very severe limitations that require very careful management.

Subp. 8. Comprehensive plan. "Comprehensive plan" means a long-range plan prepared by the district pursuant to Minnesota Statutes, section 40.07, subdivision 9 and according to the most recent version of the Guidelines for Soil and Water Conservation District Comprehensive and Annual Plans published by the state board. That publication is subject to frequent change, is available in the State Law Library, and is incorporated by reference.

Subp. 8a. Descriptive maps. "Descriptive maps" means computer-generated maps prepared by the land management information center of the State Planning Agency and provided to districts depicting high priority wind and water erosion and sedimentation areas. These maps are a tool for the district to identify high priority problem areas. These maps can and should be supplemented by the district as needed to more accurately reflect high priority erosion and sedimentation problems.

Subp. 9. District. "District" means a soil and water conservation district organized under ~~the provisions of~~ Minnesota Statutes, chapter 40.

Subp. 10. District board. "District board" means the five supervisors of a district authorized to carry out the functions of the district ~~under Minnesota Statutes, chapter 40~~.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

Subp. 11. District conservationist. "District conservationist" means the district conservationist of the ~~USDA~~ Soil Conservation Service.

Subp. 12. District cooperator. "District cooperator" means a land occupier who has requested the assistance of a district in controlling conservation problems. ~~Such~~ The request must be formalized by the signing of a district cooperator's agreement provided by the state board and approved by the district board.

Subp. 13. District technician. "District technician" means a district employee or county employee assigned to the district who possesses expertise in the design and application of soil and water conservation practices. ~~He shall perform under the technical supervision of the district conservationist or other assigned SCS personnel.~~

Subp. 14. Enduring practice. "Enduring practice" means a soil and water conservation practice which is designed for an effective life ~~in excess~~ of ten years or more.

Subp. 14a. Feedlot model. "Feedlot model" means the analytical model contained in "An Evaluation System To Rate Feedlot Pollution Potential," publication no. ARM-NC-17, of the Agricultural Research Service of the United States Department of Agriculture (Peoria, Illinois, April 1982), designed for programmable hand-held calculators and used to determine the pollution potential rating of an animal feedlot. That publication is not subject to frequent change, is available at the State Law Library, and is incorporated by reference.

Subp. 15. Field Office Technical Guide. "Field Office Technical Guide" means the document providing ~~all~~ standards and specifications ~~necessary~~ for technical requirements of soil and water conservation practices as provided by the ~~USDA~~ Soil Conservation Service and adopted by the district board.

Subp. 16. [Unchanged.]

Subp. 16a. High priority erosion problems. "High priority erosion problems" means areas where erosion from wind or water is occurring on Class I-IV soils equal to or in excess of 2 × T tons per acre per year or any area within 300 feet of a water course or within 1,000 feet of a water basin or wetland eroding by water in excess of T tons per acre per year. The water basin, wetland, or water course must be classified by the Department of Natural Resources as a protected water. Erosion problems occurring on nonshoreland areas in excess of T but less than 2 × T tons per acre per year are classified as secondary priority.

Subp. 16b. High priority water quality problems. "High priority water quality problems" means areas where sediment, nutrients, chemicals, or other pollutants discharge to Department of Natural Resources designated protected waters or to a sinkhole or ground water so as to impair their quality or usefulness, including high priority feedlots and sedimentation problems.

"High priority feedlots" means feedlots where the pollution potential rating from the feedlot model is greater than or equal to one which is discharging pollutants to Department of Natural Resources designated protected waters or to a sinkhole or shallow soils overlying fractured or cavernous bedrock or within 100 feet of a water well. Feedlots not meeting these criteria are not eligible for cost-sharing assistance except as provided in part 8400.2600, subpart 3.

"High priority sedimentation problems" means areas within 300 feet of a water course or 1,000 feet of a water basin or wetland where the water erosion rate exceeds three tons per acre per year or areas where the districts can show that sediment delivery occurs from a watershed or direct conveyance structure such as a storm sewer or paved outlet channel discharging to these waters. The water basin, wetland, or water course must be classified by the Department of Natural Resources as a protected water. Sedimentation problems not meeting these criteria are not eligible for cost-sharing assistance.

Subp. 17. [See Repealer.]

Subp. 18. Land occupier. "Land occupier" means ~~any~~ a person, firm, or corporation, including the governments of this state and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of the state, who ~~shall be in possession of any~~ possess lands lying within a district organized under ~~the provisions of~~ Minnesota Statutes, chapter 40, whether as owner, lessee, renter, tenant, or otherwise, including, during the life of a practice, successors of a land occupier who received a cost-share payment. This definition also includes the federal government.

Subp. 19. Nonproduction practice. "Nonproduction practice" means a soil and water conservation practice which is installed or applied to control soil erosion~~, reduce sediment yield,~~ or sedimentation or to protect or improve water quality. Practices installed or applied primarily to bring land into production or to increase the short-term productivity are ~~excluded~~ not eligible for cost-sharing.

Subp. 20. [Unchanged.]

Subp. 20a. Protected water. "Protected water" means those water basins, water courses, and wetlands, as defined in

Minnesota Statutes, section 105.37, on the inventory of public waters and wetlands under Minnesota Statutes, section 105.391, subdivision 1, and identified on a protected waters and inventory map available in a county auditor's office.

Subp. 20b. Registered professional engineer. "Registered professional engineer" means a person who practices professional engineering within the meaning of Minnesota Statutes, sections 326.02 to 326.15, and who performs technical professional services such as, but not limited to, the planning, designing, or inspecting of the construction of erosion, sediment control, or water quality protection or improvement measures. A registered professional engineer may be designated by a district board and may use criteria in a recognized technical procedure to design, install, and certify practices which qualify for state cost-sharing.

Subp. 20c. Shallow soils overlying fractured or cavernous bedrock. "Shallow soils overlying fractured or cavernous bedrock" means areas where the soil depth or texture in conjunction with the condition of the bedrock will not provide treatment of agricultural waste sufficient to protect groundwater quality. Determination of these areas is made on an individual project basis by assigned Soil Conservation Service personnel or a registered professional engineer. Actual determination may be done by the district technician.

Subp. 20d. Sinkhole. "Sinkhole" means a depression or hole in the earth's surface caused by dissolving of underlying limestone; drainage is through joints and fractures in underlying bedrock.

Subp. 21. Soil and water conservation practice. "Soil and water conservation practice" means ~~those~~ structural ~~and~~ or vegetative practices applied to the land for the purpose of controlling soil erosion, sediment, agricultural waste, or other water pollutants.

Subp. 22. [Unchanged.]

Subp. 22a. Special project. "Special project" means a conservation project including but not limited to a demonstration project, accelerated watershed or water quality project, long-term conservation agreement, planning technique, or nonstructural erosion or sediment control or water quality protection or improvement measure. Special projects may address nonshoreland secondary priority erosion problems and are submitted to the state board according to "Guidelines for Special Projects" published by the state board. That publication is subject to frequent change, is available in the State Law Library, and is incorporated by reference.

Subp. 23. State board. "State board" means the state Soil and Water Conservation Board ~~as defined~~ created in Minnesota Statutes, ~~chapter 40~~ section 40.03.

Subp. 24. [See Repealer.]

Subp. 25. T. "T" means soil loss tolerance which is the maximum level of soil erosion that will permit a high level of crop productivity to be sustained economically and indefinitely. In Minnesota, "T" ranges from one to five tons per acre per year depending on the particular soil characteristics. "T" values for Minnesota soils are provided in the Field Office Technical Guide.

Subp. 26. 2 × T. "¼ × T" means soil erosion at the rate of two times T.

8400.0200 AUTHORITY.

Minnesota Statutes, chapter 40, authorizes the state Soil and Water Conservation Board, in cooperation with the soil and water conservation districts, to administer a program of cost-sharing with land occupiers on the installation of soil and water conservation practices. Parts 8400.0100 to 8400.2900 provide procedures and criteria to be followed by the state board in allocating cost-sharing funds to districts, and standards and guidelines which the district boards shall ~~include in all cost-sharing contracts~~ use in allocating funds to land occupiers.

8400.0300 ESTABLISHING APPROVED PRACTICES.

The state board, in consultation with the districts, shall maintain a list of practices which are eligible for cost-share funds and a schedule of maximum rates. The list ~~shall be~~ is contained in parts 8400.2000 to 8400.2700 and the schedule in parts 8400.2800 and 8400.2900. Changes to the list and schedule ~~shall~~ must be made ~~in the manner provided by the rulesmaking provisions of~~ pursuant to Minnesota Statutes, chapter 14.

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8400.0400 CRITERIA FOR APPROVED PRACTICES.

Practices approved by the state board must meet the ~~following~~ criteria in items A to C.

A. Their primary purpose must be the control of soil erosion~~, sediment~~ or sedimentation, or protection or improvement of water quality.

B. They must be enduring in nature. All practices cost-shared under this program ~~shall~~ must be designed for a minimum effective life of ten years.

C. They must be nonproduction practices.

8400.0600 ALLOCATION OF FUNDS.

Subpart 1. Comprehensive plan. Before the state board can allocate cost-share funds to a district it must first approve the district's comprehensive plan, including its most recent amendment and the annual work plan which includes the application for needed cost-share funds. The plans must be in a format required by the state board.

Subp. 2. [See Repealer.]

Subp. 3. Review criteria. The state board shall review all district applications for cost-share funds with respect to the following criteria:

A. the extent of high priority erosion or water quality problems in the district as outlined in the district comprehensive and annual plans;

B. priorities for the control of soil erosion~~, sediment, or other water pollutants~~ or water quality problems as established in the program plan of the state board;

C. historical success of the district in applying soil and water conservation practices;

D. availability of cost-share funds from other sources; and

E. readiness of the district to effectively ~~utilize~~ use the funds.

The state board shall review all district applications for special project funds with respect to criteria established in the most recent version of the Guidelines for Special Projects published by the state board. That publication is subject to frequent change, is available in the State Law Library, and is incorporated by reference.

Subp. 4. Grants. Following review and approval of the annual and comprehensive plans, the state board shall ~~provide grants to the districts for the purpose of cost-sharing with land occupiers for the application of approved practices~~ allocate to districts in the form of grants at least 70 percent of the cost-sharing funds available statewide for conservation practices to address high priority erosion or water quality problems. At least 50 percent of the cost-sharing funds available statewide must be allocated for conservation practices to control high priority erosion problems. Up to 20 percent of the cost-sharing funds available statewide may be used to control high priority water quality problems. The remaining cost-share funds may be allocated by the board to districts for technical and administrative assistance or special projects. Technical and administrative assistance grants shall be based on the extent of high priority erosion and water quality problems in each district and the demonstrated interest of the district in identifying and addressing those problems. Technical and administrative assistance grants may be used for controlling secondary priority nonshoreland erosion problems.

8400.0700 MONITORING.

For the purpose of monitoring the progress of the program and ~~utilization~~ use of funds, the state board shall receive from each district ~~quarterly reports by October 15, January 15, and April 15, and~~ an annual report of the year's accomplishments by ~~July 15~~ a date deemed reasonable by the state board. The state board may require ~~such~~ additional special reports ~~as may be~~ deemed necessary by the state board to monitor the cost-sharing program. The reports ~~shall~~ must be on forms provided by the state board.

8400.0900 ADMINISTRATION OF FUNDS.

Following receipt of grant funds from the state board, ~~the respective districts shall be~~ a district is responsible for administration of the funds in accordance with ~~the provisions of~~ Minnesota Statutes, chapter 40 and all other applicable laws. The district board ~~shall have the authority to~~ may make all decisions concerning ~~utilization~~ use of these funds ~~within the rules established herein~~ in accordance with parts 8400.0100 to 8400.2900.

As a condition to receiving grant funds from the state board, the district shall ensure compliance ~~of~~ with the maintenance provisions of part 8400.1700 and Minnesota Statutes, chapter 40 by monitoring all cost-share contracts made with land occupiers.

Prior to considering any applications from land occupiers for cost-share assistance, the district board shall establish the cost-share or flat rates for practices to be installed under the program, which ~~shall~~ may not exceed the maximum rates established by the state board. This decision shall be based on the following factors:

A. the extent of high priority erosion or water quality problems in the district as outlined in the district comprehensive and annual plans;

B. advice of technical experts familiar with the district;

C. cost-share rates currently in effect under the agricultural conservation program administered by the United States Agricultural Stabilization and Conservation Service and other assistance programs;

D. district priorities as established in the districts' comprehensive and annual plans; and

E. cost-share funds available.

8400.1000 APPLICATION FOR FUNDS BY LAND OCCUPIERS.

Land occupiers seeking assistance under this program shall apply to the districts on forms provided by the state board and available from the district office. Each application ~~shall~~ must be filled out in its entirety. The application must be signed by the land occupier and if the land occupier is not the owner it must also bear the owner's signature. Applications must be submitted not later than June 1 to be considered for cost-sharing from the funds available for the current fiscal year ~~beginning July 1~~. After initial priority screening by the district board, assigned ~~SCS~~ Soil Conservation Service personnel ~~shall be~~ or a registered professional engineer are responsible for making a determination of need and cost estimate. Actual determination of need and cost estimate may be done by the district technician. Additional information on the desired practice which may be required by the district board in its consideration of the application shall be included.

8400.1100 GROUP PROJECT.

A situation may arise where the cooperation of several land occupiers is required to solve a conservation problem. The district may share the cost of such a group project ~~provided that~~ if all of the land occupiers are eligible as individuals and the ~~practice or~~ practices satisfy the criteria of the program. The land occupiers must reach agreement on ~~the~~ a division of payments~~. The~~ and designate a group spokesperson ~~shall~~. The spokesperson must be identified on the ~~application~~ group cooperator agreement and shall file ~~the form~~ all forms with the district~~,~~ and ~~shall~~ negotiate all project details with the district. Checks for the district share of the practice shall be issued to the group members based on the division of payment plan prepared by the group.

8400.1200 LAND IN MORE THAN ONE DISTRICT.

If ~~the~~ a project involves land in more than one district, application ~~shall~~ must be made to the district containing the most land ~~affected~~ benefited by the practice.

8400.1300 CRITERIA FOR DISTRICT BOARD REVIEW.

Criteria for district board review:

A. The applicant must be a district cooperator.

B. The ~~desired~~ practice needed to solve the problem must be on the list of approved practices.

C. The primary purpose of the ~~desired~~ requested practice must be the control of soil erosion~~, reduction of sediment delivery~~ or sedimentation, or the protection or improvement of water quality. In cases where the primary purpose is questionable, the district board shall make a determination of the acceptability of the application. Additionally, the district board shall make determination of the need for supplemental practices to protect any practice installed under this program. ~~e.g.,~~ such as fencing of water impoundment structures. If the district board determines that supplemental practices are necessary, it shall authorize cost-sharing for their installation.

D. The ~~desired~~ requested practice must be consistent with district plans and priorities.

E. The practice must be maintained by the land occupier, who ~~shall be~~ is responsible for operation and maintenance of practices applied under this program.

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F. Priority consideration shall be given to land occupiers or groups of land occupiers who demonstrate the ability to meet matching requirements. Cost-sharing funds may not be used for repair of practices installed solely with private or federal cost-sharing funds.

G. The practice must comply with the ~~specifications~~ technical requirements of the Field Office Technical Guide. For practices not included in the Field Office Technical Guide, other recognized technical procedures may be used to design, install, and certify practices.

8400.1400 DISTRICT APPROVAL.

Subpart 1. General. After completion of a priority determination and cost estimate, the district board shall either approve or deny the application. If it is approved, the district board shall instruct the chairman or acting chairman to sign the application. Once it is signed, the application becomes the contract between the district and land occupier and serves as the authorization for work to proceed on the practice. Practices begun prior to district approval are ineligible for financial assistance. If it is denied, the district board shall notify the land occupier in writing within 30 days after board action of the reason for denial of the application. Changes in any provisions of the contract ~~shall be~~ are subject to review and approval ~~of~~ by the district board.

Subp. 2. High priority problems. In order to ensure compliance with part 8400.0600, subpart 4, the district board shall approve only those applications that involve the high priority problems for which they received funds. The district board may allocate high priority water quality funds for high priority erosion projects, but not the converse.

8400.1405 STARTING AND COMPLETION DEADLINES.

Subpart 1. Time limit; cancellation. Projects not started within 18 months after district board approval must be canceled unless an amendment to the project has been approved by the district board. Projects not completed within two calendar years after initial approval must be canceled.

Subp. 2. Partial payment. In cases where weather or other unanticipated circumstances beyond the control of the land occupier, force postponement of certification of completion until the following construction season, the state board or its authorized representative may authorize a district board to issue a partial payment for the work that has been completed. The following conditions must be met before the state board or its authorized representative will consider authorizing a partial payment:

A. The anticipated completion date will be in compliance with subpart 1.

B. The completed work meets the requirements of part 8400.1300, item G.

C. The state board's authorized representative must review the work and concur in the payment decision.

Subp. 3. Payment conditions. If the state board of its authorized representative authorizes a partial payment under subpart 2, the following conditions apply:

A. Payment percentages must comply with part 8400.2800.

B. The balance of the project must be paid by the district board upon the satisfactory completion of the total project.

C. All expenses incurred in correcting damage caused to the project by virtue of its incompletion must be borne by the land occupier.

D. Land occupiers receiving partial payments must complete the project within a time deemed reasonable by the district board.

E. Land occupiers not completing partially paid projects are violating part 8400.1700 and shall be directed to return the amount of financial assistance received.

F. Partial payment authorizations shall not be construed as precedent setting. Every request will be considered by the state board or its authorized representative on its own merits.

Subp. 4. Denial. If the state board or its authorized representative denies a request for partial payment under subpart 2, the district board shall be notified within 30 days of the reasons for denial of the request.

8400.1500 DISTRICT RECORDS.

The district shall maintain a current ledger of all cost-share contracts on forms provided by the state board. The ledger ~~shall~~ must specify the land occupiers with whom the district has contracted, the practices involved, the status of construction, and a

total of funds encumbered. ~~The district shall monitor all cost-sharing contracts to insure compliance with the provisions of part 8400.0900. Districts having funds which are unencumbered by December 1 of each program period shall be required to return those funds to the state board for reallocation, if the state board has determined the funds are of significant amount and there is another district that has greater need for them.~~

8400.1600 PAYMENTS.

Subpart 1. Construction of practice. Construction of practices ~~shall~~ must be monitored by the district board to ensure compliance with ~~the specifications in the Field Office Technical Guide~~ part 8400.1300, item G. Upon completion, assigned ~~SCS~~ Soil Conservation Service personnel or a registered professional engineer shall certify whether or not the practice has been satisfactorily performed, including a certification that the practice meets the requirements of ~~the Field Office Technical Guide~~ part 8400.1300, item G. No ~~such~~ certification shall be made until all specifications have been satisfied. Exceptions must be in accordance with part 8400.1405, subpart 2. Upon certification of completion, the land occupier shall contact the district for payment and shall present ~~all receipts for cost~~ documentation of all costs incurred in the installation of the practice in the form of receipts or invoices.

Subp. 2. In-kind services. In-kind services provided by the land occupier such as, but not limited to, earth work, seedbed preparation, and seeding ~~can~~ may be credited toward the land occupier's share of the total cost of the practice. The district board shall determine whether charges for ~~such~~ in-kind services are practical and reasonable.

Subp. 3. Actual cost differing from estimated cost. In cases where the actual cost of the practice exceeds the estimated cost, the district may only share the approved percentage of the estimated cost, except when an amendment to the cost-share ~~agreement~~ contract has been approved. Because of extreme circumstances such as, but not limited to, weather and unforeseen geologic conditions, it may be desirable to increase the ~~practice units and/or~~ estimated cost, or ~~to~~ postpone the starting or completion date of the practice. ~~Such~~ These changes must be approved by the supervisors in advance of completion of the work with an amendment to the cost-share ~~agreement~~ contract covering the changes. Amendments may not be authorized for providing final cost-sharing percentages in excess of the originally approved percentage or additional money for projects that were knowingly underfunded at the time of approval. Amendments may not be authorized after final approval of payment has been made on the original contract. Where the actual cost is less than the estimated cost, the district shall only share the approved percentage of the actual cost of the practice. The district board shall review the receipts or invoices provided by the land occupier to determine the actual cost of the practice. When the district determines that all claims are practical and reasonable, it shall authorize issuance of a check for the district share of the practice. ~~Where~~ If the district board determines that certain claims are not justified, it shall notify the land occupier in writing of the unjustified claims within 30 days. The district board shall then authorize the issuance of a check for the district share of the justified claims.

8400.1700 MAINTENANCE.

The land occupier is responsible for operation and maintenance of practices applied under this program to ensure that their conservation objective is met and the effective life of ten or more years is achieved. Should the land occupier fail to maintain ~~such~~ the practices ~~or willfully remove them~~ during their effective life, the land occupier ~~shall be~~ is liable for the amount of financial assistance received for their installation. The district board may authorize the removal of a practice installed under this program provided the land occupier can show good cause for removal of the practice. The land occupier ~~shall~~ is not ~~be held~~ liable for cost-share assistance received ~~provided~~ if the failure was caused by reasons beyond the land occupier's control, or if soil and water conservation practices are applied at the land occupier's expense which provide equivalent protection of the soil and water resources. In no case shall a district provide cost-share assistance to a land occupier for the reapplication of practices which were removed by the land occupier during their effective life or failed due to improper maintenance.

8400.1800 APPEALS.

~~In cases where~~ If a land occupier feels he has been treated unfairly, he may request that the district board review its decision. Should the land occupier and the district board reach an impasse, the land occupier may petition in writing for a hearing before the state ~~Soil and Water Conservation~~ board. If it grants the hearing, which shall be informal, the state board or a referee appointed by it shall hear all testimony offered, and shall accept written testimony for ten days after the hearing. The referee, if one is used, shall report his findings and recommendation to the state board, which shall within 60 days of the hearing date make its decision on the appeal, upholding, reversing, or amending the decision of the district board.

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8400.1950 VARIANCES.

If a district board feels that a particular requirement of parts 8400.0100 to 8400.2900 prevents an erosion or sedimentation control or water quality project from being installed, a request for a variance may be filed with the director of the state board. The request must be in writing and contain:

A. the name and address of the district board making the request and the signature of the district chairperson;

B. the nature of the variance being sought, including an identification of the applicable rule from which the variance is sought, the time period for which it is sought, and the reason for seeking the variance;

C. a statement of alternatives for dealing with the installation of the affected project if the variance is not granted; and

D. a statement of the effects on applicable natural resources and the public if the variance is granted.

Variance requests must be submitted to the director at least 30 days prior to the state board meeting at which the variance is requested to be heard. Within 45 days after the meeting, the state board must approve or deny the variance request and provide written notification of the decision to the applicant. A variance will not be granted if it is in conflict with any statute. The state board may grant a variance upon such conditions as it may prescribe.

If a variance has been granted by the state board, the district board holding the variance may file with the state board at any time a written request for modification or amendment of the variance. The request for modification or amendment, and the state board's consideration of the request, shall comply with requirements of this part.

8400.2000 APPROVED PRACTICE: EROSION CONTROL STRUCTURES.

Subpart 1. Definition. "Erosion control structure" means a structure such as, but not limited to, ~~grade stabilization structures,~~ floodwater retarding ~~structures, and~~ or multipurpose dams designed to ~~stabilize the grade or control head cutting in natural or artificial channels,~~ provide temporary storage of floodwater, control the release rate of water providing downstream channel stability, or impound water.

Subp. 2. Purpose. The purpose of an erosion control structure is to control soil erosion ~~and sediment~~ or to protect or improve water quality. An erosion control structure may provide multiple benefits including, but not limited to, water supply for livestock, recreation, flood control, channel stability, wildlife habitat, and fire prevention.

Subp. 3. Applicability. ~~This practice applies to~~ Erosion control structures may be used on any lands where ~~such structures~~ they are necessary for the control of soil erosion ~~and sediment~~ or water quality protection or improvement.

Subp. 4. Policies. Cost-sharing is authorized:

A. only ~~on~~ for the construction of erosion control structures that provide for reduction of soil erosion or ~~sediment pollution.~~ water quality protection or improvement;

~~Cost-sharing may be authorized~~ B. for the installation of livestock watering facilities in conjunction with erosion control structures only if ~~such~~ the facilities are necessary for the proper management and protection of the structure as determined by the district board~~.~~;

~~Cost-sharing may be authorized~~ C. for permanent fencing of an erosion control structure as determined by the district board~~.~~;

~~Cost-sharing may be authorized~~ D. for tree and shrub plantings adjacent to the structure and seeding ~~required~~ necessary to stabilize ~~the~~ an erosion control structure~~.~~ and adjacent critical areas, including, whenever possible, ~~the district board shall encourage~~ the use of those species that provide wildlife habitat and visual enhancement~~.~~;

~~Cost-sharing may be authorized~~ E. for erosion control structures which provide multiple benefits ~~provided~~ if the primary benefit is soil erosion ~~and sediment~~ control~~.~~ or water quality protection or improvement;

~~Cost-sharing is authorized~~ F. for temporary materials and seedings necessary to properly stabilize an erosion control structure during construction; and

G. for erosion control dams and ponds ~~provided that~~ if a minimum of 50 percent of the contributing drainage area above the proposed project is adequately ~~treated or treatment is being applied~~ protected.

8400.2100 APPROVED PRACTICE: STRIPCROPPING.

Subpart 1. Definition. "Stripcropping" ~~shall mean~~ means the development and application of a cropping system for a farming unit which provides for planting row crops with the contour where practicable and incorporates alternate strips of row crops, close sown crops, ~~and~~ sod crops, or fallow.

Subp. 2. Purpose. The purpose of stripcropping is to establish a system of farming with contour or field stripcropping to ~~reduce wind and water~~ control soil erosion ~~and sediment pollution~~ or protect or improve water quality. Stripcropping may provide additional benefits to wildlife.

Subp. 3. Applicability. ~~This practice applies to~~ Stripcropping may be used on any lands where ~~stripcropping~~ it is necessary for the control of soil erosion ~~and sediment~~ or water quality protection or improvement.

Subp. 4. Policies. Cost-sharing ~~may be~~ is authorized for ~~all costs associated with the delineation of strips and removal of obstructions~~ a per acre rate not to exceed $11 whether solely state cost-shared or in combination with federal cost-sharing.

8400.2200 APPROVED PRACTICE: TERRACES.

Subpart 1. Definition. "Terrace" means an earth embankment, or a combination ridge and channel constructed across the slope at the required spacing.

Subp. 2. Purpose. Terraces are constructed to:

A. reduce erosion~~,~~;

B. reduce sediment content in runoff water~~,~~;

C. intercept and conduct surface runoff at a nonerosive velocity to a stable outlet~~,~~;

D. prevent gully development~~, and~~;

E. reduce flooding; or

F. protect or improve water quality.

Terraces may provide additional benefits by creating wildlife habitat and retaining runoff for moisture conservation.

Subp. 3. Applicability. ~~This practice applies to~~ Terraces may be used on any lands where ~~terraces~~ they are needed for the control of soil erosion ~~and sediment~~ or water quality protection or improvement.

Subp. 4. Policies. Cost-sharing is authorized:

A. for construction necessary to properly establish ~~the~~ terraces, including earthwork, material, and seedings if necessary~~,~~;

~~Cost-sharing is authorized~~ B. for temporary materials and seedings necessary to properly stabilize terraces during construction; and

C. for tile systems necessary ~~to~~ for the establishment and operation of the terraces, including the outlet which shall be limited to 300 feet below the last terrace in a system.

8400.2300 APPROVED PRACTICE: DIVERSIONS.

Subpart 1. Definition. "Diversion" means a channel with a supporting ridge on the lower side constructed across the slope.

Subp. 2. Purpose. The purpose of ~~this practice~~ a diversion is to divert water away from erosive areas to ~~sites~~ areas where it can be used or disposed of safely. Diversions may provide additional benefit to wildlife.

Subp. 3. Applicability. ~~This practice applies to sites~~ A diversion may be used where:

A. runoff from higher lying areas is eroding cropland, pastureland, or farmsteads, or is needed to support conservation practices such as terraces or stripcropping in the control of erosion or ~~runoff~~ sedimentation;

B. surface and shallow subsurface flow is damaging sloping upland or contaminating ground or surface water; or

C. it is required as a part of a pollution abatement system, or to control erosion ~~and runoff~~ or sedimentation on urban or developing areas and construction sites.

Subp. 4. Policies. Cost-sharing is authorized:

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A. for tile systems necessary for the establishment and operation ~~or erosion control practices such as~~ of diversions~~.~~;

~~Cost-sharing is authorized~~ B. for construction necessary to properly establish ~~the~~ diversions including earthwork, materials, and seedings ~~necessary to properly stabilize this practice~~;

C. for temporary materials and seedings necessary to properly stabilize diversions during construction; and

D. for permanent fencing of diversions as determined by the district board.

8400.2400 APPROVED PRACTICE: STORMWATER CONTROL SYSTEMS.

Subpart 1. Definition. "Stormwater control system" means a practice or system of ~~components~~ practices such as, but not limited to, grassed waterways, ~~diversions,~~ water and sediment control ~~structures,~~ basins, and grade stabilization structures~~, culverts, channels, and floodways~~ installed to convey storm runoff to a constructed or natural outlet in a nonerosive manner. This practice does not apply ~~to areas for which~~ when the primary purpose is drainage to expand or improve crop production or making the cropping system more convenient.

Subp. 2. Purpose. The purpose of ~~this~~ a stormwater control system ~~of elements~~ is to provide a means of regulating ~~and/or~~ or removing runoff to ~~protect the area from flood damage and~~ control erosion~~, and to prevent pollution of watersheds, lakes, and streams~~ or protect or improve water quality. Additional benefit may be provided through creation of wildlife habitat.

Subp. 3. Applicability. ~~The provisions of this system of elements to convey runoff apply to~~ A stormwater control system may be used on all lands by ~~utilizing~~ using vegetative ~~and mechanical protection~~ or structural measures for control of erosion ~~and pollution~~ or protection or improvement of water quality.

Subp. 4. Policies. Cost-sharing is authorized:

A. For the construction of practices required in a complete stormwater control system. ~~Such~~ These practices ~~shall~~ include, but are not limited to~~:~~ ~~channel lining, chutes, drop~~ spillways a lined waterway or outlet, detention ponds, vegetative filter strips, ~~protective outlets, sod waterways,~~ permanent sod cover, ~~fencing,~~ and permanent vegetation including trees, shrubs, and grasses. At least 80 percent of the contributing drainage area above grassed waterways on land owned or controlled by the applicant, must be adequately protected.

~~Cost-sharing is authorized~~ B. For tile systems necessary for the establishment and operation of ~~erosion control practices such as~~ stormwater control systems, including the outlet, which is limited to 300 feet below the end of the waterway.

~~Cost-sharing is authorized~~ C. For temporary materials and seedings necessary to properly stabilize ~~this practice~~ a stormwater control system during construction.

D. For permanent fencing of stormwater control systems as determined by the district board.

8400.2500 APPROVED PRACTICE: FIELD WINDBREAKS.

Subpart 1. Definitions. "Field windbreak" means a strip or belt of trees, shrubs, or grass barriers established within or adjacent to a field.

Subp. 2. Purpose. The primary purpose of a field ~~windbreaks~~ windbreak is to reduce wind erosion. Additional benefits may be ~~gained from:~~ the protection of crops, livestock, and wildlife~~;~~, increased moisture conservation by controlling snow deposition~~;~~, and ~~to beautify~~ beautification and ~~otherwise enhance~~ enhancement of the landscape.

Subp. 3. Applicability. ~~This practice applies~~ Field windbreaks may be used in or around open fields which need protection against wind ~~damage to soils~~ erosion. Additional ~~benefit~~ benefits may be realized from the creation of wildlife habitat.

Subp. 4. Policies. Cost-sharing is authorized for ~~land~~ site preparation, planting materials, planting, chemicals for weed control, and other applicable costs necessary to establish ~~the system~~ a field windbreak. The land occupier ~~shall be~~ is responsible for controlling competitive vegetation for two years following planting and ~~shall~~ must bear the cost of control.

Cost-sharing is prohibited for plantings installed primarily for farm beautification, protection of buildings or livestock, energy conservation, or other uses where erosion control is not the primary purpose.

8400.2600 APPROVED PRACTICE: ANIMAL WASTE CONTROL SYSTEMS.

Subpart 1. Definition. "Animal waste control system" means a planned agricultural waste management system to contain and manage liquid and solid wastes including runoff from concentrated animal waste (feedlot) areas with ultimate disposal in a manner which does not degrade soil or water resources. This practice includes systems for safe disposal of livestock wastes through use of soil and plants.

Subp. 2. Purpose. Agricultural waste management systems are used to manage wastes in rural areas in a manner which

prevents or minimizes degradation of soil and water resources and protects public health and safety. ~~Such~~ These systems are planned to preclude discharge of pollutants to surface or ground water and, to the fullest practicable extent, recycle wastes through soil and plants.

Subp. 3. Applicability. ~~This practice applies to~~ Animal waste control systems may be used in any animal confinement area~~, any part of which is located within 300 feet of a stream or 1,000 feet of a lake or to an animal confinement area identified as a pollution problem by the district board, and/or Minnesota Pollution Control Agency.~~

~~For other requests for this practice, the district may refer the request to Minnesota Pollution Control Agency for a priority needs determination~~ for which the feedlot evaluation model has been applied and a potential pollution hazard has been determined to exist or where the land occupier was cited by the Minnesota Pollution Control Agency or other situations where that agency determines there is a potential pollution hazard.

Subp. 4. Policies. Cost-sharing is authorized for:

A. All structures and ~~vegetative practices~~ permanent shrubs, trees, or grasses necessary to store animal wastes or control stormwater runoff from animal confinement areas including storage facilities, diversions, waste storage ~~pond~~ ponds, and waterways. A complete system, controlling discharge of runoff from animal confinement areas to waters of the state, ~~will be~~ is required.

~~Cost-sharing is authorized for~~ B. Tile systems necessary for the establishment and operation of ~~a~~ an animal waste control system.

~~Cost-sharing is authorized for~~ C. Temporary materials and seedings necessary to properly ~~establish a~~ stabilize an animal waste control system during construction.

~~Cost-sharing is authorized for~~ D. Permanent fencing ~~necessary to protect a system~~ of an animal waste control system as determined by the district board.

Cost-sharing is prohibited on any costs normally incurred in the management of an animal confinement area. This ~~shall include~~ includes buildings, yards, permanent or portable pumps, tank wagons, ~~etc~~ loaders, stackers, and similar items.

Holding tanks, collection basins, waste conveying pipe, and other animal waste ~~storage~~ facilities are eligible for cost-sharing ~~provided~~ if the district board determines that they are necessary to protect water quality and ~~also provided that~~ if the entire system needed to control pollution is installed.

A holding tank which will become an integral part of a building is eligible for cost-sharing ~~provided~~ if there is no other feasible alternative available for controlling pollution. The district board, with technical review completed by technicians available to it, shall make the final decision concerning the cost-sharing eligibility of such a system. For purposes of determining the cost-share payment, the cost of the building foundation and the cost of the building ~~are~~ is not eligible for cost-sharing. The cost attributable to the foundation shall be represented by the top four feet of the storage tank walls.

~~Equipment utilized in the handling or transfer of animal waste is ineligible for cost-sharing, except that animal waste conveying pipe from point of generation to the storage facility shall be eligible for cost-sharing.~~

8400.2700 APPROVED PRACTICE: CRITICAL AREA STABILIZATION.

Subpart 1. Definition. "Critical area stabilization" means planting permanent vegetation such as trees, shrubs, vines, grasses, or ~~zegumes~~ legumes or placing rock cover on ~~sites subject to severe erosion. It does not include tree planting primarily for wood products~~ highly erodible or severely eroded sites or in areas where vegetation is needed to protect or improve water quality.

Subp. 2. Purpose. The purpose of critical area stabilization is to provide permanent vegetative or rock cover to stabilize the soil~~;~~, to ~~protect from wind and water~~ control erosion~~; reduce damage from sediment and runoff to downstream areas~~ or to protect or improve water quality. Additional benefit may be gained by improving wildlife habitat and ~~the enhancement of~~ enhancing natural beauty.

Subp. 3. Applicability. ~~This practice applies~~ Critical area stabilization may be used on sediment-producing, highly erodible,

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or severely eroded areas ~~(including urban areas)~~ or in areas where vegetation is needed to protect or improve water quality, such as, but not limited to, ~~dams, dikes,~~ abandoned mine spoil, ~~levees, channels, waterways, terrace backslopes~~ construction sites, and denuded or gullied areas where vegetation is difficult to establish.

Subp. 4. Policies. Cost-sharing for stabilizing ~~roadside, streambed, and~~ streambank, lakeshore ~~erosion is authorized only when it is a part of a larger stabilization project~~, and roadside areas must be addressed with the approved practice in part 8400.2705.

Cost-sharing is authorized for:

A. earthwork, materials, seed, and ~~seeding~~ seedings and other associated costs necessary to stabilize the area;

B. temporary materials and seedings necessary to stabilize the area during construction; and

C. permanent fencing of the area as determined by the district board.

8400.2705 APPROVED PRACTICE: STREAMBANK, LAKESHORE, AND ROADSIDE STABILIZATION.

Subpart 1. Definition. "Streambank, lakeshore, and roadside stabilization" means stabilizing and protecting streambank, lakeshore, and roadside areas against erosion by vegetative or structural means.

Subp. 2. Purpose. The purpose of streambank, lakeshore, and roadside stabilization is to control erosion or protect or improve water quality.

Subp. 3. Applicability. Streambank, lakeshore, and roadside stabilization may be used on eroding or sediment producing areas on streambank, lakeshore, or roadside sites where vegetative or structural measures are needed to correct the problem.

Subp. 4. Policy. Cost-sharing is authorized for:

A. earthwork, materials, seed, and seedings necessary to stabilize the area;

B. temporary materials and seedings necessary to stabilize the area during construction; and

C. permanent fencing of the area as determined by the district board.

Permanent fencing may be used as the sole remedy if it is determined by the district board to be the most practical solution, except that fencing of property boundaries and roads is ineligible for cost-sharing.

Subp. 5. Cost-sharing limit. Cost-sharing may not exceed 50 percent of total eligible project costs.

8400.2800 MAXIMUM RATES.

The maximum percent of the total cost of a practice installed to control a high priority erosion or water quality problem that may be funded by state cost-share funds is 75 percent. ~~Where state and federal moneys are cost-shared on the same project, their combined amount shall not exceed 75 percent of the total cost of the project~~ except where a flat rate is authorized. The maximum percent of the total cost of a practice installed to control a secondary priority nonshoreland erosion problem that may be funded by state cost-share funds is 50 percent except where a flat rate is authorized. State cost-share funds may be matched with federal money or other state funds. The combined state and federal amount may not exceed the maximum rates in this part or part 8400.2705, subpart 5.

REPEALER. Minnesota Rules, parts 8400.0100, subparts 7, 17, and 24; and 8400.0600, subpart 2 are repealed.

EFFECTIVE DATE. These rules are effective July 1, 1985.

Department of Commerce

Proposed Rules Governing Credit Unions

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Department of Commerce proposes to adopt the above-entitled rules without a public hearing. The Commissioner of Commerce has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, sections 14.21 to 14.28. These rules were published previously in the *State Register* on October 22, 1984 (9 SR 816).

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED AMENDMENTS)
TO RULES OF THE SOIL AND WATER CONSERVATION)
BOARD GOVERNING THE ALLOCATION OF FUNDS TO)
SOIL AND WATER CONSERVATION DISTRICTS FOR)
THE INSTALLATION OF EROSION, SEDIMENTATION)
OR WATER QUALITY IMPROVEMENT PRACTICES)
(8400.0100 to 8400.2900)

FINDINGS OF FACT
AND CONCLUSION

The above-entitled rules and Notice of Intent to Adopt Rules were published in the State Register on the 14th day of January, 1985, and proper notice required by Minnesota Statutes 14.05 to 14.36 was served upon all persons, associations, and other interested groups registered with the Minnesota Department of Agriculture for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having considered all of the evidence adduced upon the records, files, and proceedings herein, I find and conclude the following:

Findings

Four written responses were submitted regarding the Rules as Proposed. After reviewing these comments, the Department agrees with the suggestions made by Dakota and Wright Soil and Water Conservation Districts, and the Minnesota State Planning Agency, Environmental Division. The State Planning Agency comments concerned interpretation of priority language with respect to allocation of funds. Appropriate changes were therefore made to the following sections of the Rule as Adopted: 8400.0600, subpart 4; 8400.1400, subpart 2; and 8400.2300, subpart 2. The changes made at the suggestion of Dakota and Wright Soil and Water Conservation Districts are addressed later in this statement. The changes recommended by these groups have been incorporated into the Rules as Adopted.

Carver Soil and Water Conservation District also suggested changes. The first of three suggestions proposed to drop from the definition of high priority feedlots (8400.0100, subpart 16b) the reference to the source receiving an animal feedlot discharge.

The Department does not agree with this suggestion from Carver Soil and Water Conservation District for the following reasons:

(a) As stated in part IV.A. of the Statement of Need and Reasonableness, part 8400.0100, subpart 16b (the subject of Carver's concern) is required by law, and

(b) reference to the source receiving an animal feedlot discharge is consistent with water quality efforts of the Minnesota Pollution Control Agency.

In considering this suggestion, the proposed language pertaining to animal feedlots was reviewed. In the Department's estimation, minor changes were in order. To this end, changes were made to 8400.0100, subpart 16b and 8400.2600, subpart 3. These changes aid interpretation of these sections of the rule.

The second suggestion proposed to drop field stripcropping because there is no practice standard. Since the suggestion of Wright was adopted and a practice standard for field stripcropping will be developed, Carver's concern becomes irrelevant.

The third suggestion proposed to increase the rate of cost-sharing for stripcropping and allow federal funds be included in the payment. The Department does not agree with this suggestion for the following reasons:

(a) The rates proposed by Carver would provide a 200 percent rate of cost-sharing in some uses. Such a policy is inconsistent with the concept of "sharing" the cost, and

(b) Dakota suggested eliminating the arbitrary flat rate per acre basis for payments and adopting instead a readily available cost guide; the Department agrees and has incorporated appropriate changes at 8400.0900; 8400.2100, subpart 4; and 8400.2800. In doing so, Carver's concerns cannot be met.

The Department initiated technical changes made to 8400.2100, subparts 1 and 2. These changes are necessary, in the Department's estimation, to update this practice and bring language into conformance with recent terminology changes associated with soil and water conservation.

Unless otherwise stated, all incorporated language reflects those changes necessary to adopt the suggestions of Dakota and Wright Soil and Water Conservation Districts, and the Minnesota State Planning Agency, Environmental Division.

The Department concludes that the changes between the Rules as Proposed and the Rules as Adopted are non-substantial for the reasons stated above and in the letter submitted by the Minnesota State Planning Agency.

The Department concludes from this record that the proposed rules, along with the changes proposed herein, are necessary and reasonable and that they are in the long-term best interests of the State of Minnesota. Therefore, I order the adoption of these rules, as evidenced by the Order Adopting Rules submitted with this record.

STATE OF MINNESOTA

DATE: Mar 18, 1985

Jim Nichols

COMMISSIONER OF AGRICULTURE

CERTIFICATE OF BOARD'S

RESOLUTION ADOPTING RULES

I, Wayne Haglin, do hereby certify that I am a member and the Chairman of the Board of Soil and Water Conservation, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Board of Soil and Water Conservation, duly and properly called and held on the 12th day of March, 1985, that a quorum was present at said meeting, that a majority of those present voted for the resolution, and that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> "RESOLVED, that the rules relating to Cost Share Programs to Soil and Water Conservation Districts be and they hereby are approved and adopted, pursuant to authority vested in us by Minnesota Statutes, 1982, 40.036, subd. 4, and that Wayne Haglin, the Chairman of the Board of Soil and Water Conservation, be and hereby is authorized to sign an order adopting these rules and further is authorized to perform the necessary acts to provide that these rules shall have the force and effect of law."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 12th day of March, 1985.

Wayne Haglin

Wayne Haglin
Chairman of the Board

Attest by one other Board member

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

In the Matter Of The Proposed Amendments To Rules Of The Soil And Water Conservation Board Governing The Allocation Of Funds To Soil And Water Conservation Districts For The Installation Of Erosion, Sedimentation Or Water Quality Improvement Practices (8400.0100 to 8400.2900)

Statement Of Need And Reasonableness

I. INTRODUCTION

The subject of this rulemaking is the proposed adoption by the Minnesota Department of Agriculture (Department) of amendments to rules governing the allocation of funds to Soil and Water Conservation Districts (SWCDs) for the installation of erosion, sedimentation or water quality improvement practices. These amendments are proposed for adoption pursuant to Minnesota Statutes, 1982, section 40.036, which requires the Soil and Water Conservation Board (SWCB) to promulgate rules to implement changes to existing rules (8400.0100 - 8400.2900). Minnesota Statutes, 1982, section 40.036, requires that the proposed rule contain the content and scope of SWCD annual and comprehensive plans, standards and methods for planning and implementing a priority cost-sharing program, and the share of the cost of priority conservation practices to be paid from state funds.

The Notice of Intent to Solicit Outside Opinion was published in the State Register by the Department on December 20, 1982. Prior to this, the Department and SWCB determined that the proposed adoption of these amendments would be noncontroversial because the changes are mainly clarification or technical in nature. In addition, SWCDs and agencies most affected by the proposed changes were actively encouraged by the Department and SWCB to review and comment on several drafts of the proposed rule. The proposed rule thus reflects many changes suggested by SWCDs, agencies, and the task force mandated by Minnesota Statutes 40.036. The proposed rule includes the items required by the 1982 legislation, provides clarification of certain sections of the current rules, and establishes new administrative requirements which provide SWCDs with the ability to administer the program in a consistent manner, and yet address local resource concerns.

For the aforementioned reasons, the SWCB directed that the proceedings on the proposed amendments be conducted in accordance with the statutory provisions governing the adoption of noncontroversial rules, Minnesota Statutes, sections 14.22 to 14.28.

The discussion provided in this statement is divided into the following parts:

Part II. Small Business Impact
Part III. General Overview
Part IV. Need For and Reasonableness of the Proposed Amendments to the Rules
Part V. Effective Date
Part VI. Attachment

II. SMALL BUSINESS IMPACT

Minnesota Statute 14.115 requires an assessment of the impact on small business when laws and rules are enacted that affect them.

The proposed amendments pertaining to the allocation of funds to Soil and Water Conservation Districts for the installation of erosion, sedimentation or water quality improvement practices (8400.0100 - 8400.2900) relate to the local administration of a state program. Consequently, exemption from a small business impact statement is claimed on the basis of 14.115, subd. 7, which excuses agency rules that do not directly affect small businesses.

III. GENERAL OVERVIEW

A. The Need for Amendments to 8400.0100 to 8400.2900

To understand the need for and reasonableness of the proposed amendments, it is important to know why they are proposed. In recent years, considerable attention has been given to the manner in which erosion and sediment control and water quality improvement funds have been spent. To this end, the 1982 Minnesota Legislature directed the SWCB to amend cost-share program rules (8400.0100 - 8400.2900) and incorporate changes which would direct available cost-share program funds to priority areas of the state. Additional changes were to be made to insure that SWCDs planned and implemented a priority cost-sharing program in a manner consistent with local soil and water resource priorities and statewide resource plans.

Other changes were also necessary, in the view of the SWCB, to address administrative and interpretive issues resulting from six years of experience with the current rule (8400.0100 - 8400.2900).

This rulemaking is necessary and reasonable to incorporate legislative, administrative and interpretive changes to the current rule. The proposed amendments provide for a more cost-effective program and increased administrative flexibility for SWCDs.

B. Historical Summary of the Cost-Share Program

In 1977, legislation passed establishing a cost-share program as an incentive for soil and water conservation measures. The bill was the most comprehensive piece of legislation affecting soil conservation since Chapter 40 (the Soil and Water Conservation District Law) was enacted in 1937. The legislation also updated and accelerated soil and water conservation programs.

The SWCB initiated the procedures for development of the cost-share program. To carry out this responsibility, the SWCB used an interagency approach. This method, the same used in drafting the legislation, resulted in several joint meetings, draft proposals, and periods of review and comment. This process culminated with the adoption of emergency rules by the SWCB in October, 1977. Permanent rules were adopted by July 1, 1978, and published as § MCAR 7.001 - 7.005. They were later re-formatted and published as Chapter 8400.0100 - 8400.2900. It is this edition that is the subject of the proposed amendments.

The proposed amendments are the result of 1982 legislative action and the intent of the SWCB to strengthen program administration by adding new requirements and clarifying existing policy.

IV. NEED FOR AND REASONABLENESS OF THE PROPOSED AMENDMENTS TO THE RULES

The following discussion addresses the need for and reasonableness of the proposed amendments to the rules governing the allocation of funds to Soil and Water Conservation Districts for the installation of erosion, sedimentation or water quality improvement practices. The proposed amendments have been divided into the following categories: incorporation of items required by law; addition of new administrative requirements; clarification of the current rules; changes in language and form by the office of the Revisor of Statutes; and repealers.

A. Incorporation of Items Required by Law

8400.0100 subparts 3, 8, 8a., 14a., 16a., and 16b.
8400.0600 subparts 1 and 4
8400.1400 subpart 2
8400.2800

The amendments proposed for the parts of the rule noted above are necessary to comply with Minnesota Statute 40.036, subd. 4, which requires that the proposed rule contain the content and scope of SWCD annual and comprehensive plans, standards and methods for planning and implementing a priority cost-sharing program, and the share of the cost of priority conservation practices to be paid from state funds. The proposed changes are reasonable because they comply with statutory requirements and provide for better identification and more cost-effective treatment of priority erosion, sedimentation and water quality areas.

B. Addition of New Administrative Requirements

Minnesota Rules 8400.0100 subparts 1a, 7a, 20a, 20c, 20d, 25 and 26.

These proposed amendments consist of new definitions. They are necessary to clarify the meaning of other proposed amendments. The definitions are reasonable because they are consistent with generally accepted soil and water conservation terminology and will permit a better understanding of other proposed amendments.

Minnesota Rules 8400.0100 subpart 13.

The proposed amendment is necessary to reflect the manner by which SWCD Board members currently view their role as supervisors of staff. This change is further necessary because it eliminates language which confuses parts 8400.0100, subpart 20c. and 8400.1000. These parts clearly imply that a district technician is technically responsible to a USDA - Soil Conservation Service employee or a registered professional engineer. The proposed change is reasonable because it corrects the concerns expressed by SWCD Board's that district technicians are ultimately responsible to them. It is further reasonable because technical supervision is addressed elsewhere in the rule.

Minnesota Rules 8400.0100, subpart 20b; 8400.1000; 8400.1300g; and 8400.1600, subpart 1.

These proposed amendments are necessary to incorporate the changes made to technical assistance for soil and water conservation measures. These changes are reasonable because they provide for greater technical assistance options to SWCDs, and yet maintain the integrity and engineering quality of soil and water conservation practices.

Minnesota Rules 8400.0100, subpart 22a.

The proposed amendment is necessary to provide SWCDs with a means of addressing those soil erosion and water quality problems beyond the scope and funding of local programs. The change is reasonable because it provides SWCDs with the opportunity to address unique soil and water resource problems, and yet insure that funds are administered consistent with legislative mandates and these rules.

Minnesota Rules 8400.0600 subpart 3.

The proposed amendment is necessary to revise the criteria by which the SWCB reviews SWCD applications for cost-share funds. This change is reasonable because it links SWCB review criteria with the legislatively mandated changes addressed in Part IV A and B of this statement.

Minnesota Rules 8400.0700.

The proposed amendment is necessary to change SWCD reporting requirements. The number of reports was reduced to reflect improved SWCD administration, and the date of the annual report was made variable to allow the SWCB to establish deadlines consistent with district planning efforts and state funding cycles. This change is reasonable because it eliminates unnecessary reports, increases SWCD flexibility and yet maintains an efficient program.

Minnesota Rules 8400.0900.

The proposed amendment is necessary because it is the required "companion" to 8400.0600 subpart 3. This change is reasonable because it links SWCD to SWCB review criteria and will provide for consistent implementation of the program.

Minnesota Rules 8400.1300 F.

The proposed amendment is necessary to prohibit the funding of repair of practices installed without state financial assistance. This change is reasonable because it corrects the misuse of state funds which occurs whenever the repair of low priority or otherwise ineligible practices are funded. It is further reasonable because the financial responsibility for repairing practices is limited to the entity(ies) that first provided funding. This maintains uniformity with respective funding criteria and technical specifications.

Minnesota Rules 8400.1405, subpart 1.

The proposed amendment is necessary to limit the time by which approved projects must be started and completed. This change is reasonable because it corrects the problems of approved projects remaining unstarted or uncompleted for several construction seasons. It is further reasonable because it insures that SWCD financial accounting will be simplified due to fewer program years remaining uncompleted. This provides an advantage in that state program summaries remain current.

Minnesota Rules 8400.1405, subparts 2-4.

The proposed amendments are necessary to provide SWCDs with the ability to make a partial payment to a land occupier in the event of bad weather or other unanticipated circumstances. This change is reasonable because it provides a remedy to the problem of committing land occupiers to major investments and then not being able to pay (under any circumstances) until the project is totally complete. It is further reasonable because the conditions for payment insure that the project will eventually be completed or else the money will be refunded, and partial payments will not result in increased project costs.

Minnesota Rules 8400.1500

The proposed amendment is necessary to change SWCD reporting requirements. The proposed change is necessary due to a 1984 legislative act which allows the SWCB to use an appropriation until expended. Previously, funds not spent by the end of a fiscal year reverted to the State Treasury. The legislative change thus reduced the need for the SWCB to call-back unspent SWCD funds. This change is reasonable because it eliminates unnecessary reports, increases SWCD flexibility and yet maintains an efficient program.

Minnesota Rules 8400.1600, subpart 3.

The proposed amendment is necessary to provide an option to SWCDs concerning payment documentation. Additional language is provided to clarify the use of amendments to cost-share contracts. These changes are reasonable because the authorized use of invoices allows SWCDs to make a payment without requiring the land-occupier to first prove that payment has been made to suppliers or contractors. This eliminates the hardship imposed on land occupiers who depend on the cost-share payment for meeting financial obligations. The changes are further reasonable because the clarification of amendments does not change the existing intent of the rules.

Minnesota Rules 8400.1950.

The proposed amendment is necessary to provide SWCDs with a means of addressing limitations of the rule. Previously, several unique and high priority projects could not be funded due to rule requirements. This change is reasonable because it establishes a procedure for the SWCB to consider variances to the rule.

Minnesota Rules 8400.2400, subpart 4, A and B.

The proposed amendment is necessary to establish protection to grassed waterways, and limit land drainage to that required for installation of the practice. These changes are reasonable because the installation of grassed waterways without the attendant upland protection may result in sedimentation damage to the waterway and substantiate that the reason for installing the practice was for convenience rather than erosion control. In addition, limiting the extent of tile installation to 300 feet below the end of the waterway minimizes land drainage, yet provides sufficient length for the satisfactory disposal of water.

Minnesota Rules 8400.2600, subpart 3.

The proposed amendment is necessary to link the applicability of animal waste control systems to the definition of high priority feedlots. This change is reasonable because it will permit SWCDs to allocate cost-sharing funds in a manner consistent with the legislative mandate for treatment of priority water quality areas, and yet provide a means for the Minnesota Pollution Control Agency to become involved in local animal waste pollution control efforts.

Minnesota Rules 8400.2700, subpart 4; and 8400.2705.

The proposed amendments are necessary to prohibit erosion and sediment control work from being performed on streambank, lakeshore or roadside (SLR) areas (8400.2700, subpart 4), and establish a new practice specifically for SLR areas (8400.2705). These changes are reasonable because duplication of practices 8400.2700 and 8400.2705 is prevented, and the potential confusion resulting from the reduced cost share rate for SLR work is avoided. They are further reasonable because the cost-share rate of 50% is consistent with that of another SWCB program which specifically addresses SLR problems. Thus, due to the existence of another program, the reduced cost-share rate as proposed in 8400.2705 should not limit practice implementation. In addition, maintaining consistent cost-share rates prevents competition between programs.

C. Clarification of the Current Rules

8400.0100 subparts 19 and 21
8400.1100
8400.1400 subpart 1
8400.1700
8400.2000
8400.2100
8400.2200
8400.2300
8400.2400 subparts 1-3, and subpart 4 C-D
8400.2500
8400.2600 subparts 1, 2, and 4
8400.2700 subparts 1-3

The amendments proposed for the parts of the rule noted above are necessary to provide clarification to the existing rule. The proposed changes are reasonable because they consist of minor wording changes which do not alter the original intent of the rules but provide for more accurate interpretation by SWCDs.

D. Changes in language and Form by the Office of the Revisor of Statutes.

8400.0100 subparts 1, 4, 5, 6, 9, 10, 11, 12, 14, 15, 18 and 23
8400.0200
8400.0300
8400.0400
8400.1200
8400.1300 A-E
8400.1600 subpart 2
8400.1800

Strike outs and additions in the proposed amendments to the rules as found in the above sections, and which are not specifically addressed in this statement, are necessary and reasonable changes in language and in form made by the Office of the Revisor of Statutes.

E. Repealers

8400.0100 subparts 7, 17, and 24
8400.0600 subpart 2

These sections of the current rule are proposed for repeal because changes in the format and content of the proposed amendments make them inappropriate or obsolete. It is unreasonable to retain old rules when reasonable amendments are proposed for which the old rules do not apply.

V. EFFECTIVE DATE

The proposed effective date of July 1, 1985 is necessary and reasonable due to the manner in which erosion, sedimentation or water quality improvement funds are allocated. The funds are allocated to SWCD's on a

fiscal year basis. To make the proposed amendments effective at a time other than the beginning of a fiscal year would result in significant administrative difficulty for SWCD's. In addition, an effective date of other than July 1 may mean that requests to SWCDs by land occupiers for financial assistance must be cancelled in order to comply with the amended rules. Additional information concerning the effective date can be found in Attachment A.

VI. ATTACHMENT

The following attachment has been referred to and pertains to this statement.

Attachment A - Letter to Legislative Commission to Review Administrative Rules, dated August 9, 1984.

STATE OF MINNESOTA
SOIL AND WATER CONSERVATION BOARD
DEPARTMENT OF AGRICULTURE
90 W. Plato Blvd.
St. Paul, MN 55107
Telephone: (612) 296-3767

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August 9, 1984

Ms. Kathleen Burek, Executive Director
Legislative Commission to Review
Administrative Rules
Room 430 State Office Building
435 Park Street
St. Paul, MN 55155

Dear Ms. Burek:

Chapter 512, laws of 1982 (40.036, subd.4) required this agency to promulgate a rule regarding soil erosion control grant allocations by May 1, 1983. Pursuant to Chapter 14.12, I am advising you of the reasons which have prevented this agency from promulgating the rule by that date. The reasons are as follows:

1. Task Force

Chapter 512 required this agency to appoint a multi-agency task force to assist in rule development. Twelve agencies were selected. The group met eight times from May 25 to September 22, 1982. Given the amount of work that needed to be accomplished and the work schedules of the task force members, it was not possible to complete this effort earlier.

2. Land Management Information Center (LMIC), State Planning Agency

The Land Management Information Center, State Planning Agency, was selected to develop the critical area identification methods required by the legislation. This method must be addressed in the rules. However, the necessary LMIC products were not available until after July 1, 1983.

3. Nature of the Rules

The rules are complicated. Both administrative and technical subjects must be addressed and because the implementation of the rule takes place outside this agency

by 92 soil and water conservation districts, a long review was necessary. In addition, the technical aspects of the rule must be consistent with United States Department of Agriculture, Soil Conservation Service standards and specifications. The "outside" review of the rule was completed in July, 1984.

There is a reference to a pilot planning program in 40.036, subd. 5 of the 1982 legislation. The pilot program has been implemented and is proceeding well.

We intend to adopt the rule by the non-controversial procedure and plan to initiate this process by the end of this month. The effective date of the revised rule is targeted for July 1, 1985.

We will be happy to answer any questions.

Sincerely,

Ronald Nargang

Ronald Nargang
Director

RN:kaf
cc: Governor Rudy Perpich
Senate Agricultural and
Natural Resources Committee
House Agricultural Committee

In the Matter of the Proposed
Rules of the Department of
Agriculture Governing
Cost Share Programs To Soil and Water
Conservation Districts
(Minnesota Rules 8400.0100 - 8400.2800)

STATEMENT OF
COMPLIANCE WITH
RULEMAKING PROCEDURES

I, (Special Assistant Attorney General) Jon Murphy, do hereby declare that I have examined the rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedure Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed. Any exceptions are noted below.

Special Assistant Attorney General

Date: 3/21/85