

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Rule Title No. 12-10 05-0007, 0786

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 8-5-86
DATE FOR REVIEW
DATE DUE 8-19-86

Adopted w/a hearing
Adopted w/o hearing
~~Temporary~~ Emergency rule ~~85~~ ✓

Approved 8/18/86 Disapproved Returned to Agency 8/20

Resubmitted Due
Approved Disapproved Returned to Agency

Date filed w/Secretary of State 8/20 Revisor approved 87-8
disapproved

✓ Rule as Adopted

✓ Rule as Proposed

✓ Order Adopting 7-29-86 Date

NA Notice of Intent to Solicit Outside Opinion

✓ Order for rulemaking
date of Hearing

✓ Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
✓ Sufficiency

✓ Affidavit of Mailing Notice or rulemaking
6-25-86 At least 30 days prior to ~~hearing~~/adoption

✓ Mailing list Certificate

✓ Publication in State Register
6-30-86 At least 30/20 days prior to hearing/adoption

NA Hearing Examiner's Report

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

Agency's Findings of Fact

✓ LCRAR Report or agency Affidavit

✓ Certificate of Board's Resolution Adopting Rules

NA Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness

NA 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

✓ Affidavit of Mailing Notice of Submission to Attorney General

✓ Notice of Submission to the Attorney General

SF-00006-03

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO: RON NARGANG
DIRECTOR, SOIL AND WATER CONSERVATION BOARD

ATTN: JON MURPHY
Special Assistant Attorney General

DATE: 08/19/86

FROM: J. MICHAEL MILES
Assistant Attorney General

PHONE: 296-6555

SUBJECT: In the Matter of the Proposed Adoption of Emergency Rules of the Soil and Water Conservation Board Governing the Reinvest in Minnesota Conservation Reserve Program

The above-referenced rule has been approved as to its legality by the Attorney General on August 19, 1986.

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.

JMM:pmf

Enclosures

cc: Maryanne Hruby
Executive Director
Legislative Commission to Review
Administrative Rules

Duane Harves
Chief Administrative Law Judge
Office of Administrative Hearings

RR1296

AG Copy

Department of Agriculture

Adopted Emergency Rules Relating to the Reinvest In Minnesota Program

Rules as Adopted

SOIL AND WATER CONSERVATION BOARD

RIM RESERVE PROGRAM

8400.3000 [Emergency] AUTHORITY.

Minnesota Statutes, chapter 40, authorizes the state board, in cooperation with the districts, state and local private groups, and state and federal agencies, to administer a program of retiring marginal agricultural land from crop production and establishing on those lands permanent vegetative cover. Parts 8400.3000 to 8400.5600 [Emergency] provide procedures and criteria to be followed by the state board in allocating funds to districts and standards and guidelines that the district boards shall use in allocating funds to landowners.

8400.3100 [Emergency] DEFINITIONS.

Subpart 1. **Scope.** For purposes of parts 8400.3000 to 8400.5600 [Emergency], the definitions in this part, in addition to those in Minnesota Statutes, chapter 40, apply.

Subp. 2. **Agricultural crop production.** "Agricultural crop production" means an agricultural activity devoted to the production of horticultural, row, close grown, rotation pasture, or hayland crops.

Subp. 3. **Agricultural property.** "Agricultural property" means land devoted to farming, exclusive of buildings.

Subp. 4. **Agricultural Stabilization and Conservation Service.** "Agricultural Stabilization and Conservation Service" means the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture.

Subp. 5. **Annual plan.** "Annual plan" means a plan prepared by the district under Minnesota Statutes, section 40.07,

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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. 6. **Approved practice.** "Approved practice" means a soil and water conservation practice that qualifies for RIM reserve program funding and that has been approved by the state board.

Subp. 7. **Authorized farm corporation.** "Authorized farm corporation" means a corporation meeting the following standards:

A. it has no more than five shareholders;

B. its shareholders, other than any estate, are natural persons;

C. it has no more than one class of shares;

D. its revenue from rent, royalties, dividends, interest, and annuities does not exceed 20 percent of its gross receipts; and

E. shareholders holding a majority of its shares reside on the farm or are actively engaged in farming.

Subp. 8. **Commissioner.** "Commissioner" means the commissioner of agriculture.

Subp. 9. **Conservation easement, easement.** "Conservation easement" or "easement" means a nonpossessory interest of a holder in real property imposing limitations or affirmative obligations the purposes of which include keeping or protecting natural, scenic, or open-space values of real property, assuring its availability for agricultural, forest, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property. Public access ~~must be~~ is controlled by the landowner.

Subp. 10. **Converted wetland.** "Converted wetland" means wetland that has been drained, dredged, filled, leveled, or otherwise sufficiently manipulated since approval of an easement to render the land suitable for agricultural crop production.

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Subp. 11. **Cropland.** "Cropland" means an area devoted to agricultural crop production.

Subp. 12. **District.** "District" means a soil and water conservation district organized under Minnesota Statutes, chapter 40.

Subp. 13. **District board.** "District board" means the five supervisors of a district authorized to carry out the functions of the district.

Subp. 14. **District cooperator.** "District cooperator" means a landowner 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 on a form provided by the state board and approved by the district board.

Subp. 15. **District technician.** "District technician" means a district employee or other nonfederal employee assigned to the district who has expertise in the design and application of soil and water conservation practices.

Subp. 16. **Enduring practice.** "Enduring practice" means a soil and water conservation practice that is designed for an effective life of ten years or more.

Subp. 17. **Family farm.** "Family farm" means an unincorporated farming unit owned by one or more persons residing on the farm or actively engaging in farming.

Subp. 18. **Family farm corporation.** "Family farm corporation" means a corporation founded to farm and to own agricultural land, the majority of the voting stock of which is held by and the majority of the stockholders of which are persons or the spouses of persons related to each other within the third degree of kindred according to the rules of civil law, at least one of the stockholders of which is residing on or actively operating the farm, and none of whose stockholders are corporations. A family farm corporation does not cease to qualify because of a devise or bequest of shares of voting stock.

Subp. 19. **Farm operation.** "Farm operation" means property owned or leased by the landowner that is associated with farming.

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Subp. 20. **Farming.** "Farming" means the production of (1) agricultural products; (2) livestock or livestock products; (3) milk or milk products; or (4) fruit or other horticultural products. It does not include processing, refining, or packaging the products, providing spraying or harvesting services, or producing timber, forest products, or poultry products.

Subp. 21. **Field Office Technical Guide.** "Field Office Technical Guide" has the meaning given in part 8400.0100, subpart 15.

Subp. 22. **Fish and Wildlife Service.** "Fish and Wildlife Service" means the Fish and Wildlife Service of the United States Department of the Interior.

Subp. 23. **Hydric soil.** "Hydric soil" means a soil in its natural undrained condition that is saturated at or near the surface or flooded frequently during much of the growing season, and that can support hydrophytic vegetation. A list of hydric soils may be found in the Field Office Technical Guide.

Subp. 24. **Hydrophytic vegetation.** "Hydrophytic vegetation" means herbaceous or woody plants that grow in water, in wet or saturated soils, or in soils that are at least periodically deficient in oxygen as a result of excess water.

Subp. 25. **Inherently unproductive.** "Inherently unproductive" means that the soil properties of available water capacity, bulk density, and pH in the uppermost 100 centimeters (39 inches) of a soil, are present so that an unfavorable rooting environment exists for agronomic crops.

Subp. 26. **Landowner.** "Landowner" means a Minnesota resident who owns or is a buyer under contract for deed, of land that qualifies as a family farm, a family farm corporation, or an authorized farm corporation.

Subp. 27. **Local emergency.** "Local emergency" means an emergency declared under Minnesota Statutes, section 12.29. The commissioner, after consulting with the commissioner of natural resources, must concur with a decision to declare a local emergency that affects easement provisions.

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Subp. 28. **Marginal agricultural land.** "Marginal agricultural land" means land with cropland soils that are inherently unproductive for agricultural crop production and subject to significant potential soil productivity loss from erosion. The state board shall provide districts with a list of soils indicative of marginal agricultural land. Districts may add to or delete soils from the list as necessary to reflect local soil characteristics. Changes must be approved by the state board.

Subp. 29. **Natural vegetation.** "Natural vegetation" means plant species including, but not limited to, grasses, trees, shrubs, or hydrophytic vegetation that form an area's noncultivated plant community, excluding the area immediately adjacent to buildings.

Subp. 30. **Nonproduction practice.** "Nonproduction practice" means a soil and water conservation practice that is installed or applied to control soil erosion or sedimentation, protect or improve water quality, or create or enhance wildlife habitat. Practices installed or applied primarily to bring land into production or to increase short-term productivity are not nonproduction practices.

Subp. 31. **Permanent pasture.** "Permanent pasture" means an area of forage species, harvested by grazing, that has not been cultivated within the last ten years. These areas are not considered to be in agricultural crop production.

Subp. 32. **Protected water.** "Protected water" means 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 wetlands inventory map available in the county auditor's office.

Subp. 33. **Range.** "Range" means an area supporting an understory or periodic cover of herbaceous or shrubby plants suitable for grazing that has not been cultivated within the last ten years.

Subp. 34. **Relevant geographic area.** "Relevant geographic

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area" is an area established by the state board to minimize discrepancies in Federal Conservation Reserve Program bid values across county lines.

Subp. 35. **RIM reserve program.** "RIM reserve program" means the reinvest in Minnesota resources conservation reserve program established in Laws 1986, chapter 383, section 4.

Subp. 36. **Rotation pasture.** "Rotation pasture" means a cultivated or interseeded area devoted to the production of forage consisting of introduced or native species, and harvested by grazing. These areas are managed in a rotation of row crops or small grains and are considered to be in agricultural crop production. Areas of permanent pasture are excluded.

Subp. 37. **Screening committee.** "Screening committee" means a group established and chaired by a district, composed of representatives of private, state, and local organizations or clubs, and state and federal agencies with an interest in the RIM reserve program. A screening committee must include representatives of the Department of Natural Resources, the Pollution Control Agency, the Agricultural Stabilization and Conservation Service, the Fish and Wildlife Service, and the Soil Conservation Service.

Subp. 38. **Significant potential soil productivity loss.** "Significant potential soil productivity loss" means that soil productivity loss due to erosion may occur in a short time unless management measures are initiated to control soil erosion. The method of calculation combines the rating of a soil as a rooting environment with landscape characteristics that represent erosion potential.

Subp. 39. **Soil and water conservation practice.** "Soil and water conservation practice" means structural or vegetative practices applied to land to control soil erosion, sediment, or other water pollutants.

Subp. 40. **Soil Conservation Service.** "Soil Conservation Service" means the Soil Conservation Service of the United States Department of Agriculture.

Subp. 41. **Soil mapping unit.** "Soil mapping unit" means a

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kind of soil or combination of soils shown at the scale of mapping for the defined purposes and objectives of a soil survey.

Subp. 42. **State board.** "State board" means the State Soil and Water Conservation Board created under Minnesota Statutes, section 40.03.

Subp. 43. **Wetland.** "Wetland" means land that has a predominance of hydric soils and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, or that periodically does support, a predominance of hydrophytic vegetation typically adapted for life in saturated soil conditions. Wetland does not include converted wetlands as defined by subpart 10 and prohibited by part 8400.4900 [Emergency].

8400.3200 [Emergency] ESTABLISHING APPROVED VEGETATIVE AND SUPPORTING PRACTICES.

The state board, in consultation with the districts and state and federal agencies, shall develop a list of practices that are eligible for RIM reserve program funds and a schedule of maximum rates. The list is contained in parts 8400.5200 to 8400.5600 [Emergency] and the schedule in part 8400.4300 [Emergency]. Changes to the list and schedule must be made under Minnesota Statutes, chapter 14.

8400.3300 [Emergency] CRITERIA FOR APPROVED PRACTICES.

Practices approved by the state board must be enduring in nature and have as their primary purpose the control of soil erosion or sedimentation, protection or improvement of water quality, or creation or improvement of wildlife habitat. Practices cost-shared under this program must be designed for a minimum effective life of ten years, be nonproduction practices, and have specifications providing for the use of plant species and construction techniques that provide quality fish and wildlife benefits.

8400.3400 [Emergency] ELIGIBLE LAND.

Land may be enrolled in the RIM reserve program if the land:

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A. is marginal agricultural land, or is adjacent to marginal agricultural land that is being enrolled if enrollment of the adjacent land is beneficial to resource protection or necessary for efficient recording of the land description and if at least 50 percent of the total proposed acreage is marginal agricultural land;

B. was in agricultural crop production or rotation pasture for at least two years during the period 1981 to 1985;

C. was owned by the applicant on January 1, 1985, or for an application made on or after January 1, 1988, was owned by the applicant for at least three years before the date of application;

D. is at least five acres in size, or is a whole field as defined by the Agricultural Stabilization and Conservation Service;

E. is not currently set-aside, enrolled, or diverted under another federal or state government program including, but not limited to, Federal Conservation Reserve, Federal Production Adjustment Set-Aside, or state or federal Water Bank;

F. is physically possible to crop; and

G. as enrolled does not exceed 20 percent of the landowner's total acreage of agricultural property in the state.

8400.3500 [Emergency] CONSERVATION EASEMENTS.

A district board may acquire, on behalf of the commissioner and state, conservation easements on eligible land. An easement may be permanent or for ten years. By signing an agreement, a landowner agrees:

A. to convey to the state a conservation easement that is not subject to any prior title, lien, or encumbrance;

B. to seed the land subject to the conservation easement contained in the agreement, to establish and maintain permanent cover of either a grass-legume mixture or native grasses for the term of the easement, at seeding rates determined by the state board, or to plant trees or install supporting practices required due to site conditions for soil

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and water conservation or wildlife management in parts 8400.5200 to 8400.5600 [Emergency];

C. that other noncrop or permanent pasture land supporting natural vegetation owned or leased as part of the same farm operation during the term of the easement will not be converted to agricultural crop production or pasture as specified in part 8400.4900 [Emergency];

D. to the enforcement of the maintenance provisions in part 8400.4700 [Emergency];

E. not to alter wildlife habitat and other natural features of the land, unless specifically approved by the state board;

F. to refrain from agricultural crop production, unless specifically approved by the district for wildlife management purposes such as food plots;

G. to prohibit grazing of livestock unless approved by the commissioner, after consultation with the commissioner of natural resources, in the case of severe drought or a local emergency;

H. to prohibit spraying with chemicals or mowing, except as necessary to comply with state and county noxious weed control laws, for emergency control of pests necessary to protect public health, or to maintain permanent vegetative cover as approved by the district; and

I. to allow maintenance of public drainage systems. The activities must not damage the conservation purpose of the easement area. In addition, any authorization granted by the district must provide that the easement area be restored to the condition required by the terms of the conservation easement.

8400.3600 [Emergency] ALLOCATION OF FUNDS.

The state board shall authorize a district board to obligate funds based on the following factors:

A. the extent of marginal agricultural land in the district; and

B. the need for soil erosion or sediment control,

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protection or improvement of water quality, or improvement of fish and wildlife habitat.

The state board may also consider the expressed interest of landowners and the readiness of the district board and cooperating groups and agencies to implement the program.

The state board may increase or decrease its obligation as necessary to maximize the use of funds among districts, and may require enrollment periods.

8400.3700 [Emergency] ADMINISTRATION OF FUNDS.

Following authorization to obligate funds from the state board, a district is responsible for administration of the funds in accordance with Minnesota Statutes, chapter 40 and other applicable laws. The district board may make decisions concerning use of these funds in accordance with parts 8400.3000 to 8400.5600 [Emergency].

As a condition to participating in the program, the district shall ensure compliance with the maintenance provisions of part 8400.4700 [Emergency] and Minnesota Statutes, chapter 40 by monitoring easements in a manner prescribed by the state board.

Before considering any requests from landowners, the district board shall establish a screening committee. Then, in cooperation with the screening committee, local priority areas must be established. In addition, administrative procedures necessary to efficiently implement the program must be developed. Priority areas must 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. the potential of the land for fish and wildlife production, reducing erosion, and protecting water quality;

C. advice of technical experts familiar with the district;

D. priorities as established by the district in

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consultation with other members of the screening committee;

E. current programs administered by the Agricultural Stabilization and Conservation Service, the Fish and Wildlife Service, and the Department of Natural Resources; and

F. RIM reserve program funds available.

8400.3800 [Emergency] APPLICATION FOR FUNDS BY LANDOWNERS.

Landowners interested in participating in the RIM reserve program shall apply to the districts on forms provided by the state board and available from the district office. An application must be filled out in its entirety. A district technician is then responsible for making a determination of easement eligibility and a cost estimate to establish permanent vegetative cover and, if necessary, supporting practices. Actual determination of need and a cost estimate may be done by district-approved representatives from other agencies. Additional information that may be required by the district board in its consideration of the application must be included.

8400.3900 [Emergency] LAND IN MORE THAN ONE DISTRICT.

If a request involves land in more than one district, application must be made to each district containing proposed land. The affected districts must cooperate to ensure a consistent and timely review of the proposed lands.

8400.4000 [Emergency] CRITERIA FOR DISTRICT BOARD REVIEW.

The criteria for district board review are listed in this part.

A. The applicant must be a district cooperator.

B. The practices needed to establish permanent vegetative cover must be on the list of approved practices.

C. The primary purpose of the requested easement must be the control of soil erosion or sedimentation, the protection or improvement of water quality, or the improvement of fish and wildlife habitat. In cases where the primary purpose is questionable, the district board in cooperation with the screening committee shall make a determination of the

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acceptability of the application.

D. The requested easement and vegetative practices must be consistent with local plans and priorities.

E. The easement must be maintained by the landowner, who is responsible for operation and maintenance of vegetative and other supporting practices applied under this program.

F. The practice must comply with the technical requirements of the Field Office Technical Guide. Technical review must be completed by a district technician or Soil Conservation Service employee who has applicable job approval authority or by district-approved representatives from other agencies.

8400.4100 [Emergency] DISTRICT APPROVAL.

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 chair or acting chair to sign the application. Once it is signed, the application becomes an agreement between the state and landowner and serves as the authorization to begin establishing vegetative cover and, if required, other supporting practices. In addition, district approval obligates payment for the easement and vegetative cover establishment, provided the landowner complies with parts 8400.3000 to 8400.5600 [Emergency]. Practices begun before district approval are ineligible for financial assistance. The requirements for vegetative cover establishment and maintenance must be specified in a plan prepared by the district technician or district-approved representatives from other agencies. If an application is denied, the district board shall notify the landowner in writing within 30 days after district board action of the reason for denial of the application. Changes in any provisions of the agreement are subject to review and approval by the district board.

8400.4200 [Emergency] CONSERVATION EASEMENT PAYMENTS.

After approval of an application, easement documents

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provided by the state board must be completed by the district. Once completed, the easement is considered conveyed. Upon conveyance, the following easement payments must be made:

A. for a permanent easement, 70 percent of the township average equalized estimated market value of agricultural property as established by the commissioner of revenue when the easement is conveyed; and

B. for a ten-year easement, 90 percent of the present value of the average of the acceptable bids for the Federal Conservation Reserve Program in the relevant geographic area and on bids made immediately before the easement is conveyed. The commissioner shall establish, at least annually, the discount rate to be used for calculating present value. If federal bid figures have not been determined for the area or the federal program has been discontinued, the rate must be determined by the state board.

8400.4300 [Emergency] ESTABLISHMENT OF VEGETATIVE PRACTICES.

Subpart 1. **Installation of practices.** Establishment of vegetative practices must be monitored by the district board to ensure compliance with part 8400.4000 [Emergency], item F. Upon completion, a district technician shall certify whether or not the practice has been satisfactorily performed, including certification that the practice meets the requirements of part 8400.4000 [Emergency], item F. No certification may be made until all specifications have been satisfied. Exceptions must be in accordance with subpart 4. Upon certification of completion, the landowner shall contact the district for payment and present documentation of the 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 landowner including, but not limited to, earthwork, seedbed preparation, and seeding, may be credited to the landowner's share of the total cost of the practice. The district board shall determine whether charges for in-kind services are practical and reasonable.

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Subp. 3. **Actual cost differing from estimated cost.** If the actual cost of a practice exceeds the estimated cost, the district may only authorize payment of the approved rate unless an amendment to the vegetative cover agreement has been approved. Because of extreme circumstances including, but not limited to, weather or 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 district board in advance of completion of the work with an amendment to the vegetative cover agreement covering the changes. Amendments may not be authorized for providing final payments in excess of the maximum rate established in subpart ~~5~~ 7. Amendments may not be authorized after final approval of payment has been made on the original agreement. If the actual cost is less than the estimated cost, the district shall only authorize payment of the actual cost of the practice. The district board shall review the receipts or invoices provided by the landowner to determine the actual cost of the practice. If the district determines that the claims are practical and reasonable, it shall authorize payment. Payments may not exceed the rates established in subpart ~~5~~ 7. If the district board determines that certain claims are not justified, it shall notify the landowner in writing of the unjustified claims within 30 days. The district board shall then authorize the issuance of a check for the justified claims.

Subp. 4. **Partial payment.** If weather, unanticipated circumstances beyond the control of the land occupier, or management considerations such as dormant seedings force postponement of certification of completion, 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 not cause unreasonable delays in establishing vegetative cover.

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B. The completed work meets the requirements of part 8400.4000 [Emergency], item F.

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

Subp. 5. **Payment conditions.** If the state board or its authorized representative authorizes a partial payment under subpart 4, the following conditions apply:

A. Payment rates must comply with ~~this~~ subpart 7.

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

C. Expenses incurred in correcting damage caused to the project by virtue of its incompletion must be borne by the landowner.

D. Landowners receiving partial payments must complete the project within a time considered reasonable by the district board.

E. Landowners not completing partially-paid projects are in violation of part 8400.4700 [Emergency] and must be directed to return the amount of financial assistance received plus interest.

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

Subp. 6. **Denial.** If the state board or its authorized representative denies a request for partial payment under subpart 4, the district board must be notified within 30 days of the reasons for denial of the request.

Subp. 7. **Payments for establishment of vegetative cover.** After certification by an assigned district technician that permanent vegetative cover is established, the district shall notify the state board to make the following payments to the landowner:

A. to establish the permanent cover or supporting practices required by the agreement, the actual cost up to $75 per acre; and

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B. for the cost of planting trees required by the agreement, the actual cost up to $75 per acre;

Payments for establishing permanent cover, trees, or other improvements are limited to the actual cost, up to $75 per acre. Supporting practices must be required by the vegetative cover agreement. These include practices or components of practices listed in parts 8400.5200 to 8400.5600 [Emergency]. Supporting practices must be installed in conjunction with permanent cover or trees. If trees are combined with a cover practice, payments increase to a combined actual cost up to $150 per acre, or up to $75 per acre each for trees and cover.

RIM reserve payments may be supplemented by funds from other programs or organizations, including sportsmen's groups or state or federal cost-share programs. Requirements for supplementing payments must be determined by the contributing agency or group.

8400.4400 [Emergency] MAXIMUM PAYMENT.

The state board may not pay more than $50,000 annually to a landowner for the landowner's vegetative cover agreements and conservation easements. The district shall record the easement document with the county recorder.

8400.4500 [Emergency] DISTRICT RECORDS.

The district shall maintain a current ledger of vegetative cover agreements and easements on forms provided by the state board. The ledger must specify the landowners with whom the district has developed agreements, the soil mapping units of enrolled land, the vegetative practices involved, the status of vegetative establishment, the total of funds obligated and spent, the size and type of easements, and their effective date. Recording must be done, to the extent possible, in a manner compatible with the needs of cooperating agencies and groups. In addition, the location of easements must be recorded on base maps provided by the Land Management Information Center of the State Planning Agency to facilitate entry into a state data base.

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8400.4600 [Emergency] EASEMENT RENEWAL.

When a ten-year conservation easement expires, a new permanent or ten-year conservation easement may be acquired by written concurrence of the district and the landowner. The district may recommend that the state board adjust payment rates as a result of renewing a ten-year conservation easement only after examining the condition of the established cover, supporting practices, and land values.

8400.4700 [Emergency] MAINTENANCE.

A landowner is responsible for operation and maintenance of vegetative and supporting practices applied under this program and ensuring that easement restrictions in parts 8400.3500 [Emergency] and 8400.4900 [Emergency] are followed to ensure that the easements conservation objective is met and the effective life of ten or more years is achieved.

Should the landowner fail to install or maintain the practices or comply with easement restrictions during their effective life, the landowner may be subject to:

A. damages up to the amount of financial assistance received for practice installation and easement payment plus interest accrued from the date of nonmaintenance determination;

B. a mandatory court-imposed injunction; or

C. other actions directed at correcting the maintenance violation. The district board, in consultation with the state board and legal counsel, shall determine how maintenance violations must be corrected. Easements remain in effect even if maintenance violations have occurred.

The landowner is not liable for financial assistance received if the failure was caused by reasons beyond the landowner's control; in those instances, the district may authorize payment for the repair. Payments for repair must comply with part 8400.4300 [Emergency]. In no case may a district provide financial assistance to a landowner for the reapplication of vegetative or supporting practices that were removed or altered by the landowner during their effective life

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or failed due to improper maintenance.

8400.4800 [Emergency] MONITORING.

The state board may require reports from the district to monitor the progress of the RIM reserve program and the use of funds. The reports must be on forms provided by the state board.

8400.4900 [Emergency] NONCROPLAND CONVERSION.

From approval of vegetative cover agreements until the end of the easement, land supporting natural vegetation, including, but not limited to, trees, shrubs, permanent pasture, range, or wetland, must not be converted to cropland. This restriction applies to all land owned or leased as part of the landowner's farm operation.

8400.5000 [Emergency] APPEALS.

If a landowner feels unfairly treated, the landowner may request that the district board review its decision. Should the landowner and the district board reach an impasse, the landowner may petition in writing for a hearing before the state board. If it grants the hearing, which must 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 the 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.

8400.5100 [Emergency] VARIANCES.

If a district board feels that a particular requirement of part 8400.3400 [Emergency] prevents a RIM reserve program application from being funded, 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 chair;

B. the nature of the variance being sought, including

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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 funding 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 of the state board at least 30 days before 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 must not be granted if it is in conflict with any statute. The state board may grant a variance upon conditions it prescribes.

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, must comply with this part.

8400.5200 [Emergency] APPROVED PRACTICE: STRUCTURES.

Subpart 1. **Definition.** For the purpose of this part, "structure" includes, but is not limited to, floodwater retarding dams, levees, or drain tile plugs designed to provide temporary storage of floodwater, control the release rate of water providing downstream channel stability, impound water, or restore or create wetland areas. Structures are supporting practices.

Subp. 2. **Purpose.** The purpose of structures is to permit the establishment of vegetative cover, control soil erosion, protect or improve water quality, or create or improve wildlife habitat. An erosion control structure may provide multiple benefits including, but not limited to, recreation, flood

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control, and channel stability.

Subp. 3. **Applicability.** Structures may be used on enrolled lands where they are necessary to permit establishment of vegetative cover, for the control of soil erosion, water quality protection or improvement, or creation or enhancement of wildlife habitat. Structures may also be installed on nonenrolled lands if necessary to enhance or protect enrolled lands.

Subp. 4. **Policies.** Funding is authorized:

A. only for the construction of structures that provide for reduction of soil erosion, water quality protection or improvement, or creation or enhancement of wildlife habitat;

B. for permanent fencing of a structure as determined by the district board;

C. for tree and shrub plantings adjacent to the structure and seeding necessary to stabilize the structure and adjacent critical areas, including, when possible, the use of those species that provide quality wildlife habitat;

D. for structures that provide multiple benefits if the primary benefit is soil erosion control, water quality protection or improvement, or creation or improvement of wildlife habitat; and

E. for temporary materials and seedings necessary to properly stabilize the structure during construction.

8400.5300 [Emergency] APPROVED PRACTICE: DIVERSIONS.

Subpart 1. **Definition.** For purposes of this part, "diversion" means a channel with a supporting ridge on the lower side constructed across the slope. Diversions are supporting practices.

Subp. 2. **Purpose.** The purpose of a diversion is to permit the establishment of vegetative cover or divert water away from erosive areas or areas that pose a threat to water quality 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:

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A. runoff from higher areas is eroding enrolled lands or is needed to establish vegetative cover; or

B. surface and shallow subsurface flow is damaging sloping enrolled lands or contaminating ground or surface water.

Diversions may be installed on nonenrolled lands if necessary to enhance or protect enrolled lands.

Subp. 4. **Policies.** Funding 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.

8400.5400 [Emergency] APPROVED PRACTICE: STORMWATER CONTROL SYSTEMS.

Subpart 1. **Definition.** For purposes of this part, "stormwater control system" means a practice or system of practices including, but not limited to, grassed waterways 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. Stormwater control systems are supporting practices.

Subp. 2. **Purpose.** The purpose of a stormwater control system is to permit the establishment of vegetative cover, 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 enrolled lands by using vegetative or structural measures for control of erosion or protection or improvement of water quality. Stormwater control systems may also be installed

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on nonenrolled lands if necessary to protect enrolled lands.

Subp. 4. **Policies.** Funding is authorized:

A. for the construction of practices required in a complete stormwater control system, including, but not limited to, a lined waterway or outlet, detention ponds, permanent sod cover, and permanent vegetation including trees, shrubs, and grasses;

B. for tile systems necessary for the establishment and operation of stormwater control systems;

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

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

8400.5500 [Emergency] APPROVED PRACTICE: FIELD WINDBREAKS.

Subpart 1. **Definitions.** For purposes of this part, "field windbreak" means a strip or belt of trees or shrubs 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 creation of wildlife habitat, 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 that need protection against wind erosion. Additional benefits may be realized from the creation of wildlife habitat.

Subp. 4. **Policies.** Funding is authorized:

A. for field windbreaks if the inter-windbreak area is established in permanent vegetative cover at the time the windbreak is established; and

B. for site preparation, planting materials, planting, chemicals for weed control, and other applicable costs necessary to establish a field windbreak.

The landowner is responsible for controlling competitive

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vegetation for two years following planting and must bear the cost of control. Tree planting must not conflict with existing electrical lines, telephone lines, rights-of-way, or drainage systems.

8400.5600 [Emergency] APPROVED PRACTICE: ESTABLISHMENT OF PERMANENT VEGETATIVE COVER.

Subpart 1. **Definition.** For purposes of this part, "permanent vegetative cover" means planting permanent vegetation on enrolled lands, including trees, shrubs, vines, grasses, and legumes.

Subp. 2. **Purpose.** The purpose of permanent vegetative cover is to control soil erosion, protect or improve water quality, or create or improve wildlife habitat.

Subp. 3. **Applicability.** Permanent vegetative cover may be used on enrolled lands if vegetation is needed to control soil erosion, protect or improve water quality, or create or improve wildlife habitat.

Subp. 4. **Policies.** Funding 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.

Subp. 5. **Conflicts.** Tree planting must not conflict with existing electrical lines, telephone lines, rights-of-way, or drainage systems.

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STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
AUG 20 1986
Joan Anderson Growe
Secretary of State

10:06 AM

APPROVED AS TO FORM AND LEGALITY

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HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY _____
ASSISTANT ATTORNEY GENERAL

Department of Agriculture

Proposed Emergency Rules Relating to the Reinvest In Minnesota Program

Rules as Proposed (all new material)

SOIL AND WATER CONSERVATION BOARD

RIM RESERVE PROGRAM

8400.3000 [Emergency] AUTHORITY.

Minnesota Statutes, chapter 40, authorizes the state board, in cooperation with the districts, state and local private groups, and state and federal agencies, to administer a program of retiring marginal agricultural land from crop production and establishing on those lands permanent vegetative cover. Parts 8400.3000 to 8400.5600 [Emergency] provide procedures and criteria to be followed by the state board in allocating funds to districts and standards and guidelines that the district boards shall use in allocating funds to landowners.

8400.3100 [Emergency] DEFINITIONS.

Subpart 1. **Scope.** For purposes of parts 8400.3000 to 8400.5600 [Emergency], the definitions in this part, in addition to those in Minnesota Statutes, chapter 40, apply.

Subp. 2. **Agricultural crop production.** "Agricultural crop production" means an agricultural activity devoted to the production of horticultural, row, close grown, rotation pasture, or hayland crops.

Subp. 3. **Agricultural property.** "Agricultural property" means land devoted to farming, exclusive of buildings.

Subp. 4. **Agricultural Stabilization and Conservation Service.** "Agricultural Stabilization and Conservation Service" means the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture.

Subp. 5. **Annual plan.** "Annual plan" means a plan prepared by the district under Minnesota Statutes, section 40.07,

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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. 6. **Approved practice.** "Approved practice" means a soil and water conservation practice that qualifies for RIM reserve program funding and that has been approved by the state board.

Subp. 7. **Authorized farm corporation.** "Authorized farm corporation" means a corporation meeting the following standards:

A. it has no more than five shareholders;

B. its shareholders, other than any estate, are natural persons;

C. it has no more than one class of shares;

D. its revenue from rent, royalties, dividends, interest, and annuities does not exceed 20 percent of its gross receipts; and

E. shareholders holding a majority of its shares reside on the farm or are actively engaged in farming.

Subp. 8. **Commissioner.** "Commissioner" means the commissioner of agriculture.

Subp. 9. **Conservation easement, easement.** "Conservation easement" or "easement" means a nonpossessory interest of a holder in real property imposing limitations or affirmative obligations the purposes of which include keeping or protecting natural, scenic, or open-space values of real property, assuring its availability for agricultural, forest, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property. Public access must be controlled by the landowner.

Subp. 10. **Converted wetland.** "Converted wetland" means wetland that has been drained, dredged, filled, leveled, or otherwise sufficiently manipulated since approval of an easement to render the land suitable for agricultural crop production.

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Subp. 11. **Cropland.** "Cropland" means an area devoted to agricultural crop production.

Subp. 12. **District.** "District" means a soil and water conservation district organized under Minnesota Statutes, chapter 40.

Subp. 13. **District board.** "District board" means the five supervisors of a district authorized to carry out the functions of the district.

Subp. 14. **District cooperator.** "District cooperator" means a landowner 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 on a form provided by the state board and approved by the district board.

Subp. 15. **District technician.** "District technician" means a district employee or other nonfederal employee assigned to the district who has expertise in the design and application of soil and water conservation practices.

Subp. 16. **Enduring practice.** "Enduring practice" means a soil and water conservation practice that is designed for an effective life of ten years or more.

Subp. 17. **Family farm.** "Family farm" means an unincorporated farming unit owned by one or more persons residing on the farm or actively engaging in farming.

Subp. 18. **Family farm corporation.** "Family farm corporation" means a corporation founded to farm and to own agricultural land, the majority of the voting stock of which is held by and the majority of the stockholders of which are persons or the spouses of persons related to each other within the third degree of kindred according to the rules of civil law, at least one of the stockholders of which is residing on or actively operating the farm, and none of whose stockholders are corporations. A family farm corporation does not cease to qualify because of a devise or bequest of shares of voting stock.

Subp. 19. **Farm operation.** "Farm operation" means property owned or leased by the landowner that is associated with farming.

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Subp. 20. **Farming.** "Farming" means the production of (1) agricultural products; (2) livestock or livestock products; (3) milk or milk products; or (4) fruit or other horticultural products. It does not include processing, refining, or packaging the products, providing spraying or harvesting services, or producing timber, forest products, or poultry products.

Subp. 21. **Field Office Technical Guide.** "Field Office Technical Guide" has the meaning given in part 8400.0100, subpart 15.

Subp. 22. **Fish and Wildlife Service.** "Fish and Wildlife Service" means the Fish and Wildlife Service of the United States Department of the Interior.

Subp. 23. **Hydric soil.** "Hydric soil" means a soil in its natural undrained condition that is saturated at or near the surface or flooded frequently during much of the growing season, and that can support hydrophytic vegetation. A list of hydric soils may be found in the Field Office Technical Guide.

Subp. 24. **Hydrophytic vegetation.** "Hydrophytic vegetation" means herbaceous or woody plants that grow in water, in wet or saturated soils, or in soils that are at least periodically deficient in oxygen as a result of excess water.

Subp. 25. **Inherently unproductive.** "Inherently unproductive" means that the soil properties of available water capacity, bulk density, and pH in the uppermost 100 centimeters (39 inches) of a soil, are present so that an unfavorable rooting environment exists for agronomic crops.

Subp. 26. **Landowner.** "Landowner" means a Minnesota resident who owns or is a buyer under contract for deed, of land that qualifies as a family farm, a family farm corporation, or an authorized farm corporation.

Subp. 27. **Local emergency.** "Local emergency" means an emergency declared under Minnesota Statutes, section 12.29. The commissioner, after consulting with the commissioner of natural resources, must concur with a decision to declare a local emergency that affects easement provisions.

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Subp. 28. **Marginal agricultural land.** "Marginal agricultural land" means land with cropland soils that are inherently unproductive for agricultural crop production and subject to significant potential soil productivity loss from erosion. The state board shall provide districts with a list of soils indicative of marginal agricultural land. Districts may add to or delete soils from the list as necessary to reflect local soil characteristics. Changes must be approved by the state board.

Subp. 29. **Natural vegetation.** "Natural vegetation" means plant species including, but not limited to, grasses, trees, shrubs, or hydrophytic vegetation that form an area's noncultivated plant community, excluding the area immediately adjacent to buildings.

Subp. 30. **Nonproduction practice.** "Nonproduction practice" means a soil and water conservation practice that is installed or applied to control soil erosion or sedimentation, protect or improve water quality, or create or enhance wildlife habitat. Practices installed or applied primarily to bring land into production or to increase short-term productivity are not nonproduction practices.

Subp. 31. **Permanent pasture.** "Permanent pasture" means an area of forage species, harvested by grazing, that has not been cultivated within the last ten years. These areas are not considered to be in agricultural crop production.

Subp. 32. **Protected water.** "Protected water" means 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 wetlands inventory map available in the county auditor's office.

Subp. 33. **Range.** "Range" means an area supporting an understory or periodic cover of herbaceous or shrubby plants suitable for grazing that has not been cultivated within the last ten years.

Subp. 34. **Relevant geographic area.** "Relevant geographic

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area" is an area established by the state board to minimize discrepancies in Federal Conservation Reserve Program bid values across county lines.

Subp. 35. **RIM reserve program.** "RIM reserve program" means the reinvest in Minnesota resources conservation reserve program established in Laws 1986, chapter 383, section 4.

Subp. 36. **Rotation pasture.** "Rotation pasture" means a cultivated or interseeded area devoted to the production of forage consisting of introduced or native species, and harvested by grazing. These areas are managed in a rotation of row crops or small grains and are considered to be in agricultural crop production. Areas of permanent pasture are excluded.

Subp. 37. **Screening committee.** "Screening committee" means a group established and chaired by a district, composed of representatives of private, state, and local organizations or clubs, and state and federal agencies with an interest in the RIM reserve program. A screening committee must include representatives of the Department of Natural Resources, the Pollution Control Agency, the Agricultural Stabilization and Conservation Service, the Fish and Wildlife Service, and the Soil Conservation Service.

Subp. 38. **Significant potential soil productivity loss.** "Significant potential soil productivity loss" means that soil productivity loss due to erosion may occur in a short time unless management measures are initiated to control soil erosion. The method of calculation combines the rating of a soil as a rooting environment with landscape characteristics that represent erosion potential.

Subp. 39. **Soil and water conservation practice.** "Soil and water conservation practice" means structural or vegetative practices applied to land to control soil erosion, sediment, or other water pollutants.

Subp. 40. **Soil Conservation Service.** "Soil Conservation Service" means the Soil Conservation Service of the United States Department of Agriculture.

Subp. 41. **Soil mapping unit.** "Soil mapping unit" means a

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kind of soil or combination of soils shown at the scale of mapping for the defined purposes and objectives of a soil survey.

Subp. 42. **State board.** "State board" means the State Soil and Water Conservation Board created under Minnesota Statutes, section 40.03.

Subp. 43. **Wetland.** "Wetland" means land that has a predominance of hydric soils and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, or that periodically does support, a predominance of hydrophytic vegetation typically adapted for life in saturated soil conditions. Wetland does not include converted wetlands as defined by subpart 10 and prohibited by part 8400.4900 [Emergency].

8400.3200 [Emergency] ESTABLISHING APPROVED VEGETATIVE AND SUPPORTING PRACTICES.

The state board, in consultation with the districts and state and federal agencies, shall develop a list of practices that are eligible for RIM reserve program funds and a schedule of maximum rates. The list is contained in parts 8400.5200 to 8400.5600 [Emergency] and the schedule in part 8400.4300 [Emergency]. Changes to the list and schedule must be made under Minnesota Statutes, chapter 14.

8400.3300 [Emergency] CRITERIA FOR APPROVED PRACTICES.

Practices approved by the state board must be enduring in nature and have as their primary purpose the control of soil erosion or sedimentation, protection or improvement of water quality, or creation or improvement of wildlife habitat. Practices cost-shared under this program must be designed for a minimum effective life of ten years, be nonproduction practices, and have specifications providing for the use of plant species and construction techniques that provide quality fish and wildlife benefits.

8400.3400 [Emergency] ELIGIBLE LAND.

Land may be enrolled in the RIM reserve program if the land:

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A. is marginal agricultural land, or is adjacent to marginal agricultural land that is being enrolled if enrollment of the adjacent land is beneficial to resource protection or necessary for efficient recording of the land description and if at least 50 percent of the total proposed acreage is marginal agricultural land;

B. was in agricultural crop production or rotation pasture for at least two years during the period 1981 to 1985;

C. was owned by the applicant on January 1, 1985, or for an application made on or after January 1, 1988, was owned by the applicant for at least three years before the date of application;

D. is at least five acres in size, or is a whole field as defined by the Agricultural Stabilization and Conservation Service;

E. is not currently set-aside, enrolled, or diverted under another federal or state government program including, but not limited to, Federal Conservation Reserve, Federal Production Adjustment Set-Aside, or state or federal Water Bank;

F. is physically possible to crop; and

G. as enrolled does not exceed 20 percent of the landowner's total acreage of agricultural property in the state.

8400.3500 [Emergency] CONSERVATION EASEMENTS.

A district board may acquire, on behalf of the commissioner and state, conservation easements on eligible land. An easement may be permanent or for ten years. By signing an agreement, a landowner agrees:

A. to convey to the state a conservation easement that is not subject to any prior title, lien, or encumbrance;

B. to seed the land subject to the conservation easement contained in the agreement, to establish and maintain permanent cover of either a grass-legume mixture or native grasses for the term of the easement, at seeding rates determined by the state board, or to plant trees or install supporting practices required due to site conditions for soil

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and water conservation or wildlife management in parts 8400.5200 to 8400.5600 [Emergency];

C. that other noncrop or permanent pasture land supporting natural vegetation owned or leased as part of the same farm operation during the term of the easement will not be converted to agricultural crop production or pasture as specified in part 8400.4900 [Emergency];

D. to the enforcement of the maintenance provisions in part 8400.4700 [Emergency];

E. not to alter wildlife habitat and other natural features of the land, unless specifically approved by the state board;

F. to refrain from agricultural crop production, unless specifically approved by the district for wildlife management purposes such as food plots;

G. to prohibit grazing of livestock unless approved by the commissioner, after consultation with the commissioner of natural resources, in the case of severe drought or a local emergency;

H. to prohibit spraying with chemicals or mowing, except as necessary to comply with state and county noxious weed control laws, for emergency control of pests necessary to protect public health, or to maintain permanent vegetative cover as approved by the district; and

I. to allow maintenance of public drainage systems. The activities must not damage the conservation purpose of the easement area. In addition, any authorization granted by the district must provide that the easement area be restored to the condition required by the terms of the conservation easement.

8400.3600 [Emergency] ALLOCATION OF FUNDS.

The state board shall authorize a district board to obligate funds based on the following factors:

A. the extent of marginal agricultural land in the district; and

B. the need for soil erosion or sediment control,

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protection or improvement of water quality, or improvement of fish and wildlife habitat.

The state board may also consider the expressed interest of landowners and the readiness of the district board and cooperating groups and agencies to implement the program.

The state board may increase or decrease its obligation as necessary to maximize the use of funds among districts, and may require enrollment periods.

8400.3700 [Emergency] ADMINISTRATION OF FUNDS.

Following authorization to obligate funds from the state board, a district is responsible for administration of the funds in accordance with Minnesota Statutes, chapter 40 and other applicable laws. The district board may make decisions concerning use of these funds in accordance with parts 8400.3000 to 8400.5600 [Emergency].

As a condition to participating in the program, the district shall ensure compliance with the maintenance provisions of part 8400.4700 [Emergency] and Minnesota Statutes, chapter 40 by monitoring easements in a manner prescribed by the state board.

Before considering any requests from landowners, the district board shall establish a screening committee. Then, in cooperation with the screening committee, local priority areas must be established. In addition, administrative procedures necessary to efficiently implement the program must be developed. Priority areas must 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. the potential of the land for fish and wildlife production, reducing erosion, and protecting water quality;

C. advice of technical experts familiar with the district;

D. priorities as established by the district in

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consultation with other members of the screening committee;

E. current programs administered by the Agricultural Stabilization and Conservation Service, the Fish and Wildlife Service, and the Department of Natural Resources; and

F. RIM reserve program funds available.

8400.3800 [Emergency] APPLICATION FOR FUNDS BY LANDOWNERS.

Landowners interested in participating in the RIM reserve program shall apply to the districts on forms provided by the state board and available from the district office. An application must be filled out in its entirety. A district technician is then responsible for making a determination of easement eligibility and a cost estimate to establish permanent vegetative cover and, if necessary, supporting practices. Actual determination of need and a cost estimate may be done by district-approved representatives from other agencies. Additional information that may be required by the district board in its consideration of the application must be included.

8400.3900 [Emergency] LAND IN MORE THAN ONE DISTRICT.

If a request involves land in more than one district, application must be made to each district containing proposed land. The affected districts must cooperate to ensure a consistent and timely review of the proposed lands.

8400.4000 [Emergency] CRITERIA FOR DISTRICT BOARD REVIEW.

The criteria for district board review are listed in this part.

A. The applicant must be a district cooperator.

B. The practices needed to establish permanent vegetative cover must be on the list of approved practices.

C. The primary purpose of the requested easement must be the control of soil erosion or sedimentation, the protection or improvement of water quality, or the improvement of fish and wildlife habitat. In cases where the primary purpose is questionable, the district board in cooperation with the screening committee shall make a determination of the

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acceptability of the application.

D. The requested easement and vegetative practices must be consistent with local plans and priorities.

E. The easement must be maintained by the landowner, who is responsible for operation and maintenance of vegetative and other supporting practices applied under this program.

F. The practice must comply with the technical requirements of the Field Office Technical Guide. Technical review must be completed by a district technician or Soil Conservation Service employee who has applicable job approval authority or by district-approved representatives from other agencies.

8400.4100 [Emergency] DISTRICT APPROVAL.

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 chair or acting chair to sign the application. Once it is signed, the application becomes an agreement between the state and landowner and serves as the authorization to begin establishing vegetative cover and, if required, other supporting practices. In addition, district approval obligates payment for the easement and vegetative cover establishment, provided the landowner complies with parts 8400.3000 to 8400.5600 [Emergency]. Practices begun before district approval are ineligible for financial assistance. The requirements for vegetative cover establishment and maintenance must be specified in a plan prepared by the district technician or district-approved representatives from other agencies. If an application is denied, the district board shall notify the landowner in writing within 30 days after district board action of the reason for denial of the application. Changes in any provisions of the agreement are subject to review and approval by the district board.

8400.4200 [Emergency] CONSERVATION EASEMENT PAYMENTS.

After approval of an application, easement documents

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provided by the state board must be completed by the district. Once completed, the easement is considered conveyed. Upon conveyance, the following easement payments must be made:

A. for a permanent easement, 70 percent of the township average equalized estimated market value of agricultural property as established by the commissioner of revenue when the easement is conveyed; and

B. for a ten-year easement, 90 percent of the present value of the average of the acceptable bids for the Federal Conservation Reserve Program in the relevant geographic area and on bids made immediately before the easement is conveyed. The commissioner shall establish, at least annually, the discount rate to be used for calculating present value. If federal bid figures have not been determined for the area or the federal program has been discontinued, the rate must be determined by the state board.

8400.4300 [Emergency] ESTABLISHMENT OF VEGETATIVE PRACTICES.

Subpart 1. **Installation of practices.** Establishment of vegetative practices must be monitored by the district board to ensure compliance with part 8400.4000 [Emergency], item F. Upon completion, a district technician shall certify whether or not the practice has been satisfactorily performed, including certification that the practice meets the requirements of part 8400.4000 [Emergency], item F. No certification may be made until all specifications have been satisfied. Exceptions must be in accordance with subpart 4. Upon certification of completion, the landowner shall contact the district for payment and present documentation of the 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 landowner including, but not limited to, earthwork, seedbed preparation, and seeding, may be credited to the landowner's share of the total cost of the practice. The district board shall determine whether charges for in-kind services are practical and reasonable.

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Subp. 3. **Actual cost differing from estimated cost.** If the actual cost of a practice exceeds the estimated cost, the district may only authorize payment of the approved rate unless an amendment to the vegetative cover agreement has been approved. Because of extreme circumstances including, but not limited to, weather or 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 district board in advance of completion of the work with an amendment to the vegetative cover agreement covering the changes. Amendments may not be authorized for providing final payments in excess of the maximum rate established in subpart 5. Amendments may not be authorized after final approval of payment has been made on the original agreement. If the actual cost is less than the estimated cost, the district shall only authorize payment of the actual cost of the practice. The district board shall review the receipts or invoices provided by the landowner to determine the actual cost of the practice. If the district determines that the claims are practical and reasonable, it shall authorize payment. Payments may not exceed the rates established in subpart 5. If the district board determines that certain claims are not justified, it shall notify the landowner in writing of the unjustified claims within 30 days. The district board shall then authorize the issuance of a check for the justified claims.

Subp. 4. **Partial payment.** If weather, unanticipated circumstances beyond the control of the land occupier, or management considerations such as dormant seedings force postponement of certification of completion, 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 not cause unreasonable delays in establishing vegetative cover.

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B. The completed work meets the requirements of part 8400.4000 [Emergency], item F.

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

Subp. 5. **Payment conditions.** If the state board or its authorized representative authorizes a partial payment under subpart 4, the following conditions apply:

A. Payment rates must comply with this subpart.

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

C. Expenses incurred in correcting damage caused to the project by virtue of its incompletion must be borne by the landowner.

D. Landowners receiving partial payments must complete the project within a time considered reasonable by the district board.

E. Landowners not completing partially-paid projects are in violation of part 8400.4700 [Emergency] and must be directed to return the amount of financial assistance received plus interest.

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

Subp. 6. **Denial.** If the state board or its authorized representative denies a request for partial payment under subpart 4, the district board must be notified within 30 days of the reasons for denial of the request.

Subp. 7. **Payments for establishment of vegetative cover.** After certification by an assigned district technician that permanent vegetative cover is established, the district shall notify the state board to make the following payments to the landowner:

A. to establish the permanent cover or supporting practices required by the agreement, the actual cost up to $75 per acre; and

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B. for the cost of planting trees required by the agreement, the actual cost up to $75 per acre;

Payments for establishing permanent cover, trees, or other improvements are limited to the actual cost, up to $75 per acre. Supporting practices must be required by the vegetative cover agreement. These include practices or components of practices listed in parts 8400.5200 to 8400.5600 [Emergency]. Supporting practices must be installed in conjunction with permanent cover or trees. If trees are combined with a cover practice, payments increase to a combined actual cost up to $150 per acre, or up to $75 per acre each for trees and cover.

RIM reserve payments may be supplemented by funds from other programs or organizations, including sportsmen's groups or state or federal cost-share programs. Requirements for supplementing payments must be determined by the contributing agency or group.

8400.4400 [Emergency] MAXIMUM PAYMENT.

The state board may not pay more than $50,000 annually to a landowner for the landowner's vegetative cover agreements and conservation easements. The district shall record the easement document with the county recorder.

8400.4500 [Emergency] DISTRICT RECORDS.

The district shall maintain a current ledger of vegetative cover agreements and easements on forms provided by the state board. The ledger must specify the landowners with whom the district has developed agreements, the soil mapping units of enrolled land, the vegetative practices involved, the status of vegetative establishment, the total of funds obligated and spent, the size and type of easements, and their effective date. Recording must be done, to the extent possible, in a manner compatible with the needs of cooperating agencies and groups. In addition, the location of easements must be recorded on base maps provided by the Land Management Information Center of the State Planning Agency to facilitate entry into a state data base.

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8400.4600 [Emergency] EASEMENT RENEWAL.

When a ten-year conservation easement expires, a new permanent or ten-year conservation easement may be acquired by written concurrence of the district and the landowner. The district may recommend that the state board adjust payment rates as a result of renewing a ten-year conservation easement only after examining the condition of the established cover, supporting practices, and land values.

8400.4700 [Emergency] MAINTENANCE.

A landowner is responsible for operation and maintenance of vegetative and supporting practices applied under this program and ensuring that easement restrictions in parts 8400.3500 [Emergency] and 8400.4900 [Emergency] are followed to ensure that the easements conservation objective is met and the effective life of ten or more years is achieved.

Should the landowner fail to install or maintain the practices or comply with easement restrictions during their effective life, the landowner may be subject to:

A. damages up to the amount of financial assistance received for practice installation and easement payment plus interest accrued from the date of nonmaintenance determination;

B. a mandatory court-imposed injunction; or

C. other actions directed at correcting the maintenance violation. The district board, in consultation with the state board and legal counsel, shall determine how maintenance violations must be corrected. Easements remain in effect even if maintenance violations have occurred.

The landowner is not liable for financial assistance received if the failure was caused by reasons beyond the landowner's control; in those instances, the district may authorize payment for the repair. Payments for repair must comply with part 8400.4300 [Emergency]. In no case may a district provide financial assistance to a landowner for the reapplication of vegetative or supporting practices that were removed or altered by the landowner during their effective life

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or failed due to improper maintenance.

8400.4800 [Emergency] MONITORING.

The state board may require reports from the district to monitor the progress of the RIM reserve program and the use of funds. The reports must be on forms provided by the state board.

8400.4900 [Emergency] NONCROPLAND CONVERSION.

From approval of vegetative cover agreements until the end of the easement, land supporting natural vegetation, including, but not limited to, trees, shrubs, permanent pasture, range, or wetland, must not be converted to cropland. This restriction applies to all land owned or leased as part of the landowner's farm operation.

8400.5000 [Emergency] APPEALS.

If a landowner feels unfairly treated, the landowner may request that the district board review its decision. Should the landowner and the district board reach an impasse, the landowner may petition in writing for a hearing before the state board. If it grants the hearing, which must 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 the 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.

8400.5100 [Emergency] VARIANCES.

If a district board feels that a particular requirement of part 8400.3400 [Emergency] prevents a RIM reserve program application from being funded, 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 chair;

B. the nature of the variance being sought, including

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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 funding 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 of the state board at least 30 days before 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 must not be granted if it is in conflict with any statute. The state board may grant a variance upon conditions it prescribes.

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, must comply with this part.

8400.5200 [Emergency] APPROVED PRACTICE: STRUCTURES.

Subpart 1. **Definition.** For the purpose of this part, "structure" includes, but is not limited to, floodwater retarding dams, levees, or drain tile plugs designed to provide temporary storage of floodwater, control the release rate of water providing downstream channel stability, impound water, or restore or create wetland areas. Structures are supporting practices.

Subp. 2. **Purpose.** The purpose of structures is to permit the establishment of vegetative cover, control soil erosion, protect or improve water quality, or create or improve wildlife habitat. An erosion control structure may provide multiple benefits including, but not limited to, recreation, flood

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control, and channel stability.

Subp. 3. **Applicability.** Structures may be used on enrolled lands where they are necessary to permit establishment of vegetative cover, for the control of soil erosion, water quality protection or improvement, or creation or enhancement of wildlife habitat. Structures may also be installed on nonenrolled lands if necessary to enhance or protect enrolled lands.

Subp. 4. **Policies.** Funding is authorized:

A. only for the construction of structures that provide for reduction of soil erosion, water quality protection or improvement, or creation or enhancement of wildlife habitat;

B. for permanent fencing of a structure as determined by the district board;

C. for tree and shrub plantings adjacent to the structure and seeding necessary to stabilize the structure and adjacent critical areas, including, when possible, the use of those species that provide quality wildlife habitat;

D. for structures that provide multiple benefits if the primary benefit is soil erosion control, water quality protection or improvement, or creation or improvement of wildlife habitat; and

E. for temporary materials and seedings necessary to properly stabilize the structure during construction.

8400.5300 [Emergency] APPROVED PRACTICE: DIVERSIONS.

Subpart 1. **Definition.** For purposes of this part, "diversion" means a channel with a supporting ridge on the lower side constructed across the slope. Diversions are supporting practices.

Subp. 2. **Purpose.** The purpose of a diversion is to permit the establishment of vegetative cover or divert water away from erosive areas or areas that pose a threat to water quality 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:

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A. runoff from higher areas is eroding enrolled lands or is needed to establish vegetative cover; or

B. surface and shallow subsurface flow is damaging sloping enrolled lands or contaminating ground or surface water.

Diversions may be installed on nonenrolled lands if necessary to enhance or protect enrolled lands.

Subp. 4. **Policies.** Funding 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.

8400.5400 [Emergency] APPROVED PRACTICE: STORMWATER CONTROL SYSTEMS.

Subpart 1. **Definition.** For purposes of this part, "stormwater control system" means a practice or system of practices including, but not limited to, grassed waterways 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. Stormwater control systems are supporting practices.

Subp. 2. **Purpose.** The purpose of a stormwater control system is to permit the establishment of vegetative cover, 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 enrolled lands by using vegetative or structural measures for control of erosion or protection or improvement of water quality. Stormwater control systems may also be installed

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on nonenrolled lands if necessary to protect enrolled lands.

Subp. 4. **Policies.** Funding is authorized:

A. for the construction of practices required in a complete stormwater control system, including, but not limited to, a lined waterway or outlet, detention ponds, permanent sod cover, and permanent vegetation including trees, shrubs, and grasses;

B. for tile systems necessary for the establishment and operation of stormwater control systems;

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

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

8400.5500 [Emergency] APPROVED PRACTICE: FIELD WINDBREAKS.

Subpart 1. **Definitions.** For purposes of this part, "field windbreak" means a strip or belt of trees or shrubs 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 creation of wildlife habitat, 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 that need protection against wind erosion. Additional benefits may be realized from the creation of wildlife habitat.

Subp. 4. **Policies.** Funding is authorized:

A. for field windbreaks if the inter-windbreak area is established in permanent vegetative cover at the time the windbreak is established; and

B. for site preparation, planting materials, planting, chemicals for weed control, and other applicable costs necessary to establish a field windbreak.

The landowner is responsible for controlling competitive

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vegetation for two years following planting and must bear the cost of control. Tree planting must not conflict with existing electrical lines, telephone lines, rights-of-way, or drainage systems.

8400.5600 [Emergency] APPROVED PRACTICE: ESTABLISHMENT OF PERMANENT VEGETATIVE COVER.

Subpart 1. **Definition.** For purposes of this part, "permanent vegetative cover" means planting permanent vegetation on enrolled lands, including trees, shrubs, vines, grasses, and legumes.

Subp. 2. **Purpose.** The purpose of permanent vegetative cover is to control soil erosion, protect or improve water quality, or create or improve wildlife habitat.

Subp. 3. **Applicability.** Permanent vegetative cover may be used on enrolled lands if vegetation is needed to control soil erosion, protect or improve water quality, or create or improve wildlife habitat.

Subp. 4. **Policies.** Funding 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.

Subp. 5. **Conflicts.** Tree planting must not conflict with existing electrical lines, telephone lines, rights-of-way, or drainage systems.

APPROVED IN THE
REVISOR OF STATUTES
OFFICE BY:

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Emergency Rules Relating to the Reinvest In Minnesota Program

AGENCY: Department of Agriculture

MINNESOTA RULES: Chapter 8400

INCORPORATION BY REFERENCE:

Rule Number: Part 8400.3100 [Emergency] Subpart 2

Material Incorporated: Guidelines for Soil and Water Conservation District Comprehensive and Annual Plans

The attached rules are approved for publication in the State Register

Craig E. Lindeke
Senior Assistant Revisor

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

In the Matter of the Proposed Adoption of Emergency Rules of the Soil and Water Conservation Board Governing the Reinvest in Minnesota Conservation Reserve Program (Minnesota Rules pts. 1650.0100-1650.2700)

ORDER ADOPTING EMERGENCY RULES

The above-entitled matter was published in the State Register on June 30, 1986, as proposed emergency rules pursuant to Minnesota Statutes section 14.30. After affording interested and affected persons an opportunity to submit written data and views for at least 25 days after the publication date, reviewing and considering the data and views, and determining that the above-captioned rules are needed and reasonable.

NOW THEREFORE, IT IS ORDERED that these rules identified as the Emergency Rules Governing the Reinvest in Minnesota Conservation Reserve Program are adopted this 29th day of July, 1986 pursuant to authority vested in me by Laws of Minnesota 1986, chapter 383, section 6.

STATE OF MINNESOTA

Ron Nargang

Ron Nargang, Director
Soil and Water
Conservation Board

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE -

SOIL AND WATER CONSERVATION BOARD

In the Matter of the Proposed Adoption of Emergency Rules Governing the Reinvest in Minnesota Conservation Reserve Program (MN Rules Pts. 1650.0100-1650.2700)

ORDER FOR PUBLICATION OF EMERGENCY RULES

IT IS ORDERED this 16 day of June, 1986, that the proposed emergency rules in the above-entitled matter be published in the State Register.

STATE OF MINNESOTA

Ronald Nargang

Ron Nargang
Director
Soil and Water Conservation Board

CERTIFICATE OF BOARD'S
AUTHORIZING RESOLUTION

I, Wally Bernhardson, 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 April, 1986, 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 Ron Nargang, Director 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 of Soil and Water Conservation directing the publication in the State Register of proposed emergency rules governing the Reinvest in Minnesota Conservation Reserve Program as well as perform any and all acts incidental thereto.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 8th day of April, 1986.

Wally Bernhardson
Chairman of the Board

John A. Williamson
Attest by one other Board member

Department of Agriculture

Soil and Water Conservation Board

In the Matter of the Proposed Emergency Rules Governing the Reinvest in Minnesota Conservation Reserve Program

Notice of Intent to Adopt Emergency Rules

Notice is hereby given that the Minnesota Department of Agriculture and the Soil and Water Conservation Board propose to adopt the above entitled emergency rules. The Board will follow the procedures set forth in Minnesota Statutes, sections 14.29-14.36 in adopting these rules.

Persons interested in these emergency rules shall have 25 days from the date the rules are published in the State Register to submit comments on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the department.

Persons who wish to submit oral or written comments should submit the comments to: Carol Milligan, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, Minnesota 55107, (612) 296-6906.

Authority to adopt this rule is contained in Laws of Minnesota 1986, chapter 383, section 6. The Commissioner is authorized by this section to adopt emergency rules to implement the Reinvest in Minnesota Conservation Reserve Program. The program is intended to provide for conservation easements to keep marginal, highly erodable agricultural land out of production and to reestablish a perennial vegetation cover.

Upon adoption of the emergency rules, this Notice, all written comments received, and the emergency Rules as Adopted, will be delivered to the Attorney General for review as to form and legality.

One free copy of this Notice and the proposed emergency rules may be obtained by contacting Ms. Milligan. Persons who wish to be notified by mail that the proposed emergency rule has been submitted to the Attorney General or who wish to receive a copy of the emergency rule as adopted should also contact Ms. Milligan.

STATE OF MINNESOTA

Date: 6/9/84

Ron Nargang
Director, Soil and Water
Conservation Board

rule was attached per phone call w/ Carol Milligan on 8-6-85

In the Matter of the Proposed Adoption of Emergency
Rules of the Department of Agriculture
Governing the Reinvest in Minnesota
Conservation Reserve Program
(Minnesota Rules pts. 1650.0100-1650.2700)

AFFIDAVIT OF
MAILING

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

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

That on the 25th day of June, 1986, 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.

Marie Skerbitz

Subscribed and sworn to before me
this 25th day of June, 1986.

Diane M. Windham

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

STATE OF MINNESOTA

COUNTY OF RAMSEY

CERTIFICATE

In the Matter of the Proposed Adoption of
Emergency Rules of the Department of Agriculture
Governing the Reinvest in Minnesota
Conservation Reserve Program
(Minnesota Rules pts. 1650.0100-1650.2700)

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minn. Stat. § 14.14, subd. 1a, 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 10:00 a.m., this 25th day of June, 1986.

Carol Milligan

Department of Agriculture

Proposed Emergency Rules Relating to the Reinvest In Minnesota Program

Notice of Intent to Adopt Emergency Rules

Notice is hereby given that the Minnesota Department of Agriculture and the Soil and Water Conservation Board propose to adopt the above entitled emergency rules. The Board will follow the procedures set forth in Minnesota Statutes, sections 14.29-14.36 in adopting these rules.

Persons interested in these emergency rules shall have 25 days from the date the rules are published in the *State Register* to submit comments on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the department.

Persons who wish to submit oral or written comments should submit the comments to: Carol Milligan, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, Minnesota 55107, (612) 296-6906.

Authority to adopt this rule is contained in Laws of Minnesota 1986, chapter 383, section 6. The Commissioner is authorized by this section to adopt emergency rules to implement the Reinvest in Minnesota Conservation Reserve Program. The program is intended to provide for conservation easements to keep marginal, highly erodable agricultural land out of production and to re-establish a perennial vegetation cover.

Upon adoption of the emergency rules, this Notice, all written comments received, and the emergency Rules as Adopted, will be delivered to the Attorney General for review as to form and legality.

One free copy of this Notice and the proposed emergency rules may be obtained by contacting Ms. Milligan. Persons who wish to be notified by mail that the proposed emergency rule has been submitted to the Attorney General or who wish to receive a copy of the emergency rule as adopted should also contact Ms. Milligan.

9 June 1986

Ron Nargang, Director
Soil and Water Conservation Board

Rules as Proposed (all new material)

SOIL AND WATER CONSERVATION BOARD

RIM RESERVE PROGRAM

8400.3000 [Emergency] AUTHORITY.

Minnesota Statutes, chapter 40, authorizes the state board, in cooperation with the districts, state and local private groups, and state and federal agencies, to administer a program of retiring marginal agricultural land from crop production and establishing on those lands permanent vegetative cover. Parts 8400.3000 to 8400.5600 [Emergency] provide procedures and criteria to be followed by the state board in allocating funds to districts and standards and guidelines that the district boards shall use in allocating funds to landowners.

8400.3100 [Emergency] DEFINITIONS.

Subpart 1. **Scope.** For purposes of parts 8400.3000 to 8400.5600 [Emergency], the definitions in this part, in addition to those in Minnesota Statutes, chapter 40, apply.

Subp. 2. **Agricultural crop production.** "Agricultural crop production" means an agricultural activity devoted to the production of horticultural, row, close grown, rotation pasture, or hayland crops.

Subp. 3. **Agricultural property.** "Agricultural property" means land devoted to farming, exclusive of buildings.

Subp. 4. **Agricultural Stabilization and Conservation Service.** "Agricultural Stabilization and Conservation Service" means the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture.

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. 5. **Annual plan.** "Annual plan" means a plan prepared by the district under 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. 6. **Approved practice.** "Approved practice" means a soil and water conservation practice that qualifies for RIM reserve program funding and that has been approved by the state board.

Subp. 7. **Authorized farm corporation.** "Authorized farm corporation" means a corporation meeting the following standards:

A. it has no more than five shareholders;

B. its shareholders, other than any estate, are natural persons;

C. it has no more than one class of shares;

D. its revenue from rent, royalties, dividends, interest, and annuities does not exceed 20 percent of its gross receipts; and

E. shareholders holding a majority of its shares reside on the farm or are actively engaged in farming.

Subp. 8. **Commissioner.** "Commissioner" means the commissioner of agriculture.

Subp. 9. **Conservation easement, easement.** "Conservation easement" or "easement" means a nonpossessory interest of a holder in real property imposing limitations or affirmative obligations the purposes of which include keeping or protecting natural, scenic, or open-space values of real property, assuring its availability for agricultural, forest, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property. Public access must be controlled by the landowner.

Subp. 10. **Converted wetland.** "Converted wetland" means wetland that has been drained, dredged, filled, leveled, or otherwise sufficiently manipulated since approval of an easement to render the land suitable for agricultural crop production.

Subp. 11. **Cropland.** "Cropland" means an area devoted to agricultural crop production.

Subp. 12. **District.** "District" means a soil and water conservation district organized under Minnesota Statutes, chapter 40.

Subp. 13. **District board.** "District board" means the five supervisors of a district authorized to carry out the functions of the district.

Subp. 14. **District cooperator.** "District cooperator" means a landowner 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 on a form provided by the state board and approved by the district board.

Subp. 15. **District technician.** "District technician" means a district employee or other nonfederal employee assigned to the district who has expertise in the design and application of soil and water conservation practices.

Subp. 16. **Enduring practice.** "Enduring practice" means a soil and water conservation practice that is designed for an effective life of ten years or more.

Subp. 17. **Family farm.** "Family farm" means an unincorporated farming unit owned by one or more persons residing on the farm or actively engaging in farming.

Subp. 18. **Family farm corporation.** "Family farm corporation" means a corporation founded to farm and to own agricultural land, the majority of the voting stock of which is held by and the majority of the stockholders of which are persons or the spouses of persons related to each other within the third degree of kindred according to the rules of civil law, at least one of the stockholders of which is residing on or actively operating the farm, and none of whose stockholders are corporations. A family farm corporation does not cease to qualify because of a devise or bequest of shares of voting stock.

Subp. 19. **Farm operation.** "Farm operation" means property owned or leased by the landowner that is associated with farming.

Subp. 20. **Farming.** "Farming" means the production of (1) agricultural products; (2) livestock or livestock products; (3) milk or milk products; or (4) fruit or other horticultural products. It does not include processing, refining, or packaging the products, providing spraying or harvesting services, or producing timber, forest products, or poultry products.

Subp. 21. **Field Office Technical Guide.** "Field Office Technical Guide" has the meaning given in part 8400.0100, subpart 15.

Subp. 22. **Fish and Wildlife Service.** "Fish and Wildlife Service" means the Fish and Wildlife Service of the United States Department of the Interior.

Subp. 23. **Hydric soil.** "Hydric soil" means a soil in its natural undrained condition that is saturated at or near the surface or flooded frequently during much of the growing season, and that can support hydrophytic vegetation. A list of hydric soils may be found in the Field Office Technical Guide.

Subp. 24. **Hydrophytic vegetation.** "Hydrophytic vegetation" means herbaceous or woody plants that grow in water, in wet or saturated soils, or in soils that are at least periodically deficient in oxygen as a result of excess water.

Subp. 25. **Inherently unproductive.** "Inherently unproductive" means that the soil properties of available water capacity, bulk density, and pH in the uppermost 100 centimeters (39 inches) of a soil, are present so that an unfavorable rooting environment exists for agronomic crops.

Subp. 26. **Landowner.** "Landowner" means a Minnesota resident who owns or is a buyer under contract for deed, of land that qualifies as a family farm, a family farm corporation, or an authorized farm corporation.

Subp. 27. **Local emergency.** "Local emergency" means an emergency declared under Minnesota Statutes, section 12.29. The commissioner, after consulting with the commissioner of natural resources, must concur with a decision to declare a local emergency that affects easement provisions.

Subp. 28. **Marginal agricultural land.** "Marginal agricultural land" means land with cropland soils that are inherently unproductive for agricultural crop production and subject to significant potential soil productivity loss from erosion. The state board shall provide districts with a list of soils indicative of marginal agricultural land. Districts may add to or delete soils from the list as necessary to reflect local soil characteristics. Changes must be approved by the state board.

Subp. 29. **Natural vegetation.** "Natural vegetation" means plant species including, but not limited to, grasses, trees, shrubs, or hydrophytic vegetation that form an area's noncultivated plant community, excluding the area immediately adjacent to buildings.

Subp. 30. **Nonproduction practice.** "Nonproduction practice" means a soil and water conservation practice that is installed or applied to control soil erosion or sedimentation, protect or improve water quality, or create or enhance wildlife habitat. Practices installed or applied primarily to bring land into production or to increase short-term productivity are not nonproduction practices.

Subp. 31. **Permanent pasture.** "Permanent pasture" means an area of forage species, harvested by grazing, that has not been cultivated within the last ten years. These areas are not considered to be in agricultural crop production.

Subp. 32. **Protected water.** "Protected water" means 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 wetlands inventory map available in the county auditor's office.

Subp. 33. **Range.** "Range" means an area supporting an understory or periodic cover of herbaceous or shrubby plants suitable for grazing that has not been cultivated within the last ten years.

Subp. 34. **Relevant geographic area.** "Relevant geographic area" is an area established by the state board to minimize discrepancies in Federal Conservation Reserve Program bid values across county lines.

Subp. 35. **RIM reserve program.** "RIM reserve program" means the reinvest in Minnesota resources conservation reserve program established in Laws 1986, chapter 383, section 4.

Subp. 36. **Rotation pasture.** "Rotation pasture" means a cultivated or interseeded area devoted to the production of forage consisting of introduced or native species, and harvested by grazing. These areas are managed in a rotation of row crops or small grains and are considered to be in agricultural crop production. Areas of permanent pasture are excluded.

Subp. 37. **Screening committee.** "Screening committee" means a group established and chaired by a district, composed of representatives of private, state, and local organizations or clubs, and state and federal agencies with an interest in the RIM reserve program. A screening committee must include representatives of the Department of Natural Resources, the Pollution Control Agency, the Agricultural Stabilization and Conservation Service, the Fish and Wildlife Service, and the Soil Conservation Service.

Subp. 38. **Significant potential soil productivity loss.** "Significant potential soil productivity loss" means that soil productivity loss due to erosion may occur in a short time unless management measures are initiated to control soil erosion. The method of calculation combines the rating of a soil as a rooting environment with landscape characteristics that represent erosion potential.

Subp. 39. **Soil and water conservation practice.** "Soil and water conservation practice" means structural or vegetative practices applied to land to control soil erosion, sediment, or other water pollutants.

Subp. 40. **Soil Conservation Service.** "Soil Conservation Service" means the Soil Conservation Service of the United States Department of Agriculture.

Subp. 41. **Soil mapping unit.** "Soil mapping unit" means a kind of soil or combination of soils shown at the scale of mapping for the defined purposes and objectives of a soil survey.

Subp. 42. **State board.** "State board" means the State Soil and Water Conservation Board created under Minnesota Statutes, section 40.03.

Subp. 43. **Wetland.** "Wetland" means land that has a predominance of hydric soils and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, or that periodically does support, a predominance of hydrophytic

vegetation typically adapted for life in saturated soil conditions. Wetland does not include converted wetlands as defined by subpart 10 and prohibited by part 8400.4900 [Emergency].

8400.3200 [Emergency] ESTABLISHING APPROVED VEGETATIVE AND SUPPORTING PRACTICES.

The state board, in consultation with the districts and state and federal agencies, shall develop a list of practices that are eligible for RIM reserve program funds and a schedule of maximum rates. The list is contained in parts 8400.5200 to 8400.5600 [Emergency] and the schedule in part 8400.4300 [Emergency]. Changes to the list and schedule must be made under Minnesota Statutes, chapter 14.

8400.3300 [Emergency] CRITERIA FOR APPROVED PRACTICES.

Practices approved by the state board must be enduring in nature and have as their primary purpose the control of soil erosion or sedimentation, protection or improvement of water quality, or creation or improvement of wildlife habitat. Practices cost-shared under this program must be designed for a minimum effective life of ten years, be nonproduction practices, and have specifications providing for the use of plant species and construction techniques that provide quality fish and wildlife benefits.

8400.3400 [Emergency] ELIGIBLE LAND.

Land may be enrolled in the RIM reserve program if the land:

A. is marginal agricultural land, or is adjacent to marginal agricultural land that is being enrolled if enrollment of the adjacent land is beneficial to resource protection or necessary for efficient recording of the land description and if at least 50 percent of the total proposed acreage is marginal agricultural land;

B. was in agricultural crop production or rotation pasture for at least two years during the period 1981 to 1985;

C. was owned by the applicant on January 1, 1985, or for an application made on or after January 1, 1988, was owned by the applicant for at least three years before the date of application;

D. is at least five acres in size, or is a whole field as defined by the Agricultural Stabilization and Conservation Service;

E. is not currently set-aside, enrolled, or diverted under another federal or state government program including, but not limited to, Federal Conservation Reserve, Federal Production Adjustment Set-Aside, or state or federal Water Bank;

F. is physically possible to crop; and

G. as enrolled does not exceed 20 percent of the landowner's total acreage of agricultural property in the state.

8400.3500 [Emergency] CONSERVATION EASEMENTS.

A district board may acquire, on behalf of the commissioner and state, conservation easements on eligible land. An easement may be permanent or for ten years. By signing an agreement, a landowner agrees:

A. to convey to the state a conservation easement that is not subject to any prior title, lien, or encumbrance;

B. to seed the land subject to the conservation easement contained in the agreement, to establish and maintain permanent cover of either a grass-legume mixture or native grasses for the term of the easement, at seeding rates determined by the state board, or to plant trees or install supporting practices required due to site conditions for soil and water conservation or wildlife management in parts 8400.5200 to 8400.5600 [Emergency];

C. that other noncrop or permanent pasture land supporting natural vegetation owned or leased as part of the same farm operation during the term of the easement will not be converted to agricultural crop production or pasture as specified in part 8400.4900 [Emergency];

D. to the enforcement of the maintenance provisions in part 8400.4700 [Emergency];

E. not to alter wildlife habitat and other natural features of the land, unless specifically approved by the state board;

F. to refrain from agricultural crop production, unless specifically approved by the district for wildlife management purposes such as food plots;

G. to prohibit grazing of livestock unless approved by the commissioner, after consultation with the commissioner of natural resources, in the case of severe drought or a local emergency;

H. to prohibit spraying with chemicals or mowing, except as necessary to comply with state and county noxious weed control laws, for emergency control of pests necessary to protect public health, or to maintain permanent vegetative cover as approved by the district; and

I. to allow maintenance of public drainage systems. The activities must not damage the conservation purpose of the easement area. In addition, any authorization granted by the district must provide that the easement area be restored to the condition required by the terms of the conservation easement.

8400.3600 [Emergency] ALLOCATION OF FUNDS.

The state board shall authorize a district board to obligate funds based on the following factors:

A. the extent of marginal agricultural land in the district; and

B. the need for soil erosion or sediment control, protection or improvement of water quality, or improvement of fish and wildlife habitat.

The state board may also consider the expressed interest of landowners and the readiness of the district board and cooperating groups and agencies to implement the program.

The state board may increase or decrease its obligation as necessary to maximize the use of funds among districts, and may require enrollment periods.

8400.3700 [Emergency] ADMINISTRATION OF FUNDS.

Following authorization to obligate funds from the state board, a district is responsible for administration of the funds in accordance with Minnesota Statutes, chapter 40 and other applicable laws. The district board may make decisions concerning use of these funds in accordance with parts 8400.3000 to 8400.5600 [Emergency].

As a condition to participating in the program, the district shall ensure compliance with the maintenance provisions of part 8400.4700 [Emergency] and Minnesota Statutes, chapter 40 by monitoring easements in a manner prescribed by the state board.

Before considering any requests from landowners, the district board shall establish a screening committee. Then, in cooperation with the screening committee, local priority areas must be established. In addition, administrative procedures necessary to efficiently implement the program must be developed. Priority areas must 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. the potential of the land for fish and wildlife production, reducing erosion, and protecting water quality;

C. advice of technical experts familiar with the district;

D. priorities as established by the district in consultation with other members of the screening committee;

E. current programs administered by the Agricultural Stabilization and Conservation Service, the Fish and Wildlife Service, and the Department of Natural Resources; and

F. RIM reserve program funds available.

8400.3800 [Emergency] APPLICATION FOR FUNDS BY LANDOWNERS.

Landowners interested in participating in the RIM reserve program shall apply to the districts on forms provided by the state board and available from the district office. An application must be filled out in its entirety. A district technician is then responsible for making a determination of easement eligibility and a cost estimate to establish permanent vegetative cover and, if necessary, supporting practices. Actual determination of need and a cost estimate may be done by district-approved representatives from other agencies. Additional information that may be required by the district board in its consideration of the application must be included.

8400.3900 [Emergency] LAND IN MORE THAN ONE DISTRICT.

If a request involves land in more than one district, application must be made to each district containing proposed land. The affected districts must cooperate to ensure a consistent and timely review of the proposed lands.

8400.4000 [Emergency] CRITERIA FOR DISTRICT BOARD REVIEW.

The criteria for district board review are listed in this part.

A. The applicant must be a district cooperator.

B. The practices needed to establish permanent vegetative cover must be on the list of approved practices.

C. The primary purpose of the requested easement must be the control of soil erosion or sedimentation, the protection or improvement of water quality, or the improvement of fish and wildlife habitat. In cases where the primary purpose is questionable, the district board in cooperation with the screening committee shall make a determination of the acceptability of the application.

D. The requested easement and vegetative practices must be consistent with local plans and priorities.

E. The easement must be maintained by the landowner, who is responsible for operation and maintenance of vegetative and other supporting practices applied under this program.

F. The practice must comply with the technical requirements of the Field Office Technical Guide. Technical review must be

completed by a district technician or Soil Conservation Service employee who has applicable job approval authority or by district-approved representatives from other agencies.

8400.4100 [Emergency] DISTRICT APPROVAL.

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 chair or acting chair to sign the application. Once it is signed, the application becomes an agreement between the state and landowner and serves as the authorization to begin establishing vegetative cover and, if required, other supporting practices. In addition, district approval obligates payment for the easement and vegetative cover establishment, provided the landowner complies with parts 8400.3000 to 8400.5600 [Emergency]. Practices begun before district approval are ineligible for financial assistance. The requirements for vegetative cover establishment and maintenance must be specified in a plan prepared by the district technician or district-approved representatives from other agencies. If an application is denied, the district board shall notify the landowner in writing within 30 days after district board action of the reason for denial of the application. Changes in any provisions of the agreement are subject to review and approval by the district board.

8400.4200 [Emergency] CONSERVATION EASEMENT PAYMENTS.

After approval of an application, easement documents provided by the state board must be completed by the district. Once completed, the easement is considered conveyed. Upon conveyance, the following easement payments must be made:

A. for a permanent easement, 70 percent of the township average equalized estimated market value of agricultural property as established by the commissioner of revenue when the easement is conveyed; and

B. for a ten-year easement, 90 percent of the present value of the average of the acceptable bids for the Federal Conservation Reserve Program in the relevant geographic area and on bids made immediately before the easement is conveyed. The commissioner shall establish, at least annually, the discount rate to be used for calculating present value. If federal bid figures have not been determined for the area or the federal program has been discontinued, the rate must be determined by the state board.

8400.4300 [Emergency] ESTABLISHMENT OF VEGETATIVE PRACTICES.

Subpart 1. **Installation of practices.** Establishment of vegetative practices must be monitored by the district board to ensure compliance with part 8400.4000 [Emergency], item F. Upon completion, a district technician shall certify whether or not the practice has been satisfactorily performed, including certification that the practice meets the requirements of part 8400.4000 [Emergency], item F. No certification may be made until all specifications have been satisfied. Exceptions must be in accordance with subpart 4. Upon certification of completion, the landowner shall contact the district for payment and present documentation of the 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 landowner including, but not limited to, earthwork, seedbed preparation, and seeding, may be credited to the landowner'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.** If the actual cost of a practice exceeds the estimated cost, the district may only authorize payment of the approved rate unless an amendment to the vegetative cover agreement has been approved. Because of extreme circumstances including, but not limited to, weather or 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 district board in advance of completion of the work with an amendment to the vegetative cover agreement covering the changes. Amendments may not be authorized for providing final payments in excess of the maximum rate established in subpart 5. Amendments may not be authorized after final approval of payment has been made on the original agreement. If the actual cost is less than the estimated cost, the district shall only authorize payment of the actual cost of the practice. The district board shall review the receipts or invoices provided by the landowner to determine the actual cost of the practice. If the district determines that the claims are practical and reasonable, it shall authorize payment. Payments may not exceed the rates established in subpart 5. If the district board determines that certain claims are not justified, it shall notify the landowner in writing of the unjustified claims within 30 days. The district board shall then authorize the issuance of a check for the justified claims.

Subp. 4. **Partial payment.** If weather, unanticipated circumstances beyond the control of the land occupier, or management considerations such as dormant seedings force postponement of certification of completion, 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 not cause unreasonable delays in establishing vegetative cover.

B. The completed work meets the requirements of part 8400.4000 [Emergency], item F.

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

B. a mandatory court-imposed injunction; or

C. other actions directed at correcting the maintenance violation. The district board, in consultation with the state board and legal counsel, shall determine how maintenance violations must be corrected. Easements remain in effect even if maintenance violations have occurred.

The landowner is not liable for financial assistance received if the failure was caused by reasons beyond the landowner's control; in those instances, the district may authorize payment for the repair. Payments for repair must comply with part 8400.4300 [Emergency]. In no case may a district provide financial assistance to a landowner for the reapplication of vegetative or supporting practices that were removed or altered by the landowner during their effective life or failed due to improper maintenance.

8400.4800 [Emergency] MONITORING.

The state board may require reports from the district to monitor the progress of the RIM reserve program and the use of funds. The reports must be on forms provided by the state board.

8400.4900 [Emergency] NONCROPLAND CONVERSION.

From approval of vegetative cover agreements until the end of the easement, land supporting natural vegetation, including, but not limited to, trees, shrubs, permanent pasture, range, or wetland, must not be converted to cropland. This restriction applies to all land owned or leased as part of the landowner's farm operation.

8400.5000 [Emergency] APPEALS.

If a landowner feels unfairly treated, the landowner may request that the district board review its decision. Should the landowner and the district board reach an impasse, the landowner may petition in writing for a hearing before the state board. If it grants the hearing, which must 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 the 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.

8400.5100 [Emergency] VARIANCES.

If a district board feels that a particular requirement of part 8400.3400 [Emergency] prevents a RIM reserve program application from being funded, 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 chair;

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 funding 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 of the state board at least 30 days before 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 must not be granted if it is in conflict with any statute. The state board may grant a variance upon conditions it prescribes.

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, must comply with this part.

8400.5200 [Emergency] APPROVED PRACTICE: STRUCTURES.

Subpart 1. **Definition.** For the purpose of this part, "structure" includes, but is not limited to, floodwater retarding dams, levees, or drain tile plugs designed to provide temporary storage of floodwater, control the release rate of water providing downstream channel stability, impound water, or restore or create wetland areas. Structures are supporting practices.

Subp. 2. **Purpose.** The purpose of structures is to permit the establishment of vegetative cover, control soil erosion, protect or improve water quality, or create or improve wildlife habitat. An erosion control structure may provide multiple benefits including, but not limited to, recreation, flood control, and channel stability.

Subp. 3. **Applicability.** Structures may be used on enrolled lands where they are necessary to permit establishment of vegetative cover, for the control of soil erosion, water quality protection or improvement, or creation or enhancement of wildlife habitat. Structures may also be installed on nonenrolled lands if necessary to enhance or protect enrolled lands.

Subp. 4. **Policies.** Funding is authorized:

A. only for the construction of structures that provide for reduction of soil erosion, water quality protection or improvement, or creation or enhancement of wildlife habitat;

B. for permanent fencing of a structure as determined by the district board;

C. for tree and shrub plantings adjacent to the structure and seeding necessary to stabilize the structure and adjacent critical areas, including, when possible, the use of those species that provide quality wildlife habitat;

D. for structures that provide multiple benefits if the primary benefit is soil erosion control, water quality protection or improvement, or creation or improvement of wildlife habitat; and

E. for temporary materials and seedings necessary to properly stabilize the structure during construction.

8400.5300 [Emergency] APPROVED PRACTICE: DIVERSIONS.

Subpart 1. **Definition.** For purposes of this part, "diversion" means a channel with a supporting ridge on the lower side constructed across the slope. Diversions are supporting practices.

Subp. 2. **Purpose.** The purpose of a diversion is to permit the establishment of vegetative cover or divert water away from erosive areas or areas that pose a threat to water quality 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 areas is eroding enrolled lands or is needed to establish vegetative cover; or

B. surface and shallow subsurface flow is damaging sloping enrolled lands or contaminating ground or surface water.

Diversions may be installed on nonenrolled lands if necessary to enhance or protect enrolled lands.

Subp. 4. **Policies.** Funding 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.

8400.5400 [Emergency] APPROVED PRACTICE: STORMWATER CONTROL SYSTEMS.

Subpart 1. **Definition.** For purposes of this part, "stormwater control system" means a practice or system of practices including, but not limited to, grassed waterways 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. Stormwater control systems are supporting practices.

Subp. 2. **Purpose.** The purpose of a stormwater control system is to permit the establishment of vegetative cover, 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 enrolled lands by using vegetative or structural measures for control of erosion or protection or improvement of water quality. Stormwater control systems may also be installed on nonenrolled lands if necessary to protect enrolled lands.

Subp. 4. **Policies.** Funding is authorized:

A. for the construction of practices required in a complete stormwater control system, including, but not limited to, a lined waterway or outlet, detention ponds, permanent sod cover, and permanent vegetation including trees, shrubs, and grasses;

B. for tile systems necessary for the establishment and operation of stormwater control systems;

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

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

8400.5500 [Emergency] APPROVED PRACTICE: FIELD WINDBREAKS.

Subpart 1. **Definitions.** For purposes of this part, "field windbreak" means a strip or belt of trees or shrubs 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 creation of wildlife habitat, 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 that need protection against wind erosion. Additional benefits may be realized from the creation of wildlife habitat.

Subp. 4. **Policies.** Funding is authorized:

A. for field windbreaks if the inter-windbreak area is established in permanent vegetative cover at the time the windbreak is established; and

B. for site preparation, planting materials, planting, chemicals for weed control, and other applicable costs necessary to establish a field windbreak.

The landowner is responsible for controlling competitive vegetation for two years following planting and must bear the cost of control. Tree planting must not conflict with existing electrical lines, telephone lines, rights-of-way, or drainage systems.

8400.5600 [Emergency] APPROVED PRACTICE: ESTABLISHMENT OF PERMANENT VEGETATIVE COVER.

Subpart 1. **Definition.** For purposes of this part, "permanent vegetative cover" means planting permanent vegetation on enrolled lands, including trees, shrubs, vines, grasses, and legumes.

Subp. 2. **Purpose.** The purpose of permanent vegetative cover is to control soil erosion, protect or improve water quality, or create or improve wildlife habitat.

Subp. 3. **Applicability.** Permanent vegetative cover may be used on enrolled lands if vegetation is needed to control soil erosion, protect or improve water quality, or create or improve wildlife habitat.

Subp. 4. **Policies.** Funding 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.

Subp. 5. **Conflicts.** Tree planting must not conflict with existing electrical lines, telephone lines, rights-of-way, or drainage systems.

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.

Minnesota Board of Dentistry

Outside Information or Opinions Sought Regarding Existing Rules Including Those on Auxiliary Personnel and Proposed Rules Regarding General Anesthesia and Intravenous Conscious Sedation

Notice is hereby given that the Minnesota Board of Dentistry is seeking information or opinions from sources outside the agency regarding its existing rules governing the functions which dental auxiliary personnel may perform and regarding a new rule which will address the administration of general anesthesia and intravenous conscious sedation. The Board is also seeking comments and suggestions with respect to all of its existing rules to determine which, if any, should be amended. The adoption of rules by the Board is authorized under Minn. Stat. § 150A.04 (1984) which permits the Board to adopt rules to carry out and make effective the provisions and purposes of Minn. Stat. § 150A.01 to 150A.12, the laws governing the practice of dentistry. Section 150A.04 also specifically authorizes the Board to set forth the training and education necessary for administering general anesthesia and intravenous conscious sedation.

The Board of Dentistry requests information and opinions on the matters referenced above. Interested or affected persons or groups may submit data, information suggestions, or opinions orally or in writing. Written statements should be addressed to: Dale J. Forseth, Executive Director, Minnesota Board of Dentistry, Suite 109, 2700 University Avenue West, St. Paul, Minnesota 55114. Oral statements will be received during regular business hours over the telephone at (612) 642-0579 and in person at the above address.

Any written materials received by the Board of Dentistry shall become part of the rulemaking record to be submitted to the Attorney General or an administrative law judge in the event that a rule is adopted.

Dated: 18 June, 1986

Dale J. Forseth
Executive Director

Department of Human Services: Health Care Programs Division

Public Notice Regarding Changes in Minnesota's Medical Assistance Program

Notice is hereby given to all providers and recipients of Minnesota Medical Assistance, and to the public, of changes in the levels of reimbursement for certain Medical Assistance services. This notice is published pursuant to federal regulations which govern administration of the Medical Assistance program at 42 CFR §§ 447.205.

Personal Care Attendant Services

State law (Minnesota Statutes 256B.02, subdivision 8, item 17) requires annual adjustment of payments to personal care attendants to reflect changes in the cost of living or of providing services. Accordingly, the payment rate for personal care attendant services will increase from $5.88 per hour to $6.08 per hour effective July 1, 1986. This represents a 3.4% increase, which is based on the projected Consumer Price Index (CPI) for urban areas for fiscal year 1987. (The CPI is prepared by the Department of Labor, Bureau of Labor Statistics and is a measurement of the cumulative increase in the price of consumer goods.)

Private Duty Nursing Services

In order to ensure that private duty nursing services are available to Medical Assistance recipients to the same extent the services are available to the general population, maximum payment rates will be increased effective July 1, 1986 to reflect the projected 3.4% increase in the CPI for urban areas for fiscal year 1987. Payment for private duty nursing services provided by RNs will increase from $11.52 per hour to $11.91 per hour. For LPNs, payment will increase from $8.64 per hour to $8.93 per hour.

Information on implementation of these provisions will be sent as needed to local welfare agencies via instructional and informational bulletins, to MA recipients via their MA cards, and the health care providers enrolled in the Medical Assistance program via provider bulletins. Copies of this material may be reviewed at the county welfare or social services department.

The estimated aggregate cost of these changes for fiscal year 1987 is $250,000.

Written comments and questions may be addressed to:

Health Care Programs Professional Services Section
2nd Floor, Space Center
444 Lafayette Road
St. Paul, Minnesota 55101

Comments and suggestions from the public may be viewed at the same address during normal working hours.

Department of Jobs and Training

Notice of Availability of 1987 Community Services Block Grant Plan for Public Review

Notice is hereby given that the State Plan for the use and distribution of the Fiscal Year 1987 Community Services Block Grant is available for public review.

This plan will be available for review at the local offices of current Community Services Block Grantees; Community Action agencies, Indian Reservations and the Minnesota Migrant Council.

A single copy of the plan may be obtained by writing:

Beverly J. Gleeson
Minnesota Department of
Jobs and Training
Community Services Office
690 American Center Building
150 East Kellogg Boulevard
St. Paul, MN 55101

CERTIFICATE OF BOARD'S RESOLUTION
ADOPTING EMERGENCY RULES

I, Wally Bernhardson, 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 29th day of July, 1986, 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 emergency rules relating to the Reinvest in Minnesota Conservation Reserve Program be and they hereby are approved and adopted, pursuant to authority vested in us by Laws of Minnesota 1986, Chapter 383, Sec. 6 and that Ron Nargang, the Director 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 the law."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 29th day of July, 1986.

Wally Bernhardson
Chairman of the Board

Russell Bund
Attest by one other Board member

In the Matter of the Proposed Adoption of Emergency Rules of the Soil and Water Conservation Board Governing the Reinvest in Minnesota Conservation Reserve Program (Minnesota Rules Pts. 1650.0100 - 1650.2700)

STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, Jon Murphy, do hereby declare that I have examined the rule 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.

Jon Murphy
Special Assistant Attorney General

Date: 8/1/86

In the Matter of the Proposed Adoption of Emergency Rules of the Department of Agriculture Governing the Reinvest in Minnesota Conservation Reserve Program

AFFIDAVIT OF MAILING NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

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

That on the 4th day of August, 1986, in the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Submission to the Attorney General by depositing in the United States Mail at said city of St. Paul, a copy thereof, properly enveloped, with postage prepaid, to all persons and associations who requested notice that the rules in the above-entitled matter have been submitted to the Attorney General.

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

Marie Skerbitz

Subscribed and sworn to before me this 4th day of August, 19 86.

Diane M. Windham

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

In the Matter of the Proposed Adoption of Emergency Rules of the Department of Agriculture Governing the Reinvest in Minnesota Conservation Reserve Program

NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

Pursuant to your request and in accordance with Minnesota Statutes, sections 14.05 to 14.365:

PLEASE TAKE NOTICE that the above-captioned rules have been submitted to the Office of the Attorney General on this date, August 4th, 1986, for review as to form and legality. Pursuant to Minnesota Statutes section 14.32, the Attorney General shall approve or disapprove the proposed emergency rule on the tenth working day after receipt.

The proposed Emergency rule has been modified since publication in the State Register. To receive a free copy of the proposed emergency rule, as modified, contact Carol Milligan, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, Minnesota 55107, (612) 296-6906.

Gerald Heil
Director of Planning

SF-00006-03

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

Office Memorandum

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

DATE: 07/30/86

FROM: Carol Milligan, Management Analyst
Planning Division

PHONE: 296-6909

SUBJECT: Review of Emergency Rules Governing the Reinvest in Minnesota Conservation Reserve Program (Minnesota Rules 1650.0100 - 1650.2700)

The Department of Agriculture adopted the above-mentioned emergency rules pursuant to Minnesota Statutes, sections 14.29-14.36. 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.

If you have questions, please contact me.

CM:cb

Attachment

cc: Jim Nichols, Commissioner
Rollin Dennistoun, Deputy Commissioner
Jon Murphy, Special Assistant Attorney General
Craig Lindeke, Office of Revisor of Statutes
Gerald Heil, Director, Planning Division
Ron Nargang, Director, Soil and Water Conservation Board
Wayne Edgerton, Soil and Water Conservation Board

RECEIVED
AUG 05 1986
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

PLANNING DIVISION
DEPARTMENT OF AGRICULTURE

LIST OF ENCLOSED DOCUMENTS

A. Emergency Rules as Adopted.

B. Order Adopting Emergency Rules.

C. Certificate of Boards Resolution Adopting Rule.

D. Order for Publication of Emergency Rules.

E. Certificate of Boards Authorizing Resolution.

F. Notice of Intent to Adopt Emergency Rules.

G. Affidavit of Mailing Notice of Intent to Adopt Emergency Rules.

H. Mailing List Certificate.

I. Emergency Rules as Proposed.

J. Certificate of Compliance with Rulemaking Procedures.

K. Affidavit of Mailing Notice of Submission to the Attorney General.

L. Notice of Submission to the Attorney General.