

Minnesota Attorney General: Administrative Rules Proceedings

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File No. 1516

DATE RECEIVED 9/8/88

REVIEW DATE 9/17/88

DUE DATE 9/22/88

APPROVED 9.22.88 mjc

DISAPPROVED _____

WITHDRAWN _____

Docket No. 5.0009, 0986

ADOPTED W/O HEARING ✓

EMERGENCY RULE _____

REVISOR APPROVED _____

REVISOR DISAPPROVED _____

FILED W/SEC. OF STATE 9/22/88

RETURNED TO AGENCY 9/22/88

✓ Rule as adopted (4 copies)

_____ ~~Notice to Solicit Outside Information/Opinion (if applicable)~~

_____ Date published in State Register

_____ Comments

_____ ~~Petition for Adoption of a Rule (if applicable)~~

~~✓~~ ~~Board's Authorizing Resolution~~

~~yes~~ ~~Date adopted~~

✓ Proposed Rule

yes Revisor's Certificate

✓ Notice of Intent to Adopt Rule

40.45 Statutory Authority

yes Small Business Statement

n/a Expenditure of public money statement

yes Signature

✓ Statement of Need and Reasonableness (if applicable)

yes ~~9/13/88~~ Small Business Statement

n/a Fees - § 16A.128

✓ Affidavit of Mailing Notice of Intent to Adopt Rule

7/13/88 Date (30)/25 days before adoption

ok Notice attached

_____ ~~Copy of rule or summary attached~~

✓ Publication in State Register

7/18/88 Date (30)/25 days before adoption

_____ 180-day deadline from:

8/12/88 end of comment period (§ 14.26) (rules without hearing)

_____ ~~effective date of statutory authority (§ 14.29) (emergency rules)~~

_____ ~~Resolution Adopting~~

_____ ~~Date adopted~~

✓ Findings of Fact, Conclusions & Order Adopting

8/31/88 Date

✓ Written requests, submissions or comments (5)

✓ Declaration of attorney

Paul Strandberg Name of SAAG representing agency

_____ ~~Notice of Submission to Atty. Gen. (if applicable)~~

_____ ~~Aff. of Mailing Notice to Atty. Gen. (if applicable)~~

FILE COPY

ATTORNEY GENERAL

September 22, 1988

Carol Milligan, Management Analyst
Dept. of Agriculture Planning Division
90 W. Plato Blvd.

Martha J. Casserly
Special Assistant Attorney General
Public Finance Div., 515 DOT

6-6839

In the Matter of the Adopted Rules Relating to
Dept. of Agriculture, RIM Reserve Program

The above-referenced rule has been approved as to its legality by the Attorney General on September 22, 1988.

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

Also enclosed are any petitions, requests, submissions or comments along with any extra copies of documents which you submitted to the Attorney General.

Your next step is to arrange for publication of the Notice of Adoption in the State Register. In a day or two, you should receive from the Revisor's Office three copies of the notice of adoption of your rule. You should submit two copies of the Notice of Adoption to the State Register for publication. A permanent rule without a hearing does not become effective until five days after a notice of adoption is published 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.

MJC:bbl
Enclosure

cc: Paul Strandberg, S.A.A.G.
Maryanne Hruby, Legis. Comm.
William Brown, Chief Judge

Department of Agriculture

Adopted Permanent Rules Relating to Department of Agriculture, Reinvest in Minnesota (RIM) Reserve Program

Rules as Adopted

DEPARTMENT OF AGRICULTURE

RIM RESERVE PROGRAM

8400.3000 AUTHORITY.

Minnesota Statutes, sections 40.40 to 40.45 and 84.95, authorize the commissioner, in cooperation with the state board, districts, state and local private groups, and state and federal agencies, to implement a program of retiring certain agricultural land from crop production and establishing on that land permanent vegetative cover, restoring altered wetlands, or establishing windbreaks adjacent to highways. Parts 8400.3000 to 8400.3930 provide procedures and criteria to be followed by the commissioner, state board, and district boards in implementing Minnesota Statutes, sections 40.40 to 40.45.

8400.3030 DEFINITIONS.

Subpart 1. **Scope.** The definitions in this part apply to parts 8400.3000 to 8400.3930.

Subp. 2. **Agricultural crop production.** "Agricultural crop production" means an agricultural activity:

A. including but not limited to tillage, planting, or harvesting operations; and

B. devoted to the production of horticultural, row, close grown, introduced pasture, or introduced hayland crops.

Subp. 3. **Altered wetland.** "Altered wetland" means a former natural wetland that has been altered by draining, dredging, filling, leveling, or other manipulation sufficient to render the land suitable for agricultural crop production. The alteration must have occurred before December 23, 1985, and must be a legal alteration as determined by the Department of Natural Resources.

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Subp. 4. **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. The most recent version is available at the district office and state board office and is incorporated by reference.

Subp. 5. **Approved practice.** "Approved practice" means a soil and water conservation practice that qualifies for RIM reserve program funding. All approved practices are described in the RIM reserve conservation practice specifications.

Subp. 6. **Authorized farm corporation.** "Authorized farm corporation" has the meaning given in Minnesota Statutes, section 500.24, subdivision 2.

Subp. 7. **Beginning farmer program.** "Beginning farmer program" means the program created by Minnesota Statutes, section 41B.039.

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

Subp. 9. **Conservation agreement.** "Conservation agreement" means a written contract stating the terms and conditions for conveying the conservation plan and the conservation easement by the landowner to the commissioner.

Subp. 10. **Conservation easement, easement.** "Conservation easement" or "easement" has the meaning given for "conservation easement" in Minnesota Statutes, section 84C.01, paragraph (1).

Subp. 11. **Conservation plan.** "Conservation plan" means a written description of the approved practices that must be applied to the easement area.

Subp. 12. **Crop history.** "Crop history" means a sequence of agricultural crop production that includes at least one of the following activities on an annual basis: tillage, planting, or harvesting. For purposes of this part, land with a crop history includes acres devoted to "set-aside" and "conserving use" for the United States Department of Agriculture programs.

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Subp. 13. **Cropland.** "Cropland" means an area devoted to agricultural crop production.

Subp. 14. **District.** "District" means a local soil and water conservation district organized under Minnesota Statutes, section 40.04.

Subp. 15. **District board.** "District board" means the five supervisors of a district authorized to carry out the functions of the district.

Subp. 16. **District cooperator.** "District cooperator" means a landowner who has requested the assistance of a district board in ~~controlling~~ solving conservation problems and has entered into a written cooperator's agreement with the district board.

Subp. 17. **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. 18. **Enduring practice.** "Enduring practice" means a soil and water conservation practice that is designed for an effective life of 20 years or more.

Subp. 19. **Family farm.** "Family farm" has the meaning given in Minnesota Statutes, section 500.24, subdivision 2.

Subp. 20. **Family farm corporation.** "Family farm corporation" has the meaning given in Minnesota Statutes, section 500.24, subdivision 2.

Subp. 21. **Farm operation.** "Farm operation" means property owned or leased in Minnesota by the landowner that is associated with farming.

Subp. 22. **Farming.** "Farming" has the meaning given in Minnesota Statutes, section 500.24, subdivision 2.

Subp. 23. **Food plot.** "Food plot" means an area established annually for the purpose of providing food for wildlife.

Subp. 24. **Highway windbreak.** "Highway windbreak" means a strip or belt of trees, shrubs, or grass barriers at least six rows deep and within 300 feet of the right-of-way of a highway.

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Grass barriers must be used in conjunction with trees and shrubs.

Subp. 25. **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. The current list of hydric soils is available at the state law library and the district office, is subject to frequent change, and is incorporated by reference.

Subp. 26. **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. 27. **Individual.** "Individual" means a person or legal entity, whether or not a resident of Minnesota.

Subp. 28. **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. 29. **Introduced hayland.** "Introduced hayland" means an area devoted to the production of forage and cultivated in a rotation of row crops or small grains or interseeded with introduced or ~~nonnative~~ native species at least twice during the period 1976 to 1985. These areas must be harvested by mechanical methods at least two years during the period 1981 to 1985. These areas are considered to be in agricultural crop production.

7.2

Subp. 30. **Introduced pasture.** "Introduced pasture" means an area devoted to the production of forage and cultivated in a rotation of row crops or small grains or interseeded with introduced or ~~nonnative~~ native species at least twice during the period 1976 to 1985. These areas must be harvested by grazing at least two years during the period 1981 to 1985. These areas are considered to be in agricultural crop production.

7.2.

Subp. 31. **Landowner.** "Landowner" means an individual, family farm, family farm corporation, or authorized farm

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corporation who either owns eligible land or is purchasing eligible land under a contract for deed in Minnesota.

Subp. 32. **Local emergency.** "Local emergency" means an emergency declared under Minnesota Statutes, section 12.29.

Subp. 33. **Marginal agricultural land.** "Marginal agricultural land" for the RIM reserve program means land with cropland soils that are inherently unproductive for agricultural crop production or subject to significant potential soil productivity loss from erosion. For the beginning farmer program, "marginal agricultural land" means land in the land capability classes ~~6-to-8~~ VI to VIII, as defined by the United States Department of Agriculture, Agricultural Handbook Number 210. This publication is available at the state law library and at district offices, is not subject to frequent change, and is incorporated by reference. The state board shall provide districts with a list of soil mapping units indicative of marginal agricultural land. Districts may change the list as necessary to reflect local soil characteristics. Changes must be approved by the commissioner and the state board. This list, with changes, is available at the state law library and at district offices, is subject to frequent change, and is incorporated by reference.

Subp. 34. **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. An area is not considered in natural vegetation if it has been in agricultural crop production for at least one year since January 1, 1981.

Subp. 35. **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.

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Subp. 36. **Permanent cover.** "Permanent cover" means the water area created by a restored wetland and the permanent vegetative cover established under the RIM reserve program.

Subp. 37. **Present value.** "Present value" means the value today of an amount that would have been received later, at a discount rate established annually by the commissioner.

Subp. 38. **Protected water.** "Protected water" means public waters or wetlands, as defined in Minnesota Statutes, section 105.37, and inventoried under Minnesota Statutes, section 105.391. A copy of the inventory is available in the district office.

Subp. 39. **Public access.** "Public access" means the right of individuals to enter and exit private property. Under the RIM reserve program, public access is controlled by the landowner.

Subp. 40. **Restored wetland.** "Restored wetland" means an altered wetland restored under the RIM reserve program if the wetland meets the definition of a wetland in subpart 48.

Subp. 41. **RIM reserve conservation practice specifications.** "RIM reserve conservation practice specifications" means the current edition of the Minnesota Department of Agriculture publication containing detailed descriptions of the approved conservation practices found in part 8400.3660. This publication is subject to frequent change, is available at the state law library and at district offices, and is incorporated by reference.

Subp. 42. **RIM reserve program.** "RIM reserve program" means the Reinvest in Minnesota Resources Conservation Reserve program established in Minnesota Statutes, sections 40.41 to 40.45.

Subp. 43. **Screening committee.** "Screening committee" means a group established by the district board to assist in implementing the RIM reserve program. The screening committee is chaired by a district board member and is composed of representatives of private, state, and local organizations or clubs, and <u>local,</u> state<u>,</u> and federal agencies with an interest

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in the RIM reserve program. A request for participation must be sent by the district at least annually to the: Minnesota Department of Natural Resources, Minnesota Pollution Control Agency, United States Agricultural Stabilization and Conservation Service, United States Fish and Wildlife Service, and United States Soil Conservation Service.

Subp. 44. **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 soil and water conservation practices 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. 45. **Soil and water conservation practice.** "Soil and water conservation practice" means an approved conservation practice applied to land to control soil erosion, sediment, or other water pollutants as described in the RIM reserve conservation practice specifications.

Subp. 46. **Soil mapping unit.** "Soil mapping unit" means a unit or type of soil or combination of soils shown on a soil survey map.

Subp. 47. **State board.** "State board" means the Board of Water and Soil Resources.

Subp. 48. **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 prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions, including wetlands as defined in Minnesota Statutes, section 105.37.

8400.3060 CRITERIA FOR ALLOCATION OF FUNDS.

The commissioner shall allocate funds to participating district boards through the state board based on the following criteria:

A. the number of applications recommended for

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approval by the district board;

B. the proportion of marginal agricultural land in the district as compared to state totals;

C. the potential for restoring wetlands;

D. the need for highway windbreaks;

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

F. the expressed interest and readiness of the district board, cooperating groups, and agencies to implement the program.

The allotted funds may be increased, decreased, or shifted as necessary to maximize the use of funds among districts.

8400.3100 ADMINISTRATION OF FUNDS.

The participating district board is responsible for administration of the funds in accordance with Minnesota Statutes, sections 40.40 to 40.45 and other applicable laws. The district board may make recommendations concerning use of these funds in accordance with parts 8400.3000 to 8400.3930.

8400.3130 PRIORITY SETTING.

Annually, before considering any applications from landowners, the participating district board shall call a screening committee meeting. The screening committee must establish priority areas within the district. Establishment of priority areas must be based on the following criteria:

A. the location of high priority soil erosion or water quality problem areas in the district as outlined in the district comprehensive and annual plans;

B. the potential of the land for fish and wildlife production, reducing soil erosion, and protecting water quality;

C. recommendations from technical agricultural and natural resource experts familiar with the district;

D. the established priorities of the agencies and organizations represented on the screening committee;

E. maximizing the benefits of current programs

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administered by the United States Agricultural Stabilization and Conservation Service, United States Fish and Wildlife Service, and Minnesota Department of Natural Resources; and

F. the amount of RIM reserve program funds available.

8400.3160 CRITERIA FOR ELIGIBLE LAND.

Land eligible for the RIM reserve program must meet at least one of the following criteria:

A. The land is marginal agricultural land.

B. The land is agricultural land 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.

C. The land is an altered wetland and cropland adjacent to the altered wetland, with up to four acres of ~~nonmarginal~~ adjacent cropland for each acre of wetland restored.

D. The land is land that with a highway windbreak would control snow drifting and be beneficial to resource protection.

In addition, eligible land must have all of the following characteristics:

(1) a crop history for at least two years during the period 1981 to 1985;

(2) was owned by the landowner on January 1, 1985, or was owned by the landowner, or a parent or other blood relative of the landowner, for at least three years before the date of application;

(3) is at least five acres in size, except for a highway windbreak, or is a whole field as defined by the Agricultural Stabilization and Conservation Service;

(4) is not set-aside, enrolled, or diverted under another federal or state government land retirement program including, but not limited to, federal conservation reserve, federal production adjustment set-aside, or state or federal

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water bank; and

(5) is physically possible to crop, except for altered wetlands.

8400.3200 MAXIMUM ENROLLMENT.

The total enrolled land of a landowner in the RIM reserve program may not exceed 20 percent of the landowner's total agricultural land acreage in Minnesota, if the landowner owns at least 200 acres of agricultural land. If a landowner owns less than 200 acres of agricultural land, the amount that may be enrolled in the conservation reserve is:

(a) all agricultural land owned, if 20 acres or less; or

(b) if the total agricultural land owned is more than 20 acres but less than 200 acres, 20 acres plus ten percent of the total.

The total enrolled land of a landowner in the beginning farmer program may not exceed 20 percent of the total agricultural acreage of the enrolled farm operation.

8400.3230 APPLICATION BY LANDOWNERS.

Landowners interested in participating in the RIM reserve program must submit an application to the appropriate district office in which the land is located, during the application period established by the commissioner, and on forms provided by the commissioner. The landowner must complete the application in its entirety along with any supportive information required for proper consideration of the application. The supportive information includes, but is not limited to:

A. crop history of the parcel;

B. total agricultural acres owned by the applicant in Minnesota;

C. aerial photographs or a sketch of the parcel; and

D. description of other land owned or leased as part of the same farm operation at the time of application.

The district technician shall make an initial determination of easement eligibility at the time of application.

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Applications having questionable eligibility must be referred to the district board for eligibility determination. Providing proof of eligibility is the responsibility of the landowner. The district technician shall develop a cost estimate for the easement and approved practices for all eligible applications. Other organizations and agencies may be requested to provide technical assistance in preparing cost estimates.

8400.3260 LAND IN MORE THAN ONE DISTRICT.

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

8400.3300 CRITERIA FOR SCREENING COMMITTEE REVIEW.

Upon completion of the application period and initial eligibility determination by the district technician, the screening committee shall confer and prioritize each eligible application. The criteria for screening committee prioritization are as follows:

A. consistency with the purpose and policy of the RIM reserve program;

B. the parcel's relationship to the priority areas previously determined in part 8400.3130;

C. the parcel's potential impact on reducing soil erosion and sedimentation, improving water quality, and enhancing fish and wildlife habitat;

D. potential title problems and encumbrances;

E. compatibility with established priorities of the organizations and groups represented; and

F. highest priority must be given to permanent easements that are consistent with Minnesota Statutes, section 40.41.

All eligible applications must be prioritized with recommendations and submitted to the district board for review. Applications with eligibility questions must be referred to the district board for eligibility determination before screening

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committee prioritization.

8400.3330 CRITERIA FOR DISTRICT BOARD REVIEW.

Upon the receipt of the applications with screening committee prioritization, the district board shall meet and review the applications. Criteria for district board review are as follows:

A. criteria in part 8400.3300 used in screening committee review;

B. compatibility with district plans and priorities; and

C. availability of funds from RIM reserve and other sources.

8400.3360 DISTRICT ACTION ON APPLICATIONS.

Upon completion of district board review of the eligible applications, the following action must be taken:

A. Applications approved for further processing are designated as approved and must be signed by the district chair or acting chair.

B. High priority applications for which there are insufficient funds are designated as pending, with the consent of the landowner. These applications may be held in a pending status for up to 60 days while additional funds are sought.

C. Applications not eligible or not of sufficient priority are designated as denied. The reason for the denial must be stated on the application.

D. The district board shall notify all applicants in writing of their application designation status within 30 days after the end of the application period.

E. ~~All~~ Denied applications must be kept at the district office for a minimum of three years for future reference.

F. When district board action results in prioritization differing from the screening committee recommendations, the screening committee must be notified within 30 days in writing by the district board.

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8400.3400 CONSERVATION AGREEMENT FOR EASEMENT.

The district board shall develop a conservation agreement for all approved applications in which the landowner agrees to:

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

B. establish and maintain permanent cover and other conservation practices on the land subject to the easement as described in the conservation plan approved by the commissioner, which is incorporated into the conservation easement;

C. convey to the state a permanent wetland restoration easement when an altered wetland is being restored;

D. not convert to agricultural crop production or introduced pasture any other land supporting natural vegetation owned or leased as part of the same farm operation ~~during the term of the easement~~ at the time of application, if those lands support natural vegetation or have not been used in agricultural crop production or introduced pasture;

E. the enforcement of the terms of the easement and agreements by an action for specific performance, a mandatory injunction, or for damages in an amount not to exceed the total amount paid by the state to the landowner, with interest from the date of each default under the agreement or any combination of these remedies;

F. not alter wildlife habitat, natural features, or the vegetative cover and other conservation practices established in the conservation plan, except by the prior written approval of the commissioner;

G. not produce agricultural crops, unless approved by the commissioner for wildlife management purposes;

H. not graze livestock except with the prior written approval of the commissioner, after consultation with the commissioner of the Department of Natural Resources, in the case of severe drought or a local emergency;

I. be responsible for weed control and not to spray with chemicals or mow, except as necessary to comply with

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noxious weed control laws, or emergency control of pests necessary to protect public health, or to maintain permanent vegetative cover as approved by the district;

J. restore the easement area to the condition described in the conservation plan after any lawful repair or improvement of a public drainage system;

K. notify the commissioner in writing at least 30 days before the conveyance of all or part of the title or interest in the land in which the easement area is located by providing the names and addresses of the grantees, assignees, or heirs;

L. pay, when due, all taxes and assessments that may be levied against the easement area;

M. the running of the easement with the land and its being binding on all persons and entities who come into ownership or possession of the affected lands;

N. not place, erect, or construct temporary or permanent structures on the easement area;

O. allow the commissioner and the commissioner's employees and agents to enter the easement area for the purposes of inspection or enforcement of the terms and conditions of the easement; and

P. undertake the protection and management of the easement area in accordance with the conditions in the easement.

The conservation agreement must be recordable and on forms approved by the commissioner.

8400.3430 PROCEDURE FOR REVIEW OF CONSERVATION AGREEMENT.

After the conservation agreement has been developed by the district board, the unsigned agreement must be processed as follows:

A. It must be reviewed by a representative of the state board.

B. It must have a review and determination by the commissioner.

C. The landowner must be notified of the

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commissioner's decision.

D. If it is approved by the commissioner, the agreement must be given to the landowner for signature.

E. The agreement must be returned to the commissioner for signature by the necessary state officials and encumbrance of state funds.

F. A copy of the signed agreement must be provided to the landowner.

8400.3460 ABSTRACT AND TITLE REQUIREMENTS.

After notification of the commissioner's signing of the conservation agreement, the landowner, at the landowner's expense, shall deliver to the district office an original up-to-date abstract of title or registered property abstract, with certifications as to liens, bankruptcies, real estate taxes, and judgments. The landowner must have good and marketable title, not subject to any prior liens or encumbrances, as determined by the Attorney General, or an insurable title under a title insurance policy, not subject to any prior liens or encumbrances, approved by the Attorney General. Any title defect, liens, or encumbrances must be promptly removed or corrected by the landowner including, but not limited to, the following: lien waivers, releases or consent and subrogation from mortgagees, release or satisfaction of judgments, and receipt for payment of delinquent real estate taxes. The landowner's abstract of title must be returned to the landowner.

8400.3500 EASEMENT CONVEYANCE.

Upon delivery and recording of a properly executed conservation easement, approved by the commissioner, and the vesting of the easement interest in the commissioner, not subject to any prior lien or encumbrances, payment must be made for the easement to the landowner, landowner's designees, assignees, or heirs.

8400.3530 PAYMENT RATES.

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Subpart 1. **Calculation.** The payment rate for the conservation easement must be calculated according to subparts 2 to 4.

Subp. 2. **New easements.** For permanent easements, payments are per acre figures derived from county average cash rent adjusted for countywide variations in estimated township market value. The figures are established on a township basis with the lower of the following two values selected as the payment:

A. 100 percent of the present value of the derived per acre figure calculated for perpetuity; or

B. 90 percent of estimated township market value.

This payment method provides higher values for better quality land and ensures that payments do not exceed estimated market values. A schedule of payments for townships and unorganized areas is developed annually and is available at district offices or from the commissioner.

For limited duration easements not less than 20 years in length, payments are based on 65 percent of the permanent easement payment.

Payment rates may be modified prior to the sign up by the commissioner if the commissioner determines the rates established above do not reflect current market values based on the most recent land value market indicators.

There is a Basis ok?

The commissioner shall annually establish the discount rate to be used for calculating present value. Average cash rent and estimated market value are based on information provided by the Department of Revenue in cooperation with local assessors.

Subp. 3. **Conversion to permanent easement.** When converting limited duration easements to permanent easements, the payment is the difference between the amount paid per acre for the permanent easement as established for the most recent sign-up period and the amount already paid for the limited duration easement on the area.

Subp. 4. **Approved practices.** The payment rate for the approved conservation practice to be applied to the easement area is described in Minnesota Statutes, section 40.43,

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subdivision 6.

8400.3560 PAYMENTS.

Payments for easements will be a one-time lump sum amount unless the landowner requests a split payment for up to four equal annual installments for which no interest is paid. Payments may be assigned by the landowner.

8400.3600 EASEMENT RENEWAL AND CONVERSION.

A. When a conservation easement of limited duration expires, a new conservation easement and agreement for an additional period of not less than 20 years may be acquired by agreement of the commissioner and the landowner under the rules in force at that time. The commissioner may adjust payment rates as a result of renewing an agreement and conservation easement only after examining the condition of the established cover, conservation practices, and land values.

B. The easement duration may be lengthened through mutual agreement with the commissioners of the Departments of Agriculture and Natural Resources if they determine that the changes effectuate the purpose of the program or to facilitate its administration.

Not sure what that means. haha

8400.3630 CRITERIA FOR APPROVED PRACTICES.

Approved practices 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 fish and wildlife habitat. The list is contained in part 8400.3660 and is further specified in the RIM reserve conservation practice specifications. Practices under this program must be designed for a minimum effective life of 20 years, be nonproduction practices, and have specifications providing for the use of plant species and construction techniques that provide quality fish and wildlife benefits. Production practices that do not qualify as approved practices include, but are not limited to, Christmas tree plantations and fruit orchards. Food plots are not eligible for RIM reserve

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cost-sharing, but are allowed on enrolled acres if they are included in the conservation plan and approved by the commissioner.

8400.3660 LIST OF APPROVED PRACTICES.

Approved practices include, but are not limited to:

A. permanent vegetative cover;

B. tree and shrub planting;

C. field windbreak;

D. highway windbreak;

E. stormwater control system;

F. diversion; and

G. structures for water control.

The approved practices are further described in the RIM reserve conservation practice specifications.

8400.3700 ESTABLISHMENT OF APPROVED PRACTICES.

Subpart 1. **Installation of approved practices.** Establishment of approved practices must be monitored by the district board to ensure compliance with the easement. Upon completion of an annual component or the entire plan a district technician shall certify whether or not the practice has been satisfactorily performed, including certification that the practice meets the RIM reserve conservation practice specifications. Upon certification of completion, the landowner shall present documentation to the district of the costs incurred in the installation of the practice in the form of receipts or invoices.

Subp. 2. **Costs for approved practices.**

A. The district board shall review the receipts and invoices provided by the landowner to determine the actual cost eligible for RIM reserve payment. If the district board determines that the claims are reasonable and practical, it shall recommend payment to the landowner by submitting a completed certification of practice completion and a cost-share voucher to the commissioner. If the district board determines that certain claims are not justified or not eligible, it shall

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notify the landowner in writing of the unjustified claim within 30 days. The landowner may request reconsideration of this determination by the district board within 15 days of receipt of the determination. If additional eligible costs are justified, the district board shall then recommend payment for the approved amount.

B. The state is only financially obligated up to the amount encumbered for each approved practice as stated in the conservation plan attached to the conservation easement, and any costs exceeding this amount are the responsibility of the landowner.

C. If the actual cost of installing the approved practices in the conservation plan are less than the encumbered amount, the state shall only pay the applicable cost of the installation in accordance with the limits in Minnesota Statutes, section 40.43, subdivision 6, clauses (1) and (2).

D. The commissioner may encumber additional funds for eligible costs if the additional encumbrance is consistent with the purpose and policy of the RIM reserve program and the maximum amounts in Minnesota Statutes, section 40.43, subdivision 6, clauses 1 and 2, are not exceeded.

Subp. 3. **Payment for 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. 4. **Funds from other sources.** RIM reserve funds may be augmented by funds from other agencies, organizations, or individuals. Securing these funds is the responsibility of the landowner. Requirements for obtaining these funds are determined by the contributor.

8400.3730 FAILURE OF APPROVED PRACTICES.

A landowner is not in violation of the conservation easement if the failure of approved practices was caused by

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reasons beyond the landowner's control such as extreme weather conditions. In these instances, the district board may recommend to the commissioner that additional RIM reserve funds be encumbered for reinstallation of the approved practices. The encumbrance must comply with the limits in Minnesota Statutes, section 40.43, subdivision 6, clauses (1) and (2), and cannot exceed the amount encumbered for the initial installation. In no case may a district board provide financial assistance to a landowner for the reapplication of approved practices that were removed, altered, or failed due to improper maintenance during the term of the easement.

8400.3760 MAXIMUM PAYMENT.

The commissioner may not pay more than $50,000 total in RIM reserve program funds to a landowner for all approved practices and conservation easements. This is the maximum cumulative amount that may be received over the landowner's lifetime.

8400.3800 MAINTENANCE.

A landowner is responsible for planting, establishment, operation, and maintenance of approved practices described in the conservation agreement and for ensuring that easement restrictions are followed so that the easement's conservation objective is met and the effective life of 20 or more years is achieved.

8400.3830 VIOLATIONS.

The commissioner may enforce the easement and agreement by the following legal action:

A. specific performance;

B. mandatory injunction;

C. damages in an amount not to exceed the total amount paid by the state to the landowner from RIM reserve funds, with interest from the date of each default; or

D. any combination of the above remedies.

The district board may recommend to the commissioner appropriate measures to be taken to correct violations.

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Easements remain in effect even if maintenance violations have occurred.

8400.3860 MONITORING.

The commissioner through 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 commissioner.

8400.3900 DISTRICT BOARD RECORDS.

The district shall maintain a current ledger of easements on forms provided by the commissioner. The ledger must specify the names of the landowners with whom the easements have been developed, the approved practices involved, the status of permanent cover establishment, the total of funds encumbered and expended, the size and type of easements, and their effective date.

8400.3930 RECONSIDERATION AND REVIEW.

Subpart 1. **Procedures.** Procedures for reconsideration and review of applications are in subparts 2 to 4.

Subp. 2. **Reconsideration by district.** An affected landowner may request the district board to reconsider its recommendations that deny landowner acceptance under the RIM reserve program by mailing a written request to the district within 15 days of receipt of the notice of denial of ineligibility, stating the specific reasons for claiming eligibility or a higher priority and including additional evidence to support the landowner's claims. The district shall notify the landowner of the final recommendation of the district board.

Subp. 3. **Review by state board.** An affected landowner may request the state board to review, on the record, the final recommendations of the district board that deny a landowner eligibility under the RIM reserve program by mailing a written request to the state board within 15 days after receipt of the final recommendation of the district board, stating the specific

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reasons for claiming eligibility, or a higher priority. The state board shall notify the landowner and district board of its recommendations.

Subp. 4. **Review by commissioner.** An affected landowner may request the commissioner to review, on the record, the recommendations of the state board that deny a landowner eligibility under the RIM reserve program, by mailing a written request to the commissioner within 15 days after receipt of the state board recommendation, stating the specific reasons for claiming eligibility, or a higher priority. The commissioner shall notify the landowner of the commissioner's decision.

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Joan Anderson Growe

Secretary of State

2:30 PM

APPROVED AS TO FORM AND LEGALITY

Sept 22 19 88

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY MJ Cassady

SPECIAL ASSISTANT ATTORNEY GENERAL

Department of Agriculture

Proposed Permanent Rules Relating to Department of Agriculture, Reinvest in Minnesota (RIM) Reserve Program

Rules as Proposed (all new material)

DEPARTMENT OF AGRICULTURE

RIM RESERVE PROGRAM

8400.3000 AUTHORITY.

Minnesota Statutes, sections 40.40 to 40.45 and 84.95, authorize the commissioner, in cooperation with the state board, districts, state and local private groups, and state and federal agencies, to implement a program of retiring certain agricultural land from crop production and establishing on that land permanent vegetative cover, restoring altered wetlands, or establishing windbreaks adjacent to highways. Parts 8400.3000 to 8400.3930 provide procedures and criteria to be followed by the commissioner, state board, and district boards in implementing Minnesota Statutes, sections 40.40 to 40.45.

8400.3030 **DEFINITIONS.**

Subpart 1. **Scope.** The definitions in this part apply to parts 8400.3000 to 8400.3930.

Subp. 2. **Agricultural crop production.** "Agricultural crop production" means an agricultural activity:

A. including but not limited to tillage, planting, or harvesting operations; and

B. devoted to the production of horticultural, row, close grown, introduced pasture, or introduced hayland crops.

Subp. 3. **Altered wetland.** "Altered wetland" means a former natural wetland that has been altered by draining, dredging, filling, leveling, or other manipulation sufficient to render the land suitable for agricultural crop production. The alteration must have occurred before December 23, 1985, and must be a legal alteration as determined by the Department of Natural Resources.

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Subp. 4. **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. The most recent version is available at the district office and state board office and is incorporated by reference.

Subp. 5. **Approved practice.** "Approved practice" means a soil and water conservation practice that qualifies for RIM reserve program funding. All approved practices are described in the RIM reserve conservation practice specifications.

Subp. 6. **Authorized farm corporation.** "Authorized farm corporation" has the meaning given in Minnesota Statutes, section 500.24, subdivision 2.

Subp. 7. **Beginning farmer program.** "Beginning farmer program" means the program created by Minnesota Statutes, section 41B.039.

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

Subp. 9. **Conservation agreement.** "Conservation agreement" means a written contract stating the terms and conditions for conveying the conservation plan and the conservation easement by the landowner to the commissioner.

Subp. 10. **Conservation easement, easement.** "Conservation easement" or "easement" has the meaning given for "conservation easement" in Minnesota Statutes, section 84C.01, paragraph (1).

Subp. 11. **Conservation plan.** "Conservation plan" means a written description of the approved practices that must be applied to the easement area.

Subp. 12. **Crop history.** "Crop history" means a sequence of agricultural crop production that includes at least one of the following activities on an annual basis: tillage, planting, or harvesting. For purposes of this part, land with a crop history includes acres devoted to "set-aside" and "conserving use" for the United States Department of Agriculture programs.

Subp. 13. **Cropland.** "Cropland" means an area devoted to agricultural crop production.

Subp. 14. **District.** "District" means a local soil and water conservation district organized under Minnesota Statutes, section 40.04.

Subp. 15. **District board.** "District board" means the five supervisors of a district authorized to carry out the functions of the district.

Subp. 16. **District cooperator.** "District cooperator" means a landowner who has requested the assistance of a district board in controlling conservation problems and has entered into a written cooperator's agreement with the district board.

Subp. 17. **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. 18. **Enduring practice.** "Enduring practice" means a soil and water conservation practice that is designed for an effective life of 20 years or more.

Subp. 19. **Family farm.** "Family farm" has the meaning given in **Minnesota Statutes**, section 500.24, subdivision 2.

Subp. 20. **Family farm corporation.** "Family farm corporation" has the meaning given in Minnesota Statutes, section 500.24, subdivision 2.

Subp. 21. **Farm operation.** "Farm operation" means property owned or leased in Minnesota by the landowner that is associated with farming.

Subp. 22. **Farming.** "Farming" has the meaning given in Minnesota Statutes, section 500.24, subdivision 2.

Subp. 23. **Food plot.** "Food plot" means an area established annually for the purpose of providing food for wildlife.

Subp. 24. **Highway windbreak.** "Highway windbreak" means a strip or belt of trees, shrubs, or grass barriers at least six rows deep and within 300 feet of the right-of-way of a highway. Grass barriers must be used in conjunction with trees and shrubs.

Subp. 25. **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. The current list of hydric soils is available at the state law library and the district office, is subject to frequent change, and is incorporated by reference.

Subp. 26. **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. 27. **Individual.** "Individual" means a person or legal entity, whether or not a resident of Minnesota.

Subp. 28. **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. 29. **Introduced hayland.** "Introduced hayland" means an area devoted to the production of forage and cultivated in a rotation of row crops or small grains or interseeded with introduced or nonnative species at least twice during the period 1976 to 1985. These areas must be harvested by mechanical methods at least two years during the period 1981 to 1985. These areas are considered to be in agricultural crop production.

Subp. 30. **Introduced pasture.** "Introduced pasture" means an area devoted to the production of forage and cultivated in a rotation of row crops or small grains or interseeded with introduced or nonnative species at least twice during the period 1976 to 1985. These areas must be harvested by grazing at least two years during the period 1981 to 1985. These areas are considered to be in agricultural crop production.

Subp. 31. **Landowner.** "Landowner" means an individual, family farm, family farm corporation, or authorized farm corporation who either owns eligible land or is purchasing eligible land under a contract for deed in Minnesota.

Subp. 32. **Local emergency.** "Local emergency" means an emergency declared under Minnesota Statutes, section 12.29.

Subp. 33. **Marginal agricultural land.** "Marginal agricultural land" for the RIM reserve program means land with cropland soils that are inherently unproductive for agricultural crop production or subject to significant potential soil productivity loss from erosion. For the beginning farmer program, "marginal agricultural land" means land in the land capability classes 6 to 8, as defined by the United States Department of Agriculture, Agricultural Handbook Number 210. This publication is available at the state law library and at district offices, is not subject to frequent change, and is incorporated by reference. The state board shall provide districts with a list of soil mapping units indicative of marginal agricultural land. Districts may change the list as necessary to reflect local soil characteristics. Changes must be approved by the commissioner and the state board. This list, with changes, is available at the state law library and at district offices, is subject to frequent change, and is incorporated by reference.

Subp. 34. **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. An area is not considered in natural vegetation if it has been in agricultural crop production for at least one year since January 1, 1981.

Subp. 35. **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. 36. **Permanent cover.** "Permanent cover" means the water area created by a restored wetland and the permanent

vegetative cover established under the RIM reserve program.

Subp. 37. **Present value.** "Present value" means the value today of an amount that would have been received later, at a discount rate established annually by the commissioner.

Subp. 38. **Protected water.** "Protected water" means public waters or wetlands, as defined in Minnesota Statutes, section 105.37, and inventoried under Minnesota Statutes, section 105.391. A copy of the inventory is available in the district office.

Subp. 39. **Public access.** "Public access" means the right of individuals to enter and exit private property. Under the RIM reserve program, public access is controlled by the landowner.

Subp. 40. **Restored wetland.** "Restored wetland" means an altered wetland restored under the RIM reserve program if the wetland meets the definition of a wetland in subpart 48.

Subp. 41. **RIM reserve conservation practice specifications.** "RIM reserve conservation practice specifications" means the current edition of the Minnesota Department of Agriculture publication containing detailed descriptions of the approved conservation practices found in part 8400.3660. This publication is subject to frequent change, is available at the state law library and at district offices, and is incorporated by reference.

Subp. 42. **RIM reserve program.** "RIM reserve program" means the Reinvest in Minnesota Resources Conservation Reserve program established in Minnesota Statutes, sections 40.41 to 40.45.

Subp. 43. **Screening committee.** "Screening committee" means a group established by the district board to assist in implementing the RIM reserve program. The screening committee is chaired by a district board member and is 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 request for participation must be sent at least annually to the: Minnesota Department of Natural

Resources, Minnesota Pollution Control Agency, United States Agricultural Stabilization and Conservation Service, United States Fish and Wildlife Service, and United States Soil Conservation Service.

Subp. 44. **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 soil and water conservation practices 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. 45. **Soil and water conservation practice.** "Soil and water conservation practice" means an approved conservation practice applied to land to control soil erosion, sediment, or other water pollutants as described in the RIM reserve conservation practice specifications.

Subp. 46. **Soil mapping unit.** "Soil mapping unit" means a unit or type of soil or combination of soils shown on a soil survey map.

Subp. 47. **State board.** "State board" means the Board of Water and Soil Resources.

Subp. 48. **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 prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions, including wetlands as defined in Minnesota Statutes, section 105.37.

8400.3060 CRITERIA FOR ALLOCATION OF FUNDS.

The commissioner shall allocate funds to participating district boards through the state board based on the following criteria:

A. the number of applications recommended for approval by the district board;

B. the proportion of marginal agricultural land in

the district as compared to state totals;

C. the potential for restoring wetlands;

D. the need for highway windbreaks;

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

F. the expressed interest and readiness of the district board, cooperating groups, and agencies to implement the program.

The allotted funds may be increased, decreased, or shifted as necessary to maximize the use of funds among districts.

8400.3100 ADMINISTRATION OF FUNDS.

The participating district board is responsible for administration of the funds in accordance with Minnesota Statutes, sections 40.40 to 40.45 and other applicable laws. The district board may make recommendations concerning use of these funds in accordance with parts 8400.3000 to 8400.3930.

8400.3130 PRIORITY SETTING.

Annually, before considering any applications from landowners, the participating district board shall call a screening committee meeting. The screening committee must establish priority areas within the district. Establishment of priority areas must be based on the following criteria:

A. the location of high priority erosion or water quality problem areas 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. recommendations from technical agricultural and natural resource experts familiar with the district;

D. the established priorities of the agencies and organizations represented on the screening committee;

E. maximizing the benefits of current programs administered by the United States Agricultural Stabilization and Conservation Service, United States Fish and Wildlife Service,

and Minnesota Department of Natural Resources; and

F. the amount of RIM reserve program funds available.

8400.3160 CRITERIA FOR ELIGIBLE LAND.

Land eligible for the RIM reserve program must meet at least one of the following criteria:

A. The land is marginal agricultural land.

B. The land is agricultural land 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.

C. The land is an altered wetland and cropland adjacent to the altered wetland, with up to four acres of nonmarginal cropland for each acre of wetland restored.

D. The land is land that with a highway windbreak would control snow drifting and be beneficial to resource protection.

In addition, eligible land must have all of the following characteristics:

(1) a crop history for at least two years during the period 1981 to 1985;

(2) was owned by the landowner, or a parent or other blood relative of the landowner, for at least three years before the date of application;

(3) is at least five acres in size, except for a highway windbreak, or is a whole field as defined by the Agricultural Stabilization and Conservation Service;

(4) is not set-aside, enrolled, or diverted under another federal or state government land retirement program including, but not limited to, federal conservation reserve, federal production adjustment set-aside, or state or federal water bank; and

(5) is physically possible to crop, except for altered wetlands.

8400.3200 MAXIMUM ENROLLMENT.

The total enrolled land of a landowner in the RIM reserve program may not exceed 20 percent of the landowner's total agricultural land acreage in Minnesota, if the landowner owns at least 200 acres of agricultural land. If a landowner owns less than 200 acres of agricultural land, the amount that may be enrolled in the conservation reserve is:

(a) all agricultural land owned, if 20 acres or less; or

(b) if the total agricultural land owned is more than 20 acres but less than 200 acres, 20 acres plus ten percent of the total.

The total enrolled land of a landowner in the beginning farmer program may not exceed 20 percent of the total agricultural acreage of the enrolled farm operation.

8400.3230 APPLICATION BY LANDOWNERS.

Landowners interested in participating in the RIM reserve program must submit an application to the appropriate district office in which the land is located, during the application period established by the commissioner, and on forms provided by the commissioner. The landowner must complete the application in its entirety along with any supportive information required for proper consideration of the application. The supportive information includes, but is not limited to:

A. crop history of the parcel;

B. total agricultural acres owned by the applicant in Minnesota;

C. aerial photographs or a sketch of the parcel; and

D. description of other land owned or leased as part of the same farm operation at the time of application.

The district technician shall make an initial determination of easement eligibility at the time of application. Applications having questionable eligibility must be referred to the district board for eligibility determination. Providing proof of eligibility is the responsibility of the landowner.

The district technician shall develop a cost estimate for the easement and approved practices for all eligible applications. Other organizations and agencies may be requested to provide technical assistance in preparing cost estimates.

8400.3260 LAND IN MORE THAN ONE DISTRICT.

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

8400.3300 CRITERIA FOR SCREENING COMMITTEE REVIEW.

Upon completion of the application period and initial eligibility determination by the district technician, the screening committee shall confer and prioritize each eligible application. The criteria for screening committee prioritization are as follows:

A. consistency with the purpose and policy of the RIM reserve program;

B. the parcel's relationship to the priority areas previously determined in part 8400.3130;

C. the parcel's potential impact on reducing erosion and sedimentation, improving water quality, and enhancing fish and wildlife habitat;

D. potential title problems and encumbrances;

E. compatibility with established priorities of the organizations and groups represented; and

F. highest priority must be given to permanent easements that are consistent with Minnesota Statutes, section 40.41.

All eligible applications must be prioritized with recommendations and submitted to the district board for review. Applications with eligibility questions must be referred to the district board for eligibility determination before screening committee prioritization.

8400.3330 CRITERIA FOR DISTRICT BOARD REVIEW.

Upon the receipt of the applications with screening committee prioritization, the district board shall meet and review the applications. Criteria for district board review are as follows:

A. criteria in part 8400.3300 used in screening committee review;

B. compatibility with district plans and priorities; and

C. availability of funds from RIM reserve and other sources.

8400.3360 DISTRICT ACTION ON APPLICATIONS.

Upon completion of district board review of the eligible applications, the following action must be taken:

A. Applications approved for further processing are designated as approved and must be signed by the district chair or acting chair.

B. High priority applications for which there are insufficient funds are designated as pending, with the consent of the landowner. These applications may be held in a pending status for up to 60 days while additional funds are sought.

C. Applications not eligible or not of sufficient priority are designated as denied. The reason for the denial must be stated on the application.

D. The district board shall notify all applicants in writing of their application designation status within 30 days after the end of the application period.

E. All applications must be kept at the district office for a minimum of three years for future reference.

F. When district board action results in prioritization differing from the screening committee recommendations, the screening committee must be notified within 30 days in writing by the district board.

8400.3400 CONSERVATION AGREEMENT FOR EASEMENT.

The district board shall develop a conservation agreement for all approved applications in which the landowner agrees to:

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

B. establish and maintain permanent cover and other conservation practices on the land subject to the easement as described in the conservation plan approved by the commissioner, which is incorporated into the conservation easement;

C. convey to the state a permanent wetland restoration easement when an altered wetland is being restored;

D. not convert to agricultural crop production or pasture any other land supporting natural vegetation owned or leased as part of the same farm operation during the term of the easement, if those lands support natural vegetation or have not been used in agricultural crop production or introduced pasture;

E. the enforcement of the terms of the easement and agreements by an action for specific performance, a mandatory injunction, or for damages in an amount not to exceed the total amount paid by the state to the landowner, with interest from the date of each default under the agreement or any combination of these remedies;

F. not alter wildlife habitat, natural features, or the vegetative cover and other conservation practices established in the conservation plan, except by the prior written approval of the commissioner;

G. not produce agricultural crops, unless approved by the commissioner for wildlife management purposes;

H. not graze livestock except with the prior written approval of the commissioner, after consultation with the commissioner of the Department of Natural Resources, in the case of severe drought or a local emergency;

I. be responsible for weed control and not to spray with chemicals or mow, except as necessary to comply with noxious weed control laws, or emergency control of pests necessary to protect public health, or to maintain permanent vegetative cover as approved by the district;

J. restore the easement area to the condition described in the conservation plan after any lawful repair or

improvement of a public drainage system;

K. notify the commissioner in writing at least 30 days before the conveyance of all or part of the title or interest in the land in which the easement area is located by providing the names and addresses of the grantees, assignees, or heirs;

L. pay, when due, all taxes and assessments that may be levied against the easement area;

M. the running of the easement with the land and its being binding on all persons and entities who come into ownership or possession of the affected lands;

N. not place, erect, or construct temporary or permanent structures on the easement area;

O. allow the commissioner and the commissioner's employees and agents to enter the easement area for the purposes of inspection or enforcement of the terms and conditions of the easement; and

P. undertake the protection and management of the easement area in accordance with the conditions in the easement.

The conservation agreement must be recordable and on forms approved by the commissioner.

8400.3430 PROCEDURE FOR REVIEW OF CONSERVATION AGREEMENT.

After the conservation agreement has been developed by the district board, the unsigned agreement must be processed as follows:

A. It must be reviewed by a representative of the state board.

B. It must have a review and determination by the commissioner.

C. The landowner must be notified of the commissioner's decision.

D. If it is approved by the commissioner, the agreement must be given to the landowner for signature.

E. The agreement must be returned to the commissioner for signature by the necessary state officials and encumbrance

of state funds.

F. A copy of the signed agreement must be provided to the landowner.

8400.3460 ABSTRACT AND TITLE REQUIREMENTS.

After notification of the commissioner's signing of the conservation agreement, the landowner, at the landowner's expense, shall deliver to the district office an original up-to-date abstract of title or registered property abstract, with certifications as to liens, bankruptcies, real estate taxes, and judgments. The landowner must have good and marketable title, not subject to any prior liens or encumbrances, as determined by the Attorney General, or an insurable title under a title insurance policy, not subject to any prior liens or encumbrances, approved by the Attorney General. Any title defect, liens, or encumbrances must be promptly removed or corrected by the landowner including, but not limited to, the following: lien waivers, releases or consent and subrogation from mortgagees, release or satisfaction of judgments, and receipt for payment of delinquent real estate taxes. **The landowner's** abstract of title must be returned to the landowner.

8400.3500 EASEMENT CONVEYANCE.

Upon delivery and recording of a properly executed conservation easement, approved by the commissioner, and the vesting of the easement interest in the commissioner, not subject to any prior lien or encumbrances, payment must be made for the easement to the landowner, landowner's designees, assignees, or heirs.

8400.3530 PAYMENT RATES.

Subpart 1. **Calculation.** The payment rate for the conservation easement must be calculated according to subparts 2 to 4.

Subp. 2. **New easements.** For permanent easements, payments are per acre figures derived from county average cash rent

adjusted for countywide variations in estimated township market value. The figures are established on a township basis with the lower of the following two values selected as the payment:

A. 100 percent of the present value of the derived per acre figure calculated for perpetuity; or

B. 90 percent of estimated township market value.

This payment method provides higher values for better quality land and ensures that payments do not exceed estimated market values. A schedule of payments for townships and unorganized areas is developed annually and is available at district offices or from the commissioner.

For limited duration easements not less than 20 years in length, payments are based on 65 percent of the permanent easement payment.

Payment rates may be modified prior to the sign up by the commissioner if the commissioner determines the rates established above do not reflect current market values based on the most recent land value market indicators.

The commissioner shall annually establish the discount rate to be used for calculating present value. Average cash rent and estimated market value are based on information provided by the Department of Revenue in cooperation with local assessors.

Subp. 3. **Conversion to permanent easement.** When converting limited duration easements to permanent easements, the payment is the difference between the amount paid per acre for the permanent easement as established for the most recent sign-up period and the amount already paid for the limited duration easement on the area.

Subp. 4. **Approved practices.** The payment rate for the approved conservation practice to be applied to the easement area is described in Minnesota Statutes, section 40.43, subdivision 6.

8400.3560 PAYMENTS.

Payments for easements will be a one-time lump sum amount unless the landowner requests a split payment for up to four

equal annual installments for which no interest is paid. Payments may be assigned by the landowner.

8400.3600 EASEMENT RENEWAL AND CONVERSION.

A. When a conservation easement of limited duration expires, a new conservation easement and agreement for an additional period of not less than 20 years may be acquired by agreement of the commissioner and the landowner under the rules in force at that time. The commissioner may adjust payment rates as a result of renewing an agreement and conservation easement only after examining the condition of the established cover, conservation practices, and land values.

B. The easement duration may be lengthened through mutual agreement with the commissioners of the Departments of Agriculture and Natural Resources if they determine that the changes effectuate the purpose of the program or to facilitate its administration.

8400.3630 CRITERIA FOR APPROVED PRACTICES.

Approved practices 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 fish and wildlife habitat. The list is contained in part 8400.3660 and is further specified in the RIM reserve conservation practice specifications. Practices under this program must be designed for a minimum effective life of 20 years, be nonproduction practices, and have specifications providing for the use of plant species and construction techniques that provide quality fish and wildlife benefits. Production practices that do not qualify as approved practices include, but are not limited to, Christmas tree plantations and fruit orchards. Food plots are not eligible for RIM reserve cost-sharing, but are allowed on enrolled acres if they are included in the conservation plan and approved by the commissioner.

8400.3660 LIST OF APPROVED PRACTICES.

Approved practices include, but are not limited to:

A. permanent vegetative cover;

B. tree and shrub planting;

C. field windbreak;

D. highway windbreak;

E. stormwater control system;

F. diversion; and

G. structures for water control.

The approved practices are further described in the RIM reserve conservation practice specifications.

8400.3700 ESTABLISHMENT OF APPROVED PRACTICES.

Subpart 1. **Installation of approved practices.** Establishment of approved practices must be monitored by the district board to ensure compliance with the easement. Upon completion of an annual component or the entire plan a district technician shall certify whether or not the practice has been satisfactorily performed, including certification that the practice meets the RIM reserve conservation practice specifications. Upon certification of completion, the landowner shall present documentation to the district of the costs incurred in the installation of the practice in the form of receipts or invoices.

Subp. 2. **Costs for approved practices.**

A. The district board shall review the receipts and invoices provided by the landowner to determine the actual cost eligible for RIM reserve payment. If the district board determines that the claims are reasonable and practical, it shall recommend payment to the landowner by submitting a completed certification of practice completion and a cost-share voucher to the commissioner. If the district board determines that certain claims are not justified or not eligible, it shall notify the landowner in writing of the unjustified claim within 30 days. The landowner may request reconsideration of this determination by the district board within 15 days of receipt of the determination. If additional eligible costs are justified,

the district board shall then recommend payment for the approved amount.

B. The state is only financially obligated up to the amount encumbered for each approved practice as stated in the conservation plan attached to the conservation easement, and any costs exceeding this amount are the responsibility of the landowner.

C. If the actual cost of installing the approved practices in the conservation plan are less than the encumbered amount, the state shall only pay the applicable cost of the installation in accordance with the limits in Minnesota Statutes, section 40.43, subdivision 6, clauses (1) and (2).

D. The commissioner may encumber additional funds for eligible costs if the additional encumbrance is consistent with the purpose and policy of the RIM reserve program and the maximum amounts in Minnesota Statutes, section 40.43, subdivision 6, clauses 1 and 2, are not exceeded.

Subp. 3. **Payment for 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. 4. **Funds from other sources.** RIM reserve funds may be augmented by funds from other agencies, organizations, or individuals. Securing these funds is the responsibility of the landowner. Requirements for obtaining these funds are determined by the contributor.

8400.3730 FAILURE OF APPROVED PRACTICES.

A landowner is not in violation of the conservation easement if the failure of approved practices was caused by reasons beyond the landowner's control such as extreme weather conditions. In these instances, the district board may recommend to the commissioner that additional RIM reserve funds be encumbered for reinstallation of the approved practices. The

encumbrance must comply with the limits in Minnesota Statutes, section 40.43, subdivision 6, clauses (1) and (2), and cannot exceed the amount encumbered for the initial installation. In no case may a district board provide financial assistance to a landowner for the reapplication of approved practices that were removed, altered, or failed due to improper maintenance during the term of the easement.

8400.3760 MAXIMUM PAYMENT.

The commissioner may not pay more than $50,000 total in RIM reserve program funds to a landowner for all approved practices and conservation easements. This is the maximum cumulative amount that may be received over the landowner's lifetime.

8400.3800 MAINTENANCE.

A landowner is responsible for planting, establishment, operation, and maintenance of approved practices described in the conservation agreement and for ensuring that easement restrictions are followed so that the easement's conservation objective is met and the effective life of 20 or more years is achieved.

8400.3830 VIOLATIONS.

The commissioner may enforce the easement and agreement by the following legal action:

A. specific performance;

B. mandatory injunction;

C. damages in an amount not to exceed the total amount paid by the state to the landowner from RIM reserve funds, with interest from the date of each default; or

D. any combination of the above remedies.

The district board may recommend to the commissioner appropriate measures to be taken to correct violations. Easements remain in effect even if maintenance violations have occurred.

8400.3860 MONITORING.

The commissioner through 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 commissioner.

8400.3900 DISTRICT BOARD RECORDS.

The district shall maintain a current ledger of easements on forms provided by the commissioner. The ledger must specify the names of the landowners with whom the easements have been developed, the approved practices involved, the status of permanent cover establishment, the total of funds encumbered and expended, the size and type of easements, and their effective date.

8400.3930 RECONSIDERATION AND REVIEW.

Subpart 1. **Procedures.** Procedures for reconsideration and review of applications are in subparts 2 to 4.

Subp. 2. **Reconsideration by district.** An affected landowner may request the district board to reconsider its recommendations that deny landowner acceptance under the RIM reserve program by mailing a written request to the district within 15 days of receipt of the notice of denial of ineligibility, stating the specific reasons for claiming eligibility or a higher priority and including additional evidence to support the landowner's claims. The district shall notify the landowner of the final recommendation of the district board.

Subp. 3. **Review by state board.** An affected landowner may request the state board to review, on the record, the final recommendations of the district board that deny a landowner eligibility under the RIM reserve program by mailing a written request to the state board within 15 days after receipt of the final recommendation of the district board, stating the specific reasons for claiming eligibility, or a higher priority. The state board shall notify the landowner and district board of its recommendations.

Subp. 4. **Review by commissioner.** An affected landowner may request the commissioner to review, on the record, the

recommendations of the state board that deny a landowner eligibility under the RIM reserve program, by mailing a written request to the commissioner within 15 days after receipt of the state board recommendation, stating the specific reasons for claiming eligibility, or a higher priority. The commissioner shall notify the landowner of the commissioner's decision.

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Department of Agriculture, Reinvest in Minnesota (RIM) Reserve Program

AGENCY: Department of Agriculture

MINNESOTA RULES: Chapter 8400

INCORPORATION BY REFERENCE

Rule Number: 8400.3030
Material Incorporated: Guidelines for Soil and Water Conservation District Comprehensive and Annual Plans;
State board current list of hydric soils;
Agricultural Handbook Number 210;
State board list of soil mapping units indicative of marginal agricultural land;
RIM Reserve Conservation Practice Specifications

The attached rules are approved for publication in the State Register

Craig E. Lindeke
Senior Assistant Revisor

Department of Agriculture
Commissioner's Office

In the Matter of the Proposed Rule of the Department of Agriculture Governing the Reinvest in Minnesota Reserve Program

NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING

Notice is hereby given that the Minnesota Department of Agriculture intends to adopt the above-entitled rule without a public hearing, following the procedures set forth in the Administrative Procedures Act for adopting rules without a public hearing in Minnesota Statutes, Sections 14.22-14.28. The statutory authority to adopt this rule is Minnesota Statutes, Section 40.45.

All persons have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state their name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any proposed change. If a public hearing is required, the department will proceed according to Minnesota Statutes, Sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to: Carol Milligan, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107, (612) 296-6906.

The proposed rule may be modified if the modifications are supported by the data and views submitted to the department and do not result in a substantial change in the proposed rule as noticed.

A copy of the proposed rule is attached to this Notice.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available upon request from Ms. Milligan.

The proposed rule applies to and would have an impact on farms defined as small businesses by Minnesota Statutes section 14.115 if they choose to enroll in the RIM Reserve Program. For the following reasons, the Department considers the rules to pose a minimum impact on small businesses.

The proposed rules:

1. Do not impose any additional compliance or reporting requirements other than what is required by the corporate farm statutes;
2. Deal primarily. The proposed rule is necessary to ensure groundwater protection during chemigation and must apply to large or small businesses.
3. Do not impose any additional application or enrollment requirements for small businesses; and
4. Include limitations on the maximum acreage that a landowner may enroll.

If no hearing is required, upon adoption of the final rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule must submit a written request to Ms. Milligan.

STATE OF MINNESOTA

Date: 6-22-88

Jim Nichols

Jim Nichols, Commissioner
Department of Agriculture

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

In the Matter of the Proposed Rules
of the Department of Agriculture
Governing the Reinvest in
Minnesota (RIM) Reserve Program

Minnesota Rules 8400.3000 - 8400.3930

STATEMENT OF NEED AND REASONABLENESS

I. General Need and Authority for Rules 8400.3000

Minnesota Statutes, Sections 40.40 et. seq. and 84.95 authorizes the Commissioner of Agriculture in cooperation with the Board of Water and Soil Resources, soil and water conservation districts, state and local private groups, and state and federal agencies, to implement a program of retiring certain agricultural land from crop production and establishing on that land permanent vegetative cover, restoring altered wetlands, or establishing windbreaks adjacent to highways. Parts 8400.3000 to 8400.3930 provide procedures and criteria to be followed by the Commissioner of Agriculture, Board of Water and Soil Resources, and soil and water conservation district boards in implementing Minnesota Statutes, section 40.40 et. seq.

The proposed rules replace emergency rules and reflect nearly two years of experience in dealing with administrative and technical issues. Further, soil and water conservation districts, state and local private groups and state and federal agencies were actively encouraged by the department to review and comment on several drafts of the proposed rule. Consequently, it is necessary and reasonable to adopt the proposed rules so that:

1. Legislative, administrative and technical changes are incorporated, and
2. Local program administrators, cooperating agencies and applicants are provided with clear guidance concerning enrollment requirements and administrative procedures for the RIM Reserve program.

II. Need and Reasonableness of each Rule Part

8400.3030 Definitions. The terms as defined have the meanings given to them.

Some terms are defined in law and are included in the proposed rules for completeness and as a convenience to the reader.

The terms "agricultural crop production," "altered wetland," "annual plan," "approved practice," "conservation agreement," "conservation plan," "crop history," "cropland," "district board," "district cooperator," "district technician," "enduring practice," "farm operation," "food plot," "highway windbreak," "hydric soil," "hydrophytic vegetation," "individual," "inherently unproductive," "introduced hayland," "introduced pasture," "marginal agricultural land," "natural vegetation," "non-production practice," "permanent cover," "present value," "public access," "restored wetland," "RIM reserve conservation practice specifications," "screening committee," "significant potential soil productivity loss," "soil and water conservation practice," "soil mapping unit," and "state board" are newly defined in the proposed rules.

The new term "marginal agricultural land" mentions a federal document which was incorporated by reference, Agricultural Handbook number 210 is a long standing document which does not undergo frequent revision.

The new definitions are necessary to clarify the meaning of other parts of the proposed rule. The definitions are reasonable because they are consistent with generally accepted soil and water conservation or resource management terminology and will permit a better understanding of the propsed rule. Moreover, the new definitions are known to local program administrators since the terminology was previously used in RIM Reserve program emergency rules and associated administrative procedures.

The following parts are arranged in chronological order. This format aids the understanding and use of the proposed rule by local administrators.

8400.3060 Criteria for Allocation of Funds

This part summarizes the criteria used by the Commissioner of Agriculture to allocate funds to soil and water conservation districts. It is necessary and reasonable to do this so that funds are disbursed fairly and consistent with the intent of the RIM Reserve program.

8400.3100 Administration of Funds

The intent of this part is to identify that the participating district board is responsible for administration of funds in accordance with statutes and these proposed rules. For establishment of accountability, it is both necessary and reasonable that this part be included.

8400.3130 Priority Setting

A strength of the RIM Reserve program is the active involvement of local citizens and technical experts in priority setting. To accomplish this consistently statewide, it is necessary and reasonable that this part be included.

8400.3160 Criteria for Eligible Land

This part identifies the eligibility requirements of land proposed for enrollment. To ensure accurate interpretation of this part, the language is essentially a restatement of M.S. 40.43, subd. 2. Item (5) was added to include the requirement that only land that is physically possible to crop may be enrolled. An exception is made for altered wetlands. This item reflects the intent of the department to enroll only bonafide cropland, with exceptions made only for altered wetlands. Given the environmental value of wetlands, this position is deemed by the department to be justified. For these reasons, it is both necessary and reasonable that this part be included.

8400.3200 Maximum Enrollment

To provide guidance to a district board and ensure equitable enrollments, this part is necessary and reasonable. The structure of this part allows reasonable enrollments for both small and large acreage landowners. The last sentence was necessary to differentiate the RIM reserve program from the Beginning Farmer program. The latter program uses similar administrative procedures but has a different purpose.

8400.3230 Application by Landowners

This part provides guidance to a district board when accepting applications. It is necessary and reasonable to do this so that the application process is efficient, consistent and timely.

8400.3260 Land in More Than One District

It is both necessary and reasonable to ensure that applications involving multi-district parcels are processed timely. This part accomplishes it.

8400.3300 Criteria for Screening Committee Review

This part complements part 8400.3130 and is a necessary and reasonable part of the proposed rule. It is appropriate to reaffirm priority criteria after applications have been submitted.

8400.3330 Criteria for District Board Review

This part also complements a previous part; in this case 8400.3300. It is necessary and reasonable to include this part to ensure consistency between the screening committee and district board.

8400.3360 District Action on Applications

This part summarizes the action of a district board on eligible applications. To ensure that all landowners receive the same due process and that actions of the district board are consistent with the screening committee, it is necessary and reasonable to include this part.

8400.3400 Conservation Agreement for Easement

After approval of an application and before conveyance of the easement, it is important, and necessary, to restrict activities on the enrolled parcel. The sixteen steps identified in this part comply with requirements set forth in M.S. 40.43, subd's 4 and 5 and provide further direction to the district board and landowner. To identify the conditions of enrollment to the landowner and protect the State's interest, it is necessary and reasonable to include this part.

8400.3430 Procedure for Review of Conservation Agreement

It is both necessary and reasonable to ensure a sound chronological review of the tentative conservation agreement. The proposed process includes review, notification to the landowner and financial obligation. This part adequately addresses these topics.

8400.3460 Abstract and Title Requirements

This part summarizes the obligation of a landowner to prove that a good and marketable title exists for the enrolled parcel. It is necessary and reasonable to do this so that the State's interest in the land is not jeopardized.

8400.3500 Easement Conveyance

After recording of the conservation easement, payment is made to the landowner. This part is both necessary and reasonable as it links the administrative chronology and serves as a basis to discuss payment rates which follow.

8400.3530 Payment Rates

This part summarizes the methods used to calculate payment rates for new easements, conversion to a permanent easement and approved practices. For new easements, the payment rates: give priority to permanent easements, provide higher values for better quality land and ensures that payments do not exceed estimated township market values. Sections B and C are self-explanatory. To reflect current land market conditions, offer guidance to local program administrators and provide a uniform procedure for calculating payments, it is both necessary and reasonable to include this part.

8400.3560 Payments

It is both necessary and reasonable to include this part so that landowners have payment options.

8400.3600 Easement Renewal and Conversion

A landowner may decide to convert a limited duration easement to a permanent easement. Although permanent easements are generally viewed as higher priority than limited duration easements, it is not in the State's interest to automatically approve requests for conversion. Consequently, it is both necessary and reasonable to include this part.

8400.3630 Criteria for Approved Practices

This part summarizes criteria for approved practices. The criteria provides that high quality, long-term vegetative cover will be established for the primary purpose of controlling soil erosion or sedimentation, protection or improving water quality, or creation or improvement of fish and wildlife habitat. Since these points reflect the goals of the program, it is both necessary and reasonable to include this part.

8400.3660 List of Approved Practices

The seven indicated practices are consistent with the intent of the previous part. Consequently, this part is both necessary and reasonable.

8400.3700 Establishment of Approved Practices

This part summarizes procedures to be followed by program administrators when establishing approved practices. Sections A thru D provide: technical certification of practice completion, verification of practice cost and an opportunity for a landowner to request reconsideration of a claim for payment, methods for calculating final payments, provisions for considering in-kind services, and recognition of the financial contributions of other organizations. This part is a logical companion to part 8400.3530, and is necessary if program administrators are to receive proper guidance. This part is, therefore, both necessary and reasonable.

8400.3730 Failure of Approved Practices

This part absolves a landowner from a violation if failure of a practice was beyond their control. Further, a provision is made for additional funds to reinstall the practice. This part is both necessary and reasonable since it recognizes good faith efforts and offers an opportunity to reinstall failed practices.

8400.3760 Maximum Payment

This part is necessary and reasonable as it allows many landowners to receive a modest payment, as opposed to a few landowners receiving - publicly sensitive - exhorbitant payments.

8400.3800 Maintenance

This part reflects the long-term nature of the conservation benefits from enrolled land and landowner responsibility to properly maintain enrolled parcels. Consequently, this part is both practical and reasonable.

8400.3830 Violations

As contrasted with part 8400.3730, this is the other extreme. To maintain the public interest in enrolled lands and convey a responsible administrative role, a violations procedure is both necessary and reasonable. Given the case-by-case and often unique circumstances surrounding a violation, the flexibility in selecting a remedy is warranted.

8400.3860 Monitoring

This part is necessary and reasonable as it provides a flexible means of monitoring. Consequently, the Commissioner is not required to monitor "for the sake of monitoring," which should please local program administrators.

8400.3900 District Board Records

This part is a necessary and reasonable component of any program to ensure internal control of administrative activities and financial transactions.

8400.3930 Reconsideration and Review Procedures

This part is necessary and reasonable so that applicants are afforded several opportunities to appeal program denial.

III. Impact of the Proposed Rules on Small Businesses

Of the approximately 900 parcels currently enrolled in the RIM Reserve program, over 98 percent are owned by individuals. A number of the remaining sites are owned by farm-related small businesses such as authorized farm corporations and family farm corporations. While recognizing that the proposed rules may affect small businesses, the Department considers the rules - for the following reasons - to pose a minimum impact. The proposed rules:

1. Do not impose any additional compliance or reporting requirements other than what is required by the corporate farm statutes;

2. Deal primarily with local administration of a state program and do not directly affect small businesses;
3. Do not impose any additional application or enrollment requirements for small businesses; and
4. Include limitations on the maximum acreage that a landowner may enroll.

This last point serves to limit the impact to local implement and fertilizer businesses as cropland is retired and converted to long-term vegetative cover.

IV. Conclusion

For the reasons stated, the Minnesota Department of Agriculture believes that the proposed rule is necessary and reasonable to effectively administer M.S., chapters 40.40 et. seq. and 84.95 relating to Reinvest in Minnesota (RIM) reserve program.

In the Matter of the Proposed Rule
of the Department of Agriculture
Governing The Reinvest in Minnesota
Reserve Program

AFFIDAVIT OF MAILING
THE NOTICE OF INTENT
TO ADOPT A RULE WITHOUT
A PUBLIC HEARING

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Marie Skerbitz, being sworn, says:

That on the 13th day of July, 1988, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Intent to Adopt a Rule Without a Public Hearing by depositing in the State of Minnesota Central Mail System for United States mailing a copy thereof, with postage prepaid, to all persons and associations who have requested, persuant to Minnesota Statutes, sections 14.14, subdivision 1.a. and 14.22 OR 14.30, that their names be placed on the Minnesota Department of Agriculture rulemaking mailing list.

Marie Skerbitz
Mail Room Clerk

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

Subscribed and sworn to before me
this 13th day of July, 1988.

Diane M. Windham

Proposed Rules

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

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

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

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

Department of Agriculture

Proposed Permanent Rules Relating to Department of Agriculture, Reinvest in Minnesota (RIM) Reserve Program

Notice of Intent to Adopt a Rule Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Department of Agriculture intends to adopt the above-entitled rule without a public hearing, following the procedures set forth in the Administrative Procedures Act for adopting rules without a public hearing in *Minnesota Statutes*, Sections 14.22-14.28. The statutory authority to adopt this rule is *Minnesota Statutes*, Section 40.45.

All persons have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state their name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any proposed change. If a public hearing is required, the department will proceed according to *Minnesota Statutes*, Sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to: Carol Milligan, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107, (612) 296-6906.

The proposed rule may be modified if the modifications are supported by the data and views submitted to the department and do not result in a substantial change in the proposed rule as noticed.

A copy of the proposed rule is attached to this Notice.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available upon request from Ms. Milligan.

The proposed rule applies to and would have an impact on farms defined as small businesses by *Minnesota Statutes* section 14.115 if they choose to enroll in the RIM Reserve Program. For the following reasons, the Department considers the rules to pose a minimum impact on small businesses.

The proposed rules:

1. Do not impose any additional compliance or reporting requirements other than what is required by the corporate farm statutes;

2. Deal primarily. The proposed rule is necessary to ensure groundwater protection during chemigation and must apply to large or small businesses.

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.

3. Do not impose any additional application or enrollment requirements for small businesses; and

4. Include limitations on the maximum acreage that a landowner may enroll.

If no hearing is required, upon adoption of the final rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule must submit a written request to Ms. Milligan.

Dated: 22 June 1988

Jim Nichols, Commissioner
Department of Agriculture

Rules as Proposed (all new material)

DEPARTMENT OF AGRICULTURE RIM RESERVE PROGRAM

8400.3000 AUTHORITY.

Minnesota Statutes, sections 40.40 to 40.45 and 84.95, authorize the commissioner, in cooperation with the state board, districts, state and local private groups, and state and federal agencies, to implement a program of retiring certain agricultural land from crop production and establishing on that land permanent vegetative cover, restoring altered wetlands, or establishing windbreaks adjacent to highways. Parts 8400.3000 to 8400.3930 provide procedures and criteria to be followed by the commissioner, state board, and district boards in implementing *Minnesota Statutes*, sections 40.40 to 40.45.

8400.3030 DEFINITIONS.

Subpart 1. **Scope.** The definitions in this part apply to parts 8400.3000 to 8400.3930.

Subp. 2. **Agricultural crop production.** "Agricultural crop production" means an agricultural activity:

A. including but not limited to tillage, planting, or harvesting operations; and

B. devoted to the production of horticultural, row, close grown, introduced pasture, or introduced hayland crops.

Subp. 3. **Altered wetland.** "Altered wetland" means a former natural wetland that has been altered by draining, dredging, filling, leveling, or other manipulation sufficient to render the land suitable for agricultural crop production. The alteration must have occurred before December 23, 1985, and must be a legal alteration as determined by the Department of Natural Resources.

Subp. 4. **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. The most recent version is available at the district office and state board office and is incorporated by reference.

Subp. 5. **Approved practice.** "Approved practice" means a soil and water conservation practice that qualifies for RIM reserve program funding. All approved practices are described in the RIM reserve conservation practice specifications.

Subp. 6. **Authorized farm corporation.** "Authorized farm corporation" has the meaning given in *Minnesota Statutes*, section 500.24, subdivision 2.

Subp. 7. **Beginning farmer program.** "Beginning farmer program" means the program created by *Minnesota Statutes*, section 41B.039.

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

Subp. 9. **Conservation agreement.** "Conservation agreement" means a written contract stating the terms and conditions for conveying the conservation plan and the conservation easement by the landowner to the commissioner.

Subp. 10. **Conservation easement, easement.** "Conservation easement" or "easement" has the meaning given for "conservation easement" in *Minnesota Statutes*, section 84C.01, paragraph (1).

Subp. 11. **Conservation plan.** "Conservation plan" means a written description of the approved practices that must be applied to the easement area.

Subp. 12. **Crop history.** "Crop history" means a sequence of agricultural crop production that includes at least one of the following activities on an annual basis: tillage, planting, or harvesting. For purposes of this part, land with a crop history includes acres devoted to "set-aside" and "conserving use" for the United States Department of Agriculture programs.

Subp. 13. **Cropland.** "Cropland" means an area devoted to agricultural crop production.

Subp. 14. **District.** "District" means a local soil and water conservation district organized under *Minnesota Statutes*, section 40.04.

Subp. 15. **District board.** "District board" means the five supervisors of a district authorized to carry out the functions of the district.

Subp. 16. **District cooperator.** "District cooperator" means a landowner who has requested the assistance of a district board in controlling conservation problems and has entered into a written cooperator's agreement with the district board.

Subp. 17. **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. 18. **Enduring practice.** "Enduring practice" means a soil and water conservation practice that is designed for an effective life of 20 years or more.

Subp. 19. **Family farm.** "Family farm" has the meaning given in *Minnesota Statutes*, section 500.24, subdivision 2.

Subp. 20. **Family farm corporation.** "Family farm corporation" has the meaning given in *Minnesota Statutes*, section 500.24, subdivision 2.

Subp. 21. **Farm operation.** "Farm operation" means property owned or leased in Minnesota by the landowner that is associated with farming.

Subp. 22. **Farming.** "Farming" has the meaning given in *Minnesota Statutes*, section 500.24, subdivision 2.

Subp. 23. **Food plot.** "Food plot" means an area established annually for the purpose of providing food for wildlife.

Subp. 24. **Highway windbreak.** "Highway windbreak" means a strip or belt of trees, shrubs, or grass barriers at least six rows deep and within 300 feet of the right-of-way of a highway. Grass barriers must be used in conjunction with trees and shrubs.

Subp. 25. **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. The current list of hydric soils is available at the state law library and the district office, is subject to frequent change, and is incorporated by reference.

Subp. 26. **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. 27. **Individual.** "Individual" means a person or legal entity, whether or not a resident of Minnesota.

Subp. 28. **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. 29. **Introduced hayland.** "Introduced hayland" means an area devoted to the production of forage and cultivated in a rotation of row crops or small grains or interseeded with introduced or nonnative species at least twice during the period 1976 to 1985. These areas must be harvested by mechanical methods at least two years during the period 1981 to 1985. These areas are considered to be in agricultural crop production.

Subp. 30. **Introduced pasture.** "Introduced pasture" means an area devoted to the production of forage and cultivated in a rotation of row crops or small grains or interseeded with introduced or nonnative species at least twice during the period 1976 to 1985. These areas must be harvested by grazing at least two years during the period 1981 to 1985. These areas are considered to be in agricultural crop production.

Subp. 31. **Landowner.** "Landowner" means an individual, family farm, family farm corporation, or authorized farm corporation who either owns eligible land or is purchasing eligible land under a contract for deed in Minnesota.

Subp. 32. **Local emergency.** "Local emergency" means an emergency declared under *Minnesota Statutes*, section 12.29.

Subp. 33. **Marginal agricultural land.** "Marginal agricultural land" for the RIM reserve program means land with cropland soils that are inherently unproductive for agricultural crop production or subject to significant potential soil productivity loss from erosion. For the beginning farmer program, "marginal agricultural land" means land in the land capability classes 6 to 8, as defined by the United States Department of Agriculture, Agricultural Handbook Number 210. This publication is available at the state law library and at district offices, is not subject to frequent change, and is incorporated by reference. The state board shall provide districts with a list of soil mapping units indicative of marginal agricultural land. Districts may change the list as necessary to reflect local soil characteristics. Changes must be approved by the commissioner and the state board. This list, with changes, is available at the state law library and at district offices, is subject to frequent change, and is incorporated by reference.

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Subp. 34. **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. An area is not considered in natural vegetation if it has been in agricultural crop production for at least one year since January 1, 1981.

Subp. 35. **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. 36. **Permanent cover.** "Permanent cover" means the water area created by a restored wetland and the permanent vegetative cover established under the RIM reserve program.

Subp. 37. **Present value.** "Present value" means the value today of an amount that would have been received later, at a discount rate established annually by the commissioner.

Subp. 38. **Protected water.** "Protected water" means public waters or wetlands, as defined in *Minnesota Statutes*, section 105.37, and inventoried under *Minnesota Statutes*, section 105.391. A copy of the inventory is available in the district office.

Subp. 39. **Public access.** "Public access" means the right of individuals to enter and exit private property. Under the RIM reserve program, public access is controlled by the landowner.

Subp. 40. **Restored wetland.** "Restored wetland" means an altered wetland restored under the RIM reserve program if the wetland meets the definition of a wetland in subpart 48.

Subp. 41. **RIM reserve conservation practice specifications.** "RIM reserve conservation practice specifications" means the current edition of the Minnesota Department of Agriculture publication containing detailed descriptions of the approved conservation practices found in part 8400.3660. This publication is subject to frequent change, is available at the state law library and at district offices, and is incorporated by reference.

Subp. 42. **RIM reserve program.** "RIM reserve program" means the Reinvest in Minnesota Resources Conservation Reserve program established in *Minnesota Statutes*, sections 40.41 to 40.45.

Subp. 43. **Screening committee.** "Screening committee" means a group established by the district board to assist in implementing the RIM reserve program. The screening committee is chaired by a district board member and is 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 request for participation must be sent at least annually to the: Minnesota Department of Natural Resources, Minnesota Pollution Control Agency, United States Agricultural Stabilization and Conservation Service, United States Fish and Wildlife Service, and United States Soil Conservation Service.

Subp. 44. **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 soil and water conservation practices 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. 45. **Soil and water conservation practice.** "Soil and water conservation practice" means an approved conservation practice applied to land to control soil erosion, sediment, or other water pollutants as described in the RIM reserve conservation practice specifications.

Subp. 46. **Soil mapping unit.** "Soil mapping unit" means a unit or type of soil or combination of soils shown on a soil survey map.

Subp. 47. **State board.** "State board" means the Board of Water and Soil Resources.

Subp. 48. **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 prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions, including wetlands as defined in *Minnesota Statutes*, section 105.37.

8400.3060 CRITERIA FOR ALLOCATION OF FUNDS.

The commissioner shall allocate funds to participating district boards through the state board based on the following criteria:

A. the number of applications recommended for approval by the district board;

B. the proportion of marginal agricultural land in the district as compared to state totals;

C. the potential for restoring wetlands;

D. the need for highway windbreaks;

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

F. the expressed interest and readiness of the district board, cooperating groups, and agencies to implement the program.

The allotted funds may be increased, decreased, or shifted as necessary to maximize the use of funds among districts.

8400.3100 ADMINISTRATION OF FUNDS.

The participating district board is responsible for administration of the funds in accordance with *Minnesota Statutes*, sections 40.40 to 40.45 and other applicable laws. The district board may make recommendations concerning use of these funds in accordance with parts 8400.3000 to 8400.3930.

8400.3130 PRIORITY SETTING.

Annually, before considering any applications from landowners, the participating district board shall call a screening committee meeting. The screening committee must establish priority areas within the district. Establishment of priority areas must be based on the following criteria:

A. the location of high priority erosion or water quality problem areas 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. recommendations from technical agricultural and natural resource experts familiar with the district;

D. the established priorities of the agencies and organizations represented on the screening committee;

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

F. the amount of RIM reserve program funds available.

8400.3160 CRITERIA FOR ELIGIBLE LAND.

Land eligible for the RIM reserve program must meet at least one of the following criteria:

A. The land is marginal agricultural land.

B. The land is agricultural land 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.

C. The land is an altered wetland and cropland adjacent to the altered wetland, with up to four acres of nonmarginal cropland for each acre of wetland restored.

D. The land is land that with a highway windbreak would control snow drifting and be beneficial to resource protection.

In addition, eligible land must have all of the following characteristics:

(1) a crop history for at least two years during the period 1981 to 1985;

(2) was owned by the landowner, or a parent or other blood relative of the landowner, for at least three years before the date of application;

(3) is at least five acres in size, except for a highway windbreak, or is a whole field as defined by the Agricultural Stabilization and Conservation Service;

(4) is not set-aside, enrolled, or diverted under another federal or state government land retirement program including, but not limited to, federal conservation reserve, federal production adjustment set-aside, or state or federal water bank; and

(5) is physically possible to crop, except for altered wetlands.

8400.3200 MAXIMUM ENROLLMENT.

The total enrolled land of a landowner in the RIM reserve program may not exceed 20 percent of the landowner's total agricultural land acreage in Minnesota, if the landowner owns at least 200 acres of agricultural land. If a landowner owns less than 200 acres of agricultural land, the amount that may be enrolled in the conservation reserve is:

(a) all agricultural land owned, if 20 acres or less; or

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(b) if the total agricultural land owned is more than 20 acres but less than 200 acres, 20 acres plus ten percent of the total.

The total enrolled land of a landowner in the beginning farmer program may not exceed 20 percent of the total agricultural acreage of the enrolled farm operation.

8400.3230 APPLICATION BY LANDOWNERS.

Landowners interested in participating in the RIM reserve program must submit an application to the appropriate district office in which the land is located, during the application period established by the commissioner, and on forms provided by the commissioner. The landowner must complete the application in its entirety along with any supportive information required for proper consideration of the application. The supportive information includes, but is not limited to:

A. crop history of the parcel;

B. total agricultural acres owned by the applicant in Minnesota;

C. aerial photographs or a sketch of the parcel; and

D. description of other land owned or leased as part of the same farm operation at the time of application.

The district technician shall make an initial determination of easement eligibility at the time of application. Applications having questionable eligibility must be referred to the district board for eligibility determination. Providing proof of eligibility is the responsibility of the landowner. The district technician shall develop a cost estimate for the easement and approved practices for all eligible applications. Other organizations and agencies may be requested to provide technical assistance in preparing cost estimates.

8400.3260 LAND IN MORE THAN ONE DISTRICT.

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

8400.3300 CRITERIA FOR SCREENING COMMITTEE REVIEW.

Upon completion of the application period and initial eligibility determination by the district technician, the screening committee shall confer and prioritize each eligible application. The criteria for screening committee prioritization are as follows:

A. consistency with the purpose and policy of the RIM reserve program;

B. the parcel's relationship to the priority areas previously determined in part 8400.3130;

C. the parcel's potential impact on reducing erosion and sedimentation, improving water quality, and enhancing fish and wildlife habitat;

D. potential title problems and encumbrances;

E. compatibility with established priorities of the organizations and groups represented; and

F. highest priority must be given to permanent easements that are consistent with *Minnesota Statutes*, section 40.41.

All eligible applications must be prioritized with recommendations and submitted to the district board for review. Applications with eligibility questions must be referred to the district board for eligibility determination before screening committee prioritization.

8400.3330 CRITERIA FOR DISTRICT BOARD REVIEW.

Upon the receipt of the applications with screening committee prioritization, the district board shall meet and review the applications. Criteria for district board review are as follows:

A. criteria in part 8400.3300 used in screening committee review;

B. compatibility with district plans and priorities; and

C. availability of funds from RIM reserve and other sources.

8400.3360 DISTRICT ACTION ON APPLICATIONS.

Upon completion of district board review of the eligible applications, the following action must be taken:

A. Applications approved for further processing are designated as approved and must be signed by the district chair or acting chair.

B. High priority applications for which there are insufficient funds are designated as pending, with the consent of the landowner. These applications may be held in a pending status for up to 60 days while additional funds are sought.

C. Applications not eligible or not of sufficient priority are designated as denied. The reason for the denial must be stated on the application.

D. The district board shall notify all applicants in writing of their application designation status within 30 days after the end of the application period.

E. All applications must be kept at the district office for a minimum of three years for future reference.

F. When district board action results in prioritization differing from the screening committee recommendations, the screening committee must be notified within 30 days in writing by the district board.

8400.3400 CONSERVATION AGREEMENT FOR EASEMENT.

The district board shall develop a conservation agreement for all approved applications in which the landowner agrees to:

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

B. establish and maintain permanent cover and other conservation practices on the land subject to the easement as described in the conservation plan approved by the commissioner, which is incorporated into the conservation easement;

C. convey to the state a permanent wetland restoration easement when an altered wetland is being restored;

D. not convert to agricultural crop production or pasture any other land supporting natural vegetation owned or leased as part of the same farm operation during the term of the easement, if those lands support natural vegetation or have not been used in agricultural crop production or introduced pasture;

E. the enforcement of the terms of the easement and agreements by an action for specific performance, a mandatory injunction, or for damages in an amount not to exceed the total amount paid by the state to the landowner, with interest from the date of each default under the agreement or any combination of these remedies;

F. not alter wildlife habitat, natural features, or the vegetative cover and other conservation practices established in the conservation plan, except by the prior written approval of the commissioner;

G. not produce agricultural crops, unless approved by the commissioner for wildlife management purposes;

H. not graze livestock except with the prior written approval of the commissioner, after consultation with the commissioner of the Department of Natural Resources, in the case of severe drought or a local emergency;

I. be responsible for weed control and not to spray with chemicals or mow, except as necessary to comply with noxious weed control laws, or emergency control of pests necessary to protect public health, or to maintain permanent vegetative cover as approved by the district;

J. restore the easement area to the condition described in the conservation plan after any lawful repair or improvement of a public drainage system;

K. notify the commissioner in writing at least 30 days before the conveyance of all or part of the title or interest in the land in which the easement area is located by providing the names and addresses of the grantees, assignees, or heirs;

L. pay, when due, all taxes and assessments that may be levied against the easement area;

M. the running of the easement with the land and its being binding on all persons and entities who come into ownership or possession of the affected lands;

N. not place, erect, or construct temporary or permanent structures on the easement area;

O. allow the commissioner and the commissioner's employees and agents to enter the easement area for the purposes of inspection or enforcement of the terms and conditions of the easement; and

P. undertake the protection and management of the easement area in accordance with the conditions in the easement.

The conservation agreement must be recordable and on forms approved by the commissioner.

8400.3430 PROCEDURE FOR REVIEW OF CONSERVATION AGREEMENT.

After the conservation agreement has been developed by the district board, the unsigned agreement must be processed as follows:

A. It must be reviewed by a representative of the state board.

B. It must have a review and determination by the commissioner.

C. The landowner must be notified of the commissioner's decision.

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D. If it is approved by the commissioner, the agreement must be given to the landowner for signature.

E. The agreement must be returned to the commissioner for signature by the necessary state officials and encumbrance of state funds.

F. A copy of the signed agreement must be provided to the landowner.

8400.3460 ABSTRACT AND TITLE REQUIREMENTS.

After notification of the commissioner's signing of the conservation agreement, the landowner, at the landowner's expense, shall deliver to the district office an original up-to-date abstract of title or registered property abstract, with certifications as to liens, bankruptcies, real estate taxes, and judgments. The landowner must have good and marketable title, not subject to any prior liens or encumbrances, as determined by the Attorney General, or an insurable title under a title insurance policy, not subject to any prior liens or encumbrances, approved by the Attorney General. Any title defect, liens, or encumbrances must be promptly removed or corrected by the landowner including, but not limited to, the following: lien waivers, releases or consent and subrogation from mortgagees, release or satisfaction of judgments, and receipt for payment of delinquent real estate taxes. The landowner's abstract of title must be returned to the landowner.

8400.3500 EASEMENT CONVEYANCE.

Upon delivery and recording of a properly executed conservation easement, approved by the commissioner, and the vesting of the easement interest in the commissioner, not subject to any prior lien or encumbrances, payment must be made for the easement to the landowner, landowner's designees, assignees, or heirs.

8400.3530 PAYMENT RATES.

Subpart 1. **Calculation.** The payment rate for the conservation easement must be calculated according to subparts 2 to 4.

Subp. 2. **New easements.** For permanent easements, payments are per acre figures derived from county average cash rent adjusted for countywide variations in estimated township market value. The figures are established on a township basis with the lower of the following two values selected as the payment:

A. 100 percent of the present value of the derived per acre figure calculated for perpetuity; or

B. 90 percent of estimated township market value. This payment method provides higher values for better quality land and ensures that payments do not exceed estimated market values. A schedule of payments for townships and unorganized areas is developed annually and is available at district offices or from the commissioner.

For limited duration easements not less than 20 years in length, payments are based on 65 percent of the permanent easement payment.

Payment rates may be modified prior to the sign up by the commissioner if the commissioner determines the rates established above do not reflect current market values based on the most recent land value market indicators.

The commissioner shall annually establish the discount rate to be used for calculating present value. Average cash rent and estimated market value are based on information provided by the Department of Revenue in cooperation with local assessors.

Subp. 3. **Conversion to permanent easement.** When converting limited duration easements to permanent easements, the payment is the difference between the amount paid per acre for the permanent easement as established for the most recent sign-up period and the amount already paid for the limited duration easement on the area.

Subp. 4. **Approved practices.** The payment rate for the approved conservation practice to be applied to the easement area is described in *Minnesota Statutes*, section 40.43, subdivision 6.

8400.3560 PAYMENTS.

Payments for easements will be a one-time lump sum amount unless the landowner requests a split payment for up to four equal annual installments for which no interest is paid. Payments may be assigned by the landowner.

8400.3600 EASEMENT RENEWAL AND CONVERSION.

A. When a conservation easement of limited duration expires, a new conservation easement and agreement for an additional period of not less than 20 years may be acquired by agreement of the commissioner and the landowner under the rules in force at that time. The commissioner may adjust payment rates as a result of renewing an agreement and conservation easement only after examining the condition of the established cover, conservation practices, and land values.

B. The easement duration may be lengthened through mutual agreement with the commissioners of the Departments of Agriculture and Natural Resources if they determine that the changes effectuate the purpose of the program or to facilitate its administration.

8400.3630 CRITERIA FOR APPROVED PRACTICES.

Approved practices 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 fish and wildlife habitat. The list is contained in part 8400.3660 and is further specified in the RIM reserve conservation practice specifications. Practices under this program must be designed for a minimum effective life of 20 years, be nonproduction practices, and have specifications providing for the use of plant species and construction techniques that provide quality fish and wildlife benefits. Production practices that do not qualify as approved practices include, but are not limited to, Christmas tree plantations and fruit orchards. Food plots are not eligible for RIM reserve cost-sharing, but are allowed on enrolled acres if they are included in the conservation plan and approved by the commissioner.

8400.3660 LIST OF APPROVED PRACTICES.

Approved practices include, but are not limited to:

A. permanent vegetative cover;

B. tree and shrub planting;

C. field windbreak;

D. highway windbreak;

E. stormwater control system;

F. diversion; and

G. structures for water control.

The approved practices are further described in the RIM reserve conservation practice specifications.

8400.3700 ESTABLISHMENT OF APPROVED PRACTICES.

Subpart 1. **Installation of approved practices.** Establishment of approved practices must be monitored by the district board to ensure compliance with the easement. Upon completion of an annual component or the entire plan a district technician shall certify whether or not the practice has been satisfactorily performed, including certification that the practice meets the RIM reserve conservation practice specifications. Upon certification of completion, the landowner shall present documentation to the district of the costs incurred in the installation of the practice in the form of receipts or invoices.

Subp. 2. **Costs for approved practices.**

A. The district board shall review the receipts and invoices provided by the landowner to determine the actual cost eligible for RIM reserve payment. If the district board determines that the claims are reasonable and practical, it shall recommend payment to the landowner by submitting a completed certification of practice completion and a cost-share voucher to the commissioner. If the district board determines that certain claims are not justified or not eligible, it shall notify the landowner in writing of the unjustified claim within 30 days. The landowner may request reconsideration of this determination by the district board within 15 days of receipt of the determination. If additional eligible costs are justified, the district board shall then recommend payment for the approved amount.

B. The state is only financially obligated up to the amount encumbered for each approved practice as stated in the conservation plan attached to the conservation easement, and any costs exceeding this amount are the responsibility of the landowner.

C. If the actual cost of installing the approved practices in the conservation plan are less than the encumbered amount, the state shall only pay the applicable cost of the installation in accordance with the limits in *Minnesota Statutes*, section 40.43, subdivision 6, clauses (1) and (2).

D. The commissioner may encumber additional funds for eligible costs if the additional encumbrance is consistent with the purpose and policy of the RIM reserve program and the maximum amounts in *Minnesota Statutes*, section 40.43, subdivision 6, clauses 1 and 2, are not exceeded.

Subp. 3. **Payment for 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. 4. **Funds from other sources.** RIM reserve funds may be augmented by funds from other agencies, organizations, or individuals. Securing these funds is the responsibility of the landowner. Requirements for obtaining these funds are determined by the contributor.

8400.3730 FAILURE OF APPROVED PRACTICES.

A landowner is not in violation of the conservation easement if the failure of approved practices was caused by reasons beyond the landowner's control such as extreme weather conditions. In these instances, the district board may recommend to the commissioner that additional RIM reserve funds be encumbered for reinstallation of the approved practices. The encumbrance must comply with the limits in *Minnesota Statutes*, section 40.43, subdivision 6, clauses (1) and (2), and cannot exceed the amount encumbered for the initial installation. In no case may a district board provide financial assistance to a landowner for the reapplication of approved practices that were removed, altered, or failed due to improper maintenance during the term of the easement.

8400.3760 MAXIMUM PAYMENT.

The commissioner may not pay more than $50,000 total in RIM reserve program funds to a landowner for all approved practices and conservation easements. This is the maximum cumulative amount that may be received over the landowner's lifetime.

8400.3800 MAINTENANCE.

A landowner is responsible for planting, establishment, operation, and maintenance of approved practices described in the conservation agreement and for ensuring that easement restrictions are followed so that the easement's conservation objective is met and the effective life of 20 or more years is achieved.

8400.3830 VIOLATIONS.

The commissioner may enforce the easement and agreement by the following legal action:

A. specific performance;

B. mandatory injunction;

C. damages in an amount not to exceed the total amount paid by the state to the landowner from RIM reserve funds, with interest from the date of each default; or

D. any combination of the above remedies.

The district board may recommend to the commissioner appropriate measures to be taken to correct violations. Easements remain in effect even if maintenance violations have occurred.

8400.3860 MONITORING.

The commissioner through 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 commissioner.

8400.3900 DISTRICT BOARD RECORDS.

The district shall maintain a current ledger of easements on forms provided by the commissioner. The ledger must specify the names of the landowners with whom the easements have been developed, the approved practices involved, the status of permanent cover establishment, the total of funds encumbered and expended, the size and type of easements, and their effective date.

8400.3930 RECONSIDERATION AND REVIEW.

Subpart 1. **Procedures.** Procedures for reconsideration and review of applications are in subparts 2 to 4.

Subp. 2. **Reconsideration by district.** An affected landowner may request the district board to reconsider its recommendations that deny landowner acceptance under the RIM reserve program by mailing a written request to the district within 15 days of receipt of the notice of denial of ineligibility, stating the specific reasons for claiming eligibility or a higher priority and including additional evidence to support the landowner's claims. The district shall notify the landowner of the final recommendation of the district board.

Subp. 3. **Review by state board.** An affected landowner may request the state board to review, on the record, the final recommendations of the district board that deny a landowner eligibility under the RIM reserve program by mailing a written request to the state board within 15 days after receipt of the final recommendation of the district board, stating the specific reasons for claiming eligibility, or a higher priority. The state board shall notify the landowner and district board of its recommendations.

Subp. 4. **Review by commissioner.** An affected landowner may request the commissioner to review, on the record, the recommendations of the state board that deny a landowner eligibility under the RIM reserve program, by mailing a written request to the commissioner within 15 days after receipt of the state board recommendation, stating the specific reasons for claiming eligibility, or a higher priority. The commissioner shall notify the landowner of the commissioner's decision.

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED ADOPTION OF THE RULE OF THE MINNESOTA DEPARTMENT OF AGRICULTURE GOVERNING THE REINVEST IN MINNESOTA (RIM) RESERVE PROGRAM

FINDINGS OF FACT, CONCLUSIONS AND ORDER ADOPTING RULE WITHOUT PUBLIC HEARING

Notice of the Commissioner's intent to adopt the above-entitled rule was published in the State Register on July 18, 1988, and was sent by United States mail to all persons on the list maintained by the department pursuant to Minnesota Statutes, section 14.14, subd. 1a and 14.22 on July 13, 1988. The Statement of Need and Reasonableness was prepared before the notice of intent to adopt a rule without a public hearing was mailed to all persons on the rulemaking mailing list and published in the State Register and was available to the public.

All persons were given the opportunity to submit comments on the rule for 30 days after notice of proposed rulemaking. No requests for a public hearing on the rule were received by the department.

No requests for notice of submission to the attorney general were received by the department.

Based on the comments and evidence in the record before the department, I find the following:

8400.3030, Subp. 16.

Replacing the term "controlling" with "solving" makes the terminology throughout the rule more consistent. This is a technical change meant to clarify the rule.

8400.3030, Subp. 33.

Replacing the Arabic numerals "6" and "8" with Roman numerals "VI" and "VIII" makes the rule consistent with other federal documents defining land capability classes. This is a technical change for clarification.

8400.3030, Subp. 43.

The addition of the "local" agency reference and the participation request "by the district" clarifies this part of the rule.

8400.3130, Subp. A. and B.

The addition of the word "soil" in front of the word "erosion" clarifies this part of the rule.

8400.3160, Subp. C.

The addition of the word "adjacent" and elimination of the word "nonmarginal" clarifies this part of the rule and makes if consistent with the statute.

8400.3160, Subp. D(2).

This addition makes the rule consistent with the language of the statute.

8400.3300, Subp. C.

The addition of the word "soil" in front of the word "erosion" clarifies this part of the rule.

8400.3360, Subp. E.

Since accepted applications have easements on file, this subpart should only refer to denied applications. This change clarifies this part of the rule.

8400.3400, Subp. D.

This change clarifies this part of the rule and makes it consistent with the language of the statute.

All changes to the rule as proposed are minor amendments to clarify definitions or terms or make the rule consistent with statute, and therefore, do not constitute substantial change.

The above-captioned rule is needed and reasonable.

NOW, THEREFORE, IT IS ORDERED that the rule identified as the Rule Governing The Reinvest in Minnesota (RIM) Reserve Program is adopted this 31st day of August 1988, pursuant to authority vested in me by Minnesota Statutes, section 40.45.

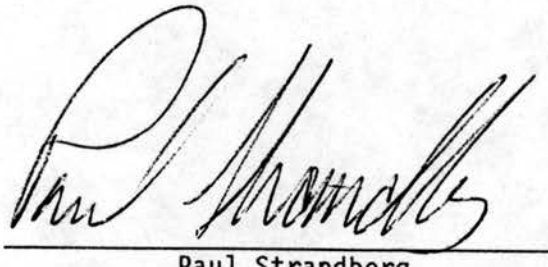
STATE OF MINNESOTA

JIM NICHOLS
COMMISSIONER OF AGRICULTURE

In the Matter of the Adoption of the
Rule of the Minnesota Department
of Agriculture Governing The Reinvest
in Minnesota (RIM)
Reserve Program

DECLARATION
OF COUNSEL

I, Paul Strandberg, Special Assistant Attorney General, do hereby declare that I have examined the above-captioned rule and the supporting rulemaking record, and that, based on my examination, the Administrative Procedure Act and Minnesota Rules, Chapter 2010 have been followed. Any exceptions are listed below. For Attorney General billing purposes, the four-digit docket client code is 0986.



Paul Strandberg
Special Assistant Attorney General

Date: 9/1/88

In the Matter of the Proposed Rule
of the Department of Agriculture
Governing The Reinvest in Minnesota
Reserve Program

CERTIFICATE OF
MAILING LIST

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Carol Milligan, being sworn, says:

I hereby certify that the list of persons and associations who have requested, pursuant to Minn. Statutes, sections 14.14, subd. 1a, and 14.22 or 14.30, that their names be placed on the Minnesota Department of Agriculture rulemaking mailing list is accurate, complete and current as of this 13th day of July, 1988.

Carol Milligan
Carol Milligan
Management Analyst

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

Subscribed and sworn to before me
this 13th day of July, 1988.

Diane M. Windham

PLANNING DIVISION
DEPARTMENT OF AGRICULTURE

LIST OF ATTACHED DOCUMENTS

A. Rule as Proposed.

B. Notice of Intent to Adopt a Rule Without Public Hearing.

C. Statement of Need and Reasonableness.

D. Affidavit of Mailing Notice of Intent to Adopt a Rule Without Public Hearing.

E. Certification of Mailing List.

F. State Register Photocopy of Notice of Intent.

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

H. Findings of Fact and Conclusions, and Order Adopting.

I. Comments Received.

J. Declaration of Counsel.

SF-00006-05 (4/86)

DEPARTMENT : OF AGRICULTURE

STATE OF MINNESOTA

Office Memorandum

DATE : September 9, 1988

TO : Rita Desmond
Administration - Finance Division
Office of the Attorney General

FROM : Carol Milligan, Management Analyst
Planning Division

PHONE : 296-6906

SUBJECT : Review of Proposed Rule Governing RIM

RECEIVED

SEPT 08 88

ATTORNEY GENERAL'S OFFICE
515 TRANSPORTATION BLDG.
ST PAUL, MN 55155

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

If you have questions, please contact me.

CM:cb

Attachment

cc: Jim Nichols, Commissioner
Paul Strandberg, Special Assistant Attorney General
Craig Lindeke, Office of Revisor of Statutes
Gerald Heil, Planning Division
Pat Jensen, Counsel to the Commissioner

Wayne Edgerton, Board of Water and Soil Resources