

CHAPTER 8400

BOARD OF WATER AND SOIL RESOURCES

COST-SHARE PROGRAM

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8400.3000 AUTHORITY.

Minnesota Statutes, sections 40.40 to 40.46 and 84.95, authorize the board, in cooperation with 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 drained wetlands, establishing windbreaks adjacent to highways, or enhancing and protecting other private lands. Parts 8400.3000 to 8400.3930 provide procedures and criteria to be followed by the board and district boards in implementing Minnesota Statutes, sections 40.40 to 40.46.

Statutory Authority: *MS s.40.45*

History: *14 SR 1928*

8400.3030 DEFINITIONS.

[For text of subps 1 and 2, see M.R.]

Subp. 3. [Repealed, 14 SR 1928]

[For text of subps 4 to 6, see M.R.]

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

Subp. 7. [Repealed, 14 SR 1928]

Subp. 8. **Board.** "Board" means the Board of Water and Soil Resources.

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 board.

[For text of subps 10 to 17, see M.R.]

Subp. 17a. **Drained wetland.** "Drained wetland" means a former natural wetland that has been altered by draining, dredging, filling, leveling, or other manipulation in an attempt 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 commissioner of natural resources.

[For text of subps 18 to 20, see M.R.]

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

[For text of subps 21 to 30, see M.R.]

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

[For text of subp 32, see M.R.]

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. 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 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. In addition, land immediately surrounding a sinkhole is marginal agricultural land.

Subp. 33a. Pasture. "Pasture" means land used for grazing by domestic livestock on and before June 2, 1989, which has not been cultivated or interseeded at least twice during the period of 1976 to 1985, and therefore is not considered to be in agricultural crop production.

Subp. 33b. Pastured hillside. "Pastured hillside" means land used for pasture in land capability classes III 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.

[For text of subps 34 to 36, see M.R.]

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 board.

[For text of subps 38 and 39, see M.R.]

Subp. 39a. Public water. "Public water" means waters and 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. 40. Restored wetland. "Restored wetland" means a drained 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 board's 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 40.46.

Subp. 42a. Riparian. "Riparian" means cropland adjacent to public water. For the RIM reserve program, the cropland must begin within 100 feet of the boundary of the public water to be eligible.

[For text of subp 43, see M.R.]

Subp. 43a. **Sensitive groundwater area.** "Sensitive groundwater area" means a geographic area defined by natural features where there is a significant risk of groundwater degradation from activities conducted at or near the land surface. These areas may be identified by mapping or other appropriate methods determined by the commissioner of natural resources and the board. Wellhead protection areas may be designated as a sensitive groundwater area.

[For text of subps 44 to 46, see M.R.]

Subp. 47. [Repealed, 14 SR 1928]

[For text of subp 48, see M.R.]

Statutory Authority: *MS s 40.45*

History: *14 SR 1928*

8400.3060 CRITERIA FOR ALLOCATION OF FUNDS.

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

[For text of items A and B, see M.R.]

C. the potential for restoring drained wetlands;

[For text of items D to F, see M.R.]

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

Statutory Authority: *MS s 40.45*

History: *14 SR 1928*

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 40.46 and other applicable laws. The district board may make recommendations concerning use of these funds in accordance with parts 8400.3000 to 8400.3930.

Statutory Authority: *MS s 40.45*

History: *14 SR 1928*

8400.3110 EASEMENT DURATION.

The board may acquire conservation easements on eligible land. An easement may be permanent or of limited duration. An easement acquired on drained wetlands or land for highway windbreak purposes must be of permanent duration. An easement of limited duration may not be acquired if it is for a period less than 20 years.

Statutory Authority: *MS s 40.45*

History: *14 SR 1928*

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 priorities established by the board;

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

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

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

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

F. 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

G. the amount of RIM reserve program funds available.

Statutory Authority: *MS s 40.45*

History: *14 SR 1928*

8400.3160 CRITERIA FOR ELIGIBLE LAND.

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

[For text of items A and B, see M.R.]

C. The land is drained wetland and cropland adjacent to the drained wetland, with up to four acres of adjacent cropland for each acre of restored wetland. In selecting drained wetlands for enrollment, the highest priority must be given to wetlands with a cropping history during the period 1976 to 1985.

[For text of item D, see M.R.]

E. The land is cropland in a sensitive groundwater area.

F. The land is cropland riparian to public waters.

G. The land is a woodlot on agricultural land.

H. The land is an abandoned building site on agricultural land.

I. The land is a pastured hillside.

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

(1) The land has been in agricultural crop production for at least two years during the period 1981 to 1985, except drained wetlands, woodlots, abandoned building sites, or hillsides used for pasture.

(2) The land has been owned by the landowner, or a parent or other blood relative of the landowner, for at least one year before the date of application.

(3) The land must be at least five acres in size, except for a highway windbreak, woodlot, abandoned building site, or must be a whole field as defined by the Agricultural Stabilization and Conservation Service.

(4) The land must not be within 200 feet of any building.

(5) The land must not be set-aside, enrolled, or diverted under another federal or state government crop land retirement program including, but not limited to, federal conservation reserve, federal production adjustment set-aside, or state or federal water bank.

(6) The land must be physically possible to crop, except for drained wetlands, woodlots, abandoned building sites, and hillsides used for pasture.

Statutory Authority: *MS s 40.45*

History: *14 SR 1928*

8400.3200 MAXIMUM ENROLLMENT.

The total land for which a landowner may receive compensation from the RIM reserve program may not exceed 20 percent of the average farm size in the county where the land is being enrolled according to the average size determined by the most recent United States Department of Agriculture Census of Agriculture.

Statutory Authority: *MS s 40.45*

History: *14 SR 1928*

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 board, and on forms provided by the board. 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. aerial photographs or a sketch of the parcel; and
- C. 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.

Statutory Authority: *MS s 40.45*

History: *14 SR 1928*

8400.3400 CONSERVATION AGREEMENT FOR EASEMENT.

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

[For text of item A, see M.R.]

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 board, which is incorporated into the conservation easement;

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

D. not convert to agricultural crop production, pasture, or introduced pasture any other land supporting natural vegetation owned or leased as part of the same farm operation at the time of application, if those lands support natural vegetation or have not been used in agricultural crop production, pasture, or introduced pasture except that land may be converted to pasture if done according to an approved district conservation plan;

E. the enforcement of the terms of the easement and agreements as provided in Minnesota Statutes, section 40.43, subdivision 9, or other relief authorized by law;

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 board;

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

H. not graze livestock, except easements secured from the 1986, 1987, and 1988 application periods, may be grazed with the prior written approval of the board, after consultation with the commissioner of the Department of Natural Resources, in the case of severe drought or a local emergency;

[For text of items I and J, see M.R.]

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K. notify the board in writing within 30 days after 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;

[For text of items L to N, see M.R.]

O. allow the board and the board'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

[For text of item P, see M.R.]

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

Statutory Authority: *MS s 40.45*

History: *14 SR 1928*

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 field representative of the board.
- B. It must have a review and determination by the board.
- C. The landowner must be notified of the board's decision.
- D. If it is approved by the board, the agreement must be given to the landowner for signature.
- E. The agreement must be returned to the board 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.

Statutory Authority: *MS s 40.45*

History: *14 SR 1928*

8400.3460 ABSTRACT AND TITLE REQUIREMENTS.

After notification of the board'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.

Statutory Authority: *MS s 40.45*

History: *14 SR 1928*

8400.3500 EASEMENT CONVEYANCE.

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

Statutory Authority: *MS s 40.45*

History: *14 SR 1928*

8400.3530 PAYMENT RATES.*[For text of subpart 1, see M.R.]*

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 board.

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

Payment rates for eligible lands without a cropping history must be based on a percentage of the permanent easement payment rate as determined by the board annually. There must be no compensation for the value of any buildings or other structures that may be on the easement area.

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

The board 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.

*[For text of subps 3 and 4, see M.R.]***Statutory Authority:** *MS s 40.45***History:** *14 SR 1928***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 board and the landowner under the rules in force at that time. The board 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 board in consultation with the commissioners of agriculture and natural resources if they determine that the changes effectuate the purpose of the program or to facilitate its administration.

Statutory Authority: *MS s 40.45***History:** *14 SR 1928***8400.3610 ALTERATION, RELEASE, OR TERMINATION OF EASEMENTS.**

The board may alter, release, or terminate an easement after consultation with the commissioners of agriculture and natural resources. The board may alter, release, or terminate an easement only if the board determines the public interests and general welfare are better served by the alteration, release, or termination.

The board must be provided the following information at least 30 days prior

to a board meeting, before the board will consider a request to alter, release, or terminate an easement:

A. a letter from the landowner justifying the change and identifying how the public interest and general welfare will be better served;

B. a letter from the district board recommending the change;

C. a letter from the Department of Natural Resources wildlife manager recommending the change; and

D. other supporting documents, including:

(1) an aerial photo identifying the requested change;

(2) a soil survey map of the area;

(3) cropping history information; and

(4) other pertinent documentation that will support the request.

The board reserves the right to require special provisions to ensure at least equal resource value as a condition of approving the request. The board must be compensated for all damages and loss of benefits to the conservation easement as well as administrative expenses and costs incurred in the alteration, release, or termination of an easement. Priority must be given to obtaining eligible replacement land rather than cash payment for damage or loss of benefits.

Statutory Authority: *MS s 40.45*

History: *14 SR 1928*

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 board in cooperation with the commissioner of natural resources.

Statutory Authority: *MS s 40.45*

History: *14 SR 1928*

8400.3700 ESTABLISHMENT OF APPROVED PRACTICES.

[For text of subpart 1, see M.R.]

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 necessary, it shall recommend payment to the landowner by submitting a completed certification of practice completion and a cost-share voucher to the board. 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. The board reserves the right to determine whether claims for payment are reasonable and necessary.

[For text of items B and C, see M.R.]

D. The board 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.

[For text of subps 3 and 4, see M.R.]

Statutory Authority: *MS s 40.45*

History: *14 SR 1928*

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 board that additional RIM reserve funds be encumbered for reinstatement 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.

Statutory Authority: *MS s 40.45*

History: *14 SR 1928*

8400.3760 [Repealed, 14 SR 1928]

8400.3830 VIOLATIONS.

The board may enforce the easement and agreement by the legal action in items A and B.

A. A landowner who violates the terms of a conservation easement or agreement under this chapter, or induces, assists, or allows another to do so, is liable to the state for treble damages if the trespass is willful, but liable for double damages only if the trespass is not willful. The amount of damages is the amount needed to make the state whole or the amount the landowner has gained due to the violation, whichever is greater.

B. Upon the request of the board, the attorney general may commence an action for specific performances, injunctive relief, damages, including attorney fees, and any other appropriate relief to enforce Minnesota Statutes, sections 40.41 to 40.46 in district court in the county where all or part of the violation is alleged to have been committed, or where the landowner resides or has a principal place of business.

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

Statutory Authority: *MS s 40.45*

History: *14 SR 1928*

8400.3860 MONITORING.

The 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 board.

Statutory Authority: *MS s 40.45*

History: *14 SR 1928*

8400.3900 DISTRICT BOARD RECORDS.

The district shall maintain a current ledger of easements on forms provided by the board. 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.

Statutory Authority: *MS s 40.45*

History: *14 SR 1928*

8400.3930 RECONSIDERATION AND REVIEW.

[For text of subps 1 to 3, see M.R.]

Subp. 4. [Repealed, 14 SR 1928]

Statutory Authority: *MS s 40.45*

History: *14 SR 1928*