

NEBRASKA NATURAL RESOURCES COMMISSION  
NOTICE OF RULEMAKING HEARINGS

NOTICE IS HEREBY GIVEN that the Nebraska Natural Resources Commission (“Commission”), will hold public rulemaking hearings pursuant to *Neb. Rev. Stat.* §§ 2-1503.02; 2-1578; 2-15,123, 46-1404; 84-907. The hearings will be held hourly beginning at 9:00 a.m. on November 3, 2020, in the main conference room at the Nebraska Department of Natural Resources (“Department”) offices located on the 4<sup>th</sup> Floor of the Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, 68509.

The purpose of the hearings is to take public comments concerning the adoption of the Commission’s proposed amendments to the following rules in the *Neb. Admin. Code*: Title 257 “Administration of Small Watersheds Flood Control Fund”; Title 259 “Administration of the Water Well Decommissioning Fund”; Title 260 “Natural Resources Commission Rules of Practice and Procedure”; Title 262 “Administration of the Nebraska Soil and Water Conservation Fund”; and Title 263 “Administration of the Natural Resources Water Quality Fund.”

All proposed amendments to each of the foregoing Titles include removing the title page and table of contents, as well as removing and altering language to alter the style or form of the rule, and updating statutory references that do not alter the substance of the rule. *Neb. Rev. Stat.* § 84-907(3).

A description of the proposed amendments specific to each Title and their hearing times are as follows:

9:00 a.m. - Title 257: This title is consolidated into one chapter—Chapter 2 is moved into Section 002 of Chapter 1 and renumbered; deletes language that is duplicative of statute and references back to the relevant statute when applicable; changes the date to provide a notice of intent to acquire or retain land to the deadline in the Department’s notice; increases an agreement term from 25 to 50 years.

10:00 a.m. - Title 259: This title is consolidated into one Chapter—Chapters 2, 3, and 4 are moved into Sections 002, 003, and 004 of Chapter 1, respectively, and renumbered; deletes language that is duplicative of statute and references back to the relevant statute when applicable; deletes language from revising allocations and expiration of allocations rules that does not alter the substance of the rule.

11:00 a.m. - Title 260: This title is consolidated into one Chapter; deletes Chapter 1 General Definitions; consolidates Chapters 2, 3, 4, 5, 6, and 7 into various sections of the new Chapter 1; deletes Chapters 6 and 7 and associated Appendix “A” and adopts the Model Rules of Agency Procedure by the Nebraska Attorney General: Petitioning for Rulemaking and Regulations and Procedures Governing Agency Declaratory Orders.

1:00 p.m. - Title 262: deletes language that is duplicative of statute and references back to the relevant statute when applicable; deleted provisions related to the Department’s administration of the fund.

2:00 p.m. - Title 263: This title is consolidated into one Chapter—Chapters 2 and 3 are moved into Sections 002 and 003 of Chapter 1, respectively, and renumbered.

The rules as amended are available at the offices of the Secretary of State, Regulations/Licensing Division, Room 1305, State Capitol, Lincoln, Nebraska 68509, and on the Commission's website at <https://nrc.nebraska.gov/statutes-and-rules>. The description of the fiscal and other impacts may be inspected and obtained at the Department of Natural Resources, 4<sup>th</sup> Floor, State Office Building, 301 Centennial Mall South, Lincoln, Nebraska 68509. There will be no fiscal impact from the changes.

All interested persons are invited to attend and make oral or written comments at the hearings. Interested persons may also submit written comments prior to the hearings, which will be made part of the hearing record at the time of hearing if received by the Commission on or before November 2, 2020. Written comments should be sent to the Department of Natural Resources, 4<sup>th</sup> Floor, State Office Building, 301 Centennial Mall South, Lincoln, Nebraska 68509.

It is encouraged if you plan to attend the rulemaking hearings in person to let the Department know so that social distancing accommodations can be made. In addition, please notify the Department if auxiliary aids or reasonable accommodations are needed to participate in the hearing. Please contact Laurie Gower at (402) 471-2363 by November 2, 2020.

## FISCAL IMPACT STATEMENT

Agency: Nebraska Natural Resources Commission	
Title: 257	Prepared by: Emily Rose
Chapter(s): all chapters	Date prepared: 9/30/2020
Subject: Admin of Small Watersheds Flood Control Fund	Telephone: 402-471-1681

Type of Fiscal Impact:

	State Agency	Political Sub.	Regulated Public
No Fiscal Impact	( X )	( X )	( X )
Increased Costs	( )	( )	( )
Decreased Costs	( )	( )	( )
Increased Revenue	( )	( )	( )
Decreased Revenue	( )	( )	( )
Indeterminable	( )	( )	( )

Provide an Estimated Cost & Description of Impact:

State Agency: None

Political

Subdivision: None

Regulated

Public: None

If indeterminable, explain why: N/A

~~NEBRASKA DEPARTMENT OF NATURAL RESOURCES COMMISSION~~

~~TITLE 257—REGULATIONS GOVERNING THE  
ADMINISTRATION OF THE  
SMALL WATERSHEDS FLOOD CONTROL FUND~~

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~~NEBRASKA ADMINISTRATIVE CODE~~

~~NEBRASKA DEPARTMENT OF NATURAL RESOURCES COMMISSION~~

~~TITLE 257~~

~~RULES AND REGULATIONS CONCERNING  
SMALL WATERSHEDS FLOOD CONTROL FUND~~

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~~Adopted 7-19-01~~

~~NEBRASKA DEPARTMENT OF NATURAL RESOURCES COMMISSION  
TITLE 257 RULES AND REGULATIONS CONCERNING SMALL WATERSHEDS FLOOD  
CONTROL FUND~~

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~~NEBRASKA DEPARTMENT OF NATURAL RESOURCES COMMISSION  
TITLE 257 RULES AND REGULATIONS CONCERNING SMALL WATERSHEDS FLOOD  
CONTROL FUND~~

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NEBRASKA ADMINISTRATIVE CODE  
NEBRASKA NATURAL RESOURCES COMMISSION

~~LAST ISSUE DATE~~ TITLE 257-DNR – NEBRASKA NATURAL RESOURCES COMMISSION  
~~—~~ ADMINISTRATION OF SMALL WATERSHEDS FLOOD CONTROL FUND

~~Chapter~~ HAPTER 1 – ADMINISTRATION OF SMALL WATERSHEDS FLOOD CONTROL FUND  
GENERAL PROVISIONS

001 General Provisions.

001.01 Purpose of Rules. These rules ~~and regulations~~ are adopted for the purpose of administering the Small Watersheds Flood Control Fund created by Neb. Rev. Stat. §section 2-1503.01 R.S. Supp., 2000.

001.022 General Availability of Funds. Financial assistance from the Fund ~~wi~~shall be available only to local organizations ~~which~~ that have programs qualifying for such assistance under these rules ~~and regulations~~. The Commission, in its sole discretion, may allocate to any qualifying organization, from the ~~Small Watersheds Flood Control~~ Fund, such sum or sums as in the judgment of the Commission may be necessary for such local organization to acquire real property or easements needed to permit the local organization to effectuate the purposes of the ~~Small Watersheds Flood Control~~ Fund.

001.03003 Definitions. All terms defined in Neb. Rev. Stat. §section 2-1501 R.S. Supp., 2000 ~~shall~~ have the same definition when used in these rules ~~and regulations~~. In addition:

0013.03(1A). “Fund” means the Small Watersheds Flood Control Fund created by Neb. Rev. Stat. §section 2-1503.01 R.S. Supp., 2000.

004 Responsibilities.

~~004.01~~ It is the responsibility of the Commission to make allocations from the Fund and to specify the date and all other terms for the sale of any lands or rights of way acquired with funds from the Fund and to require the execution of all documents necessary to complete such sales.

~~004.02~~ It is the responsibility of the Director, through the Department, to administer the fund and to administer these rules and regulations.

~~NEBRASKA ADMINISTRATIVE CODE~~

~~LAST ISSUE DATE: TITLE 257 DNR — NEBRASKA NATURAL RESOURCES  
COMMISSION  
— ADMINISTRATION OF SMALL WATERSHEDS FLOOD CONTROL FUND~~

~~CHAPTER 002 Fund Administration. 2 — FUND ADMINISTRATION~~

~~002.014. Eligibility fFor Funds. To be eligible for assistance from the Small Watersheds Flood Control Fund, the local organization must first enter into an agreement with the Department specifying a hydrologic unit and the total number of land rights to be acquired by the local organization in such unit. -Such agreement, which wishall be on a form supplied by the Department, wishall also provide that the local organization will abide by the law and rules and regulations governing administration of the Small Watersheds Flood Control Fund, and that the Department in relation to the program of work has found that the conditions in Neb. Rev. Stat. § 2-15202 (1) (b) have been met. - In addition, the following conditions must have been met:~~

~~001.07 The purchase price of the land, easement, or right-of-way has been established either by a court or by at least one registered, licensed, certified residential, or certified general real estate appraiser approved by the Department; and~~

~~001.08 The local organization has given assurance to the Department that it has obtained any water rights or other permits required under state or federal law and complied with all other applicable state laws.~~

002.02 Acceptance of Appraisals. An appraisal prepared in accordance with Neb. Rev. Stat. §2-1502 (1) (g) (Section 2-1502) R.S. Supp., 2000 must accompany each formal request or application for funds. ~~Such appraisal is to~~ shall be supplied at no cost to the state. In the event the Commission or the Department ~~is of the opinion~~ determines that ~~any the~~ appraisal is subject to question, the Department may hire an appraiser at ~~S~~ state expense; to aid the Commission in making its decision whether or not to approve ~~such the~~ appraisal.

002.03 Damage to Crops. -When applicable, the local organization ~~wi~~ shall also cause an appraisal to be made of all crops ~~which are~~ growing on the land to be purchased. -Such crop appraisal ~~wi~~ shall also be subject to Commission approval and any rule, ~~hereinabove~~ set forth herein, applicable to appraisals in general. The local organization ~~wi~~ shall give the landowner the option of (1) retaining his or her interest in the crops, in which event he or she ~~wi~~ shall be given a reasonable period of time ~~in which~~ to harvest the same; or (2) selling such interest along with the land.

002.0404- Purchase Price and Total Cost of Acquisition. -For ~~all~~ purposes of ~~Fund~~ the administration ~~of the Small Watersheds Flood Control Fund~~, the terms "purchase price" and "total cost of acquisition" ~~will shall~~, in the absence of a condemnation proceeding; mean the amount actually paid by the local organization or the amount established by an appraisal conducted in accordance with ~~Section~~ Neb. Rev. Stat. § 2-1502 (1)(g), which-ever is the lesser amount. In the event of a condemnation proceeding, such terms ~~shall~~ mean the amount of damages awarded by a court of competent jurisdiction. Payments by a local organization in excess of any purchase price ~~so established~~ wi shall be the sole responsibility of the local organization and ~~wi~~ shall have no effect upon the distribution of any proceeds subsequently realized from the sale of the land or right-of-way pursuant to ~~Section~~ Neb. Rev. Stat. § 2-1502.

002.005 Title Opinion or Title Insurance and other Relevant Documents. Before any funds are paid out, ~~to~~ the local organization, ~~such organization~~ must furnish to the Department a copy of a title opinion or title insurance policy on the property or interest to be acquired, whether through purchase or condemnation. ~~If a~~ A title opinion ~~is provided~~ must ~~shall~~ have been drafted following a title search by an attorney who is hired by the local organization and who is admitted to practice law ~~before the courts of in~~ Nebraska. ~~-If a~~ title insurance policy ~~is provided, it~~ must be from an insurance company authorized to provide such insurance in Nebraska. -The ~~local organization~~ local organization ~~wi~~ shall also furnish the Department

with a copy of any purchase agreement or other written document demonstrating the terms and conditions of the proposed purchase.

~~002.006: Eminent Domain Awards.~~ -If a local organization is unable to acquire an interest in real property for which an appraisal has been approved, except through the power of eminent domain, approval by the Commission of any court award exceeding ~~in amount such the~~ appraised value ~~is shall be~~ required prior to ~~the~~ disbursement of any funds in excess of such appraised value. -The Commission reserves the right to require that the local ~~sponsor organization~~ appeal such award if ~~it such award~~ is deemed excessive or to allocate a percentage of the court award as provided in ~~Section 2 Subsection 007.002.07(B)(2)~~

~~002.007: Amount Paid.-~~

~~0027.07(A)1~~ The Commission reserves the right to approve or reject payment for any purchases of any lands, easements, or rights-of-way within the hydrologic unit described in the agreement and executed in accordance with ~~Subsection 2-002.014~~. -In addition, if based on reports from the local organization or other information available ~~to it~~, the Commission has reasonable grounds for concern that a project, or any portion of it, may not be completed, it may withhold or limit assistance to the organization for the acquisition of any lands, easements, or rights-of-way needed for that project. ~~Provided,~~ ~~H~~however, any Commission action to refuse to assist an organization in paying the costs of acquisition of any interest in land ~~wi~~shall not affect the organization's right to reimbursement for costs for which it has become legally obligated prior to such Commission action. -In addition, such action ~~wi~~shall not affect the organization's right to reimbursement for the cost of land, or interests in land, acquired through condemnation actions commenced prior to the Commission action. -Reasonable grounds for concern ~~shall~~ includes, but ~~are is~~ not ~~be~~ limited to, opposition to completion of the project including current or anticipated lawsuits; or the unavailability or loss of local, other ~~S~~state, or ~~F~~federal funds.

~~0027.07(B)2~~ The amount ~~which that~~ will be approved by the Commission for payment out of the ~~Small Watersheds Flood Control~~ Fund ~~wi~~shall not exceed the purchase price as defined in ~~Subsection 002.042-004~~. -The Commission may, however, determine that an amount less than the purchase price should be paid from the ~~Small Watersheds Flood Control~~ Fund for any one of the following reasons:

~~0027.07(2B)(1(A))~~- The dollar amount of all unapproved requests for funding assistance exceeds the availability of uncommitted funds. Prior to approving any additional requests for assistance under such circumstances, the Commission will, following consultation with all affected local organizations, determine whether the available funds could be most effectively utilized:-

~~0027.07(2B)(1)(A)(i)~~- ~~b~~By deferring assistance until funds do become available to one or more local organizations ~~which that~~ would not encounter serious problems because of such deferral;

~~0027.07(2(A)(ii)2B)(1)(ii)~~ ~~b~~By allocating ~~them-funds~~ to all applicants on the basis of a percentage of purchase price; or

~~0027.07(2(A)(iii)3B)(1)(iii)~~- ~~b~~By utilizing a combination of percentage allocation and deferral.

~~0027.07(2B)(2(B))~~- A court of competent jurisdiction has made an award in condemnation in excess of the value established by the appraisal approved by the Commission. -Provided that the dollar amount paid by the Commission in such cases ~~wi~~shall not be less than the amount specified in the approved appraisal or the amount determined in accordance with ~~section-Subsection 002.07(B)(1)007.02A~~, whatever amount is less.

~~0027.07(C3)~~- If for any of the reasons previously provided, the Commission determines that an amount less than the purchase price should be allocated from the ~~Small Watersheds Flood Control~~Fund for the acquisition of any interest in real property, the local organization ~~wi~~shall remit to the Department a pro rata share of the proceeds of any subsequent sale of such property. -The pro rata share ~~wi~~shall be equal to the percentage of the total cost of acquisition of such property made from any ~~S~~state allocation from the ~~Small Watersheds Flood Control~~Fund.

~~002.0008~~ Documentation of Purchase. -Within ~~thirty-30~~ days after the local organization receives payment from the ~~S~~state, the local organization ~~wi~~shall forward to the Department a copy of the deed, easement, court decree ~~(in the case of a condemnation proceeding)~~, or any

other document or material deemed by the Department to be necessary in the particular case. Such deed, easement, court decree, etc. wishall be verified by the clerk of the court or the register of deeds, ~~,- whichever the case may be.~~

002.009 Conservation Plan. -Within ~~one hundred twenty~~120 days after the title or titles, as applicable, have been acquired, the local organization wishall prepare a detailed Conservation Plan, a copy of which wishall be sent to the Department, ~~-to be made a part of the files.~~

002.010 Annual Inspection. -At least once each year, a Department staff member and a representative of the appropriate local organization wishall inspect each parcel of land for which fee title has been acquired and wishall compare it to the respective Conservation Plan. -A report of the staff member's findings along with any suggestions or recommendations to the local organization wishall be filed with the Department and the local organization.

002.011 Annual Financial Statement. Each local organization holding fee title to lands purchased with ~~money from the Small Watersheds Flood Control~~ Fund ~~monies~~ wishall submit a complete financial statement to the Department by August 1 of each year. Such ~~required~~ statement wishall set forth the income received from such lands and also the expenses incurred in the maintenance, improvement, and management, ~~-etc.~~ of ~~thesuch~~ lands. -This financial statement is required in addition to any other statement or accounting required to be submitted by the local organization by law or otherwise.

002.012 Annual Lease. When appropriate, a Department staff member wishall work with a local organization in preparing the annual lease for such property as was acquired, ~~-in whole or in part,~~ with ~~money from the Small Watersheds Flood Control~~ Fund ~~monies~~. -Unless otherwise approved by ~~the Director~~the Director, leases wishall commence on the first day of March and terminate on the last day of February of the year next ensuing. -No lease wishall be deemed effective unless and until it has been approved in writing by the Director.

002.013 Use of Lease Revenues. -In addition to the uses for rental and lease revenues as set forth in Neb. Rev. Stat. § 2-1502 (2) R.S. Supp., 2000, such revenues may be used for reasonable and necessary ~~conservation personnel~~ costs and expenses incurred by the local organization in the management of such lands. BecauseAs the Department is responsible for overseeing the management of such lands, the local organization wishall consult with and keep the Department informed of all matters relevant to such management.



002.014 Disposition of Property. ~~For lands or rights-of-way purchased wholly or partially with Fund monies, it is~~ shall be the duty of the the local organization, ~~ww~~ within ~~10~~ten years from the purchase date, ~~of lands and rights-of-way, will either to~~

~~014.01~~ grant or retain for public purposes or sell at a public auction such lands or rights-of-way; ~~for public purposes, as provided for in 2-1502 R.S. Supp., 2000, and as provided by these regulations, or~~

~~014.02~~ sell at public auction

~~all lands and rights-of-way purchased wholly or partially from the Fund.~~

002.015 Sale Schedule. ~~The Department~~ wishall maintain a schedule of the proposed dates of sale for lands purchased ~~in whole or in part with funds from with the Small Watersheds Flood Control Fund monies. Prior to~~ ~~On or about~~ July 1 of each calendar year, the Commission ~~wi~~shall review this schedule, consult with local ~~sponsors organizations~~ holding title to such lands, make any additions or revisions ~~that are deemed as~~ necessary, and adopt a sale schedule for the next ensuing fiscal year.

002.016 Notifying Public Bodies of Proposed Sales. ~~For the purposes of Section~~ Neb. Rev. Stat. § 2-1502 (2), R.S. Supp., 2000, the Department ~~wi~~shall ~~on or about September 1 of each year~~ notify the Governor ~~of the State~~ and the appropriate public districts, cities, counties, political subdivisions, and agencies of the State or ~~of the~~ Federal government of the land(s) scheduled to be sold in at least the next ~~twelve~~ 12 months ~~ensuing fiscal year.~~ Such notification ~~wi~~shall indicate the proposed date(s) of sale and ~~wi~~shall summarize the process by which public entities may acquire such lands for public purposes.

002.017 Notice of Intent to Acquire or Retain. Any public district, city, county, political subdivision, or agency of the State or ~~of the~~ Federal government ~~which that~~ is interested in acquiring or retaining for public purposes land(s) purchased ~~with in whole or in part with money from the Small Watersheds Flood Control Fund monies~~ must shall notify the Department of such interest by ~~the deadline set in the Department's notice~~ January 1 of the year prior to the fiscal year in which the property is scheduled to be sold.

~~002.018~~ Appraisal and Notification to Public Bodies of Appraised Fair Market Value. Whenever a public entity indicates in accordance with Subsection 002.017 that it is interested in -acquiring or retaining lands purchased ~~in whole or in part with money from the Small Watersheds Flood Control~~with Fund ~~monies~~, the Department ~~wishall, by June 1 of the fiscal year prior to the year in which the property is scheduled to be sold,~~ have an appraisal prepared for such lands in accordance with ~~section Neb. Rev. Stat. § 2-1502-R.S. Supp., 2000, as amended,~~ and notify such public entity of the appraised fair market value. Such notification ~~wishall~~ indicate the proposed date of sale, the appraised fair market value, and the requirements for purchase or retention by public bodies in accordance with Subsection 2-002.20 and Neb. Rev. Stat. §§ and Sections 2-1502 through to 2-1503.03.

~~002.019~~ Acquisition by Public Bodies. Any public district, city, county, political subdivision, or agency of the State or of the Federal government ~~which that~~ desires to acquire or retain for public purposes land(s) purchased ~~in whole or in part with money from the Small Watersheds Flood Control~~with Fund ~~monies~~ ~~must~~shall notify the Department of such desire by the deadline set in the Department's notice~~September 10 of the fiscal year in which the property is scheduled to be sold.~~ -A report explaining the public purpose to be made of such property ~~must~~shall be simultaneously submitted to the Department. -Such report ~~wishall~~ include a description of the public uses to be made of such property, a description of and timetable for improvements, if any, and a discussion of management techniques to be utilized to serve the proposed public purpose. The report ~~wishall~~ also document the public entity's legal and financial abilities to acquire or retain such property and to implement the proposed public purpose. Reimbursements to the Department will be in accordance with Neb. Rev. Stat. § 2-1502 (2) and made within 90 days of Commission approval of either retention by the local organization or acquisition by a public body. ~~If retention by the local organization of such land for public use is approved pursuant to the procedures hereinafter provided, the Department, within 90 days of approval, wishall be reimbursed in the amount of the pro rata share of the appraised fair market value that is equal to the percentage of the total cost of acquisition paid by the Fund. If acquisition of such lands for public use by a public body other than the local organization holding title to the property is approved, the Department wishall be reimbursed in the amount of the prorated share of the appraised fair market value that is equal to the percentage of the total cost of acquisition paid from the Fund. Tand the local organization transferring the title to the acquiring public body wishall be reimbursed in the amount of any remaining portion of the appraised fair market value, both reimbursements to occur within 90 days of Commissionsuch approval or approvals.~~

All such proceeds to the Department ~~wish~~ shall be remitted to the State Treasurer for credit to the Fund.

002.020 Criteria for Acquisition by Public Bodies.

~~00020.01-20(A)~~ Whenever a public entity indicates in accordance with Subsection ~~2-002.19~~ that it desires to acquire or retain lands purchased ~~in whole or in part~~ with money from the Small Watersheds Flood Control Fund monies, the Commission ~~wish~~ shall, ~~no later than November 1 of the fiscal year in which the property is scheduled to be sold~~, determine whether the property should be so acquired or retained or whether it should be offered for sale at public auction in accordance with Subsections 002.24 through 002.29. In making such determination, the Commission ~~wish~~ shall consider the following factors:

~~00020.0120(A)(1)(A)~~ the nature of the public purpose for which acquisition or retention is requested and the demand for such purpose in the area to be served thereby;

~~0020.0120(B)A(2)~~ the nature of probable alternative uses for such property and their relative importance in the community and the State;

~~00020.01(C)20(A)(3)~~ the adequacy of the property to satisfy the proposed public purpose in comparison to its adequacy to satisfy probable alternative uses;

~~0020.0120(A)(4(D))~~ the relative economic impacts ~~that~~ could be anticipated in the community because of the proposed public purpose and probable alternative uses;

~~002020.20(A)(5)01(E)~~ the legal and financial abilities of the public body to acquire or retain the property and to implement the proposed public purpose; and

~~002020.20(A)(01(F)6)~~ the compatibility of the proposed public purpose with operation and maintenance of the property for the purpose for which it was originally acquired and its consistency with accepted conservation principles.

0202.02-20(B) Prior to determining whether the property should be acquired or retained by the public body or offered for sale at public auction, the Commission ~~wish~~ shall consult with the local organization holding title ~~thereto~~ and other interested organizations and individuals. If

the amount invested in such property from the ~~Small Watersheds Flood Control~~ Fund constituted the full purchase price, the decision of the Commission regarding the purchase or retention of such property by the public body ~~wi~~shall be binding on the ~~local organization~~local organization. -If, however, a portion of the original purchase price was contributed by the local organization, such local ~~organization shall~~organization will have independent authority to disapprove the purchase of ~~such the~~ property by another public body, and any such disapproval ~~wi~~shall result in the property being offered for sale at public auction as scheduled.

002.021 Desire to Acquire by Two or More Public Entities. In the event that two or more public entities ~~indicate a desire want~~ to purchase or retain the same land or right-of-way, the Commission ~~wi~~shall evaluate each separately in accordance with Subsection 2-002.20. -If following such evaluation, more than one of the proposed purchases by public bodies ~~is are~~ deemed preferable to offering the property for sale at public auction, the Commission ~~wi~~shall evaluate such proposals on their relative merits to determine which proposal would best serve the public interest.

002.022 Acquisition or Retention of Less Than Full Parcel.

~~002.01-22(A)~~ 22(A) The acquisition or retention by public bodies of a parcel of land smaller in size than the parcel scheduled to be offered for sale will be approved only if such purchase or retention would satisfy the criteria of Subsection 2-002.20 and if:

~~002.22(01(A)(1))~~ it would have no anticipated adverse effect on the marketability of the remainder of the full parcel; and

~~002.2.0122(A)(2)(B)~~ no additional public purpose would be served by acquisition or retention by such public body of the remainder of the full parcel.

~~002.2.02-22(B)~~ 22(B) The local organization ~~wi~~shall be responsible for any surveys ~~which that~~ are deemed necessary because of such acquisition or retention or for providing proper identification of such parcel prior to the sale at auction of the remaining portion of the full parcel. -The public body acquiring such parcel ~~wi~~shall reimburse the local organization for all actual and necessary costs incurred as a result of such survey and identification.

~~002.023~~ Agreement to Retain in Public Use. As a condition to acquiring or retaining for public purposes any lands acquired ~~in whole or in part~~ with ~~funds from the Small Watersheds Flood Control Fund~~ ~~monies~~, the acquiring or retaining public body ~~must~~shall enter into an agreement with the Department. ~~Such agreement, which~~ wishall remain in effect and be controlling as to the public body's utilization and disposition of the property for a period not to exceed ~~50~~25 years, wishall specify the following terms and conditions:

~~002.23(A)3-04~~ the property wishall, unless otherwise approved by the Commission, be retained by the public body for the public purposes specified in the report submitted pursuant to Subsection 002.19;

~~0023.02-23(B)~~ no use wishall be made of the property that is incompatible with the purposes for which it was originally acquired ~~in whole or in part with funds from the Small Watersheds Flood Control Fund~~;

~~002.023(C)-03~~ such public body wishall not utilize the property or any part thereof for income production unless such income results from activities necessary to the maintenance of the property or to serving the public purposes for which the property was acquired or retained; and

~~002.23(D)3-04~~ any other terms or conditions that the Commission deems appropriate. A copy of such agreement wishall be filed by the Department in the register of deeds office of the county in which such land or right-of-way is located.

002.24 Public Auction. -When any lands involving ~~these~~ Ffunds are to be sold, whether those lands are to be sold with or without improvements, such sale, unless governed by Subsections 2-002.19 through ~~2-~~002.23, wishall be by public auction. Prior to such sale the Department wishall:

~~002.24(A)-04~~ cause an appraisal to be made of such land;

~~0024.024(B)~~ retain the services of a public auctioneer; and

~~002.24(C)-03~~ cause legal notice thereof to be published pursuant to Subsection 002.27.

002.025 Public Auctioneers. -In retaining the services of ~~an public~~ auctioneer, ~~for the sale at auction of any lands purchased in whole or in part with these funds,~~ the Department wishall, ~~not less than 60 days prior to the date established for the sale of any such lands, advertise for bids for the services of such public auctioneer.~~ S ~~selection of the auctioneer from those submitting bids shall be the responsibility of the Commission.~~

002.026 Sale of Improvements. -When any improvements on lands ~~on lands involving these funds~~ are to be sold separately from the land, such sale may be conducted by sealed bids or by public auction. Prior to such sale of improvements, the Department wishall cause legal notice ~~thereof~~ to be published pursuant to Subsection 2-002.27.

002.027 Notice of Sales. -Notice of all sales governed by these rules wishall be published in a ~~legal~~ newspaper (including electronic version) of general circulation in or near the county in which such land(s) and/or improvement(s) is (are) located and also in a ~~legal~~ newspaper (including electronic version) with statewide circulation. Such notices wishall be published once each week for three consecutive weeks, the last publication of which mayshall not be published less than seven days prior to the date set for the auction or for the opening of sealed bids. Such notices wishall list and describe the land(s) and/or improvement(s) to be sold and the easements and/or rights-of-way, if any, which will be retained by the local organization, and wishall state the date, time, and place for the opening of the sealed bids. If appropriate, such notice wishall state the address where sealed bids are to be mailed or delivered, and the deadline for receipt of the same. The terms of payment and any other information that in the particular case would be required to impart adequate notice to all interested parties mustshall also be provided.

002.028 Sealed Bids. In order to be eligible for consideration, sealed bids for improvements mustshall state which improvement(s) the bid is for and mustshall be accompanied by a certified check or bank draft made out in the full amount of the bid. -If any sealed bid is not accepted, the deposit wishall be returned to the bidder within ~~thirty~~ 30 days after the day on which the bids are opened. All sealed bids mustshall be mailed or delivered to the Department. -Such bids must be received at least three days prior to the date set for their opening. -All sealed bids wishall remain sealed until the time set for their opening, at which time the two highest bids wishall be read.

002.029 Conduct of Auction. -The public auction (including internet sales services) for each tract of land to be sold wishall remain open for receipt of bids for a minimum of one hour, but

may be closed at the end of such time period if there are no reasonable grounds to believe that a higher bid would be received were the auction held open for a longer period of time.

002.030 Earnest Money Deposit. -The highest bid for a tract of land received at public auction mustshall, in order to be eligible for consideration by the Commission, be accompanied by a check, bank draft, or cash in an amount of not less than ~~twenty~~ 20 percent of the bid.

002.031 Purchase Agreement. -The highest bidder ~~will for the purchase of any of the lands governed by these rules wishall, after being designated the highest bidder,~~ enter into a purchase agreement with the local organization stating that the balance due mustshall be paid within ~~thirty~~ 30 days of notification by the local organization of the acceptance of the bid by the Commission. The purchase agreement mustshall describe all applicable terms for the sale, including all terms specified by the Commission pursuant to ~~Section Neb. Rev. Stat. § 2-1503.03 R.S. Supp., 2000.~~ Failure to comply with this rule or with the conditions of the purchase agreement wishall result in the forfeiture of said bidder's deposit.

002.032 Approval or Rejection of Bids. -The Commission reserves the right to refuse any and/or all bids. At the next regularly scheduled Commission meeting following the closing of all bidding, the Commission wishall review the highest bid, considering, if applicable, such factors as the original purchase price, any increases or decreases in land valuation, the present appraised fair market value, and any other criteria ~~which-that~~ may reflect the adequacy of the bid. -If a portion of the original purchase price was contributed by the local organization, such local organization wishall be consulted regarding the adequacy of the bid prior to approving or rejecting the same. -In the event the Commission approves a bid, it wishall direct the local organization to proceed with the sale. Upon receiving full payment, the local organization mustshall convey title to the purchaser, reserving as applicable, such interests in the land as are necessary for the local organization to carry out its ongoing responsibilities relative to management of the land or to any improvements constructed thereon or necessary to effect any terms for the sale specified by the Commission pursuant to ~~Section Neb. Rev. Stat. § 2-1503.03 R.S. Supp., 2000.~~ -In the event that the Commission determines that a bid is inadequate, the bidder's deposit wishall be returned within ~~ten~~ 10 days after such determination, the land wishall be leased for an additional year, and the land wishall be rescheduled for sale according to ~~these~~ se rules. ~~hereinabove set forth.~~

002.033 Sale Expenses. Any expenses incurred by the Department or incurred by the local organization and approved by the Department in conducting this sale ~~wi~~shall be subtracted from the sale price prior to a pro rata distribution of such sale proceeds between the local ~~sponsor~~ organization and the Department in accordance with SubsSection ~~2-002.07(C)~~007.03.

Enabling Legislation: Neb. Rev. Stat. §§ 2-1501 to 2-1503.03



TITLE 257 NEBRASKA ADMINISTRATIVE CODE  
CHAPTER 2