

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 4th 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, 4th 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, 4th 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: 262 | Prepared by: Emily Rose |
| Chapter(s): all chapters | Date prepared: 9/30/2020 |
| Subject: Admin of the NE Soil and Water Conservation Program | 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 262 — REGULATIONS GOVERNING THE
ADMINISTRATION OF THE
SOIL AND WATER CONSERVATION FUND~~

~~NEBRASKA ADMINISTRATIVE CODE~~

~~NEBRASKA DEPARTMENT OF NATURAL RESOURCES COMMISSION~~

~~TITLE 262~~

~~RULES AND REGULATIONS GOVERNING THE
ADMINISTRATION OF THE SOIL AND WATER CONSERVATION FUND~~

~~Adopted 12-04-2014~~

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TITLE 262—NEBRASKA DEPARTMENT OF NATURAL RESOURCES COMMISSION
RULES GOVERNING THE ADMINISTRATION OF THE SOIL AND WATER
CONSERVATION PROGRAM

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| Application and Eligibility for Funds to | Neb. Rev. Stat. §§ 2-1580 and 2-1583 to 2-1585, R.R.S., 1997 and R.S. Supp., 2002 | Sections 2-1575 Chapter 3 |
| Apportionment of Funds to | Neb. Rev. Stat. § 2-1580 and 2-1583 to 2-1585, R.R.S., 1997 and R.S. Supp., 2002 | Section 2-1575 Chapter 2 |
| Cost Share Rates and Reimbursement to Procedures | Neb. Rev. Stat. § 2-1580 and 2-1583 to 2-1585, R.R.S., 1997 and R.S. Supp., 2002 | Sections 2-1575 Chapter 5 |
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2-1580 and 2-1583 to 2-1585, R.R.S.,
1997
and R.S. Supp., 2002

TITLE 262—NEBRASKA DEPARTMENT OF NATURAL RESOURCES COMMISSION
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| Cost Share Rates and Reimbursement Procedures _____ to _____ | <u>Neb. Rev. Stat. §</u> Chapter 5 2-1580 and 2-1583 to 2-1585, R.R.S., 1997 and R.S. Supp., 2002 | <u>Sections 2-1575</u> |
| District Administration of the Fund _____ to _____ | <u>Neb. Rev. Stat. §</u> Chapter 6 2-1580 and 2-1583 to 2-1585, R.R.S., 1997 and R.S. Supp., 2002 | <u>Sections 2-1575</u> |
| Department Administration of the Fund _____ to _____ | <u>Neb. Rev. Stat. §</u> Chapter 7 2-1580 and 2-1583 | <u>Sections 2-1575</u> |

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to 2-1585, R.R.S., 1997
and R.S. Supp., 2002

NEBRASKA ADMINISTRATIVE CODE
NEBRASKA NATURAL RESOURCES COMMISSION

~~LAST ISSUE DATE: September 23, 2003~~

~~Title-TITLE 262-DNR~~ – ADMINISTRATION OF NEBRASKA SOIL AND WATER CONSERVATION PROGRAMFUND

~~Chapter-CHAPTER~~ 1 – GENERAL PROVISIONS

001 Purpose of Rules. ~~-These rules-and regulations~~ are adopted for the purpose of carrying out the purposes and requirements of the Nebraska Soil and Water Conservation Act (“Act”), Neb. Rev. Stat. §§ 2-1575 to 2-1585.

002 General Availability of FundsFunds. Financial assistance from the Nebraska Soil and Water Conservation FundFund shall be available only to ~~landownerLandowners~~ of land located in ~~natural resources-D~~istricts ~~which-that~~ have agreed to assist the ~~DepartmentDepartment~~ in the administration of the FundFund and have executed a Memorandum of Understanding with the ~~DepartmentDepartment~~ setting forth the terms of such assistance.

003 Definitions. As used in these rules ~~-and regulations~~, unless the context otherwise requires:

~~003.01~~ “Act” shall mean ~~the Nebraska Soil and Water Conservation Act as established and governed by Neb. Rev. Stat. §sections 2-1575 to 2-1580 and 2-1583 to 2-1585, R.R.S. 1997, and R.S. Supp., 2002 and any and all amendments, additions, or deletions which have been or may be made thereto;~~

~~003.012~~ “Apportion” ~~shall~~ means to set aside funds~~funds~~ for use in accordance with the Act and these rules ~~-and regulations~~, but ~~doesshall~~ not mean any physical distribution or other transfer of such funds~~funds~~;

~~003.023~~ “Average Unit Ceost” ~~shall~~ means the unit of measure cost determined to be the average cost charged in that county for the work performed and materials required in installing such unit;

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003.034 ~~“BoardBoard” or “Board of Directors” shall~~ means the boardBoard of ~~directorDirectors~~ of the District in which where is located the land upon which the ~~projects or practices~~Projects or Practices are proposed or installed is located;

003.04 ~~“Commission,” “Department,” shall and “DiDirector, strict” and “District” all~~ have the same meaning as in Title 259means the Department of Natural Resources created pursuant to Neb. Rev. Stat. §Section 81-101, R.S. Supp., 2000 shall means a natural resources district created and governed by Neb. Rev. Stat. §sections 2-3201 to 2-32,101, R.R.S., 1997, and amendments and additions thereto;

003.05 ~~“Eligible project or practiceProject or Practice” shall~~ means a project or practiceProject or Practice designated as eligible for Sstate Ceost-Sshare Ffunds by the CommissionCommission in accordance with Chapter 3, Section 001;

003.06 ~~“Fiscal Yyear” shall~~ means July 1 of any calendar year through June 30 of the next calendar year;

003.07 ~~“FundFund” shall~~ means the Nebraska Soil and Water Conservation FundFund created by Neb. Rev. Stat. §Section 2-1577, R.R.S., 1997 and R.S. Supp., 2000 and amendments thereto;

003.08 ~~“LandownerLandowner” or “owner” shall~~ means the record owner or owners of real property or upon adequate documentation of the sale of real property by land contract, the purchaser or purchasers of said real property;

003.094 ~~“NRCS” shall~~ means the United States DepartmentDepartment of Agriculture, Natural Resources Conservation Service;

003.10 ~~“Participating Ddistrict” shall~~ means a natural resources-Ddistrict which-that is a party to a then current agreement-Memorandum of Understanding entered into in accordance with under Chapter 1, Section 002;

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003.11 “~~Project or Practice~~Project(s) or Practice(s)” ~~shall~~ means the soil or water conservation or water quality protection work of improvement or activity for which cost-sharing assistance is requested or approved;

003.12 “State Cost-Sshare Funds” ~~shall~~ means fundsfunds available from the ~~Nebraska Soil and Water Conservation Fund~~Fund.

Enabling Legislation: Neb. Rev. Stat. §§ 2-1575 to 2-1585

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~~LAST ISSUE DATE: September 23, 2003~~

Title 262-~~DNR~~ – ADMINISTRATION OF NEBRASKA SOIL AND WATER
CONSERVATION ~~PROGRAM~~FUND

~~Chapter~~CHAPTER 2 – APPORTIONMENT OF ~~FUNDS~~FUNDS

001 Apportionment of ~~Funds~~Funds.

001.01 Each ~~Ffiscal~~ Yyear each ~~Pp~~participating ~~Dd~~istrict ~~will~~shall receive a new apportionment of ~~funds~~funds for each of the following time periods:

001.01(A) July 1 to February 28; and

001.01(B) March 1 to June 30.

001.02 The amount ~~which that wish~~shall be apportioned to each ~~Pp~~participating ~~Dd~~istrict for each such period ~~wish~~shall be the combined total of:

001.02(A) A portion of the ~~funds~~funds obligated but unexpended in such ~~Dd~~istrict as of the last day of the preceding apportionment period, such portion to be determined as follows:

001.02(A)(1) ~~fF~~For each apportionment period beginning on March 1, each ~~Dd~~istrict ~~wish~~shall be apportioned the full amount of ~~funds~~funds obligated but unexpended in such ~~Dd~~istrict as of the last day of the preceding apportionment period;

001.02(A)(2-) ~~fF~~For each apportionment period beginning on July 1, each ~~Dd~~istrict ~~wish~~shall be apportioned the full amount of ~~funds~~funds obligated but unexpended by such ~~Dd~~istrict as of the last day of the preceding apportionment period if the total amount of all ~~funds~~funds obligated but unexpended by all ~~Pp~~participating ~~Dd~~istricts for that preceding

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apportionment period is \$1,000,000 or less. -If such total is more than \$1,000,000, the amount to be apportioned to all Districts wishall be reduced to \$1,000,000 and each District wishall be apportioned a percentage of its obligated but unexpended fundsfunds, such percentage to be determined by dividing \$1,000,000 by such total;

and

001.02(B) A portion of the sum of all unobligated fundsfunds as of the last day of the preceding apportionment period, any previously obligated but unexpended fundsfunds made available as a result of the reduction pursuant to Subsection 001.02(A)(2), ~~and, and~~ any fundsfunds newly appropriated to the Soil and Water Conservation Fund. In determining the amount of this part of each District's apportionment, the Commission may divide no more than \$1,400,000 ~~one million four hundred thousand dollars~~ equally among all Participating Districts and wishall, subject to Subsections 001.03 or 001.04, distribute the remainder, if any, among Participating Districts on the basis of one or more of the following criteria:

001.02(B)(1) ~~t~~The conservation or water quality protection needs in that District as expressed in monetary terms;

and

001.02(B)(2) ~~t~~The extent of the District's previous use of the Fund;

001.02(B)(3) ~~t~~The District's own commitment to conservation or water quality protection as expressed by the expenditure of its general revenues for basic soil and water conservation or water quality protection practices in the preceding Fiscal Year; ~~and-~~

001.02(B)(4) ~~t~~The need, as determined by the Commission, to provide assistance for one or more specific projects or practices or for one or more specific geographic areas.

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The ~~Commission~~Commission may also in any apportionment period establish a minimum or maximum amount to be apportioned to any one District if it determines that such a minimum or maximum is necessary to maintain the viability of the ~~Soil and Water Conservation Fund~~Fund program in all Participating Districts.

001.03 ~~The Department wish~~ reserve at least two percent of the funds credited to the ~~Fund~~ for grants to landowners ordered by a natural resources district pursuant to the ~~Erosion and Sediment Control Act~~ to install permanent soil and water conservation practices. ~~Such funds wish~~ be made available at a rate sufficient to provide the landowner with total cost-sharing assistance of at least ninety percent of the actual cost of the required permanent practices and shall be granted on a first-come, first-served basis until exhausted. ~~Such F~~unds reserved by the Department pursuant to Neb. Rev. Stat. § 2-1579 (2) shall not be obligated by the District, but shall be obligated, if available, by the ~~Director~~Director of Natural Resources to a ~~landowner~~Landowner when a copy of the District's administrative order and a copy of an application ~~for cost share assistance~~ are received by the ~~Director~~Director. -The application ~~for cost share assistance~~ must be approved by the District before submission to the ~~Director~~Director. -Such ~~fund~~s shall remain obligated until used or until the District advises the ~~Director~~Director of Natural Resources that all or part of the ~~fund~~s are no longer needed. -If more than ~~two~~two percent of the ~~fund~~s credited to the ~~Fund~~ are at any time reserved by the ~~Department~~Department for such purposes, the ~~Department~~Department may at any later time release all or part of such excess for inclusion in any future apportionment to the Districts if it concludes that such ~~fund~~s are no longer needed for the purposes of this Subsection.

001.04 The ~~Commission~~Commission may withhold from any apportionment pursuant to Subsection 001.02(B) not more than 20 ~~percent~~% of the total unobligated ~~fund~~s available. -Such ~~fund~~s may be later apportioned to Districts ~~which that~~ have obligated all previously apportioned ~~fund~~s and can demonstrate a need for additional ~~fund~~s or may be apportioned to Districts for use in critical erosion or water quality areas. -No one District shall receive more than 15 ~~percent~~% of any such withheld ~~fund~~s unless there are adequate ~~fund~~s available for all Districts requesting and demonstrating a need for such additional ~~fund~~s on or before May 1.

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001.05 No District may shall obligate any fundsfunds after the last day of any appointment period until notified by the DepartmentDepartment of a new apportionment. The report submitted pursuant to Chapter 6, Section 008 wishall be the basis for determining the amount of fundsfunds obligated and unobligated by each Participating District as of February 28 and June 30 of each Ffiscal Yyear. -Any District failing to submit a report due on or before the fifth working day of any July or March may be denied any apportionment of fundsfunds for the next apportionment period.

002 Supplemental Apportionments. -The CommissionCommission may, by utilizing fundsfunds repaid to the FundFund or otherwise made available for expenditure pursuant to the Act, establish supplemental apportionments of fundsfunds to Participating Districts. -To the extent consistent with legislative direction, any such supplemental apportionment may be combined with any apportionment made pursuant to Chapter 2, Section 001, Subsection 001.02 or 001.04.

003 Termination of the Memorandum of Understanding. In the event that the Memorandum of Understanding required by Chapter 1, Section 002 is terminated by a District or by the DepartmentDepartment, the District shall release all fundsfunds unobligated as of the effective date of such termination and shall further release as they become available obligated fundsfunds for which no claim for payment is made in a timely manner. -Any fundsfunds so released wishall be used by the CommissionCommission to supplement in accordance with Chapter 2, Section 002 the fundsfunds apportioned to Participating Districts.

Enabling Legislation: Neb. Rev. Stat. §§ 2-1575 to 2-1585

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~~LAST ISSUE DATE: September 23, 2003~~

Title 262 ~~NNRC~~ – ADMINISTRATION OF NEBRASKA SOIL AND WATER
CONSERVATION ~~PROGRAM~~FUND

~~Chapter~~CHAPTER 3 – APPLICATION AND ELIGIBILITY FOR ~~FUNDS~~FUNDS

001 Establishing Project Eligibility. ~~Landowner~~Landowners ~~wi~~shall be eligible for State Cost-Share Funds only for the types of Projects and Practices designated as eligible for such purposes by the Commission~~Commission and Participating District in accordance with Neb. Rev. Stat. § 2-1579 (3).~~ ~~The Commission may~~shall at least annually review the list of projects and practices for which such funds should be utilized and ~~may~~shall affirm or modify such list as it deems appropriate. ~~Funds apportioned to districts for that fiscal year may be obligated only for projects and practices thus designated. Each participating district may further limit the types of projects and practices eligible for funding assistance in that district; the Department is to~~shall be promptly notified of any such action.

002 Application for Assistance. To be eligible for cost-share assistance ~~from the fund~~, a Landowner must make application ~~therefor~~ on forms provided by the Department~~Department~~. ~~Copies of such forms wi~~shall be available at such locations as the district shall ~~specifies~~.

003 Certification of Practices. Before the ~~district B~~board of directors approves the application ~~for assistance~~, a technician qualified to assess the practicability and need for the Projects or Practices for which assistance is requested shall certify that ~~such projects or practice~~they are feasible and that the estimated quantities are practical and reasonable. If such technician is other than an individual employed for such purposes by the District or by the NRCS, the qualifications of such technician ~~shall will~~ be established to the Board's satisfaction ~~of the board~~ prior to approval of the application.

004 Availability of Federal FundsFunds. Except for ~~funds~~funds to be obligated by the Commission~~Commission~~ in accordance with Chapter 2, Section 001, Subsection 001.03, applications ~~for cost sharing assistance from the Fund~~ cannot be approved by the ~~district B~~board of directors unless it determines that federal ~~funds~~funds were not available for the proposed

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Project or Practice at the time the application was submitted by the Landowner. -Federal ~~fundsfunds~~ wishall be deemed to be unavailable in the county where the land is located if all such ~~fundsfunds~~ then available for obligation in such county through federal cost-sharing programs have been obligated or if the particular Project or Practice proposed is not eligible for federal cost-sharing ~~fundsfunds~~ in that county, but is eligible for State Cost-Ssharing ~~assistanc~~efunds. -Federal cost-sharing ~~fundsfunds~~ wishall also be deemed to be unavailable to the extent that the maximum allowable dollar amount available from a federal cost-sharing program to individual ~~landowner~~Landowners in a given year has limited or will limit the ~~landowner~~Landowner's federal cost-share payment to an amount less than that to which such ~~landowner~~Landowner would have been entitled in the absence of such a dollar limitation. -In the event of the utilization of both state and federal cost-share ~~fundsfunds~~ on the same Project or Practice, the State Cost-Sshare Funds provided to the Landowner mayshall not exceed the amount which ineligible contributors are authorized to provide by federal regulations and operating procedures.

005 Federal Multi-Year Agreements. -Notwithstanding any provision of Chapter 3, Section 004, federal cost-sharing ~~fundsfunds~~ wishall be deemed to be unavailable for a Project or Practice which is included in a federal multi-year cost-sharing agreement or contract when ~~and only when~~ federal maximum dollar amounts for that type of Project or Practice or that contract have been or are to be paid from federal cost-sharing ~~fundsfunds~~.

006 Compliance with Applicable Laws. -In the installation or application of any Eligible Project or Practice the Landowner ~~wi~~shall beis solely responsible for assuring compliance with any applicable federal, state, or local laws, ordinances, and rules ~~or~~and regulations. -The ~~landowner~~Landowner is also solely responsible for obtaining all permits, licenses, or other instruments of permission required prior to the installation of the proposed ~~project or practice~~Project or Practice. -Practices may be adopted to provide assistance with costs of construction or costs to modify a project so that small dams are exempt from the requirements of obtaining a permit, license, or other permission required by federal, state or local laws, ordinances, and rules ~~or~~and regulations. -Additionally, practices may be adopted to provide assistance with costs to physically modify a project so that it becomes in compliance with applicable state law, or is ~~decommissioned~~decommissioned, removed, abandoned, or breached.

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007 Group ~~Project or Practice~~Project or Practices. In the event that the most appropriate solution to the needs addressed by the Aact requires the Eeligible Pprojects or Ppractices to be located on or across the property lines of different ~~landowner~~Landowners, and when such ~~landowner~~Landowners desire to jointly install, operate, and maintain such needed Pprojects or Ppractices, ~~state cost share funds~~State Cost-Share Funds may be used to share ~~the costs~~ when the following ~~additional~~ provisions have been satisfied. In addition, when two or more Landowners intend to participate financially in the installation of a Project or Practice located wholly on the property of one Landowner, the procedures outlined in this Section may be used, but are not required. .

007.01 ~~A~~ a group planning agreement prepared by or on behalf of ~~landowner~~Landowners must be signed and submitted by the ~~landowner~~Landowners involved and approved by the ~~board~~Board;

007.02 ~~if~~ the proposed ~~projects or practices~~Projects or Practices are approved by the ~~board~~Board, the ~~landowner~~Landowners shall arrange for carrying out the ~~projects or practices~~Projects or Practices by securing and recording any necessary easements ~~which are necessary~~ and by agreeing to a division of the costs and cost-share payments;

007.03 ~~o~~ One member of the group ~~wi~~ shall be designated as the group representative to file the application, ~~which will for cost share assistance, such application to be~~ accompanied by a written statement describing the arrangements agreed to under Subsection 007.02 above;

007.04 ~~t~~ The group representative ~~wi~~ shall make arrangements to have the ~~project or practice~~Project or Practice installed, make payments, and obtain receipts from vendors;

007.05 ~~t~~ The group representative ~~wi~~ shall submit the claim for payment, ~~supported as otherwise required by these rules and regulations~~;

007.06 ~~p~~ Payment will be made to the group representative;

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007.07 ~~t~~The division of cost-share assistance provided will be made by the group representative in the manner indicated in the agreement previously reached among the members of the group;

007.08 ~~A~~a cost-share assistance agreement must be signed by each member of the group on whose land a portion of the ~~project or practice~~Project or Practice has been installed; ~~and~~

~~007.09~~ ~~When two or more landowners intend to participate financially in the installation of a project or practice located wholly on the property of one landowner, the procedures outlined in this section may be used but are not required.~~

008 Termination Date. -All applications ~~wi~~shall specify a termination date ~~which that~~ shall be no more than nine months from the date the ~~landowner~~Landowner's application is approved by the ~~board~~Board. -Claims for payment received after such termination date ~~wi~~shall not be honored unless an extension, ~~of~~ not to exceed an additional three ~~months time~~months' time period, is approved by the ~~board~~Board by amendment to the original application.

009 Application Amendments.

009.01 ~~An amendment to an A~~Application ~~amendments~~ for cost-sharing assistance ~~wi~~shall be appropriate for any of the following reasons:

009.01(A) ~~t~~To increase or decrease consistent with the responsible technician's certification pursuant to Chapter 3, Section 003 the quantities of eligible ~~projects or practices~~Projects or Practices needed and/or the amount of ~~State C~~ost-~~S~~share ~~funds~~funds estimated on the original application;:-

009.01(B) ~~t~~To extend the termination date indicated on the original application consistent with Chapter 3, Section 008; ~~and~~

009.01~~(C)~~- ~~t~~To cancel the agreement by mutual consent.

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009.02 A copy of any amendment will be furnished to each party receiving a copy of the original agreement and the ~~board~~Board ~~wi~~shall approve each ~~such~~ amendment before it ~~may~~shall become effective.

010 Need for Additional Review.s -The ~~Commission~~Commission may identify ~~projects or practices~~Projects or Practices for which reviews by an entity in addition to the ~~district~~District are required before the ~~board~~Board of directors may approve applications ~~for cost share assistance~~, or any amendments thereto, pursuant to Chapter 6, Section 002, or may approve claims for payment pursuant to Chapter 6, Section 005. -In the event the ~~Commission~~Commission takes such action, the ~~Department~~Department, within five working days thereafter, ~~wi~~shall notify the affected ~~district~~Districts and as soon ~~thereafter~~ as possible, ~~wi~~shall direct the affected ~~district~~Districts concerning the process for future acceptance and approval of applications, amendments, and claims for payment which include such ~~projects or practices~~Projects or Practices.

Enabling Legislation: Neb. Rev. Stat. §§ 2-1575 to 2-1585

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NEBRASKA ADMINISTRATIVE CODE

~~LAST ISSUE DATE: September 23, 2003~~

Title 262-~~DNR~~ – ADMINISTRATION OF NEBRASKA SOIL AND WATER
CONSERVATION ~~PROGRAM~~FUND

~~Chapter~~CHAPTER 4 – DESIGN, LAYOUT, AND CONSTRUCTION OF PROPOSED
PROJECTS AND PRACTICES AND OPERATION AND MAINTENANCE

001 Technical Specifications. Unless the ~~Commission~~Commission provides otherwise for specific ~~P~~Projects and ~~P~~Practices, specifications ~~for projects and practices~~ set forth in the NRCS Field Office Technical Guide are to be used as the basis for determining need and practicability ~~of the proposed project or practice, for~~ preparing plans and specifications, ~~for~~ designing and laying out, ~~such projects and practices, and for~~ certifying the proper installation or application of such ~~P~~Projects and ~~P~~Practices. -Specifications for additional ~~P~~Projects and ~~P~~Practices not set forth in the NRCS Field Office Technical Guide and modifications to those included in such Technical Guide may be considered and authorized by the ~~Commission~~Commission at the request of the ~~District~~District. ~~P~~Project and ~~P~~Project description and specification information will be on file in the ~~district~~District office and at all such places as application forms are made available.

001.01. District~~Districts~~ proposing to utilize ~~State cost-share funds~~State Cost-Share Funds for the purpose of controlling erosion and sediment loss from construction and development of lands being converted to urban use ~~wi~~shall submit to the ~~Department~~Department a list of practices approved by the ~~B~~Board ~~of Directors~~ for such purpose. -The ~~Department~~Department ~~wi~~shall consider and authorize from such list those practices which in its judgment most effectively accomplish the goal of controlling erosion and sediment loss from construction and development of lands being converted to urban use.

002 Inspections and Certifications. ~~A responsible technician must~~shall ~~prior to installation or application of the proposed project or practice determine that the plans therefore are adequate and wi~~shall ~~inspect any construction work in progress to determine that specifications are met.~~ Following ~~such~~ installation or application ~~, of the proposed Project or Practice, a responsible~~

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~~technician~~ it will be the responsibility of such technician ~~to~~ technician will to certify to the ~~district~~District that the ~~project or practice~~Project or Practice was ~~or was not~~ properly installed or applied. If the ~~district~~District does not receive a technician's certification, ~~that the project or practice was properly installed or applied,~~ it shall not approve any claim to the ~~Department~~Department for payment regarding such ~~project or practice~~Project or Practice. ~~In the event that~~If any the technician responsible for complying with any portion of this Section is different from the technician who originally certified the feasibility of the ~~project or practice~~Project or Practice in accordance with Chapter 3, Section 003, and if ~~such technician is other than an individual~~they are not employed for such purposes by the ~~District~~District or by NRCS, the ~~technician's~~ qualifications ~~of such technician must~~shall be established to the Board's satisfaction ~~of the board~~ prior to ~~proceeding any further with~~ processing ~~of~~ any claim for payment.

003 Operation and Maintenance by LandownerLandowner. Except as provided in Chapter 3, Section 004, the ~~landowner~~Landowner ~~wi~~shall be responsible for the operation and maintenance of all ~~P~~projects and ~~P~~practices constructed with assistance from the ~~Fund~~Fund and the ~~landowner~~Landowner will be expected to maintain the same in good operating condition to assure their continued effectiveness for the purpose or purposes for which they were installed.

004 Operation and Maintenance by DistrictDistrict. If on any particular proposed ~~project or practice~~Project or Practice, the ~~district~~District determines that ~~landowner~~Landowner assumption of all operation and maintenance responsibilities would constitute an undue burden upon such ~~landowner~~Landowner or would not assure operation or maintenance adequate to protect such ~~project or practice~~Project or Practice from failure, the ~~district~~District may agree to be or require that it be responsible for all or a part of such operation and maintenance and may prior to and as a condition for approval of an application ~~for cost share funds~~, require the ~~landowner~~Landowner to provide the ~~district~~District with the right of access necessary to perform such operation or maintenance.

005 Cost-Share Assistance Agreement. As a condition for receiving any ~~State Ceost-S~~share ~~funds~~Funds for ~~E~~eligible ~~projects or practices~~Projects or Practices, the ~~landowner~~Landowner ~~shall,~~will prior to submission of a claim for reimbursement, enter into an agreement ~~on forms supplied by the Department~~ providing that if a conservation practice is terminated or a ~~project or~~

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~~practice~~Project or Practice is removed, altered, or modified so as to lessen its effectiveness, without prior approval of the ~~district~~District, for a period of ten years after the date of receiving payment, the ~~landowner~~Landowner shall ~~refund~~fund to the ~~Fund~~Fund the full amount of the ~~State Cost-Share~~ payment-Funds previously received for the ~~project or practice~~Project or Practices or portion thereof which has been thus terminated, removed, altered, or modified.

005.01 To be eligible for ~~State Cost-Share~~ funds-Funds for practices authorized under Subsection 001.01 of this Chapter, the ~~landowner~~Landowner ~~must~~shall enter into an agreement ~~on forms supplied by the Department~~ providing that authorized practices will be installed and adequately maintained or replaced at the ~~landowner~~Landowner's expense until ~~ninety-five~~95 percent of the site is permanently stabilized, as certified by a ~~responsible~~ technician identified under Section 002 of this Chapter.

006 Requests for Termination, Removal, Alterations, Modifications. A ~~landowner~~Landowner may request the ~~district~~District's approval of the termination, removal, alteration, or modification of the ~~project or practice~~Project or Practice at any time during the 10-year period following receipt of payment.- In determining whether to approve or disapprove such action, the ~~district~~District ~~wi~~shall consider:

006.01 ~~t~~The value of the ~~project or practice~~Project or Practice in conserving soil and water resources or protecting water quality;

006.02 ~~t~~The extent to which such ~~project or practice~~Project or Practice hinders the highest and best use of the land upon which such ~~project or practice~~Project or Practice is located;

006.03 ~~w~~Whether alternative forms of soil and water conservation or water quality protection measures have been or are to be constructed or implemented; and

006.04 ~~t~~The time remaining in the designed life of the ~~project or practice~~Project or Practice.

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Enabling Legislation: Neb. Rev. Stat. §§ 2-1575 to 2-1585

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Title 262-~~DNR~~ – ADMINISTRATION OF NEBRASKA SOIL AND WATER
CONSERVATION ~~PROGRAM~~FUND

~~Chapter~~CHAPTER 5 – COST-SHARE RATES AND REIMBURSEMENT PROCEDURES

001 Cost-Share Rates. -The ~~district~~District may establish any cost-share rates for Eligible Projects and Practices up to ~~75% percent~~ of ~~average unit cost~~Average Unit Cost. -However, except as provided in Chapter 2, Section 001, Subsection 001.03, no payment shall exceed ~~75 percent%~~ of the actual cost of the ~~project or practice~~Project or Practice installed or applied. Participating ~~district~~Districts shall notify the ~~Department~~Department by February 1 of each year of the cost-share rates to be utilized for reimbursement purposes during the next ensuing year. -In the event that ~~average unit cost~~Average Unit Costs are not established in accordance with Chapter 5, Section 002, or that ~~average unit cost~~Average Unit Costs ~~which~~which are available are determined by the ~~Commission~~Commission to be unreliable because of the site-specific nature of the costs of a certain type of ~~project or practice~~Project or Practice, the cost-share rate in effect will be applied to actual cost, and average cost will not be utilized and need not be calculated on individual applications.

001.01. -At the time a ~~District~~District submits to the ~~Department~~Department a list of practices as provided for under Chapter 4, Subsection 001.01, the ~~District~~District ~~wi~~shall identify the estimated unit cost of each proposed practice, including installation, in such ~~District~~District and the ~~District~~District's proposed cost share amount for each unit to be installed.

002 Average Costs. -Unless a ~~district~~District establishes and informs the ~~Department~~Department of lower ~~average unit cost~~Average Unit Costs, the ~~average unit cost~~Average Unit Costs for a county shall be identical to any established and utilized by NRCS for the same type of Projects and Practices in that county. -If ~~average unit cost~~Average Unit Costs are not established by NRCS ~~for an eligible practice in a county~~, the ~~Commission~~Commission itself may establish ~~average unit cost~~Average Unit Costs for such ~~project or practice~~Project or Practice in ~~such that~~ county. -Except for applications filed with the ~~Commission~~Commission in accordance with

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Chapter 4

Chapter 2, Subsection 001.03, all applications ~~for cost-sharing assistance will~~ be based upon the then current ~~average unit cost~~ Average Unit Costs. -Once an application has been completed by a ~~landowner~~ Landowner, the same ~~average unit cost~~ Average Unit Costs in effect at the time the application was completed ~~will~~ be utilized for determining the cost-share payment to which each ~~landowner~~ Landowner is entitled unless the ~~district~~ District and the ~~landowner~~ Landowner agree to use updated ~~average unit cost~~ Average Unit Costs.

003 Eligible Costs. -Except for costs incurred in employing the services of a technician as required by these rules ~~and regulations~~ or as otherwise may be limited by the ~~Department~~ Department, all necessary costs incurred by the ~~landowner~~ Landowner in installing or applying an approved ~~project or practice~~ Project or Practice ~~will~~ be eligible for cost-sharing. Such costs include machine hire or the costs of the use of ~~his~~ the Landowner's own equipment, needed materials delivered to ~~be used at~~ the site, and labor required to construct the project.

004 Documenting Costs. -All authorized items of costs ~~for which that~~ the ~~landowner~~ Landowner desires ~~State Cost-Sharing Assistance Funds will~~ be itemized on a statement submitted to the ~~district~~ District by the ~~landowner~~ Landowner in such form as ~~is~~ required by the ~~Department~~ Department. -Costs incurred by the ~~landowner~~ Landowner in furnishing ~~their~~ his own labor, material, or equipment for use on a ~~project or practice~~ Project or Practice should be listed in a certified statement itemizing such items and showing unit cost for each item and the total amount for which payment is claimed.

005 Claim for Payment. -The ~~landowner~~ Landowner ~~will~~ after the ~~project or practice~~ Project or Practice has been completed and certified by the responsible technician complete a claim for payment, ~~on forms provided by the Department and available at the location where the application form was obtained.~~ -A copy of the document(s) required by Chapter 5, Section 004, ~~will~~ be attached to such claim for payment prior to submission to the ~~district~~ District. -A claim for payment will not be accepted unless the ~~landowner~~ Landowner has signed the portion of the claim form required by Chapter 4, Section 005.

Enabling Legislation: Neb. Rev. Stat. §§ 2-1575 to 2-1585

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NEBRASKA ADMINISTRATIVE CODE

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Title 262-~~DNR~~ – ADMINISTRATION OF NEBRASKA SOIL AND WATER CONSERVATION ~~PROGRAM~~FUND

Chapter 6 – ~~DISTRICT~~DISTRICT ADMINISTRATION OF THE ~~FUND~~FUND

001 Application. -Chapter 6, Sections 001 through 009-~~shall~~ apply only to ~~district~~Districts ~~which that~~ have entered into a Memorandum of Understanding with the ~~Department~~Department agreeing to assist the ~~Department~~Department in ~~the~~-Administration of the ~~Fund~~Fund.

002 Board~~Board~~ Action on Application. -The ~~board~~Board of directors-~~wish~~all review each ~~cost-share assistance~~ application and any and all amendments thereto and ~~wish~~all approve or disapprove each ~~such~~ application or amendment. -Such action ~~wish~~all be recorded in the official minutes of the meeting and the ~~landowner~~Landowners shall be notified of such action within ~~ten~~ 10 days thereafter. -For any ~~project or practice~~Project or Practice subject to additional review in accordance with Chapter 3, Section 010, the ~~board~~Board ~~wish~~all not approve an application-~~for cost-share assistance~~ or an amendment thereto except in compliance with direction given by the ~~Department~~Department.

003 Approving Applications. -Except for applications pursuant to Chapter 2, Section ~~2~~-001, Subsection 001.03, applications ~~for cost-share assistance~~ may be approved by the ~~board~~Board only when there is a sufficient unobligated ~~fund~~Fund balance to provide the estimated cost-share amount based upon the average cost information indicated on the application. -The ~~board~~Board may if it desires give preference to the construction of ~~projects or practices~~Projects or Practices ~~which that~~ will in its judgment provide the greatest public benefit in that ~~district~~District. Examples of ~~such~~ Pprojects and Ppractices ~~which would provide the most public benefit~~ include those ~~which that would~~ reduce runoff and sediment damage to lakes, streams, reservoirs, roads, highways, or other public improvements; and those ~~which would that~~ reduce demands on or contamination of the groundwater reservoir and/or provide enhanced recharge to an aquifer with a declining water table.

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Chapter 5

004 Record Keeping. -The ~~district~~District ~~must~~shall maintain a record of ~~funds~~funds obligated as applications ~~for cost share assistance~~ are approved based upon estimated costs. -A cost-share ledger will be kept current showing the balance of unobligated ~~funds~~funds and such other information as the ~~Department~~Department determines is necessary to provide for proper documentation of all expenditures from the ~~Fund~~Fund.

005 District~~District~~ Review of Claim for Payment. -Upon completion of an approved ~~project or practice~~Project or Practice, the ~~district~~District ~~wish~~shall review the claim for payment prepared by the ~~landowner~~Landowner in accordance with Chapter 5, Section 005, and ~~wish~~shall if it finds that the ~~project or practice~~Project or Practice was properly installed, that all other conditions have been satisfied, and that the claim has been properly completed and is accompanied by all required supporting documentation, approve the claim and certify the same to the ~~Department~~Department with all supporting documentation attached. -For any ~~project or practice~~Project or Practice subject to additional review in accordance with Chapter 3, Section 010, the ~~board~~Board ~~wish~~shall not approve a claim for payment except in compliance with direction given by the ~~Department~~Department. -If the ~~district~~District determines that the claim is improperly prepared or that other deficiencies exist, it ~~wish~~shall so notify the ~~landowner~~Landowner and ~~wish~~shall provide the ~~landowner~~Landowner with a reasonable opportunity to correct such deficiencies and to resubmit the claim for payment.

006 District~~District~~ Assistance to Landowner~~Landowner~~. -The ~~district~~District ~~wish~~shall provide such assistance as it deems appropriate to the ~~landowner~~Landowner in the completion of necessary forms and in all matters relating to completion of Eligible Projects and Practices.

007 Filing System. -To provide for efficient processing of requests for State Ceost-Ssharinge Funds ~~assistance~~ and for maintenance of necessary documentation of matters relating to the administration of the ~~Fund~~Fund, the ~~district~~District ~~wish~~shall develop and maintain ~~with the assistance of the Department~~ a filing system ~~which that~~ includes copies of all forms completed by the ~~landowner~~Landowner and all other information deemed relevant to the installation and application of the Eligible Projects and Practices and to the cost-sharing assistance provided. Such files ~~wi~~shall be available for inspection by ~~personnel of the Department~~Department personnel and by representatives of the State Auditor's Office during normal business hours of the ~~district~~District.

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Chapter 5

008 Reports. -The ~~district~~District shall no later than the ~~5th~~-fifth working day of March, July, and November of each year submit a report to the ~~Department~~Department indicating the status of ~~State Ceost-Sshare funds~~Funds as shown on each cost-share ledger required by Chapter 6, Section 004 at the close of the last day of the preceding month.

009 Delegation of Responsibilities by BoardBoard. -The ~~board~~Board of directors may delegate to the ~~district~~District manager or to a member or sub-committee of the ~~board~~Board all or any of the authorities and responsibilities assigned to it by these rules ~~and regulations~~ except the establishment of preferred ~~P~~projects and ~~P~~practices in accordance with Chapter 6, Section 003 and the limitation of the types of ~~P~~projects and ~~P~~practices eligible for assistance in accordance with Chapter 3, Section 001. -The ~~Department~~Department ~~wish~~will be notified in writing of any such delegation.

Enabling Legislation: Neb. Rev. Stat. §§ 2-1575 to 2-1585

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NEBRASKA ADMINISTRATIVE CODE

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Title 262-~~DNR~~ – ADMINISTRATION OF NEBRASKA SOIL AND WATER
CONSERVATION ~~PROGRAM~~FUND

Chapter 7 – ~~DEPARTMENT~~DEPARTMENT ADMINISTRATION OF THE ~~FUND~~FUND

~~001 Forms. The Department wishall prepare and make available to participating districts sufficient copies of all forms necessary for district administration and shall further prepare and keep updated a handbook for use by districts in assisting in the administration of the fund.~~

~~002 Department Review of Claims for Payment. Upon receipt from a district of a district approved claim for payment, a Department representative wishall review the claim and the supporting documentation which is attached. If the claim is determined to be complete and properly documented, the Department wishall prepare a voucher for transmittal to the Department of Administrative Services for preparation of a warrant payable to the landowner or to a group representative designated in accordance with Chapter 3, Section 007.~~

~~003 Payment to Landowner. Upon receipt of the warrant from the Department of Administrative Services, the Department wishall transmit it by mail to the landowner or group representative.~~

~~004 Incomplete or Inaccurate Claims for Payment. If in reviewing the claim for payment, the Department determines that the information contained thereon is incomplete or inaccurate, that an error exists in the final computation or that proper documentation has not been supplied, it willshall so notify the district of such deficiency. The district wishall then request the landowner to complete a new claim for payment. No payment will be authorized until the Department has determined that the claim for payment and the necessary supporting documentation are complete and accurate in all respects.~~

~~0015 Violations of Cost-Sharing Assistance Agreement. -In the event that the DepartmentDepartment is notified of an alleged violation of the cost-sharing assistance agreement, a representative of the DepartmentDepartment and/or a representative of the~~

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Chapter 6

~~district~~District ~~wi~~shall investigate the alleged violation and ~~wi~~shall report the results of such investigation to the ~~Department~~Department. -If following the investigation it appears as though a violation has in fact occurred, the ~~Department~~Department ~~wi~~shall ~~so~~ notify the ~~landowner~~Landowner and ~~shall~~ make demand for repayment of the appropriate amount to the ~~Fund~~Fund within 30 days thereafter. -The ~~landowner~~Landowner may within the time specified for such repayment, contest the occurrence of a violation and may request that the ~~Department~~Department conduct a formal hearing to reconsider such demand for payment. Such hearing shall be conducted in accordance with Title ~~454261~~ of the ~~Department~~Department Rules and Regulations. -If following the hearing, the ~~Department~~Department determines that the violation did ~~in fact~~ occur, it ~~wi~~shall ~~so~~ notify the ~~landowner~~Landowner in accordance with the provisions of Title ~~454261~~ and ~~wi~~shall renew the demand for repayment. -If repayment is not provided or all deficiencies corrected at the ~~owner~~Landowner's expense within the time specified, appropriate legal action ~~may~~shall be taken by the ~~Department~~Department to recover such amount.

~~002 6~~ Report to ~~District~~Districts. -The ~~Department~~Department ~~wi~~shall prepare on a quarterly basis a report to each ~~P~~participating ~~district~~District indicating the payments ~~which~~ ~~that~~ have been made from the ~~F~~fund during the preceding quarter and any other information determined by the ~~Department~~Department to be of value to the ~~district~~Districts regarding ~~the~~ administration of the ~~F~~fund.

Enabling Legislation: Neb. Rev. Stat. §§ 2-1575 to 2-1585

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