

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: 263	Prepared by: Emily Rose
Chapter(s): all chapters	Date prepared: 9/30/2020
Subject: Admin of the Natural Resources Water Quality 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 263 — RULES REGULATIONS GOVERNING THE
ADMINISTRATION OF THE
NATURAL RESOURCES WATER QUALITY FUND~~

~~NEBRASKA ADMINISTRATIVE CODE~~

~~NEBRASKA DEPARTMENT OF NATURAL RESOURCES COMMISSION~~

~~TITLE 263~~

~~RULES AND REGULATIONS GOVERNING THE
ADMINISTRATION OF THE NATURAL RESOURCES
WATER QUALITY FUND~~

~~Adopted 7-19-2001~~

NEBRASKA ADMINISTRATIVE CODE

~~TITLE 263—NEBRASKA DEPARTMENT OF NATURAL RESOURCES COMMISSION
RULES GOVERNING ADMINISTRATION OF THE NATURAL RESOURCES WATER
QUALITY FUND~~

ALPHABETICAL TABLE OF CONTENTS

<u>SUBJECT</u>	<u>STATUTORY AUTHORITY</u>	<u>CODE CHAPTERSECTION</u>
Distribution of Funds	Neb. Rev. Stat. §Sec. 2-15,123, as amended by Section 2, LB 329, 97th Nebraska Legislature, 1st Session (2001)	Chapter 2
General Provisions	Neb. Rev. Stat. §Sec. 2-15,122, as amended by Section 1, LB 329, 97th Nebraska Legislature, 1st Session (2001)	Chapter 1
Qualified Expenditures	Neb. Rev. Stat. §Sec. 2-15,123, as amended by Section 2, LB 329, 97th Nebraska Legislature, 1st Session (2001)	Chapter 3

~~NEBRASKA ADMINISTRATIVE CODE~~

~~TITLE 263—NEBRASKA DEPARTMENT OF NATURAL RESOURCES COMMISSION
RULES GOVERNING THE ADMINISTRATION OF THE NATURAL RESOURCES WATER
QUALITY FUND~~

NUMERICAL TABLE OF CONTENTS

<u>SUBJECT</u>	<u>STATUTORY AUTHORITY</u>	<u>CODE CHAPTERSECTION</u>
General Provisions	Neb. Rev. Stat. §Sec. 2- 15,122, as amended by Section 1, LB 329, 97th Nebraska Legislature, 1st Session (2001)	Chapter 1
Distribution of Funds	Neb. Rev. Stat. §Sec. 2- 15,123, as amended by Section 2, LB 329, 97th Nebraska Legislature, 1st Session (2001)	Chapter 2
Qualifying Expenditures	Neb. Rev. Stat. §Sec. 2- 15,123, as amended by Section 2, LB 329, 97th Nebraska Legislature, 1st Session (2001)	Chapter 3

NEBRASKA ADMINISTRATIVE CODE
NEBRASKA NATURAL RESOURCES COMMISSION

~~LAST ISSUE DATE: MARCH 13, 1996~~

Title 263-~~DNR~~ — ADMINISTRATION OF NATURAL RESOURCES WATER QUALITY FUND

~~Chapter~~ CHAPTER 1 — ADMINISTRATION OF NATURAL RESOURCES WATER QUALITY FUND
GENERAL PROVISIONS

001 General Provisions.

001.01 Purpose of Rules. -These rules are adopted for the purpose of administering the Natural Resources Water Quality Fund (~~Fund~~) governed by Neb. Rev. Stat. §§Sections 2-15,122 and 2-15,123,~~as amended by Sections 1 and 2, LB 329, 97th Nebraska Legislature, 1st Session (2001).~~

001.02~~002~~ General Availability of Funds. -Financial assistance from the Fund ~~wi~~shall be available only to ~~NRD~~natural resources districts~~DDistricts~~ ~~which that~~ have programs qualifying for such assistance under these rules and which have entered into a ~~contractual arrangement~~contract with the Department setting forth the terms for providing such financial assistance.

001.03~~003~~ Definitions. -As used in these rules~~and regulations~~, unless the context otherwise requires:

~~003.01~~ “Commission” shall means the Natural Resources Commission created pursuant to Neb. Rev. Stat. §Section 2-1504, R.S. Supp., 2000, and amendments thereto;

~~0013.03(A)2~~ “Commission,” “Department,” and “Director,” and “District” have the same meaning as in Title 259 shall means the Nebraska Department of Natural Resources created by Neb. Rev. Stat. §Section 81-101, R.S. Supp., 2000, and amendments thereto;; and

Title 263
Chapter 4

~~003.03~~ “Director” shall mean the individual holding the position of Director of Natural Resources created by Neb. Rev. Stat. §Section 81-102, R.S. Supp., 2000~~f~~ “NRD” shall mean a district created and operating in accordance with Chapter 2, Article 32, Reissue Revised Statutes of Nebraska; and

~~0013.03(B)25~~ “Fund” shall mean the Natural Resources Water Quality Fund created by Neb. Rev. Stat. §Section 2-15,122, as amended by Section 1, LB 329, 97th Nebraska Legislature, 1st Session (2001).

~~001.04004~~ Access to Files and Compliance with Agreement and Rules ~~and Regulations~~. Each participating ~~D~~district ~~natural resources district~~ ~~must~~ shall maintain records adequate to document that the ~~D~~district had expenditures qualified pursuant to ~~Chapter Section 003~~ of these rules in amounts equal to or exceeding the amount provided from the Fund plus the required cost-share. Such files ~~are to~~ shall be available for inspection by ~~personnel of the~~ Department ~~personnel~~ and by representatives of the State Auditor’s ~~O~~office during normal business hours of the ~~D~~district. In the event ~~that~~ the Director becomes aware of a violation of the contract between the ~~D~~district and the Department or of these rules ~~and regulations~~, the Director may terminate the contract and/or demand reimbursement of any ~~S~~state funds related to such violation.

Enabling Legislation: Neb. Rev. Stat. §Sec. 2-15,122

~~NEBRASKA ADMINISTRATIVE CODE~~

~~LAST ISSUE DATE: MARCH 13, 1996~~

~~Title 263 DNR— ADMINISTRATION OF NATURAL RESOURCES WATER QUALITY FUND~~

~~002 Distribution of Funds. Chapter 2— DISTRIBUTION OF FUNDS~~

~~002.01+~~ Schedule for Distributing Funds. -Funds ~~will~~shall be distributed, pursuant to ~~Subsection 002.02 of this chapter~~ to participating ~~D~~districts on or before the 15th day of August, each year and at such other times during the year as the Director determines that sufficient additional funds are available to make a distribution and the participating ~~D~~districts indicate their ability to use additional funds.

~~002.02~~ Determining Distributions. -The money available for each distribution from the Fund ~~shall~~will be divided among participating ~~D~~districts as follows:

~~002.02(A)+~~ Except as provided by ~~Subsection 002.044 of this Chapter~~, ~~sixty-60~~ percent of the funds available ~~will~~shall be distributed to ~~D~~districts on the basis of proportionate fertilizer sales within the ~~D~~districts during the preceding three calendar years for which sales records by county are available from Nebraska Agricultural Statistics or a comparable source. -For a county ~~which-that~~ is contained within more than one ~~D~~district, each ~~D~~district's proportion of sales ~~will~~shall be based upon its proportionate land area within the county. -If sales records are not made available for any county, the Director ~~will~~shall establish that county's portion of the statewide sales total. -That decision ~~will~~shall be based upon the best available information, which may include, but not be limited to, county land area and sales in adjacent counties. In the event the Commission chooses to reserve up to ~~ten-10~~ percent of funds available for special distribution pursuant to ~~Subsection 002.0044 of this Chapter~~, the amount of funds available for distribution pursuant to this ~~S~~subsection ~~will~~shall be decreased by the amount reserved-

~~002.02(B)-~~ ~~Twenty-20~~ percent of the funds available ~~will~~shall be divided equally among all participating ~~D~~districts.

Title 263
Chapter 2

~~002.02(C)3~~ ~~Twenty 20~~ percent of the funds ~~will shall~~ be distributed among ~~D~~districts which have (1) a designated ground water management area for water quality purposes or (2) a clean lakes watershed area designated pursuant to Section 314 of the Clean Water Act, or comparable federally--funded program. Each ~~D~~district's distribution pursuant to this ~~S~~subsection ~~will shall~~ be based upon the proportionate land area in that ~~D~~district which is in such a designated area compared to the total land area within the ~~S~~state in such designated areas. -If specific lands are in more than one such designated area, they ~~will shall~~ be counted only once for purposes of this ~~S~~subsection.

~~002.03~~ At least ~~thirty 30~~ days prior to a distribution pursuant to ~~Subsection 002.02 of this chapter~~, the Department ~~will shall~~ notify each ~~D~~district of the estimated amount of funds to be distributed to that ~~D~~district. -If any ~~D~~district does not believe it could fully utilize any such distribution in the amount estimated, it ~~must shall~~ provide the Department with timely notification of the amount of funds ~~which that~~ it could utilize for qualified programs. -The difference between that amount and the amount that would otherwise be distributed to that ~~D~~district pursuant to ~~Subsection 002.02 of this Chapter~~ will be divided among the other ~~p~~participating ~~D~~districts according to ~~S~~subsections ~~002.02(A)1~~ through ~~002.02(C)3~~.

~~002.044~~ The Commission may reserve up to ~~ten 10~~ percent of the funds that otherwise would be distributed pursuant to ~~Subsection 002.02 of this Chapter~~ as part of the first distribution in any fiscal year. -Any such reserved funds will be distributed by the Director to ~~p~~participating ~~D~~districts for specific programs and/or projects by September 15 of the fiscal year in which they are to be expended. - ~~Application for such funds must shall be made on a form provided by the Department.~~ -If the available funds are not sufficient to fund all those for which application has been made, priority will be given to programs and projects offering innovative ways to address water quality problems. -No ~~D~~district ~~may shall~~ receive more than ~~twenty five 25~~ percent of the funds distributed pursuant to this ~~Subs~~section in any one fiscal year unless funds are available for all other qualified applications submitted.

Enabling Legislation: Neb. Rev. Stat. § 2-15,123

NEBRASKA ADMINISTRATIVE CODE

LAST ISSUE DATE: ~~MARCH 13, 1996~~

~~Title 263 DNR—ADMINISTRATION OF NATURAL RESOURCES WATER QUALITY FUND~~

~~Chapter 3—QUALIFYING EXPENDITURES~~003 Qualifying Expenditures.

~~003.014~~ Qualifying Programs and Projects. Subject to the requirement of Subsection 003.022 ~~of this Chapter~~, a participating District may expend funds distributed pursuant to ~~Chapter-Section 002~~ of these rules for costs incurred by that District for any of the following programs and projects: (1) the purchase, installation, maintenance, and use of ground water or surface water sampling and testing equipment; ~~(2) the purchase, installation, maintenance, and use of surface water sampling and testing equipment;~~ (23) education and information programs related to water quality issues; (34) administration of ground water quality management areas; ~~(45)~~ purchase, installation, and maintenance of special monitoring wells and related equipment; ~~(56)~~ flow meters and other equipment required in ground water management areas; ~~(67)~~ source water protection programs and activities; (78) preparation and updating of ground water management plans; (89) implementation of water quality “best management” practices in both rural and urban areas, including programs ~~which that~~ cost-share expenses of landowners and operators in installing or using such practices; ~~(940)~~ soil sampling and testing programs for soils in and below the crop root zone; (104) water quality research; (112) well decommissionings; (123) ~~c~~Chemigation permitting and inspection programs; (134) investigations, because of water quality concerns, of potential replacement sources of water for public water suppliers; (145) animal waste management activities including research, treatment lagoon cost-sharing, feedlot waste effluent management, and inactive feedlot management; and (156) other water quality related programs and projects approved in advance by the Director. The Director ~~has shall have~~ sole discretion to determine whether a District’s program qualifies for funding pursuant to this Subsection.

003.022 Cost-Share Requirement. For each two dollars expended by the District from the funds distributed pursuant to ~~Chapter-Section 002~~ of these rules, the District ~~must shall~~ spend at least three dollars in funds derived from other non-state sources for the programs and projects identified in Subsection 003.014 ~~of this chapter~~.

Title 263
Chapter 3

003.03 Certification of Expenditures and Reimbursement of Funds. -Funds distributed pursuant to ~~Chapter Section 002~~ of these rules ~~and regulations~~ must be expended by the District in the fiscal year distributed. -On or before August 31, the District ~~must~~shall account for expenditure of the funds made available from the Fund in the previous fiscal year. ~~-The Department will~~shall ~~provide a form for such purposes.~~-In the event that all funds distributed in the previous fiscal year were not expended by June 30 of that fiscal year, or that any funds were expended for programs or projects that the Director determines were not qualified for funding, or that the District did not match the funds distributed in the proportion required by Subsection 003.022 ~~of this chapter~~, the District shall reimburse the Department for the amount ~~thus~~ unexpended, improperly expended, or unmatched. -All such reimbursed funds ~~will~~shall be redeposited in the Fund for redistribution in accordance with ~~Chapter Section 002~~ of these rules ~~and regulations~~. No new distributions ~~may~~shall be made to a District ~~which that~~ has not made a reimbursement required by this Section.

Enabling Legislation: Neb. Rev. Stat. § 2-15,123