

STATE OF MINNESOTA
DEPARTMENT OF AGRICULTURE

In the Matter Of The Proposed Amendments
To Rules Of The Soil And Water Conservation
Board Governing The Allocation Of Funds To
Soil And Water Conservation Districts For
The Installation Of Erosion, Sedimentation
Or Water Quality Improvement Practices
(8400.0100 to 8400.2900)

Statement Of
Need And
Reasonableness

I. INTRODUCTION

The subject of this rulemaking is the proposed adoption by the Minnesota Department of Agriculture (Department) of amendments to rules governing the allocation of funds to Soil and Water Conservation Districts (SWCDs) for the installation of erosion, sedimentation or water quality improvement practices. These amendments are proposed for adoption pursuant to Minnesota Statutes, 1982, section 40.036, which requires the Soil and Water Conservation Board (SWCB) to promulgate rules to implement changes to existing rules (8400.0100 - 8400.2900). Minnesota Statutes, 1982, section 40.036, requires that the proposed rule contain the content and scope of SWCD annual and comprehensive plans, standards and methods for planning and implementing a priority cost-sharing program, and the share of the cost of priority conservation practices to be paid from state funds.

The Notice of Intent to Solicit Outside Opinion was published in the State Register by the Department on December 20, 1982. Prior to this, the Department and SWCB determined that the proposed adoption of these amendments would be noncontroversial because the changes are mainly clarification or technical in nature. In addition, SWCDs and agencies most affected by the proposed changes were actively encouraged by the Department and SWCB to review and comment on several drafts of the proposed rule. The proposed rule thus reflects many changes suggested by SWCDs, agencies, and the task force mandated by Minnesota Statutes 40.036. The proposed rule includes the items required by the 1982 legislation, provides clarification of certain sections of the current rules, and establishes new administrative requirements which provide SWCDs with the ability to administer the program in a consistent manner, and yet address local resource concerns.

For the aforementioned reasons, the SWCB directed that the proceedings on the proposed amendments be conducted in accordance with the statutory provisions governing the adoption of noncontroversial rules, Minnesota Statutes, sections 14.22 to 14.28.

The discussion provided in this statement is divided into the following parts:

- Part II. Small Business Impact
- Part III. General Overview
- Part IV. Need For and Reasonableness of the Proposed Amendments to the Rules
- Part V. Effective Date
- Part VI. Attachment

II. SMALL BUSINESS IMPACT

Minnesota Statute 14.115 requires an assessment of the impact on small business when laws and rules are enacted that affect them.

The proposed amendments pertaining to the allocation of funds to Soil and Water Conservation Districts for the installation of erosion, sedimentation or water quality improvement practices (8400.0100 - 8400.2900) relate to the local administration of a state program. Consequently, exemption from a small business impact statement is claimed on the basis of 14.115, subd. 7, which excuses agency rules that do not directly affect small businesses.

III. GENERAL OVERVIEW

A. The Need for Amendments to 8400.0100 to 8400.2900

To understand the need for and reasonableness of the proposed amendments, it is important to know why they are proposed. In recent years, considerable attention has been given to the manner in which erosion and sediment control and water quality improvement funds have been spent. To this end, the 1982 Minnesota Legislature directed the SWCB to amend cost-share program rules (8400.0100 - 8400.2900) and incorporate changes which would direct available cost-share program funds to priority areas of the state. Additional changes were to be made to insure that SWCDs planned and implemented a priority cost-sharing program in a manner consistent with local soil and water resource priorities and statewide resource plans.

Other changes were also necessary, in the view of the SWCB, to address administrative and interpretive issues resulting from six years of experience with the current rule (8400.0100 - 8400.2900).

This rulemaking is necessary and reasonable to incorporate legislative, administrative and interpretive changes to the current rule. The proposed amendments provide for a more cost-effective program and increased administrative flexibility for SWCDs.

B. Historical Summary of the Cost-Share Program

In 1977, legislation passed establishing a cost-share program as an incentive for soil and water conservation measures. The bill was the most comprehensive piece of legislation affecting soil conservation since Chapter 40 (the Soil and Water Conservation District Law) was enacted in 1937. The legislation also updated and accelerated soil and water conservation programs.

The SWCB initiated the procedures for development of the cost-share program. To carry out this responsibility, the SWCB used an interagency approach. This method, the same used in drafting the legislation, resulted in several joint meetings, draft proposals, and periods of review and comment. This process culminated with the adoption of emergency rules by the SWCB in October, 1977. Permanent rules were adopted by July 1, 1978, and published as § MCAR 7.001 - 7.005. They were later re-formatted and published as Chapter 8400.0100 - 8400.2900. It is this edition that is the subject of the proposed amendments.

The proposed amendments are the result of 1982 legislative action and the intent of the SWCB to strengthen program administration by adding new requirements and clarifying existing policy.

IV. NEED FOR AND REASONABLENESS OF THE PROPOSED AMENDMENTS TO THE RULES

The following discussion addresses the need for and reasonableness of the proposed amendments to the rules governing the allocation of funds to Soil and Water Conservation Districts for the installation of erosion, sedimentation or water quality improvement practices. The proposed amendments have been divided into the following categories: incorporation of items required by law; addition of new administrative requirements; clarification of the current rules; changes in language and form by the office of the Revisor of Statutes; and repealers.

A. Incorporation of Items Required by Law

8400.0100 subparts 3, 8, 8a., 14a., 16a., and 16b.
8400.0600 subparts 1 and 4
8400.1400 subpart 2
8400.2800

The amendments proposed for the parts of the rule noted above are necessary to comply with Minnesota Statute 40.036, subd. 4, which requires that the proposed rule contain the content and scope of SWCD annual and comprehensive plans, standards and methods for planning and implementing a priority cost-sharing program, and the share of the cost of priority conservation practices to be paid from state funds. The proposed changes are reasonable because they comply with statutory requirements and provide for better identification and more cost-effective treatment of priority erosion, sedimentation and water quality areas.

B. Addition of New Administrative Requirements

Minnesota Rules 8400.0100 subparts 1a, 7a, 20a, 20c, 20d, 25 and 26.

These proposed amendments consist of new definitions. They are necessary to clarify the meaning of other proposed amendments. The definitions are reasonable because they are consistent with generally accepted soil and water conservation terminology and will permit a better understanding of other proposed amendments.

Minnesota Rules 8400.0100 subpart 13.

The proposed amendment is necessary to reflect the manner by which SWCD Board members currently view their role as supervisors of staff. This change is further necessary because it eliminates language which confuses parts 8400.0100, subpart 20c. and 8400.1000. These parts clearly imply that a district technician is technically responsible to a USDA - Soil Conservation Service employee or a registered professional engineer. The proposed change is reasonable because it corrects the concerns expressed by SWCD Board's that district technicians are ultimately responsible to them. It is further reasonable because technical supervision is addressed elsewhere in the rule.

Minnesota Rules 8400.0100, subpart 20b; 8400.1000; 8400.1300g; and 8400.1600, subpart 1.

These proposed amendments are necessary to incorporate the changes made to technical assistance for soil and water conservation measures. These changes are reasonable because they provide for greater technical assistance options to SWCDs, and yet maintain the integrity and engineering quality of soil and water conservation practices.

Minnesota Rules 8400.0100, subpart 22a.

The proposed amendment is necessary to provide SWCDs with a means of addressing those soil erosion and water quality problems beyond the scope and funding of local programs. The change is reasonable because it provides SWCDs with the opportunity to address unique soil and water resource problems, and yet insure that funds are administered consistent with legislative mandates and these rules.

Minnesota Rules 8400.0600 subpart 3.

The proposed amendment is necessary to revise the criteria by which the SWCB reviews SWCD applications for cost-share funds. This change is reasonable because it links SWCB review criteria with the legislatively mandated changes addressed in Part IV A and B of this statement.

Minnesota Rules 8400.0700.

The proposed amendment is necessary to change SWCD reporting requirements. The number of reports was reduced to reflect improved SWCD administration, and the date of the annual report was made variable to allow the SWCB to establish deadlines consistent with district planning efforts and state funding cycles. This change is reasonable because it eliminates unnecessary reports, increases SWCD flexibility and yet maintains an efficient program.

Minnesota Rules 8400.0900.

The proposed amendment is necessary because it is the required "companion" to 8400.0600 subpart 3. This change is reasonable because it links SWCD to SWCB review criteria and will provide for consistent implementation of the program.

Minnesota Rules 8400.1300 F.

The proposed amendment is necessary to prohibit the funding of repair of practices installed without state financial assistance. This change is reasonable because it corrects the misuse of state funds which occurs whenever the repair of low priority or otherwise ineligible practices are funded. It is further reasonable because the financial responsibility for repairing practices is limited to the entity(ies) that first provided funding. This maintains uniformity with respective funding criteria and technical specifications.

Minnesota Rules 8400.1405, subpart 1.

The proposed amendment is necessary to limit the time by which approved projects must be started and completed. This change is reasonable because it corrects the problems of approved projects remaining unstarted or uncompleted for several construction seasons. It is further reasonable because it insures that SWCD financial accounting will be simplified due to fewer program years remaining uncompleted. This provides an advantage in that state program summaries remain current.

Minnesota Rules 8400.1405, subparts 2-4.

The proposed amendments are necessary to provide SWCDs with the ability to make a partial payment to a land occupier in the event of bad weather or other unanticipated circumstances. This change is reasonable because it provides a remedy to the problem of committing land occupiers to major investments and then not being able to pay (under any circumstances) until the project is totally complete. It is further reasonable because the conditions for payment insure that the project will eventually be completed or else the money will be refunded, and partial payments will not result in increased project costs.

Minnesota Rules 8400.1500

The proposed amendment is necessary to change SWCD reporting requirements. The proposed change is necessary due to a 1984 legislative act which allows the SWCB to use an appropriation until expended. Previously, funds not spent by the end of a fiscal year reverted to the State Treasury. The legislative change thus reduced the need for the SWCB to call-back unspent SWCD funds. This change is reasonable because it eliminates unnecessary reports, increases SWCD flexibility and yet maintains an efficient program.

Minnesota Rules 8400.1600, subpart 3.

The proposed amendment is necessary to provide an option to SWCDs concerning payment documentation. Additional language is provided to clarify the use of amendments to cost-share contracts. These changes are reasonable because the authorized use of invoices allows SWCDs to make a payment without requiring the land-occupier to first prove that payment has been made to suppliers or contractors. This eliminates the hardship imposed on land occupiers who depend on the cost-share payment for meeting financial obligations. The changes are further reasonable because the clarification of amendments does not change the existing intent of the rules.

Minnesota Rules 8400.1950.

The proposed amendment is necessary to provide SWCDs with a means of addressing limitations of the rule. Previously, several unique and high priority projects could not be funded due to rule requirements. This change is reasonable because it establishes a procedure for the SWCB to consider variances to the rule.

Minnesota Rules 8400.2400, subpart 4, A and B.

The proposed amendment is necessary to establish protection to grassed waterways, and limit land drainage to that required for installation of the practice. These changes are reasonable because the installation of grassed waterways without the attendant upland protection may result in sedimentation damage to the waterway and substantiate that the reason for installing the practice was for convenience rather than erosion control. In addition, limiting the extent of tile installation to 300 feet below the end of the waterway minimizes land drainage, yet provides sufficient length for the satisfactory disposal of water.

Minnesota Rules 8400.2600, subpart 3.

The proposed amendment is necessary to link the applicability of animal waste control systems to the definition of high priority feedlots. This change is reasonable because it will permit SWCDs to allocate cost-sharing funds in a manner consistent with the legislative mandate for treatment of priority water quality areas, and yet provide a means for the Minnesota Pollution Control Agency to become involved in local animal waste pollution control efforts.

Minnesota Rules 8400.2700, subpart 4; and 8400.2705.

The proposed amendments are necessary to prohibit erosion and sediment control work from being performed on streambank, lakeshore or roadside (SLR) areas (8400.2700, subpart 4), and establish a new practice specifically for SLR areas (8400.2705). These changes are reasonable because duplication of practices 8400.2700 and 8400.2705 is prevented, and the potential confusion resulting from the reduced cost share rate for SLR work is avoided. They are further reasonable because the cost-share rate of 50% is consistent with that of another SWCB program which specifically addresses SLR problems. Thus, due to the existence of another program, the reduced cost-share rate as proposed in 8400.2705 should not limit practice implementation. In addition, maintaining consistent cost-share rates prevents competition between programs.

C. Clarification of the Current Rules

8400.0100 subparts 19 and 21
8400.1100
8400.1400 subpart 1
8400.1700
8400.2000
8400.2100
8400.2200
8400.2300
8400.2400 subparts 1-3, and subpart 4 C-D
8400.2500
8400.2600 subparts 1, 2, and 4
8400.2700 subparts 1-3

The amendments proposed for the parts of the rule noted above are necessary to provide clarification to the existing rule. The proposed changes are reasonable because they consist of minor wording changes which do not alter the original intent of the rules but provide for more accurate interpretation by SWCDs.

D. Changes in language and Form by the Office of the Revisor of Statutes.

8400.0100 subparts 1, 4, 5, 6, 9, 10, 11, 12, 14, 15, 18 and 23
8400.0200
8400.0300
8400.0400
8400.1200
8400.1300 A-E
8400.1600 subpart 2
8400.1800

Strike outs and additions in the proposed amendments to the rules as found in the above sections, and which are not specifically addressed in this statement, are necessary and reasonable changes in language and in form made by the Office of the Revisor of Statutes.

E. Repealers

8400.0100 subparts 7, 17, and 24
8400.0600 subpart 2

These sections of the current rule are proposed for repeal because changes in the format and content of the proposed amendments make them inappropriate or obsolete. It is unreasonable to retain old rules when reasonable amendments are proposed for which the old rules do not apply.

V. EFFECTIVE DATE

The proposed effective date of July 1, 1985 is necessary and reasonable due to the manner in which erosion, sedimentation or water quality improvement funds are allocated. The funds are allocated to SWCD's on a

fiscal year basis. To make the proposed amendments effective at a time other than the beginning of a fiscal year would result in significant administrative difficulty for SWCD's. In addition, an effective date of other than July 1 may mean that requests to SWCDs by land occupiers for financial assistance must be cancelled in order to comply with the amended rules. Additional information concerning the effective date can be found in Attachment A.

VI. ATTACHMENT

The following attachment has been referred to and pertains to this statement.

Attachment A - Letter to Legislative Commission to Review Administrative Rules, dated August 9, 1984.



STATE OF MINNESOTA
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DEPARTMENT OF AGRICULTURE

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August 9, 1984

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Ms. Kathleen Burek, Executive Director
Legislative Commission to Review
Administrative Rules
Room 430 State Office Building
435 Park Street
St. Paul, MN 55155

Dear Ms. Burek:

Chapter 512, laws of 1982 (40.036, subd.4) required this agency to promulgate a rule regarding soil erosion control grant allocations by May 1, 1983. Pursuant to Chapter 14.12, I am advising you of the reasons which have prevented this agency from promulgating the rule by that date. The reasons are as follows:

1. Task Force

Chapter 512 required this agency to appoint a multi-agency task force to assist in rule development. Twelve agencies were selected. The group met eight times from May 25 to September 22, 1982. Given the amount of work that needed to be accomplished and the work schedules of the task force members, it was not possible to complete this effort earlier.

2. Land Management Information Center (LMIC),
State Planning Agency

The Land Management Information Center, State Planning Agency, was selected to develop the critical area identification methods required by the legislation. This method must be addressed in the rules. However, the necessary LMIC products were not available until after July 1, 1983.

3. Nature of the Rules

The rules are complicated. Both administrative and technical subjects must be addressed and because the implementation of the rule takes place outside this agency

August 9, 1984

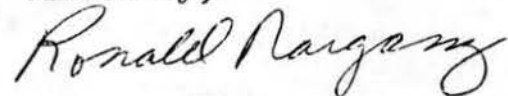
by 92 soil and water conservation districts, a long review was necessary. In addition, the technical aspects of the rule must be consistent with United States Department of Agriculture, Soil Conservation Service standards and specifications. The "outside" review of the rule was completed in July, 1984.

There is a reference to a pilot planning program in 40.036, subd. 5 of the 1982 legislation. The pilot program has been implemented and is proceeding well.

We intend to adopt the rule by the non-controversial procedure and plan to initiate this process by the end of this month. The effective date of the revised rule is targeted for July 1, 1985.

We will be happy to answer any questions.

Sincerely,



Ronald Nargang
Director

RN:kaf

cc: Governor Rudy Perpich
Senate Agricultural and
Natural Resources Committee
House Agricultural Committee