



May 10, 2012

Legislative Reference Library
645 State Office Building
100 Constitution Avenue
St. Paul, Minnesota 55155

Re: In The Matter of the Proposed Adoption of Amendments to Rules Governing the Cost-share Program and the Reinvest in Minnesota Reserve Program, Minnesota Rules Chapter 8400.0050 to 8400.3939, Governor's Tracking #557

Dear Librarian:

The Minnesota Board of Water and Soil Resources (BWSR) intends to adopt rule amendments that govern the Cost-share Program and Reinvest in Minnesota Reserve Program. We have and plan to publish a Notice of Intent to Adopt Rules without a Public Hearing in the May 7 and 14, 2012 State Register.

The BWSR has prepared a Statement of Need and Reasonableness. As required by Minnesota Statutes, sections 14.131 and 14.23, the BWSR is sending the Library a copy of the Statement of Need and Reasonableness at the same time we are mailing our Notice of Intent to Adopt Rules.

If you have questions, please contact me at 651-297-3432.

Sincerely,

A handwritten signature in black ink, appearing to read "Dave Weirens".

Dave Weirens
Land and Water Section Manager

Enclosure: Statement of Need and Reasonableness

<i>Bemidji</i>	<i>Brainerd</i>	<i>Duluth</i>	<i>Fergus Falls</i>	<i>Marshall</i>	<i>Mankato</i>	<i>New Ulm</i>	<i>Rochester</i>
4 West Building 403 Fourth St. NW, Suite 200 Bemidji, MN 56601 (218) 755-2600	1601 Minnesota Drive Brainerd, MN 56401 (218) 828-2383	394 South Lake Ave., Room 403 Duluth, MN 55802 (218) 723-4752	1004 Frontier Drive Fergus Falls, MN 56537-2505 (218) 736-5445	1400 East Lyon Street Marshall, MN 56258 (507) 537-6060	1160 Victory Drive S., Suite 5 Mankato, MN 56001-5358 (507) 389-1967	261 Highway 15 South New Ulm, MN 56073 (507) 359-6074	2300 Silver Creek Rd N.E. Rochester, MN 55906 (507) 206-2889

Central Office / Metro Office 520 Lafayette Road North Saint Paul, MN 55155 Phone: (651) 296-3767 Fax: (651) 297-5615
www.bwsr.state.mn.us TTY (800) 627-3529 An equal opportunity employer

**STATE OF MINNESOTA
BOARD OF WATER AND SOIL RESOURCES**

**In the Matter of the Proposed Adoption of Amendments to Rules Governing the Cost-share Program
and the Reinvest in Minnesota Reserve Program, Minnesota Rules Chapter 8400.0050 to 8400.3930.**

STATEMENT OF NEED AND REASONABLENESS

January 11, 2011

PURPOSE

The principal purpose of this rulemaking is to conform the rule to statutory amendments made to Minnesota Statutes 103C and 103F in 2009. Additional goals are to position the Cost-share and RIM Reserve Programs for increased direction via Board of Water and Soil Resources (BWSR) Board policies and to reduce the administrative burden of these programs.

INTRODUCTION

Agency Background: BWSR is the state's administrative agency for 90 soil and water conservation districts (SWCD), 46 watershed districts, 18 metropolitan watershed management organizations, and 80 county water managers. The agency's purpose, working through local government, is to protect and enhance the state's soil and water resources by implementing the state's soil and water conservation policy, comprehensive local water management, and the Wetland Conservation Act as it relates to the 41.7 million acres of private lands in Minnesota. The BWSR Board consists of 20 members, including local government representatives that deliver BWSR programs, state agencies, and citizens.

Rulemaking Background: BWSR administers several natural resources conservation programs through SWCDs. The proposed amendments to this rule (8400.0050 to 8400.3930) govern the Erosion Control and Water Management (commonly referred to as the State Conservation Cost-Share Program) and Reinvest in Minnesota (RIM) Reserve Programs. Both of these programs are voluntary, non-regulatory programs. This Statement of Need and Reasonableness will discuss the proposed rules changes as they relate to each of these programs.

The Cost-share Program provides state funds to SWCDs so they can provide technical and financial assistance to land occupiers to install conservation practices that reduce erosion, control sedimentation, improve and protect water quality or address water quantity problems due to altered hydrology on the lands they own or manage. Under the RIM Reserve Program, BWSR provides funds to SWCDs so they can provide technical and financial assistance to land occupiers to acquire conservation easements on certain marginal agricultural lands and wetlands.

The scope of this rulemaking is to improve the application of these programs by:

1. Incorporating statutory changes that have occurred in the RIM Reserve Law (103F.505 to 103F.531);

2. Reflecting statutory amendments enacted in 2009, including a directive to adopt Cost-share Program Policies (103C.501);
3. Streamlining the administration to increase efficiencies for both SWCDs and BWSR;
4. Respond to evolving resource management strategies by accommodating greater use of other Best Management Practices (BMPs) ; and
5. Improving the clarity of the permanent rule.

The Cost-share rules were initially promulgated in 1977, with the most recent revision occurring in 2003. The proposed revisions make the rule consistent with the amended statute.

The RIM rules were initially promulgated in 1994. The proposed revisions make the rule consistent with the amended statute.

ALTERNATIVE FORMAT.

Upon request, this Statement of Need and Reasonableness can be made available in an alternative format, such as large print, Braille, or cassette tape. To make a request, contact:

Dave Weirens
Land and Water Section Manager
Mn Board of Water and Soil Resources
520 Lafayette Road
St. Paul, MN 55155
651-297-3432 (phone)
651-297-5615 (fax)
david.weirens@state.mn.us

STATUTORY AUTHORITY.

Minnesota Statutes 103C.501 authorizes the BWSR, through districts, to enter into cost-share contracts with landowners for erosion control and water management. Minnesota Statutes 103C.501, Subd. 6 authorizes the board to adopt administrative rules for the Cost-share Program.

Minnesota Statutes 103F.501 to 103F.531 authorizes BWSR to implement a program to acquire conservation easements to restore certain marginal agricultural lands and protect environmentally sensitive areas to enhance soil and water quality, minimize damage to flood prone areas, sequester carbon, and support native plant, fish, and wildlife habitats. Minnesota Statutes 103F.531 authorizes the board to adopt administrative rules for the RIM Reserve Program.

In addition, the board has general rule making authority for carrying out all its programs pursuant to Minnesota Statutes, section 103B.101, subdivision 7.

REGULATORY ANALYSIS

Determination of the Classes of Persons affected by the Proposed Rules.

No class of person is required to comply with either the Cost-share or RIM Programs, as they are not regulatory, but voluntary land and water conservation programs. The proposed rule will directly affect SWCDs who receive funds under and implement the Cost-share and RIM programs. The work of SWCDs under these programs entails significant interaction with landowners to market and implement conservation practices and/or conservation easements. In addition, landowners that choose to participate in either program will be affected. However, the changes are intended to implement statutory changes, reduce administrative costs and provide increased implementation flexibility.

These rule changes should result in result in increased efficiency and effectiveness in achieving program goals.

Determination of Alternative, Less Costly or Less Intrusive Methods for Achieving the Purpose of the Proposed Rules.

There is no known alternative to the proposed rule that is less costly or less intrusive. The current and proposed rule is necessary to implement statute. An alternative to the proposed rule would be to develop a rule that details all requirements for implementing these programs. However, this would run counter to legislative direction that requires BWSR to adopt policies to implement these programs. Furthermore, a detailed rule would reduce flexibility in program implementation that is possible through BWSR Board adopted policies.

Probable Costs of Complying with the Proposed Rules.

The rule as proposed will not increase the state's costs, costs borne by SWCDs, and costs borne by landowners. On the contrary, the rule is expected to reduce the costs of SWCDs and the state due to streamlined administrative processes. The rule should have no effect on landowners.

Probable Costs or Consequences of not Adopting the Proposed Rules.

The consequences of not adopting the proposed rule amendments would be a rule that does not comply with statute. These inconsistencies would increase costs and negatively affect conservation opportunities due to not implementing the flexibility as required by statute.

Assessment of Differences between the Proposed Rules and Existing Federal Regulations.

As stated previously, neither the Cost-share nor the RIM Programs are regulatory and have no direct connection to any federal regulatory program. However, both programs have corollary programs with those implemented by federal agencies (Environmental Quality Incentives Program and Wetland Reserve Program) and are often closely coordinated at the state and local government levels. Partnerships and coordinated implementation are key elements of the 2007 BWSR Board Strategic Plan. The proposed rule will allow increased reliance on BWSR Board adopted policy and this flexibility will help ensure these programs continue to be closely coordinated.

Description of How the Agency Considered and Implemented the Policy to Adopt Rules that Emphasize Superior Achievement in Meeting the Agency's Regulatory Objectives and Maximum Flexibility for the Regulated Part and Agency in Meeting these Goals.

The proposed rule amendments have two objectives: (1) consistency with statute, and (2) implement the statutory directive to adopt policies and the programmatic flexibility that these policies will bring. This flexibility will assist BWSR in meeting objectives of a continued focus on a federal, state, and local conservation partnership, an improved ability to coordinate these programs with the dedicated Constitutional Clean Water and Outdoor Heritage funds, and the ability to adjust program priorities and administrative requirements to meet future needs.

ADDITIONAL NOTICE.

A. The Request for Comments was published on June 21, 2010 and was distributed by email to approximately 200 individuals with SWCDs and other local governments that have been engaged in these programs.

B. The rule development process was largely a product of BWSR staff. However, at several stages in this process, agency staff consulted with SWCDs to receive input on rule issues. In addition, the draft rule and statutorily required Board Cost-share Program Policy were posted on the BWSR website on November 5, 2010. Approximately 200 individuals were notified by email of the availability of these documents and were encouraged to provide comments.

Three comments were received in response to these two efforts to inform and encourage input on the proposed rule.

C. BWSR intends to send a copy of the Notice of Intent to Adopt Rules Without a Public Hearing to:

- All individuals who have registered with BWSR for the purpose of receiving notice of rule proceedings as required by Minn. Stat. 14.14, subd. 1a;
- All SWCDs, all watershed districts, all watershed management organizations, and all county water managers;
- All individuals and representatives of associations that BWSR has on file as interested and affected parties;
- Minn. Stat. 14.116 requires a copy of the notice, the rules, and SONAR be sent to the chairs and ranking minority members of the committees with jurisdiction over the subject matter of the proposed rules. This statute also states that if the mailing of the notice is within two years of the effective date of the law granting rulemaking authority that the agency must make reasonable efforts to send a copy of the notice and SONAR to all sitting legislators who were chief authors of the bill granting the rulemaking authority. Under this statutory directive, the following legislators will be sent the above referenced documents: the chairs and ranking minority members of (1) the House Environment, Natural Resources and Energy Policy and Finance Committee; (2) the Senate Environment and Natural Resources Committee; and (3) the chief authors of legislation amending the Cost-share and RIM statute, Representative David Dill and Senator Satveer Chaudhary.

- In addition, a copy of the notice, proposed rule, and draft SONAR will be posted on the BWSR website.

Because of the limited impact of the proposed rule amendments and the broad distribution of the Request for Comments, the broad distribution of the Notice of Intent to Adopt Without a Public Hearing, and as copies of the proposed rule are available on the BWSR website, BWSR believes a thorough effort to reach significantly affected persons has been accomplished.

NOTIFICATION TO THE COMMISSIONER OF AGRICULTURE.

Minn. Stat. 14.111 requires that before an agency adopts or repeals rules that affect farming operations, the agency must provide a copy of the proposed rule to the Commissioner of Agriculture no later than 30 days prior to publication of the proposed rule in the State Register. Both the Cost-share and RIM Programs are often implemented on agricultural lands and thereby affect agricultural operations. However, these programs are voluntary so they will have a minimal impact on agriculture.

Based on this assessment, the Commissioner of Agriculture was sent a copy of the proposed rule on March 25, 2011. This notification, while required by statute, is in addition to the participation of the Department of Agriculture on the BWSR Board.

CONSULT WITH MINNESOTA MANAGEMENT AND BUDGET ON LOCAL GOVERNMENT IMPACT.

As required by Minn. Stat. 14.131, BWSR has consulted with the Commissioner of Minnesota Management and Budget to help evaluate the fiscal impact of the proposed rule. We did this on March 29, 2011 by sending to the Commissioner of Minnesota Management and Budget copies of the draft rule amendments and SONAR.

DETERMINATION ABOUT RULES REQUIRING LOCAL IMPLEMENTATION.

Minn. Stat., section 14.128 requires determining whether a local government will have to adopt or amend an ordinance or other regulation to comply with a proposed agency rule. As stated previously, the Cost-share and RIM Programs are not regulatory and local governments will not be required to adopt or amend an ordinance or other regulation as a result of the proposed rule amendments.

COST OF COMPLYING FOR SMALL BUSINESS OR CITY.

The Cost-share and RIM Programs are implemented by SWCDs based on voluntary participation by landowners. Cities are not affected by these programs and therefore will not incur any additional costs. Similarly, small businesses will not incur additional costs under these rules. Most projects under these programs are implemented through SWCDs contracting with small businesses. These contractual relationships will not be affected by the proposed rule amendments.

RULE BY RULE ANALYSIS

(citations based on the Proposed Rule as approved by the Revisor of Statutes)

Overview.

The rule amendments largely consist of non-substantive changes that are driven by the following:

- Improving the clarity of the rule by simplifying, updating and re-organizing the language;
- Presenting rule provisions based on local or state responsibility;
- Deleting definitions no longer used in the rule;
- Deleting provisions which will be addressed via statutorily required BWSR Board adopted policy; and
- Updating statutory and rule references.

The requirement for the Board to adopt a program policy warrants further discussion. The process by which policies are generated begins with staff developing a proposal, usually in consultation with affected interests, which is reviewed by a Board Committee, before going to the Board for consideration. Meetings of Board Committees and the Board are public meetings and notice is provided to numerous agencies, organizations, and interested individuals, including the Minnesota Association of Soil and Water Conservation Districts. Also, three Board members are SWCD supervisors.

An important goal of the Cost-share Program Policy will be to make this program consistent with other BWSR grant programs, most significantly the Clean Water Fund programs. Increased consistency and uniformity of requirements and procedures will enable these programs to work together and reduce SWCD and BWSR administrative costs.

The Cost-share Program Policy will be considered by the Board at the same meeting as the rule. The Policy includes the following:

- Purpose
- Eligible Activities
- Technical and Administrative Components
- Cost-share Rates
- Technical Expertise
- Expenditure of Funds on Practices and Contracts
- Practice Sign-off and Payment
- Post-Construction and Follow-Up Activities
- District Reporting Requirements
- BWSR Program Monitoring, Closeout, and Penalty Procedures
- Conservation Districts Cost-share Program Policy

The 2009 amendments to the RIM statute authorize but do not require the Board to adopt a program policy. BWSR will consider adopting a RIM policy in the future based on program needs.

8400.0050 PURPOSE.

Revisions to this part are intended to ensure the rule is consistent with statute and to change the title of the program to “Land and Water Treatment Program” which is a more accurate statement of the purposes of the program.

8400.0060 AUTHORITY.

This part is moved from its current location of 8420.0200, with a minor rule reference change, as the statement of the statutory authority of the Board to develop the cost-share program should be one of the first provisions of the rule.

8400.0100 DEFINITIONS.

The following definitions are deleted as they are no longer used in the rule; some of which will be considered for use in implementing the required program policy:

Subp 2a. **Administrative Guidelines;**

Subp. 4. **Approved practice;**

Subp. 10a. **Conservation district technical representative;**

Subp. 14b. **Farm Service Agency;**

Subp. 15. **Field Office Technical Guide;**

Subp. 16. **Group spokesperson;**

Subp. 16a. **High priority erosion problems;**

Subp. 16b. **High priority erosion problems;**

Subp. 18a. **Landowner;**

Subp. 18b. **Natural Resource Conservation Service;**

Subp. 19a. **Other recognized technical practices;**

Subp. 20a. **Protected waters;**

Subp. 20b. **Registered professional engineer;**

Subp. 20d. **Sinkhole;**

Subp. 22a. **Special project;**

Subp. 25. **T;**

Subp. 26. **2 x T; and**

Subp. 27. **Technical approval authority.**

Subp. 3. **Annual work plan.** This definition is modified to: (1) delete references to obsolete documents, (2) rely on the development of a policy as required by statute, and (3) be consistent with the RIM Reserve portion of this chapter.

Subp. 8. **Comprehensive Plan.** This definition is modified to delete references to obsolete documents and for this definition rely on the development of a policy as required by statute.

Subp. 9. **Conservation district** and Subp. 10 **Conservation district board** have been modified to be consistent with the RIM Reserve portion of this chapter (8420.3030, Subps. 14 and 15).

Subp. 18. **Land occupier.** This definition has been modified to be consistent with the remainder of the proposed rule amendments.

8400.0200 AUTHORITY.

This part is moved from its current location to immediately precede the definitions as the statement of the statutory authority of the Board to develop the Cost-share Program should be one of the first provisions of the rule.

8400.0250 PROGRAM POLICY.

This is a new part that implements the 2009 statutory amendment in Minn. Stat. 103C.501, subd. 6 that requires the Board to adopt policies.

8400.0300 APPROVED CONSERVATION PRACTICES.

The title of this part is revised to specify the kind of practices that are allowed under this program.

Subp. 1 **Approved practices.** This subpart is deleted as the Board will address approved practices in the required policy. Including a practice list or practice categories in policy will be a flexible approach to ensuring the Cost-share program meets the needs of SWCDs and maximizes conservation opportunities with Legislatively appropriated funding.

Subp. 2 **Criteria for approved conservation practices.** The revisions to this subpart are to delete redundant language, such as item A which is already addressed in 8400.0050. The objectives of approved practices are moved from subp. 3 to item A for a more logical rule organization. In addition, new objectives are added to the approved practice categories to cover the types of projects that should be eligible for the Cost-share Program and to ensure consistency with 8400.0050.

The deletion in item B allows the effective life of projects to be addressed in the Board policy. Moving this issue to policy will allow a more flexible approach to project effective life and enable different effective life terms based on the type of project. This is important as different project types have different water quality and soil erosion benefits, different costs, and different expected life spans.

The new language in item B addressing habitat practices recognizes that an important secondary benefit of conservation practices is wildlife habitat, and that the program needs to include habitat practices under the limited, specified conditions in the proposed rule.

Language revisions to items C and D are for clarity and consistency within the rule.

8400.0500 MAXIMUM COST-SHARE RATES.

The language revisions in this part are for clarity and consistency within the rule. The last sentence is deleted to remove a disincentive to seek federal funds to implement projects.

8400.0550 RECORDING CONSERVATION PRACTICES

This part operates in concert with 8400.1650. The revisions improve clarity and flexibility for the Board to require recording conservation practices on property titles when it is determined to be necessary to ensure maintenance of the conservation practice. As an enforceable provision it is necessary to be included in the rule.

8400.0600 STATE BOARD ALLOCATION OF FUNDS TO CONSERVATION DISTRICTS

Subp. 1. **Comprehensive Plan.** This subpart is deleted as it is redundant with Minn. Stat. 103C.501, subd. 2.

Subp. 3. **Review criteria.** This subpart is deleted from rule and review criteria and will be addressed in the required program policy. As appropriated funds have been reduced by the Legislature, the advent of the Clean Water Fund, and changing conservation needs all point to an improved ability to meet locally identified needs of SWCDs through Board adopted policy.

Revisions to subparts 4 and 5 are to improve clarity and ensure consistency with statute.

8400.0700 PROGRAM REPORTING AND MONITORING

This part is deleted as it is, in part, redundant with part 8400.1900 and may be included in the required program policy.

8400.0800 APPLICATION FOR FUNDS BY DISTRICTS

This part is deleted as it is redundant with part 8400.0600.

8400.0900 CONSERVATION DISTRICT ADMINISTRATION OF PROGRAM FUNDS

Subp. 1. **General.** Revisions to this subpart are for clarity, to ensure consistency with the statute, and delete rule requirements that will be addressed in the required program policy.

Subp. 2. **Maximum cost-share rate.** A portion of this subpart is deleted which portion will be addressed in the required program policy. The current rate of 75 percent is not in statute, and flexibility that is possible through policy will increase the ability to coordinate funding for important conservation practices with other state and federal programs. Other factors discussed in this subpart are either obsolete or are not intended elements of future program implementation.

Subp. 4. **Criteria for district board review.** This is a new subpart that largely consists of the current part 8400.1300 which is relocated to be in a more logical sequence of SWCD responsibility under the Cost-share Program. Language changes improve clarity and administrative flexibility for SWCDs.

Subp. 5. **Entering into a contract.** This a new subpart that consists of language relocated from the current part 8400.1400, sub. 1.

8400.1000 APPLICATION FOR FUNDS BY LAND OCCUPIERS

This part is deleted as it is redundant with 8400.0900, subp. 3.

8400.1100 GROUP PROJECTS

This part is deleted as it will be included in the required program policy.

8400.1200 COOPERATIVE AND JOINT PROJECTS BY DISTRICTS

This part is deleted as it will be included in the required program policy.

8400.1250 TECHNICAL ASSESSMENT AND COST ESTIMATE DETERMINATION

This part is deleted as it will be included in the required program policy.

8400.1300 CRITERIA FOR CONSERVATION DISTRICT BOARD REVIEW

This part has been largely moved to 8400.0900 to be in a more logical sequence of SWCD responsibility under the Cost-share Program. In addition, some parts are redundant with 8400.0300.

8400.1400 CONSERVATION DISTRICT APPROVAL

This part is deleted as portions have been relocated to 8400.0900, subp. 4 and other portions will be included in the required program policy.

8400.1405 PROJECT DEADLINES AND PARTIAL PAYMENT

This part is deleted as it will be included in the required program policy.

8400.1460 RETURN OF ALLOCATED FUNDS

This part is deleted as it will be included in the required program policy.

8400.1500 CONSERVATION DISTRICTS

This part is deleted as it will be included in the required program policy.

8400.1600 EXECUTING THE COST-SHARE CONTRACT

This part is deleted as it will be included in the required program policy.

8400.1650 RECORDING CONSERVATION PRACTICES

This part operates in concert with 8400.0550 (Recording Conservation Practices). The revisions improve clarity and flexibility for SWCDs to require recording conservation practices on property titles when it is determined to be necessary to ensure maintenance of the practice. As an enforceable provision it is necessary that this be included in the rule.

8400.1700 MAINTENANCE

The revisions to this part improve clarity, and consistency with Minn. Stat. 103C.501, subd. 5(b).

8400.1750 PRACTICE SITE INSPECTIONS

The revisions to this part add administrative flexibility and deletes provisions that will be addressed under the required program policy.

8400.1800 APPEALS

This part has been modified to be consistent with the RIM Reserve portion of this chapter. The changes eliminate portions of the appeals process that has never been used in this program, and adds new processes that are consistent with other conflict resolution processes administered by BWSR. These changes provide a clear and understandable process for addressing appeals made to BWSR under the Cost-share Program.

8400.1900 REPORTS TO THE STATE BOARD

The revisions to this part ensure consistency with changes made to 8400.0700 and the RIM Reserve portion of this chapter.

8400.3000 AUTHORITY

This subpart is revised to be consistent with Minn. Stat. 103F.505 which was amended in 2009. The last sentence in this part is added to provide BWSR with additional flexibility in administering the RIM program and to address increased diversity of program funding and program partners that has occurred in recent years, and is expected to continue as the implementation of the Clean Water, Land and Legacy Constitutional Amendment.

8400.3030 DEFINITIONS

The following definitions are deleted as they are no longer used in the rule:

- Subp. 6. **Authorized farm corporation.**
- Subp. 6a. **Authorized farm partnership.**
- Subp. 10a. **Conservation Easement Handbook.**
- Subp. 19. **Family farm.**
- Subp. 20. **Family farm corporation.**
- Subp. 20a. **Family farm partnership.**
- Subp. 24. **Highway windbreak.**
- Subp. 25. **Hydric soils.**
- Subp. 26. **Hydrophytic Vegetation.**
- Subp. 28. **Inherently unproductive.**
- Subp. 32. **Local emergency.**
- Subp. 39c. **Replacement wetland.**
- Subp. 40. **Restorable drained wetland.**
- Subp. 44. **Significant potential environmental impact.**
- Subp. 46. **Soil mapping unit.**

The following definitions are changed to be consistent with Minn. Stat. 103F.511:

- Subp. 17a. **Drained wetland.**
- Subp. 17b. **Easement program practice specifications.**
- Subp. 31. **Landowner.**
- Subp. 42. **RIM reserve program.**
- Subp. 42a. **Riparian land.**
- Subp. 43. **Screening committee.**

Subparts 14 **District** and 15 **District board** are modified to specify the statute under which soil and water conservation districts are organized.

Subp. 33. **Marginal agricultural land** is modified to delete language that allows the Board to adopt land capability systems that are different than those employed by the United States Department of Agriculture. This flexibility has not been used and will not be used in the future due to the close working relationship that exists between the Board and the United States Department of Agriculture.

Subp. 45 **Soil and water conservation practice** has been modified to acknowledge that the practices included in this definition are intended to address agricultural nutrients as well as agricultural waste.

The definition in Subpart 48 **Wetland** was changed to be consistent with Minn. Stat. 103G.005, subd. 19a. This change will ensure improved application consistent with other environmental management programs.

8400.3060 CRITERIA FOR ALLOCATION OF FUNDS

This part is proposed to be deleted as funds are not currently, nor are they expected to be generally available for annual allocation as currently described in this part. Funds are allocated to SWCDs for specific activities associated with inspecting existing easements and for assistance in acquiring and restoring new easements.

8400.3130 LOCAL PRIORITY SETTING

This part was repealed by Laws of Minnesota 2009, Chapter 172, Article 2, Section 32 and Laws of Minnesota 2009, Chapter 176, Article 1, Section 52.

8400.3160 CRITERIA FOR ELIGIBLE LAND

This part was repealed by Laws of Minnesota 2009, Chapter 172, Article 2, Section 32 and Laws of Minnesota 2009, Chapter 176, Article 1, Section 52.

8400.3200 MAXIMUM ENROLLMENT

This part was repealed by Laws of Minnesota 2009, Chapter 172, Article 2, Section 32 and Laws of Minnesota 2009, Chapter 176, Article 1, Section 52.

8400.3230 APPLICATION BY LANDOWNERS

This part was repealed by Laws of Minnesota 2009, Chapter 172, Article 2, Section 32 and Laws of Minnesota 2009, Chapter 176, Article 1, Section 52.

8400.3300 CRITERIA FOR SCREENING COMMITTEE REVIEW OF APPLICATIONS

This part has been revised to allow BWSR to utilize local district screening committees to help prioritize local project areas or applications to assist in making funding decisions. The new language makes the use of screening committees optional as some program sign-ups may have continuous, non-competitive sign-up periods where ranking of applications is unnecessary. The criteria have also been modified to add reduction of flooding consistent with statute.

Item B is deleted as it refers to section 8400.3130 which was repealed by Laws of Minnesota 2009, Chapter 172, Article 2, Section 32 and Laws of Minnesota 2009, Chapter 176, Article 1, Section 52. Item D is deleted as it is not a criterion, but reflects issues that would prevent the State from acquiring an easement.

8400.3330 CRITERIA FOR DISTRICT BOARD REVIEW

This part was repealed by Laws of Minnesota 2009, Chapter 172, Article 2, Section 32 and Laws of Minnesota 2009, Chapter 176, Article 1, Section 52.

8400.3360 DISTRICT ACTION ON APPLICATIONS

This part was repealed by Laws of Minnesota 2009, Chapter 172, Article 2, Section 32 and Laws of Minnesota 2009, Chapter 176, Article 1, Section 52.

8400.3390 EASEMENT ACQUISITION PROCEDURES

This part was repealed by Laws of Minnesota 2009, Chapter 172, Article 2, Section 32 and Laws of Minnesota 2009, Chapter 176, Article 1, Section 52.

8400.3500 EASEMENT CONVEYANCE

This part was repealed by Laws of Minnesota 2009, Chapter 172, Article 2, Section 32 and Laws of Minnesota 2009, Chapter 176, Article 1, Section 52.

8400.3530 EASEMENT PAYMENT RATES

This part was repealed by Laws of Minnesota 2009, Chapter 172, Article 2, Section 32 and Laws of Minnesota 2009, Chapter 176, Article 1, Section 52.

8400.3560 PAYMENT SCHEDULE

This part was repealed by Laws of Minnesota 2009, Chapter 172, Article 2, Section 32 and Laws of Minnesota 2009, Chapter 176, Article 1, Section 52.

8400.3610 ALTERATION, RELEASE, OR TERMINATION OF CONSERVATION EASEMENTS

The deletion in item C recognizes that a letter regarding a change to an easement as described in this part is still required from the Department of Natural Resources, but may not originate with the area wildlife manager.

8400.3630 APPROVED PRACTICES

This part has been modified to add reduction of flooding consistent with statute. Additional changes are for clarity, to provide districts with flexibility, and to address items for a potential future Board policy.

8400.3700 COST-SHARED PRACTICES

Subp. 1. **Approved practices eligible for cost-sharing.** This subpart is revised to be consistent with Minn. Stat. 103F.515, subd. 6. This statute was amended in 2009 to eliminate references to payment limits.

Subp. 2. **Eligible costs for cost-sharing practices.** This subpart is revised to be consistent with Minn. Stat. 103F.515, subd. 6 and to allow district boards to delegate review of receipts and invoices. In addition, the Board is authorized by Minn. Stat. 103F.531 to adopt policy to implement the RIM Reserve program, and this rule part refers the establishment of eligible costs for approved practices to a potential future Board policy.

Item C and subpart 3 (**Payment for in-kind services**) has been amended to provide BWSR with additional flexibility in administering the RIM program and to address increased diversity of program funding and program partners that has occurred in recent years, and is expected to continue as the implementation of the Clean Water, Land and Legacy Constitutional Amendment.

Subp. 4. **Funds from other sources.** The last sentence is deleted as securing additional funds is often conducted by the SWCD as well as the SWCD, which is contrary to the language of this sentence.

8400.3730 FAILURE OF APPROVED PRACTICES

Subp. 1. **Cost-shared practices.** This subpart is revised to eliminate the reference to payment limits to be consistent with Minn. Stat. 103F.515 subd. 6, as this statute was amended in 2009. In addition, the Board is authorized by Minn. Stat. 103F.531 to adopt policy to implement the RIM Reserve program, and this rule part refers the establishment of encumbrances to a potential future Board policy.

8400.3830 VIOLATIONS AND ENFORCEMENT

Subp. 2. **State board action.** The proposed changes to this subpart are to reflect that BWSR may discover a landowner violation, and that action may be taken by BWSR accordingly.

8400.3870 SUPPLEMENTAL PAYMENTS ON FEDERAL AND STATE PROGRAMS

This rule provision is deleted as it unnecessarily addresses a discretionary authority of the Board.

DRAFT