

STATE OF MINNESOTA
DEPARTMENT OF AGRICULTURE

In the Matter of the Proposed Rules
of the Department of Agriculture
Governing the Reinvest in
Minnesota (RIM) Reserve Program

Minnesota Rules 8400.3000 - 8400.3930

STATEMENT OF NEED AND REASONABLENESS

I. General Need and Authority for Rules 8400.3000

Minnesota Statutes, Sections 40.40 et. seq. and 84.95 authorizes the Commissioner of Agriculture in cooperation with the Board of Water and Soil Resources, soil and water conservation districts, state and local private groups, and state and federal agencies, to implement a program of retiring certain agricultural land from crop production and establishing on that land permanent vegetative cover, restoring altered wetlands, or establishing windbreaks adjacent to highways. Parts 8400.3000 to 8400.3930 provide procedures and criteria to be followed by the Commissioner of Agriculture, Board of Water and Soil Resources, and soil and water conservation district boards in implementing Minnesota Statutes, section 40.40 et. seq.

The proposed rules replace emergency rules and reflect nearly two years of experience in dealing with administrative and technical issues. Further, soil and water conservation districts, state and local private groups and state and federal agencies were actively encouraged by the department to review and comment on several drafts of the proposed rule. Consequently, it is necessary and reasonable to adopt the proposed rules so that:

1. Legislative, administrative and technical changes are incorporated, and
2. Local program administrators, cooperating agencies and applicants are provided with clear guidance concerning enrollment requirements and administrative procedures for the RIM Reserve program.

II. Need and Reasonableness of each Rule Part

8400.3030 Definitions. The terms as defined have the meanings given to them.

Some terms are defined in law and are included in the proposed rules for completeness and as a convenience to the reader.

The terms "agricultural crop production," "altered wetland," "annual plan," "approved practice," "conservation agreement," "conservation plan," "crop history," "cropland," "district board," "district cooperator," "district technician," "enduring practice," "farm operation," "food plot," "highway windbreak," "hydric soil," "hydrophytic vegetation," "individual," "inherently unproductive," "introduced hayland," "introduced pasture," "marginal agricultural land," "natural vegetation," "non-production practice," "permanent cover," "present value," "public access," "restored wetland," "RIM reserve conservation practice specifications," "screening committee," "significant potential soil productivity loss," "soil and water conservation practice," "soil mapping unit," and "state board" are newly defined in the proposed rules.

The new term "marginal agricultural land" mentions a federal document which was incorporated by reference, Agricultural Handbook number 210 is a long standing document which does not undergo frequent revision.

The new definitions are necessary to clarify the meaning of other parts of the proposed rule. The definitions are reasonable because they are consistent with generally accepted soil and water conservation or resource management terminology and will permit a better understanding of the proposed rule. Moreover, the new definitions are known to local program administrators since the terminology was previously used in RIM Reserve program emergency rules and associated administrative procedures.

The following parts are arranged in chronological order. This format aids the understanding and use of the proposed rule by local administrators.

8400.3060 Criteria for Allocation of Funds

This part summarizes the criteria used by the Commissioner of Agriculture to allocate funds to soil and water conservation districts. It is necessary and reasonable to do this so that funds are disbursed fairly and consistent with the intent of the RIM Reserve program.

8400.3100 Administration of Funds

The intent of this part is to identify that the participating district board is responsible for administration of funds in accordance with statutes and these proposed rules. For establishment of accountability, it is both necessary and reasonable that this part be included.

8400.3130 Priority Setting

A strength of the RIM Reserve program is the active involvement of local citizens and technical experts in priority setting. To accomplish this consistently statewide, it is necessary and reasonable that this part be included.

8400.3160 Criteria for Eligible Land

This part identifies the eligibility requirements of land proposed for enrollment. To ensure accurate interpretation of this part, the language is essentially a restatement of M.S. 40.43, subd. 2. Item (5) was added to include the requirement that only land that is physically possible to crop may be enrolled. An exception is made for altered wetlands. This item reflects the intent of the department to enroll only bonafide cropland, with exceptions made only for altered wetlands. Given the environmental value of wetlands, this position is deemed by the department to be justified. For these reasons, it is both necessary and reasonable that this part be included.

8400.3200 Maximum Enrollment

To provide guidance to a district board and ensure equitable enrollments, this part is necessary and reasonable. The structure of this part allows reasonable enrollments for both small and large acreage landowners. The last sentence was necessary to differentiate the RIM reserve program from the Beginning Farmer program. The latter program uses similar administrative procedures but has a different purpose.

8400.3230 Application by Landowners

This part provides guidance to a district board when accepting applications. It is necessary and reasonable to do this so that the application process is efficient, consistent and timely.

8400.3260 Land in More Than One District

It is both necessary and reasonable to ensure that applications involving multi-district parcels are processed timely. This part accomplishes it.

8400.3300 Criteria for Screening Committee Review

This part complements part 8400.3130 and is a necessary and reasonable part of the proposed rule. It is appropriate to reaffirm priority criteria after applications have been submitted.

8400.3330 Criteria for District Board Review

This part also complements a previous part; in this case 8400.3300. It is necessary and reasonable to include this part to ensure consistency between the screening committee and district board.

8400.3360 District Action on Applications

This part summarizes the action of a district board on eligible applications. To ensure that all landowners receive the same due process and that actions of the district board are consistent with the screening committee, it is necessary and reasonable to include this part.

8400.3400 Conservation Agreement for Easement

After approval of an application and before conveyance of the easement, it is important, and necessary, to restrict activities on the enrolled parcel. The sixteen steps identified in this part comply with requirements set forth in M.S. 40.43, subd's 4 and 5 and provide further direction to the district board and landowner. To identify the conditions of enrollment to the landowner and protect the State's interest, it is necessary and reasonable to include this part.

8400.3430 Procedure for Review of Conservation Agreement

It is both necessary and reasonable to ensure a sound chronological review of the tentative conservation agreement. The proposed process includes review, notification to the landowner and financial obligation. This part adequately addresses these topics.

8400.3460 Abstract and Title Requirements

This part summarizes the obligation of a landowner to prove that a good and marketable title exists for the enrolled parcel. It is necessary and reasonable to do this so that the State's interest in the land is not jeopardized.

8400.3500 Easement Conveyance

After recording of the conservation easement, payment is made to the landowner. This part is both necessary and reasonable as it links the administrative chronology and serves as a basis to discuss payment rates which follow.

8400.3530 Payment Rates

This part summarizes the methods used to calculate payment rates for new easements, conversion to a permanent easement and approved practices. For new easements, the payment rates: give priority to permanent easements, provide higher values for better quality land and ensures that payments do not exceed estimated township market values. Sections B and C are self-explanatory. To reflect current land market conditions, offer guidance to local program administrators and provide a uniform procedure for calculating payments, it is both necessary and reasonable to include this part.

8400.3560 Payments

It is both necessary and reasonable to include this part so that landowners have payment options.

8400.3600 Easement Renewal and Conversion

A landowner may decide to convert a limited duration easement to a permanent easement. Although permanent easements are generally viewed as higher priority than limited duration easements, it is not in the State's interest to automatically approve requests for conversion. Consequently, it is both necessary and reasonable to include this part.

8400.3630 Criteria for Approved Practices

This part summarizes criteria for approved practices. The criteria provides that high quality, long-term vegetative cover will be established for the primary purpose of controlling soil erosion or sedimentation, protection or improving water quality, or creation or improvement of fish and wildlife habitat. Since these points reflect the goals of the program, it is both necessary and reasonable to include this part.

8400.3660 List of Approved Practices

The seven indicated practices are consistent with the intent of the previous part. Consequently, this part is both necessary and reasonable.

8400.3700 Establishment of Approved Practices

This part summarizes procedures to be followed by program administrators when establishing approved practices. Sections A thru D provide: technical certification of practice completion, verification of practice cost and an opportunity for a landowner to request reconsideration of a claim for payment, methods for calculating final payments, provisions for considering in-kind services, and recognition of the financial contributions of other organizations. This part is a logical companion to part 8400.3530, and is necessary if program administrators are to receive proper guidance. This part is, therefore, both necessary and reasonable.

8400.3730 Failure of Approved Practices

This part absolves a landowner from a violation if failure of a practice was beyond their control. Further, a provision is made for additional funds to reinstall the practice. This part is both necessary and reasonable since it recognizes good faith efforts and offers an opportunity to reinstall failed practices.

8400.3760 Maximum Payment

This part is necessary and reasonable as it allows many landowners to receive a modest payment, as opposed to a few landowners receiving - publicly sensitive - exorbitant payments.

8400.3800 Maintenance

This part reflects the long-term nature of the conservation benefits from enrolled land and landowner responsibility to properly maintain enrolled parcels. Consequently, this part is both practical and reasonable.

8400.3830 Violations

As contrasted with part 8400.3730, this is the other extreme. To maintain the public interest in enrolled lands and convey a responsible administrative role, a violations procedure is both necessary and reasonable. Given the case-by-case and often unique circumstances surrounding a violation, the flexibility in selecting a remedy is warranted.

8400.3860 Monitoring

This part is necessary and reasonable as it provides a flexible means of monitoring. Consequently, the Commissioner is not required to monitor "for the sake of monitoring," which should please local program administrators.

8400.3900 District Board Records

This part is a necessary and reasonable component of any program to ensure internal control of administrative activities and financial transactions.

8400.3930 Reconsideration and Review Procedures

This part is necessary and reasonable so that applicants are afforded several opportunities to appeal program denial.

III. Impact of the Proposed Rules on Small Businesses

Of the approximately 900 parcels currently enrolled in the RIM Reserve program, over 98 percent are owned by individuals. A number of the remaining sites are owned by farm-related small businesses such as authorized farm corporations and family farm corporations. While recognizing that the proposed rules may affect small businesses, the Department considers the rules - for the following reasons - to pose a minimum impact. The proposed rules:

1. Do not impose any additional compliance or reporting requirements other than what is required by the corporate farm statutes;

2. Deal primarily with local administration of a state program and do not directly affect small businesses;
3. Do not impose any additional application or enrollment requirements for small businesses; and
4. Include limitations on the maximum acreage that a landowner may enroll.

This last point serves to limit the impact to local implement and fertilizer businesses as cropland is retired and converted to long-term vegetative cover.

IV. Conclusion

For the reasons stated, the Minnesota Department of Agriculture believes that the proposed rule is necessary and reasonable to effectively administer M.S., chapters 40.40 et. seq. and 84.95 relating to Reinvest in Minnesota (RIM) reserve program.