

CHAPTER 12
WATER PROTECTION PRACTICES—WATER PROTECTION FUND

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

27—12.1 to 12.9 Reserved.

PART 1

27—12.10(161C) Authority and scope. This chapter establishes procedures and standards to be followed by soil and water conservation districts and the division of soil conservation and water quality of the department of agriculture and land stewardship, in accordance with the policies of the state soil conservation and water quality committee in implementing water protection practices through the water protection fund created in Iowa Code section 161C.4. This account shall be used to establish water protection practices with individual landowners.

[ARC 2192C, IAB 10/14/15, effective 11/18/15; ARC 3243C, IAB 8/2/17, effective 9/6/17]

27—12.11(161C) Rules are severable. If any provision of a rule or subrule or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the rule or subrule which can be given effect without invalid provision or application, and to this end the provisions of these rules or subrules are severable.

27—12.12 to 12.19 Reserved.

PART 2

27—12.20(161C) Definition of terms. In addition to the term defined herein, definitions in rule 27—10.20(161A) shall apply.

“*Agricultural production*” means the commercial production of food or fiber.

27—12.21 to 12.29 Reserved.

PART 3

27—12.30(161C) Compliance, refund, reviews and appeals. Rules 27—10.30(161A) through 27—10.33(161A) shall apply.

[ARC 8755B, IAB 5/19/10, effective 7/1/10]

27—12.31 to 12.39 Reserved.

PART 4

27—12.40(161C) Appropriations. Resource enhancement and protection program, soil and water enhancement account funds are allocated to the water protection fund. Each year’s allocation of water protection funds is divided equally between the water quality protection projects account and the water protection practices account.

[ARC 8755B, IAB 5/19/10, effective 7/1/10]

27—12.41 to 12.49 Reserved.

PART 5

27—12.50(161C) Water protection practices account. This part defines procedures for allocation, recall and reallocation of water protection practices funds to soil and water conservation districts and to the division's reserve fund.

[ARC 0737C, IAB 5/15/13, effective 7/1/13]

27—12.51(161C) Allocation to soil and water conservation districts.

12.51(1) Original allocation. July 1 of each year, funds appropriated to the water protection practices account will be allocated to districts. Seventy-three and one-half percent of the funds will be divided equally among 100 soil and water conservation districts. Twenty-five percent of the funds plus any additional appropriations for reforestation will be kept in a separate account for woodland establishment and protection, and establishment of native grasses and forbs. One and one-half percent will be held in a reserve fund.

12.51(2) Recall of funds. Any funds allocated in the current fiscal year that the districts have not spent or obligated by June 30 shall be recalled by the division.

12.51(3) Supplemental allocations. The districts shall identify valid applications and cost estimates, if any, for supplemental allocations to the division by September 1. Factors to be considered in making a supplemental allocation to a district include:

a. The sum of cost estimates (for pending applications) in each district, divided by the total cost estimates (for pending applications) for all 100 districts, multiplied by the remaining available program funds; and

b. Whether or not the proposed supplemental allocation exceeds three times the original allocation to the district.

12.51(4) Reallocation of recalled funds. Rescinded IAB 7/18/07, effective 6/27/07.

12.51(5) Woodland, native grass and forbs fund. Twenty-five percent of the funds and any additional appropriations for reforestation will be allocated to districts.

a. Original allocation. The funds distributed to this program will be allocated equally to the 100 soil and water conservation districts at the beginning of each fiscal year.

b. Supplemental allocation. The districts shall identify valid applications and cost estimates, if any, for supplemental allocations to the division by September 1. Factors to be considered in making a supplemental allocation to a district include:

(1) The sum of cost estimates (for pending applications) in each district, divided by the total cost estimates (for pending applications) for all 100 districts, multiplied by the remaining available program funds; and

(2) Whether or not the proposed supplemental allocation exceeds three times the original allocation to the district.

c. Eligibility of soil and water conservation districts for supplemental allocation. For a district to qualify for a supplemental allocation, the district must meet the following requirement: seventy-five percent of the woodland, native grass and forbs funds shall be obligated to landowners.

12.51(6) Reserve funds. The division may administer a reserve fund for the program consisting of not more than 1.5 percent of each year's appropriated funds.

a. Purpose and use of the reserve fund. The reserve fund will be set aside and used only to fund contingencies that occur in the application of practices in the districts.

b. On June 30 each year the division will transfer the unspent reserve fund balance into the water protection practices account to be allocated to districts under subrule 12.51(1).

12.51(7) Recall and reallocation of funds by division director. If districts are not demonstrating an ability to use available funding, the division director may recall these funds and reallocate the funds to a district that has an immediate need for additional funding.

[ARC 8755B, IAB 5/19/10, effective 7/1/10; ARC 0737C, IAB 5/15/13, effective 7/1/13; ARC 3244C, IAB 8/2/17, effective 9/6/17]

27—12.52 to 12.59 Reserved.

27—12.60(161C) Applications and agreements. The purpose of this part is to identify and define procedures to be followed in applying for and entering agreements for receiving water protection practices funds.

27—12.61(161C) Applications submitted to soil and water conservation district. Landowners or farm operators desiring to be considered for water protection practices funds shall complete necessary applications as specified by the district. All application forms and agreements for water protection practices funds are available from and shall be submitted to the district office located in the county where such practices are proposed. If an applicant's land is in more than one district, the respective district commissioners will review the application and agree to obligate all funds from one district or prorate the funding between districts.

27—12.62(161C) Application sign-up.

12.62(1) *Signatures by landowner and qualified applicant.* All applications and agreements shall be signed by the landowner and applicant. For an applicant to qualify for payment, both landowner and applicant must sign the application.

12.62(2) *Land being bought under contract.* All applications and agreements concerning land being purchased under contract shall be signed by both the contract seller and the contract buyer. If the operator is applying, the contract buyer, the contract seller, and the operator must sign.

12.62(3) *Power of attorney.* Applications and agreements may be signed by any person designated to represent the landowner or farm operator, provided the appropriate power of attorney has been filed with the district office. The power of attorney requirement can be met by submitting a notarized full power of attorney statement to the district office. In the case of estates and trusts, court documents designating the responsible person or administrator may be submitted to the district in lieu of the power of attorney.

27—12.63(161C) Eligibility for financial incentives.

12.63(1) *District cooperator.* Rescinded IAB 7/18/07, effective 6/27/07.

12.63(2) *Practices installed on adjoining public lands.* Where water protection practices which benefit adjoining private lands are installed on public lands and costs of the installation are to be shared by the parties, state water protection practices funds may be used to cost-share only the private landowner cost of the water protection practice.

12.63(3) *Ineligible lands.*

a. Water protection practices funds shall not be used to reimburse other units of government for implementing soil and water conservation practices.

b. Privately owned land not used for agricultural production shall not qualify for water protection practices funds. Windbreaks, streambank and shoreline protection, and stormwater quality best management practices established on privately owned land are eligible whether or not the land is in agricultural production.

c. Tracts of land enrolled in the United States Department of Agriculture's Conservation Reserve Program (CRP) that have more than 90 days left on the contract, except for woodland establishment, management and protection practices, and native grass and forb establishment practices under rule 27—12.82(161C) shall not qualify.

12.63(4) *District priorities.* Each application for water protection practices shall be evaluated under the priority system adopted by the district for disbursement of allocated funds. Soil and water conservation district commissioners shall give priority to applications for practices that implement their soil and water resource conservation plan. The priority system adopted by the district shall be made available for review at the district office.

[ARC 8755B, IAB 5/19/10, effective 7/1/10; ARC 0737C, IAB 5/15/13, effective 7/1/13; ARC 3244C, IAB 8/2/17, effective 9/6/17]

27—12.64 to 12.69 Reserved.

27—12.70(161C) Water protection practices. The purpose of this part is to establish the general conditions, eligible practices, specifications, and cost-share rates for the installation of water protection practices authorized in Iowa Code chapter 161C.

27—12.71(161C) General conditions. The following general conditions shall be met.

12.71(1) Technician certification. The designated water protection practices shall not be funded unless the technician has inspected the site and has determined that such practice(s) is needed to protect water quality.

12.71(2) Limitation of reimbursable cost of practices. Overbuilding or other practice modifications which exceed the minimum requirements of the specification shall be permitted, if approved by the technician. Any additional costs resulting from such overbuilding or exceeding of the minimum specifications shall not be cost shared by the state.

12.71(3) Materials. Projects funded with water protection funds will utilize only new materials or used materials that meet or exceed design standards and have a life expectancy of 20 years.

12.71(4) Repair or maintenance. Repair or maintenance of existing practices is not eligible for funding.

27—12.72(161C) Eligible practices. Practices listed in this rule are eligible for water protection practices fund reimbursement.

12.72(1) Critical area planting.

12.72(2) Contour buffer strips. The practice includes science-based trials of row crops integrated with prairie strips (STRIPS) planted on contour.

12.72(3) Field border.

12.72(4) Filter strips. The practice includes science-based trials of row crops integrated with prairie strips (STRIPS) planted at the foot slope.

12.72(5) Pasture and hay planting. The practice must include the conversion of land from row crop production to a permanent vegetative cover to control excessive water erosion.

12.72(6) Constructed wetlands. Land enrolled in the Conservation Reserve Program, or other similar programs, is eligible, if this practice is not an allowable practice under that program.

12.72(7) Wetland restoration. Land enrolled in the Conservation Reserve Program, or other similar programs, is eligible, if this practice is not an allowable practice under that program.

12.72(8) Streambank and shoreline protection. The practice must be bioengineered using combinations of stream-side plantings or trees, other vegetation, structural practices such as modification of slopes, and installation of reinforcing materials and in-stream structures. Land enrolled in the Conservation Reserve Program, or other similar programs, is eligible, if this practice is not an allowable practice under that program.

12.72(9) Stormwater quality best management practices (BMPs). A technique, measure, or structural control that is used for a given set of conditions to manage the quantity and improve the quality of stormwater runoff in the most cost-effective manner. BMPs can be either:

a. Nonstructural BMPs, which include a range of pollution prevention, education, or institutional management and development practices designed to limit the conversion of rainfall to runoff and to prevent pollutants from entering runoff at the source of runoff generation; or

b. Structural BMPs, which are engineered and constructed systems that are used to treat the stormwater at either the point of generation or the point of discharge to either the storm sewer system or to receiving waters (e.g., detention ponds or constructed wetlands).

12.72(10) Access control. The practice involves fencing an area to exclude livestock from intermittent streams (defined on U.S. Geological Survey topographic maps as “3 dot” blue-line streams) or larger streams. Eligibility for cost-share assistance extends only to fencing required to implement this practice, but does not extend to fences along roads or land boundaries.

[ARC 8755B, IAB 5/19/10, effective 7/1/10; ARC 0737C, IAB 5/15/13, effective 7/1/13; ARC 3244C, IAB 8/2/17, effective 9/6/17]

27—12.73(161C) Eligible practices for priority water resource protection. Practices listed in this rule are eligible for water protection practice fund reimbursement only in those areas or instances approved in rule 27—12.75(161C).

12.73(1) Grassed waterway.

12.73(2) Grade stabilization structure.

12.73(3) Terrace.

12.73(4) Water and sediment control basin.

12.73(5) Diversion.

12.73(6) Waste storage facility. Cost-sharing under this practice is not authorized for:

a. Portable pumps and pumping equipment.

b. Waste disposal equipment.

c. Building, modification of a building, that portion of the animal waste structure that serves as part of the building, or its foundation.

d. That portion of the cost of animal waste control structures attributed to expansion of an animal waste management system.

[ARC 8755B, IAB 5/19/10, effective 7/1/10; ARC 0737C, IAB 5/15/13, effective 7/1/13]

27—12.74(161C) Agricultural drainage well closure. Practices listed in this rule are eligible for water protection practice fund reimbursement where installation of the practice is consistent with current drainage law of the state of Iowa. This practice is intended to assist in the voluntary closure of agricultural drainage wells registered with the department of natural resources prior to September 30, 1988. It is not intended to be a substitute for future agricultural drainage well assistance programs authorized in Iowa Code section 159.29 that will be developed in conjunction with the Iowa department of agriculture and land stewardship's agricultural drainage well research and demonstration project.

12.74(1) *Eligible practices.*

a. Agricultural drainage well plugging and cistern removal.

b. Tile outlet from plugged agricultural drainage well to a suitable, legal outlet.

12.74(2) *Implementation of practice.* This practice shall not be used to provide outlet(s) for previously undrained wetland(s) as defined and classified under state or federal law.

12.74(3) *Outlets with excess capacity.* Tile outlets which exceed the minimum capacity required to provide one-half inch drainage coefficient to the area originally served by the drainage well shall be permitted, if approved by the technician. Any additional cost resulting from providing such excess capacity shall not be cost-shared by the state.

27—12.75(161C) Priority watersheds and water quality problems. Practices listed in rule 27—12.73(161C) will be eligible for landowner reimbursement from water protection practices funds only for watersheds and water quality problems designated by soil and water conservation district commissioners and approved by the state soil conservation and water quality committee.

12.75(1) *District designation.* Districts shall submit to the division the description of high priority watershed(s) or water quality problems within their district to be designated as eligible for practices listed in rule 27—12.73(161C).

12.75(2) *State soil conservation and water quality committee evaluation.* The state soil conservation and water quality committee shall examine the district submission under 12.75(1) with respect to the following criteria.

a. The public value and current use of the water resource to be protected.

b. The nature, extent and severity of the water quality problem to be addressed.

c. The degree to which the district designation focuses practice application in a manner that will achieve a water quality benefit from the funds available.

12.75(3) *Review time limit.* The state soil conservation and water quality committee shall approve or disapprove the district designation within 90 days of receipt by the division.

12.75(4) *Disapproval of designation.* In the event of disapproval of district designation, the state soil conservation and water quality committee shall inform the district of the reason for disapproval.

[ARC 3243C, IAB 8/2/17, effective 9/6/17]

27—12.76(161C) Practice standards and specifications. In addition to specifications defined herein, rule 27—10.84(161A) specifications shall apply.

12.76(1) *Agricultural drainage well closure.* 567 IAC Chapter 39, Requirements for Properly Plugging Abandoned Wells.

12.76(2) *Agricultural drainage well plugging and cistern removal.* 567 IAC Chapter 39, Requirements for Properly Plugging Abandoned Wells.

12.76(3) *Stormwater quality best management practices.* Iowa Stormwater Management Manual, Chapter 2, Sections D-L.

27—12.77(161C) Cost-share rates. The following cost-share rates shall apply for eligible practices designated in rules 27—12.72(161C) to 27—12.74(161C). These rates represent the maximum allowable cost share provided by state funds. These rates may be used in combination with other public funds to provide a total cost-share rate not to exceed 75 percent of the lesser of the eligible or the estimated cost of installation.

12.77(1) *Cost-share rates.* Cost-share rates for practices designated in rule 27—12.72(161C) shall be 50 percent of the eligible or estimated cost of installation, whichever is less, except for contour buffer strips, field borders, and access control. Cost-share rates for 12.72(2), contour buffer strips, and 12.72(3), field borders, shall be a one-time payment of 50 percent of the eligible or estimated cost of installation, whichever is less, up to \$25 per acre. Cost-share rates for 12.72(10), access control, shall include a one-time payment of up to \$200 per acre. In addition, fencing systems used to implement access control are eligible for 50 percent of the eligible or estimated cost, whichever is less, not to exceed \$14 per rod for permanent fencing. Cost-share assistance for this practice may not be provided on the same acres that already received a cost-share payment through the buffer initiative program.

12.77(2) *Cost-share rates for water protection practices.* Cost-share rates for practices designated in rule 12.73(161C) shall be 50 percent of the eligible or estimated cost, whichever is less.

12.77(3) *Cost-share rates for agricultural drainage well closure.* Cost-share rates for practices designated in rule 27—12.74(161C) shall be the following:

a. Fifty percent of the eligible or estimated cost, whichever is less, of agricultural drainage well plugging and cistern removal, not to exceed \$500.

b. Fifty percent of the eligible or estimated cost, whichever is less, of establishing a tile outlet from the plugged agricultural drainage well to a suitable, legal outlet, not to exceed \$2,000.

[ARC 8755B, IAB 5/19/10, effective 7/1/10; ARC 0737C, IAB 5/15/13, effective 7/1/13; ARC 3244C, IAB 8/2/17, effective 9/6/17]

27—12.78 and 12.79 Reserved.

PART 8

27—12.80(161C) Water protection practices—woodlands, native grasses and forbs. The purpose of this part is to establish the general conditions, eligible practices, specifications and cost-share rates for the installation of woodlands, native grasses and forbs as authorized in Iowa Code chapter 161C.

27—12.81(161C) General conditions. The following general conditions shall be met.

12.81(1) *Practice need.* The designated practices shall not be funded unless the certifying technician has inspected the site and has determined that such practice(s) is needed.

12.81(2) *Forest management plan required.* A forest management plan approved by the forestry bureau of the department of natural resources is required for the practices of forest stand improvement, tree planting, site preparation for natural regeneration, and rescue treatments.

12.81(3) *Eligibility of practices.* Planting or management of trees for nut orchards or Christmas tree production is only eligible as intermediate products in stands being established for other approved purposes. Planting or management of trees for ornamental purposes or fruit orchards is not eligible.

[ARC 8755B, IAB 5/19/10, effective 7/1/10]

27—12.82(161C) Eligible practices. Land enrolled in the Conservation Reserve Program is eligible for woodland establishment, management and protection practices and is also eligible for native grass and forb

establishment. All practices listed in this part are available to all other eligible landowners within Iowa soil and water conservation districts. All practices listed below are permanent.

12.82(1) *Windbreaks.* A belt of trees or shrubs established or restored next to an occupied structure. A windbreak must meet either NRCS Standard 380-Windbreak/shelterbelt establishment or NRCS Standard 650-Windbreak/shelterbelt renovation.

12.82(2) *Field windbreak.* A belt of trees or shrubs established or restored, within or adjacent to a field. A windbreak must meet either NRCS Standard 380-Windbreak/shelterbelt establishment or NRCS Standard 650-Windbreak/shelterbelt renovation.

12.82(3) *Forest stand improvement.* Minimum eligible area is five acres.

12.82(4) *Tree planting.* Minimum eligible area is three acres.

12.82(5) *Site preparation for natural regeneration.* Minimum eligible area is three acres.

12.82(6) *Riparian forest buffer.*

12.82(7) *Rescue treatments.* Minimum eligible area is three acres.

12.82(8) *Prescribed grazing.* The practice must include a minimum of two paddocks of native species grasses.

12.82(9) *Conservation cover.*

[ARC 8755B, IAB 5/19/10, effective 7/1/10]

27—12.83(161C) Practice standards and specifications. Soil and water conservation practices shall meet Natural Resources Conservation Service conservation standards and specifications where applicable. These standards may be accessed through the electronic field office technical guide at efotg.sc.egov.usda.gov/efotg_locator.aspx.

Tree planting, forest stand improvement, site preparation for natural regeneration and rescue treatment standards may be accessed through the department of natural resources' forestry technical guide found at www.iowadnr.gov/Portals/idnr/uploads/forestry/ForestryTechguide.pdf.

Standards and specifications are also available in hard copy in the district office where the practice will be implemented. These specifications and the general conditions, rule 27—10.81(161A), shall be met in all cases. To the extent of any inconsistency between the general conditions and the specifications, the general conditions shall control.

[ARC 8755B, IAB 5/19/10, effective 7/1/10; ARC 3934C, IAB 8/1/18, effective 9/5/18]

27—12.84(161C) Cost-share rates. The following cost-share rates shall apply for eligible practices designated in rule 27—12.82(161C). The use of state cost-share funds alone or in combination with other public funds shall not exceed the limits established by these rules.

12.84(1) *Windbreaks.* Seventy-five percent of the eligible or estimated cost, whichever is less, not to exceed \$1,600 for the total cost of the establishment or restoration of the windbreak.

12.84(2) *Field windbreaks.* Seventy-five percent of the eligible or estimated cost, whichever is less, not to exceed \$600 per acre for the total cost of the establishment or restoration of the field windbreak.

12.84(3) *Forest stand improvement.* Seventy-five percent of the eligible or estimated cost, whichever is less, not to exceed \$120 per acre for prescribed woodland burning, thinning, pruning crop trees, or releasing seedlings or young trees.

12.84(4) *Tree planting.*

a. Seventy-five percent of the eligible or estimated cost, whichever is less, not to exceed \$600 per acre, for tree planting including the following:

- (1) Establishing ground cover,
- (2) Trees and tree-planting operations,
- (3) Weed and pest control,
- (4) Mowing, disking, and spraying.

b. Seventy-five percent of the eligible or estimated cost, whichever is less, not to exceed \$150 per acre for woody plant competition control.

12.84(5) *Site preparation for natural regeneration.* Seventy-five percent of the eligible or estimated cost, whichever is less, not to exceed \$120 per acre of site preparation.

12.84(6) *Riparian forest buffer.* Seventy-five percent of the eligible or estimated cost, whichever is less.

12.84(7) *Rescue treatment.*

a. Seventy-five percent of the eligible or estimated cost, whichever is less, not to exceed \$60 per acre to establish alternate cover for competition control.

b. A one-time payment of 75 percent of the eligible or estimated cost, whichever is less, not to exceed \$15 per acre to control damaging rodent populations.

c. Seventy-five percent of the eligible or estimated cost, whichever is less, not to exceed \$600 per acre, for plantation replanting including the following:

- (1) Establishing ground cover,
- (2) Trees and tree planting,
- (3) Weed control.

12.84(8) *Prescribed grazing.* Seventy-five percent of the eligible or estimated cost, whichever is less. Systems must include at least two paddocks of native species grasses. Development of a water source is not eligible. Boundary fences or road fences are not included.

12.84(9) *Conservation cover.* Seventy-five percent of the eligible or estimated cost, whichever is less.

12.84(10) *Fencing systems.* Fencing systems used to implement or protect a conservation practice described in rule 27—12.82(161C) are eligible for the lesser of 75 percent of the eligible or estimated cost. The fencing costs cannot exceed \$14 per rod for permanent fencing or \$5 per rod for temporary electric fencing. Fences along roads or land boundaries are not eligible.

[ARC 8755B, IAB 5/19/10, effective 7/1/10; ARC 3244C, IAB 8/2/17, effective 9/6/17; ARC 4340C, IAB 3/13/19, effective 4/17/19]

27—12.85(161C) Special practice and cost-share procedures eligibility. Districts may submit requests to establish eligible practices, develop cost-share procedures, experiment with new conservation practices and explore new technologies with approval of the state soil conservation and water quality committee.

12.85(1) *District designation.* Districts shall submit to the state soil conservation and water quality committee the description of their intentions, which could include:

- a.* Type of practice.
- b.* Cost-share rate.
- c.* Resource to be protected.
- d.* Estimated cost.
- e.* Landowner interest.
- f.* Technology to be addressed.

12.85(2) *State soil conservation and water quality committee evaluation.* The state soil conservation and water quality committee shall examine the district submission under 12.85(1) with respect to the following criteria.

- a.* The public and current use of the resource to be protected.
- b.* The nature, extent, and severity of the problem to be addressed.
- c.* The degree to which the request focuses practice or technology application in a manner that will achieve a soil erosion or water quality benefit from the funds available.
- d.* Whether a specification can be developed by NRCS or DNR for the new technology or practice.

12.85(3) *Review time limit.* The state soil conservation and water quality committee shall approve or disapprove the district designation within 90 days of receipt by the division.

12.85(4) *Disapproval of designation.* In the event of disapproval of district requests, the state soil conservation and water quality committee shall inform the district of the reason for disapproval.

This rule is intended to implement Iowa Code chapters 161A and 161C.

[ARC 3243C, IAB 8/2/17, effective 9/6/17]

27—12.86 to 12.89 Reserved.

27—12.90(161C,312) Reporting and accounting. Reports will be prepared in the same manner as provided in rule 27—10.91(161A).

These rules are intended to implement Iowa Code chapters 161A and 161C and Iowa Code section 455A.19.

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