

CHAPTER 10
IOWA FINANCIAL INCENTIVE PROGRAM FOR SOIL EROSION CONTROL
[Prior to 12/28/88, see Soil Conservation Department, 780—Ch 5]

27—10.1 to 10.9 Reserved.

PART 1

27—10.10(161A) Authority and scope. This chapter establishes procedures and standards to be followed by the division of soil conservation, Iowa department of agriculture and land stewardship in accordance with the policies of the state soil conservation committee in implementing the state's financial incentive program for soil erosion control. It also establishes standards and guidelines to which the soil conservation districts shall conform in fulfilling their responsibilities under this program.

27—10.11(161A) Rules or subrules 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—10.12 to 10.19 Reserved.

PART 2

27—10.20(161A) Definitions.

“Administrative order” means a written notice from the commissioners to the landowner or landowners of record and to the occupants of land informing them they are violating the district's soil loss limit regulations or maintenance agreement and advising them of action required to conform to the regulations.

“Allocation” means those funds that are identified as a district's share of the state's appropriated funds that have been distributed to a particular program.

“Applicant” means a person or persons requesting assistance for implementing soil and water conservation practices.

“Appropriations” means those funds appropriated from the general fund of the state and provided the division of soil conservation for funding the various incentive programs for soil erosion control.

“Case file” means a record that is assembled and maintained for each application approved for state cost sharing.

“Certification of practice form” means a signature page used to attest that a practice was installed, performed or maintained in accordance with applicable standards.

“Certifying technician” means the district conservationist of the Natural Resources Conservation Service (NRCS) or the district forester of the department of natural resources.

“Commissioner” means one of the members of the governing body of a district, elected or appointed in accordance with the provisions of Iowa Code chapter 161A.

“Committee” or *“state soil conservation committee”* means the committee established by Iowa Code section 161A.4, as the policymaking body of the division of soil conservation.

“Complaint” means a written and signed document received by the commissioners from a landowner or occupant of land stating that said property in the district is being damaged by sediment resulting from soil erosion on the property of another named landowner.

“Conservation cover” means that if a tract of agricultural land has not been plowed or used for growing row crops at any time within the prior 15 years, it shall be classified as agricultural land under conservation cover.

“Department” means the department of agriculture and land stewardship as established in Iowa Code chapter 159.

“*District*” or “*soil and water conservation district(s)*” means a governmental subdivision of this state organized for the purposes, with the powers, and subject to the restrictions set forth in Iowa Code chapter 161A.

“*District cooperator*” means an individual or business that has entered into a cooperator’s agreement with a district for the purpose of planning, applying, and maintaining the necessary soil and water conservation practices on land under control of the individual or business.

“*Division*” means the division of soil conservation as established and maintained by the department pursuant to Iowa Code section 159.5(15) and administered pursuant to chapter 161A.

“*Excessive erosion*” means soil erosion that is occurring at a rate exceeding the established soil loss limit.

“*Fiscal year*” means the state fiscal year for which program funds were appropriated.

“*Landowner*” includes any person, firm or corporation, partnerships, estates, trusts, or any federal agency, this state or any of its political subdivisions, who shall hold title to or have legal control over land lying within a district.

“*Maintenance/performance agreement*” means an agreement between the recipient, the landowner, and the district. The recipient and landowner agree to maintain the soil conservation practices for which financial incentives from the division through the district have been received. The agreement states that the recipient and landowner will maintain, repair, or reconstruct the practices if they are not maintained according to the terms specified in the agreement. The terms of the agreement shall be specified by the division.

“*Obligated funds*” means those moneys that are set aside out of the district’s allocation or by the division for payment to a landowner after the commissioners have approved an application for financial incentives.

“*Power of attorney*” means a legal document that grants a person the right to act on behalf of the landowner.

“*Recipient*” means a landowner or district cooperator who has qualified for and received financial incentive payments for implementing soil and water conservation practices.

“*Road*” means the entire width between property lines of the publicly owned right-of-way.

“*Row cropped lands*” means land that is in an established rotation sequence that includes row crops and the sequence is actively being followed or is in consecutive row crop sequence.

“*Soil conservation practices*” means any of the practices which serve to reduce erosion of soil by wind and water on land used for agricultural or horticultural purposes and approved by the state soil conservation committee.

“*Soil loss limit*” means the maximum amount of soil loss due to erosion by water or wind, expressed in terms of tons per acre per year, which the commissioners of the respective soil and water conservation districts have established by rule as acceptable.

“*State soil survey data base for Iowa*” means a listing of the soil map units for each county and the properties and interpretation for each of the map units.

“*Supplemental allocation*” means additional funds provided beyond the original allocation.

“*Supplementary administrative order*” means a written notice sent to those receiving an administrative order for violation of the district’s soil loss limit regulations advising that cost-share funds are being committed to the landowner or landowners and establishing time limits for correcting the soil erosion problems.

“*Technician*” means a person qualified to design, lay out and inspect construction of soil conservation practices, and who is assigned to or employed by a soil and water conservation district.

“*Unobligated funds*” means those cost-share moneys the districts have been allocated and those the division administers that have not been obligated.

[ARC 8766B, IAB 5/19/10, effective 7/1/10; ARC 0224C, IAB 7/25/12, effective 8/29/12]

PART 3

27—10.30(161A) Compliance, refunds, reviews and appeals. This division establishes rules for determining landowner or farm operator compliance with performance or maintenance agreements that have been entered into as a result of receiving financial incentive payments for implementing soil conservation practices. This division also defines the responsibilities of the districts and the division for obtaining refunds from landowners or farm operators, and procedures to be followed, when it is found that temporary practices are not being performed in accordance with funding agreements.

This division also defines the responsibilities of the districts and the division for requiring maintenance, repair or reconstruction of permanent soil and water conservation practices when it is found that permanent practices are not being maintained in accordance with funding agreements.

27—10.31(161A) Compliance with maintenance/performance agreements.

10.31(1) Performance agreement. Rescinded IAB 7/18/07, effective 6/27/07.

10.31(2) Maintenance/performance agreement. As a condition for receipt of any financial incentives funds for implementing soil and water conservation practices, the owner of the land on which the practices have been installed shall agree to maintain those practices for the term specified in the maintenance/performance agreement. Specific conditions of the agreement are detailed on the form.

a. Determination of practice implementation and continued compliance with maintenance/performance agreements.

(1) The certifying technician or the technician of the district will determine if the completed practice is in compliance with applicable standards and specifications in Part 8 of these rules. The certifying technician shall attest to completion and compliance with the standards by completing and signing a certification of practice form. The completed certification will be retained in the district case file for the appropriate landowner.

(2) The certifying technician or district technician shall inspect the practice at any time the district commissioners have reason to believe it is not being satisfactorily maintained. The division will evaluate the situation to determine that proper procedures were followed. "Satisfactorily maintained" means being maintained in such a state of repair so that the practice is successfully performing the function for which it was originally installed. Following the inspection, the certifying technician shall complete a certification of practice form. The completed certification shall be filed in the district's case file for the landowner.

(3) The district shall inspect a practice whenever requested to do so by the landowner. The person requesting the inspection shall be provided a copy of the completed certification of practice form, used to document the results of this inspection.

b. Determination of noncompliance with maintenance/performance agreement. If the certifying technician determines that the practice is not being satisfactorily maintained, it shall be so noted on the certification of practice form. The district shall notify the division in writing of the noncompliance finding. The notification to the division shall contain a complete explanation of why the practice is considered not to be in compliance with the maintenance/performance agreement. The division will evaluate the situation to determine that proper procedures were followed. "Satisfactorily maintained" means the practice has been maintained in such a state of repair that it is successfully performing the function for which it was originally installed.

c. In the event that properly maintained practices that were installed with the assistance of Iowa financial incentive program funds are damaged due to natural disasters, completing the maintenance/performance agreement shall not constitute an action or intent on the part of the division to prevent the owner of the land on which the practices were installed from receiving federal emergency conservation program assistance to repair or replace the practices.

27—10.32(161A) Noncompliance.

10.32(1) Noncompliance with performance agreements. Rescinded IAB 7/18/07, effective 6/27/07.

10.32(2) Refunds for noncompliance with maintenance agreements to cost-share agreements entered prior to July 1, 1981. Rescinded IAB 7/18/07, effective 6/27/07.

10.32(3) *Refunds for noncompliance with maintenance agreements entered between January 1, 1981, and July 1, 1982.* Rescinded IAB 7/18/07, effective 6/27/07.

10.32(4) *Noncompliance with maintenance/performance agreements.* Upon determination by the district and the division that a landowner is not in compliance with a maintenance/performance agreement, the division shall assist the district in the issuance of an administrative order to the landowner requiring appropriate maintenance, repair or reconstruction of the practice, provided voluntary means have been exhausted. The district, in its sole discretion, may allow the landowner or the landowner's successors to refund to the division the entire amount of the financial incentive payment received by the landowner in lieu of maintaining, repairing or reconstructing a practice.

a. Within 60 days from the date of issue of the administrative order, the landowner shall submit to the district a written and signed statement of intent to maintain, repair or reconstruct the practice.

b. The maintenance, repair or reconstruction work shall be initiated within 180 days from the date of issue of the administrative order and shall be satisfactorily completed within one year of the date of issue of the administrative order.

10.32(5) *Agricultural land converted to nonagricultural land.* If land subject to a maintenance/performance agreement is converted to a nonagricultural use that does not require a permanent soil and water conservation practice which has been established with financial incentives, the practice shall not be removed until the owner refunds the appropriate amount of the payment received.

a. Amount of refund. The amount of refund will be the amount of the financial incentive payment received less 5 percent for each year the practice was in place.

b. Districts will notify the division when such refunds are collected.

c. Refunds will be made to the division. The division will deposit refunds to the appropriate district account. Use of the refunds will be limited to providing financial incentives under this chapter.

27—10.33(161A) Appeals and reviews. A landowner or farm operator who has been ordered to maintain, repair or reconstruct a temporary or permanent practice subject to a maintenance/performance agreement may, as appropriate, review the order with the district commissioners or the division of soil conservation. Appeals to the state soil conservation committee may be made by the district, a landowner or a farm operator following a review by the division director or the director's designee.

10.33(1) Review with soil and water conservation district commissioners. When a landowner or farm operator wishes to appeal an order to maintain, repair or reconstruct a temporary or permanent practice subject to a maintenance/performance agreement, the landowner or farm operator may request a review of the order with the district commissioners. The commissioners shall schedule a meeting to review the issue with the landowner or farm operator. This proceeding shall be informal. A landowner or farm operator shall request a review with the district commissioners in writing and within 30 days following receipt of their order.

10.33(2) Review with the division of soil conservation. After having unsuccessfully met with the district commissioners, a landowner or farm operator who has been ordered to maintain, repair or reconstruct a temporary or permanent practice subject to a maintenance/performance agreement may file a written request for review with the division. The division review shall be conducted by the division director or the director's designee. This proceeding shall be informal. A landowner or farm operator shall request the review with the division in writing within 30 days following the review with the district.

10.33(3) Appeal to the state soil conservation committee. In those cases where the district, landowner, or farm operator is not satisfied with the decision rendered as a conclusion of a division review concerning an order to maintain, repair or reconstruct a temporary or permanent practice covered by a maintenance/performance agreement, the district, landowner, or farm operator may appeal the division's decision to the state soil conservation committee. This proceeding shall be a formal, contested case hearing. The district, landowner, or farm operator shall make the appeal to the state committee in writing within 30 days following completion of the division's review.

10.33(4) The committee will either affirm, modify, or vacate the administrative order following the completion of the contested case hearing.

27—10.34 to 10.39 Reserved.

PART 4

27—10.40 Reserved.

27—10.41(161A) Appropriations. The department of agriculture and land stewardship, division of soil conservation, has received appropriations for conservation cost sharing since 1973 and appropriations to fund certain incentive programs for soil erosion control since 1979. Funds are appropriated each year by the general assembly.

The division has four years to encumber or obligate these funds before they revert to the state's general fund. This rule addresses the distribution of these appropriations among the incentive programs for soil erosion control established by the division in accordance with the authorities extended in Iowa Code chapter 161A. The rule is also consistent with the restrictions imposed by language of the appropriations bills.

10.41(1) Voluntary program. Ninety percent of the appropriation is to be used for cost sharing to provide state funding of not more than 50 percent of the approved cost of permanent soil and water conservation practices or for incentive payments to encourage management practices to control soil erosion on land that is now row-cropped.

Up to 30 percent of a district's original and supplemental allocation may be used for the establishment of practices listed in subrules 10.82(1) and 10.82(2).

The commissioners of a district may allocate voluntary program funds for the restoration of permanent soil and water conservation practices which are damaged or destroyed because of a disaster emergency. Funds may be used for construction, reconstruction, installation, or repair of projects. The commissioners must determine that funds are necessary to restore permanent practices to prevent erosion in excess of applicable soil loss limits caused by the disaster emergency. Funds cannot be used unless a state of disaster emergency pursuant to a proclamation as provided in Iowa Code section 29C.6 has been declared. Funds can be used only if federal or state disaster emergency funds are not adequate. Funds do not have to be allocated on a cost-share basis. Districts are required to report to the division regarding restoration projects and funds allocated for projects.

10.41(2) Publicly owned lakes. For the approved cost of permanent soil conservation practices on watersheds above publicly owned lakes, 5 percent of the amount appropriated is to be set aside for cost sharing at a rate not to exceed 75 percent.

10.41(3) Mandatory program. Five percent of the appropriation shall be set aside for cost sharing with landowners or farm operators who are required to install soil erosion control practices as a result of an administrative order from the district to abate complaints filed under Iowa Code section 161A.47.

10.41(4) Special watershed projects. Iowa Code section 161A.7 permits cost sharing up to 60 percent of the cost of a project including five or more contiguous farm units which have at least 500 or more acres of farmland and which constitute at least 75 percent of the agricultural land lying within a watershed or subwatershed, where the owners jointly agree to a watershed conservation plan in conjunction with their respective farm unit soil conservation plan.

10.41(5) Summer construction incentives. Funds are available for the planting of a conservation cover crop in place of cropland during the growing season to extend the construction season for the purpose of the installation of conservation practices. This practice shall be applied using the conservation crop rotation standard. Summer construction incentives are only available in conjunction with state-funded conservation practices.

10.41(6) and **10.41(7)** Reserved.

10.41(8) Funds distributed to annual programs and provided to districts may be used in combination with department of natural resources funds in accordance with the following:

a. Proposals to allow an overall cost-share rate of greater than 50 percent to the district cooperator must be submitted by districts and approved on a project-by-project basis by the state soil conservation committee.

b. The maximum cost-share rate realized by the district cooperator shall not exceed 75 percent when state cost-share funds appropriated to the division and districts are utilized in combination with such department of natural resources funds.

c. Funds utilized by districts in conjunction with such special projects shall come from the district's regular allocation.

d. Only those permanent practices listed in subrule 10.82(3) shall be eligible for financial incentive payments.

(1) Any practices to be installed on public land must meet the requirements of subrule 10.73(3) and be installed and paid for by the adjoining private landowner.

(2) Subrule 10.81(6) on upland treatment shall also apply.

e. In accordance with subrule 10.73(4), paragraph "a," no cost-sharing with other government agencies is allowed.

10.41(9) Funds distributed to annual programs and provided to districts may be used in combination with other public funds on permanent practices, in accordance with the following:

a. The maximum cost-share rate realized by the district cooperator shall not exceed 75 percent of the total eligible costs when state cost-share funds appropriated to the division and districts are utilized in combination with other public funds.

b. Funds utilized by districts in conjunction with such projects shall come from the district's regular allocation.

c. The recipient will be required to sign a maintenance agreement as stated in subrule 10.74(5).

This rule is intended to implement Iowa Code chapter 161A; 1994 Iowa Acts, chapter 1198, section 1, subsection 4, paragraphs "b," "c," and "d"; 1995 Iowa Acts, chapter 216, section 1, subsection 4, paragraphs "b," "c," and "d"; 1996 Iowa Acts, chapter 1214, section 1, subsection 4, paragraphs "b," "c," and "d"; and 1997 Iowa Acts, House File 708, section 1, subsection 4, paragraphs "b," "c," and "d."

[ARC 7722B, IAB 4/22/09, effective 4/1/09; ARC 8766B, IAB 5/19/10, effective 7/1/10]

27—10.42 to 10.49 Reserved.

PART 5

27—10.50(161A) Allocations to soil and water conservation districts. This division identifies those program funds that are allocated to the districts and explains how the allocations are made.

27—10.51(161A) Voluntary program. The division will allocate program funds to the districts in steps identified as original allocations and supplemental allocations.

10.51(1) Original allocation. Sixty percent of the fiscal year funds distributed to this program will be allocated to the districts at the beginning of the fiscal year in accordance with a formula based on the state soil survey database for Iowa. The formula is $A = wzf$, where:

a. A = allocation to the district.

b. w = the percentage factor for the district, determined by $(x/y) (100)$, where:

(1) x = district acres, determined by totaling the district's land capability class acres from the state soil survey database for Iowa using the formula: $(\frac{1}{4})2e + 3e + 4e$.

(2) y = state acres, determined by totaling the state's land capability class acres from the state soil survey database for Iowa using the formula: $(\frac{1}{4})2E + 3E + 4E$.

c. z = sixty percent of fiscal year funds distributed to the voluntary program.

d. f = an adjustment factor of 0.980 applied to each district's allocation to adjust the original allocation to compensate for establishing a minimum of four-tenths of 1 percent of "z" to ensure that each district has a workable program.

e. The following table provides the value of "w" for each district:

Individual Soil and Water Conservation District

Percentage Allocation Factors

<u>W(%) District</u>	<u>W(%) District</u>	<u>W(%) District</u>	<u>W(%) District</u>
1.8 Adair	1.2 Davis	1.0 Jefferson	0.2 Pocahontas*
1.2 Adams	1.3 Decatur	1.1 Johnson	0.7 Polk
1.5 Allamakee	0.8 Delaware	1.2 Jones	1.4 E. Pottawattamie
1.1 Appanoose	0.6 Des Moines	1.4 Keokuk	1.2 W. Pottawattamie
1.4 Audubon	0.4 Dickinson	0.6 Kossuth	1.5 Poweshiek
1.4 Benton	1.9 Dubuque	1.0 Lee	1.6 Ringgold
0.5 Black Hawk	0.3 Emmet*	1.1 Linn	0.7 Sac
0.5 Boone	1.1 Fayette	0.5 Louisa	0.9 Scott
0.3 Bremer*	0.3 Floyd*	1.1 Lucas	1.7 Shelby
0.4 Buchanan	0.6 Franklin	0.8 Lyon	1.0 Sioux
0.4 Buena Vista	1.0 Fremont	1.2 Madison	0.6 Story
0.6 Butler	0.4 Greene	1.2 Mahaska	1.5 Tama
0.3 Calhoun*	0.5 Grundy	1.3 Marion	1.7 Taylor
1.2 Carroll	1.5 Guthrie	1.4 Marshall	1.1 Union
1.5 Cass	0.4 Hamilton	1.0 Mills	1.2 Van Buren
1.2 Cedar	0.3 Hancock*	0.3 Mitchell*	1.0 Wapello
0.5 Cerro Gordo	0.7 Hardin	1.2 Monona	1.1 Warren
1.0 Cherokee	1.6 Harrison	1.0 Monroe	1.1 Washington
0.4 Chickasaw	0.9 Henry	1.2 Montgomery	1.4 Wayne
1.2 Clarke	0.4 Howard	0.6 Muscatine	0.3 Webster*
0.3 Clay*	0.2 Humboldt*	0.4 O'Brien	0.5 Winnebago
2.0 Clayton	1.3 Ida	0.3 Osceola*	1.8 Winneshiek
1.2 Clinton	1.4 Iowa	1.5 Page	2.3 Woodbury
2.4 Crawford	1.6 Jackson	0.4 Palo Alto	0.3 Worth*
0.8 Dallas	1.7 Jasper	2.4 Plymouth	0.4 Wright

*The minimum value to be used in determining original allocations to districts shall be 0.4.

10.51(2) Supplemental allocation. The remaining balance of the fiscal year funds plus recalled funds from the mandatory program as distributed in subrule 10.41(3), and from the public lakes fund as distributed in subrule 10.41(2) that were not obligated, from the reserve fund established in subrule 10.57(1), and from districts as specified in subrule 10.51(3) will be provided to the districts in a supplemental allocation. The districts shall identify valid applications and cost estimates, if any, for supplemental allocations to the division by September 1. The allocation to any district will be the lesser amount of:

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; or

b. Three times the original allocation to the district.

10.51(3) Recall of funds. Any funds allocated in the current fiscal year that the districts have not spent or obligated by June 30 may be recalled by the division.

10.51(4) Reallocation of recalled funds. Rescinded IAB 7/18/07, effective 6/27/07.

10.51(5) Eligibility for supplemental allocations. A district must have obligated 75 percent of current fiscal year funds to qualify for a supplemental allocation.

10.51(6) Recall and reallocation of funds by division director. When the unspent balance of funds allocated to a district exceeds that district's annual allocation by more than 150 percent for a period of 12 months or more, the division director may recall these unspent funds and reallocate them to a district or districts that can demonstrate a need.

[ARC 8766B, IAB 5/19/10, effective 7/1/10]

27—10.52(161A) Publicly owned lakes. The division of soil conservation maintains the funds that are distributed to the publicly owned lakes program. These funds may be used to provide cost sharing not to exceed 75 percent of the approved cost of permanent soil conservation practices on watersheds above publicly owned lakes and reservoirs. The division will allocate these program funds to eligible districts in steps identified as original allocation, recall of unobligated funds, and reallocation.

10.52(1) Original allocation. Funding needs will be identified and funds will be set aside for watershed projects which have cost-share funds in addition to state and district cooperator funds (e.g., federal, county, or other). The remaining funds will be allocated equally between the other watersheds identified on the publicly owned lakes priority list.

10.52(2) Recall of unobligated funds. Funds that are allocated to districts under this program and are not obligated within three months shall be recalled by the division and reallocated.

10.52(3) Recall of obligated, but unspent funds. Rescinded IAB 7/18/07, effective 6/27/07.

10.52(4) Reallocation of recalled funds. The reallocation of recalled funds will be based on need and demonstrated ability to use the funds. The districts shall submit their requests identifying valid applications and cost estimates, if any, to the division. The division shall allocate funds for these requests on a first-come, first-served basis to other eligible watersheds above publicly owned lakes.

10.52(5) Eligible watersheds. For a landowner to qualify for 75 percent cost sharing under this program, the watershed in which the land is located must be on a list of priority watersheds above publicly owned lakes or reservoirs that is established by the department of natural resources.

10.52(6) Applications and agreements. Applications and agreements for 75 percent cost sharing under this program will be handled by the districts as described in Part 7 of these rules except that the division will allocate funds to districts on an as-needed and first-come, first-served basis.

27—10.53 Reserved.

27—10.54(161A) Mandatory program. The division of soil conservation maintains the funds that are distributed to the mandatory cost-share program. These funds are used to provide cost sharing to landowners who are required to establish permanent soil and water conservation practices as the result of a district's administrative order or a court order.

10.54(1) Applications and agreements. Applications and maintenance/performance agreements for 50 percent cost sharing under this program will be handled by the districts as described in Part 7 of these rules except as follows:

a. When the district commissioners have decided that cost-share assistance is to be approved for a landowner, a copy of the application and a copy of the cost estimate proposed by the technician will be sent to the division with a request for funding obligation. The division will review the application, allocate funds for the specific application to the district and notify the district of the approval. If funds are not available, the division will not allocate funds to the specific application, but will write a letter of explanation to the district. The district will notify the landowner of the status by issuing a supplementary administrative order.

b. Prior approval of the amendment must be obtained from the division should the commissioners desire to amend the application to change the amount of work or the cost.

10.54(2) Redistribution of program funds. Any unobligated program funds remaining at the end of the fiscal year will be redistributed to the voluntary cost-share program. These funds may be included with the supplemental allocation to districts or may be disbursed with the original allocation.

27—10.55 Reserved.

27—10.56(161A) Special watershed projects. District commissioners will satisfy the following conditions with regard to special watershed projects:

10.56(1) Prior to approving a project application for 60 percent cost-share, the district must obtain a project number from the division.

10.56(2) All participating landowners in a particular project will be required to show progress towards completion during the first year of the project. Progress will be evaluated by the district. Failure of all participating landowners to show progress during the first year will result in loss of authorization of the project and 60 percent cost-share funding eligibility.

10.56(3) Authorization for each project shall not exceed five years.

27—10.57(161A) Reserve fund.

10.57(1) *Purpose and use of the reserve fund.* The reserve fund will be set aside and used only to meet contingencies that occur in the districts or within the division. The reserve fund shall not exceed \$150,000.

10.57(2) *Replenishing the reserve fund.* On June 30 of each year, the division may recall any unspent allocations and replenish the fund in accordance with subrule 10.57(1). If needed, the reserve fund may also be replenished at any time with recalled funds to return the balance to \$150,000.

27—10.58 and 10.59 Reserved.

PART 6

27—10.60(161A) Funding rates. The purpose of this division is to establish the funding rates at which the state will fund or share the cost for approved soil conservation practices under the various incentive programs. In all cases, except for the mandatory program, the state's share will be computed using the percentages specified below and the estimated cost, the amended estimated cost, or the actual cost of implementing the practice, whichever is less. Payments under the mandatory program will be based on actual costs.

10.60(1) *Voluntary.*

a. The state will cost-share 50 percent of the cost certified by the certifying technician as being reasonable, proper, and incurred by the applicant in voluntarily installing approved, permanent soil conservation practices, except for tree planting. Eligible costs include machine hire or use of the applicant's equipment, needed materials delivered to and used at the site, and labor required to install the practice.

b. For tree and shrub establishment, the following criteria shall apply:

(1) Fifty percent of the actual cost, not to exceed \$450 per acre, including the following:

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

(2) Fifty percent of actual cost, not to exceed \$150 per acre, for wood plant control.

(3) Actual cost, not to exceed the lesser of \$14 per rod or \$45 per acre protected, for permanent fences that protect planted acres from grazing, excluding boundary and road fencing.

c. For currently funded fiscal years, the division will make one-time payments of up to \$10 per acre for no-tillage, ridge-till and strip-till; \$6 per acre for contour farming; \$25 per acre for establishing a cover crop; and 50 percent of the cost up to \$25 per acre for strip-cropping, field borders and filter strips. Not more than 30 percent of the district's original allocation and supplemental allocation may be used for the establishment of management practices to control soil erosion on land that is now row-cropped.

d. Funding for the restoration of permanent practices damaged or destroyed because of a disaster (see 10.41(1)) does not have to be allocated on a cost-share basis.

e. Where a livestock watering system is installed in a grade stabilization structure, cost share is limited to 50 percent of the estimated or eligible cost, whichever is less, not to exceed \$500 for the watering tank or holding facility, pipe and valves. Payment will be made only if the structure is fenced.

10.60(2) *Summer construction incentives.* In addition to cost share for the establishment of a permanent conservation practice, up to \$200 per acre is available to offset income lost from cropland acres taken out of production during the growing season. Payment will be made upon completion of the permanent conservation practice. To qualify:

a. The field being treated shall be in row cropland during the growing season in which the permanent conservation practice is being constructed.

b. The construction area shall be planted with a conservation cover for erosion control purposes on the construction site.

c. The construction of the permanent conservation practice shall take place between June 15 and October 15. Work must be started and completed between these dates and verified by the technician prior to payment of the incentive. For calendar year 2012, work which has been started by June 15 and is completely finished by December 31 will be considered to be constructively completed by October 15.

d. Only the land necessary for the construction is eligible for this incentive. The construction work area shall be determined by the technician.

e. The construction work area shall not be used to grow a row crop except for the required conservation cover crop.

f. Haying and grazing may occur during calendar year 2012 without loss of the summer construction incentive.

10.60(3) *Special watershed projects.* Commissioners may enter into agreements providing for cost sharing up to 60 percent of the cost of a project that includes five or more contiguous farm units which collectively have at least 500 or more acres of farmland and which constitute at least 75 percent of the agricultural land lying within a watershed or a subwatershed. The owners must jointly agree to a watershed conservation plan in conjunction with their respective farm unit soil conservation plans.

10.60(4) *Mandatory.* The rate of cost share for permanent soil and water conservation practices required as a result of an administrative order shall be 50 percent of the total cost to the landowner of installing the approved practice. The cost must be certified by the technician as being reasonable, proper and incurred by the landowner. The rate of cost share for temporary soil and water conservation practices is set by the state soil conservation committee.

10.60(5) *Watersheds above publicly owned lakes.* The state will cost-share 75 percent of the approved cost of permanent soil and water conservation practices on watersheds above certain publicly owned lakes. Watersheds above publicly owned lakes that qualify for 75 percent cost sharing must be identified on a priority list established by the department of natural resources.

10.60(6) *Conservation cover.* Cost share for certain lands is restricted by Iowa Code chapter 161A. Each tract of agricultural land which has not been plowed or used for growing row crops at any time within the prior 15 years shall be considered classified as agricultural land under conservation cover. "Agricultural land" has the meaning assigned that term by Iowa Code section 9H.1. If any tract of land so classified is thereafter plowed or used for growing row crops, the district commissioners shall not approve use of state cost-share funds for establishing permanent or temporary soil and water conservation practices on that tract of land in an amount greater than one-half the amount of cost-share funds which would be available for that land if it were not classified as agricultural land under conservation cover. This restriction shall apply even if an administrative order or court order has been issued requiring establishment of conservation practice.

[ARC 7722B, IAB 4/22/09, effective 4/1/09; ARC 8766B, IAB 5/19/10, effective 7/1/10; ARC 0224C, IAB 7/25/12, effective 8/29/12; ARC 0331C, IAB 9/19/12, effective 8/24/12]

PART 7

27—10.70(161A) 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 financial incentives for implementing approved temporary or permanent soil and water conservation practices.

27—10.71(161A) Applications submitted to soil and water conservation district. District cooperators desiring to be considered for financial incentives for implementing soil and water conservation practices shall complete necessary applications as specified by the division. 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—10.72(161A) Application signup.

10.72(1) Signatures by landowner and applicant. All applications and agreements shall be signed by the landowner except as noted in subrule 10.72(3) below. For an applicant to qualify for payment, both landowner and applicant must sign the application.

10.72(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.

10.72(3) Power of attorney. Applications and agreements may be signed by any person designated to represent the landowner or applicant, 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—10.73(161A) Eligibility for financial incentives.

10.73(1) District cooperator. Rescinded IAB 7/18/07, effective 6/27/07.

10.73(2) Administrative order. Rescinded IAB 7/18/07, effective 6/27/07.

10.73(3) Practices installed on adjoining public lands. Where soil and water conservation practices are installed on public lands, which benefit adjoining private lands, and costs of the installation are to be shared by the parties, state cost-share funds may be used to cost-share the landowner cost of the erosion control portion of the project.

10.73(4) Ineligible lands.

a. Iowa financial incentive 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 financial incentives.

c. Tracts of land used for agricultural production which are less than ten acres in size and from which less than \$2500 of agricultural products are sold annually shall not qualify for financial incentives funds, unless approved by the commissioners as part of a group project or as a continuation of an adjacent system.

d. 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.

10.73(5) Need for soil and water conservation practices.

a. Financial incentives shall be available only for those soil and water conservation practices determined to be needed by the district to reduce excessive erosion or sedimentation and included in the designated practices identified in Part 8 of these rules. Such determination of need shall be made by a qualified technician.

b. At the discretion of the SWCD commissioners, practice construction may be allowed during the last 90 days of the CRP contract.

10.73(6) District priorities. Each application for financial incentives shall be evaluated under the priority system adopted by the district for disbursement of allocated funds. The district priority system

shall give consideration to family-operated farms and public benefit derived. The priority system adopted by the district shall be made available for review at the district office. In establishing its priorities for funds made available beginning July 1, 1983, the district shall also give consideration to the district cooperator's effort to implement Iowa Soil 2000 program requirements.

[ARC 8766B, IAB 5/19/10, effective 7/1/10]

27—10.74(161A) Financial incentive application and processing procedures.

10.74(1) Application for financial incentives.

a. Application submitted by landowner and applicant. Applicants for financial incentives for soil and water conservation practices shall complete and submit a request for assistance to the district office where the practice will be implemented.

b. Denial of application by district. Applications which are denied by the district shall be retained in the district until the end of the fiscal year. Application denial as used in this part refers to those applications which cannot be approved for reasons other than lack of available financial incentive funds.

c. Obligation of funds. Following approval of an application, the district may obligate funds for the project or, as appropriate, secure obligation of funds from the division for the amount of the project cost estimate identified on the application. In those cases where funds are not available, the application will be held by the district until funding becomes available or until the end of the fiscal year. Upon obligation of funds, the district shall notify the applicant. The district will maintain a record of funds obligated for approved applications.

d. Application withdrawn by applicant. An application may be withdrawn by the applicant at any time prior to receipt of payment by notifying the district in writing that withdrawal is desired. Applications withdrawn by the applicant shall be retained in the records of the district until the end of the fiscal year.

10.74(2) Project design by district.

a. District personnel responsible for design. The technician of the district shall design and lay out proposed soil and water conservation practices for which financial incentives funds have been obligated. The certifying technician of the district shall be responsible for determining compliance with applicable design standards and specifications.

b. Cost estimate adjustments.

(1) Application amendment. In the event that adjustment to the project cost estimate is necessitated by the final design, the applicant shall either agree to assume the additional cost or complete and submit an amendment request to the district for approval by the commissioners.

(2) Adjustment to obligated funds. The district may adjust the amount of incentive funds obligated for the project or may secure an adjusted obligation from the division for funds obligated by the division. In the event that additional funds are not available, the project may be redesigned, if possible, to a level commensurate with available funds, or the applicant can agree to assume full financial responsibility for the portion of the project cost in excess of the amount obligated.

10.74(3) Practice construction and certification.

a. Construction contracts. The landowner and applicant shall be responsible for securing any contractors needed and for all contractual or other agreements necessary to construct or perform the approved practices.

b. Certification of practice. The certifying technician or the technician of the district will determine that the completed practice is in compliance with applicable standards and specifications and that costs incurred are reasonable and proper. The certifying technician shall make such determination by completing and signing the certification of practice form. A copy of the certification will be retained in the district's case file.

10.74(4) Payment of financial incentives.

a. Submittal of bills and claim or certification of practice form to district. The applicant shall submit to the district a signed claim or certification of practice form and all bills relative to the project. Any materials and labor provided by the applicant must be itemized, and the itemization of any materials and labor provided by the applicant shall accompany the claim.

b. Approval for payment. The commissioners shall verify the technician's certification prior to approving the certification of practice form for submittal to the division for payment.

c. Claim submitted to the division by district. The signed claim or certification of practice form shall be submitted to the division. All original signed documents including itemized bills, claim agreements, maintenance/performance agreements and amendments shall be retained at the district office in the cooperator's case file.

d. Payment. Payment for the reimbursable cost of the project will be returned by the division to the district or directly to the landowner or applicant.

10.74(5) Maintenance/performance agreements.

a. Maintenance/performance agreement required. As a condition for receipt of any financial incentive funds for permanent soil and water conservation practices, the owner of the land on which the practices have been installed shall agree to maintain those practices for a minimum term as required by the division.

b. Maintenance/performance agreement form. An agreement to maintain practices for which financial incentives are being paid shall be made by completing and signing a maintenance/performance agreement form. Specific conditions of the maintenance/performance agreement are detailed on the form. Completion of the form and signature of the landowner are required prior to transfer of the incentive payment from the district to the recipient(s).

c. Filing of agreements.

(1) Establishment of a file for maintenance/performance agreements. The district shall establish and maintain a separate permanent file containing any documentation related to the maintenance/performance agreement form. The maintenance/performance agreements file shall be accessible for review by the public.

(2) Statement of compliance or noncompliance. A seller of agricultural land with respect to which a maintenance/performance agreement is in effect may request the district to inspect the practices. If the practices have not been removed, altered, or modified, the district shall issue a written statement that the seller has satisfactorily maintained the permanent practice as of the date of the statement.

The buyer of lands covered by a maintenance/performance agreement, where buyer means someone who has completed a contract for sale or deed, may also request that the district inspect the lands to determine whether any practice has been removed, altered, or modified as of the date of the inspection. If a practice has been removed, altered, or modified, the district will provide the buyer with a statement specifying the extent of noncompliance as of the date of the statement.

The seller and the buyer, if known, shall be given notice of the time of inspection so that they may be present during the inspection to express their views as to compliance.

10.74(6) Case files. A case file shall be assembled and maintained for each application approved. The file will contain all documents and correspondence that require signatures from either the district, district cooperator or technician. The case file shall also include all bills and invoices related to an approved application.

[ARC 8766B, IAB 5/19/10, effective 7/1/10]

27—10.75 to 10.79 Reserved.

PART 8

27—10.80(161A) General conditions, eligible practices and specifications. The purpose of this part is to establish the general conditions and limitations concerning practice implementation, the state-approved soil and water conservation practices eligible for state financial incentives and the specifications for which funded practices must conform.

27—10.81(161A) General conditions. The following general conditions shall be met, where applicable, in addition to the specifications in rule 27—10.84(161A). To the extent of any inconsistency between the general conditions and the specifications, the general conditions shall control.

10.81(1) Practice need. The designated soil and water conservation practices shall not be funded unless the technician has inspected the site and has determined that such practice(s) is needed to reduce excessive erosion or sedimentation.

10.81(2) Eligible practices must control erosion and sediment. Only those soil and water conservation practices applied to agricultural crop and pasture land whose primary function is to control soil erosion and prevent sediment damage will be eligible for incentive program funds.

10.81(3) Limitation of reimbursable costs 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. Examples of overbuilding or exceeding specifications include but are not limited to the following:

- a. Where a district cooperater desires that water be stored for purposes other than grade stabilization to control erosion,
- b. Where additional top width is added to an earthen fill to provide a field crossing or road,
- c. Where additional flow capacity for lowland drainage laterals is added to an underground outlet constructed as a component of a terrace system, and

10.81(4) Materials. Projects funded with Iowa financial incentive funds will utilize only new materials or used materials that meet or exceed design standards and have a life expectancy of 20 years.

10.81(5) Existing practices.

a. *Repair and maintenance.* Repair and maintenance of existing practices are not eligible for funding.

b. *Addition of underground outlets.* The addition of underground outlets to existing waterways and terraces is not eligible for funding.

10.81(6) Upland treatment. Seventy-five percent of the upland area shall be adequately treated for erosion control before waterways or grade stabilization structures will be funded.

10.81(7) Seeding.

a. *Seeding required.* Following practice construction, seeding shall be performed as appropriate in accordance with seeding specifications referenced in rule 10.84(161A), except as waived below.

b. *Seeding after specified seeding dates.* When the construction of a practice is completed after the seeding date contained in the specifications, seeding may be delayed until the following year. If delayed, the applicant shall be responsible for protecting the practice with temporary vegetative cover or other means until the seeding can be completed. For seeding delayed until the next year, the district may approve payment for the completed practice but such payment shall exclude the seeding cost. The remaining payment for seeding may be made available the following year.

10.81(8) Diversions. Rescinded IAB 5/19/10, effective 7/1/10.

10.81(9) Converting land to permanent vegetative cover. Rescinded IAB 5/19/10, effective 7/1/10.

10.81(10) Underground outlet. Rescinded IAB 5/19/10, effective 7/1/10.

[ARC 8766B, IAB 5/19/10, effective 7/1/10]

27—10.82(161A) State designation of eligible practices. Only those soil and water conservation practices listed in this rule are eligible for the Iowa financial incentives program funds.

10.82(1) Residue and management practices. The division will make one-time payments for residue and tillage management practices.

- a. No-till planting.
- b. Ridge-till planting.
- c. Strip-till planting.
- d. Cover crops.

10.82(2) Temporary practices. The division will make one-time payments for temporary practices.

- a. Critical area planting.
- b. Contour farming.
- c. Strip-cropping.
- d. Field border.

- e.* Filter strips.
- f.* Pasture and hay planting. Pasture and hay planting will be eligible for funding only when land that has been planted to row crop for three out of the last five years is being converted to permanent vegetative cover.

10.82(3) Permanent practices.

- a.* Reserved.
- b.* Diversion. Diversions are eligible for funding only when used to prevent downstream erosion.
- c.* Windbreak and shelterbelt establishment. A strip or belt of trees or shrubs established within or adjacent to a field to reduce sediment damage and soil depletion caused by wind.
- d.* Grade stabilization structure.
- e.* Reserved.
- f.* Grassed waterway.
- g.* Reserved.
- h.* Terrace.
- i.* Underground outlet. Underground outlets are eligible for Iowa financial incentive funding only when used as a component of eligible permanent practices contained in subrule 10.82(3).
- j.* Water and sediment control basin.
- k.* Reserved.
- l.* Conservation cover.
- m.* Tree and shrub planting. The minimum eligible area is three acres.

[ARC 8766B, IAB 5/19/10, effective 7/1/10; ARC 0331C, IAB 9/19/12, effective 8/24/12]

27—10.83(161A) Designation of eligible practices. District commissioners may designate which soil and water conservation practices will be eligible for Iowa financial incentive payments in their district. The selected practices must be from the state-approved practices contained in rule 27—10.82(161A).

[ARC 8766B, IAB 5/19/10, effective 7/1/10]

27—10.84(161A) Practice standards and specifications. Practices shall meet Natural Resources Conservation Service conservation standards and specifications. These standards may be accessed through the electronic field office technical guide at http://efotg.nrcs.usda.gov/efotg_locator.aspx?map=IA. The tree planting standard may be accessed through the department of natural resources' forestry technical guide found at <http://www.iowadnr.com/forestry/pdf/techguide.pdf>. Standards and specifications are 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.

27—10.85 to 10.89 Reserved.

PART 9

27—10.90 Reserved.

27—10.91(161A) Annual report. The district will submit an annual report to the division. The report will reflect accomplishments for the fiscal year ending June 30. The report shall be submitted to the division on or before July 7 each year.

27—10.92(161A) Control of lands. Rescinded IAB 5/19/10, effective 7/1/10.

27—10.93 and 10.94 Reserved.

27—10.95(161A) Forms. Standard forms, applications, and agreements used by the applicant and recipient of financial incentives for soil erosion control as outlined in these rules are provided by the division. Copies of all forms, applications, and agreements are available from the soil conservation

district office located in each county. Copies are also available from the division at the following address: Division of Soil Conservation, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, Des Moines, Iowa 50319.

27—10.96 to 10.99 Reserved.

Rules in Chapter 10 are intended to implement Iowa Code chapter 161A; 1994 Iowa Acts, chapter 1198, section 1, subsection 4, paragraphs “b,” “c,” and “d”; 1995 Iowa Acts, chapter 216, section 1, subsection 4, paragraphs “b,” “c,” and “d”; 1996 Iowa Acts, chapter 1214, section 1, subsection 4, paragraphs “b,” “c,” and “d”; and 1997 Iowa Acts, House File 708, section 1, subsection 4, paragraphs “b,” “c,” and “d.”

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