

NEBRASKA DEPARTMENT OF NATURAL RESOURCES

TITLE 257 – REGULATIONS GOVERNING THE
ADMINISTRATION OF THE
SMALL WATERSHEDS FLOOD CONTROL FUND

NEBRASKA ADMINISTRATIVE CODE
NEBRASKA DEPARTMENT OF NATURAL RESOURCES
TITLE 257
RULES AND REGULATIONS CONCERNING
SMALL WATERSHEDS FLOOD CONTROL FUND

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NEBRASKA DEPARTMENT OF NATURAL RESOURCES
 TITLE 257 - RULES AND REGULATIONS CONCERNING SMALL WATERSHEDS
 FLOOD CONTROL FUND

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Chapter 1 – GENERAL PROVISIONS

001 Purpose of Rules. These rules and regulations are adopted for the purpose of administering the Small Watersheds Flood Control Fund created by section 2-1503.01 R.S. Supp., 2000.

002 General Availability of Funds. Financial assistance from the Fund shall be available only to local organizations which have programs qualifying for such assistance under these rules and regulations. The Commission, in its sole discretion, may allocate to any qualifying organization, from the Small Watersheds Flood Control Fund, such sum or sums as in the judgment of the Commission may be necessary for such local organization to acquire real property or easements needed to permit the local organization to effectuate the purposes of the Small Watersheds Flood Control Fund.

003 Definitions. All terms defined in section 2-1501 R.S. Supp., 2000 shall have the same definition when used in these rules and regulations. In addition:

003.01 “Fund” means the Small Watersheds Flood Control Fund created by section 2-1503.01 R.S. Supp., 2000.

004 Responsibilities.

004.01 It is the responsibility of the Commission to make allocations from the Fund and to specify the date and all other terms for the sale of any lands or rights-of-way acquired with funds from the Fund and to require the execution of all documents necessary to complete such sales.

004.02 It is the responsibility of the Director, through the Department, to administer the fund and to administer these rules and regulations.

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Chapter 2 – FUND ADMINISTRATION

001 Eligibility for Funds. To be eligible for assistance from the Small Watersheds Flood Control Fund, the local organization must first enter into an agreement with the Department specifying a hydrologic unit and the total number of land rights to be acquired by the local organization in such unit. Such agreement, which shall be on a form supplied by the Department, shall also provide that the local organization will abide by the law and rules and regulations governing administration of the Small Watersheds Flood Control Fund. In addition, the following conditions must have been met:

001.01 The local organization has agreed on a program of work;

001.02 Such program of work has been found by the Department to be feasible, practicable, and will promote the health, safety, and general welfare of the people of the state;

001.03 The Department has either participated in the planning or reviewed the plans and has approved the program of work;

001.04 The local organization has obtained a minimum of seventy-five percent of the needed number of lands, easements and rights-of-way in the project or a subwatershed prior to the use of state funds for this purpose;

001.05 The local organization has made a formal request or application to the Department for state funds for the purpose of purchasing lands, easements, and rights-of-way;

001.06 The local organization and the Department have entered into an agreement on the administration and expenditure of these state funds;

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001.07 The purchase price of the land, easement, or right-of-way has been established either by a court or by at least one registered, licensed, certified residential, or certified general real estate appraiser approved by the Department; and

001.08 The local organization has given assurance to the Department that it has obtained any water rights or other permits required under state or federal law and complied with all other applicable state laws.

002 Acceptance of Appraisals. An appraisal prepared in accordance with Section 2-1502 R.S. Supp., 2000 must accompany each formal request or application for funds. Such appraisal shall be supplied at no cost to the state. In the event the Commission or the Department is of the opinion that any appraisal is subject to question, the Department may hire an appraiser at state expense, to aid the Commission in making its decision whether or not to approve such appraisal.

003 Damage to Crops. When applicable, the local organization shall also cause an appraisal to be made of all crops which are growing on the land to be purchased. Such crop appraisal shall also be subject to Commission approval and any rule, hereinabove set forth, applicable to appraisals in general. The local organization shall give the landowner the option of (1) retaining his or her interest in the crops, in which event he or she shall be given a reasonable period of time in which to harvest the same; or (2) selling such interest along with the land.

004 Purchase Price and Total Cost of Acquisition. For all purposes of the administration of the Small Watersheds Flood Control Fund, the terms "purchase price" and "total cost of acquisition" shall, in the absence of a condemnation proceeding, mean the amount actually paid by the local organization or the amount established by an appraisal conducted in accordance with Section 2-1502, whichever is the lesser amount. In the event of a condemnation proceeding, such terms shall mean the amount of damages awarded by a court of competent jurisdiction. Payments by a local organization in excess of any purchase price so established shall be the sole responsibility of the local organization and shall have no effect upon the distribution of any proceeds subsequently realized from the sale of the land or right-of-way pursuant to Section 2-1502.

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005 Title Opinion or Title Insurance and Other Relevant Documents. Before any funds are paid out to the local organization, such organization must furnish to the Department a copy of a title opinion or title insurance policy on the property or interest to be acquired, whether through purchase or condemnation. If a title opinion is provided, such opinion shall have been drafted following a title search by an attorney who is hired by the local organization and who is admitted to practice law before the courts of Nebraska. If a title insurance policy is provided, it must be from an insurance company authorized to provide such insurance in Nebraska. The local organization shall also furnish the Department with a copy of any purchase agreement or other written document demonstrating the terms and conditions of the proposed purchase.

006 Eminent Domain Awards. If a local organization is unable to acquire an interest in real property for which an appraisal has been approved except through the power of eminent domain, approval by the Commission of any court award exceeding in amount such appraised value shall be required prior to the disbursement of any funds in excess of such appraised value. The Commission reserves the right to require that the local sponsor appeal such award if such award is deemed excessive or to allocate a percentage of the court award as provided in Section 2-007.

007 Amount Paid.

007.01 The Commission reserves the right to approve or reject payment for any purchases of any lands, easements, or rights-of-way within the hydrologic unit described in the agreement and executed in accordance with section 2-001. In addition, if based on reports from the local organization or other information available to it, the Commission has reasonable grounds for concern that a project, or any portion of it, may not be completed, it may withhold or limit assistance to the organization for the acquisition of any lands, easements or rights-of-way needed for that project. Provided, however, any Commission action to refuse to assist an organization in paying the costs of acquisition of any interest in land shall not affect the organization's right to reimbursement for costs for which it has become legally obligated prior to such Commission action. In addition, such action shall not affect the organization's right to reimbursement for the cost of land, or interests in land, acquired through condemnation actions commenced prior to the Commission action. Reasonable grounds for concern shall include, but not be limited to,

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opposition to completion of the project including current or anticipated lawsuits or the unavailability or loss of local, other state, or federal funds.

007.02 The amount which will be approved by the Commission for payment out of the Small Watersheds Flood Control Fund shall not exceed the purchase price as defined in Section 2-004. The Commission may, however, determine that an amount less than the purchase price should be paid from the Small Watersheds Flood Control Fund for any one of the following reasons:

007.02A The dollar amount of all unapproved requests for funding assistance exceeds the availability of uncommitted funds. Prior to approving any additional requests for assistance under such circumstances, the Commission will, following consultation with all affected local organizations, determine whether the available funds could be most effectively utilized.

007.02A1 By deferring assistance until funds do become available to one or more local organizations which would not encounter serious problems because of such deferral;

007.02A2 By allocating them to all applicants on the basis of a percentage of purchase price; or

007.02A3 By utilizing a combination of percentage allocation and deferral.

007.02B A court of competent jurisdiction has made an award in condemnation in excess of the value established by the appraisal approved by the Commission. Provided that, the dollar amount paid by the Commission in such cases shall not be less than the amount specified in the approved appraisal or the amount determined in accordance with section 007.02A, whatever amount is less.

007.03 If for any of the reasons previously provided, the Commission determines that an amount less than the purchase price should be allocated from the Small Watersheds Flood

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Control Fund for the acquisition of any interest in real property, the local organization shall remit to the Department a pro rata share of the proceeds of any subsequent sale of such property. The pro rata share shall be equal to the percentage of the total cost of acquisition of such property made from any state allocation from the Small Watersheds Flood Control Fund.

008 Documentation of Purchase. Within thirty days after the local organization receives payment from the state, the local organization shall forward to the Department a copy of the deed, easement, court decree (in the case of a condemnation proceeding) or any other document or material deemed by the Department to be necessary in the particular case. Such deed, easement, court decree, etc. shall be verified by the clerk of the court or the register of deeds, whichever the case may be.

009 Conservation Plan. Within one hundred twenty days after the title or titles, as applicable, have been acquired, the local organization shall prepare a detailed Conservation Plan, a copy of which shall be sent to the Department to be made a part of the files.

010 Annual Inspection. At least once each year, a Department staff member and a representative of the appropriate local organization shall inspect each parcel of land for which fee title has been acquired and shall compare it to the respective Conservation Plan. A report of the staff member's findings along with any suggestions or recommendations to the local organization shall be filed with the Department and the local organization.

011 Annual Financial Statement. Each local organization holding fee title to lands purchased with Small Watersheds Flood Control Funds shall submit a complete financial statement to the Department by August 1 of each year. Such required statement shall set forth the income received from such lands and also the expenses incurred in the maintenance, improvement, management, etc. of such lands. This financial statement is required in addition to any other statement or accounting required to be submitted by the local organization by law or otherwise.

012 Annual Lease. When appropriate, a Department staff member shall work with a local organization in preparing the annual lease for such property as was acquired, in whole or in part, with Small Watersheds Flood Control Funds. Unless otherwise approved by the Director, leases

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shall commence on the first day of March and terminate on the last day of February of the year next ensuing. No lease shall be deemed effective unless and until it has been approved in writing by the Director.

013 Use of Lease Revenues. In addition to the uses for rental and lease revenues as set forth in Section 2-1502 R.S. Supp., 2000, such revenues may be used for reasonable and necessary personnel costs and expenses incurred by the local organization in the management of such lands. As the Department is responsible for overseeing the management of such lands, the local organization shall consult with and keep the Department informed of all matters relevant to such management.

014 Disposition of Property. It shall be the duty of the local organization, within ten years from the purchase date of lands and rights-of-way, to

014.01 grant or retain, for public purposes, as provided for in Section 2-1502 R.S. Supp., 2000, and as provided by these regulations, or

014.02 sell at public auction

all lands and rights-of-way purchased wholly or partially from the Fund.

015 Sale Schedule. The Department shall maintain a schedule of the proposed dates of sale for lands purchased in whole or in part with funds from the Small Watersheds Flood Control Fund. On or about July 1 of each calendar year, the Commission shall review this schedule, consult with local sponsors holding title to such lands, make any additions or revisions that are deemed necessary, and adopt a sale schedule for the next ensuing fiscal year.

016 Notifying Public Bodies of Proposed Sales. For the purpose of Section 2-1502, R.S. Supp., 2000, the Department shall on or about September 1 of each year notify the Governor of the State and the appropriate public districts, cities, counties, political subdivisions and agencies of the State or of the Federal government of the land(s) scheduled to be sold in at least the next ensuing fiscal year. Such notification shall indicate the proposed date(s) of sale and shall summarize the process by which public entities may acquire such lands for public purposes.

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017 Notice of Intent to Acquire or Retain. Any public district, city, county, political subdivision, or agency of the State or of the Federal government which is interested in acquiring or retaining for public purposes land(s) purchased in whole or in part with Small Watersheds Flood Control Funds shall notify the Department of such interest by January 1 of the year prior to the fiscal year in which the property is scheduled to be sold.

018 Appraisal and Notification to Public Bodies of Appraised Fair Market Value. Whenever a public entity indicates in accordance with Section 2-017 that it is interested in acquiring or retaining lands purchased in whole or in part with Small Watersheds Flood Control Funds, the Department shall, by June 1 of the fiscal year prior to the year in which the property is scheduled to be sold, have an appraisal prepared for such lands in accordance with section 2-1502 R.S. Supp., 2000, as amended, and notify such public entity of the appraised fair market value. Such notification shall indicate the proposed date of sale, the appraised fair market value, and the requirements for purchase or retention by public bodies in accordance with Section 2-020.

019 Acquisition by Public Bodies. Any public district, city, county, political subdivision or agency of the State or of the Federal government which desires to acquire or retain for public purposes land(s) purchased in whole or in part with Small Watersheds Flood Control Funds shall notify the Department of such desire by September 10 of the fiscal year in which the property is scheduled to be sold. A report explaining the public purpose to be made of such property shall be simultaneously submitted to the Department. Such report shall include a description of the public uses to be made of such property, a description of and timetable for improvements, if any, and a discussion of management techniques to be utilized to serve the proposed public purpose. The report shall also document the public entity's legal and financial abilities to acquire or retain such property and to implement the proposed public purpose. If retention by the local organization of such land for public use is approved pursuant to the procedures hereinafter provided, the Department, within 90 days of approval, shall be reimbursed in the amount of the pro rata share of the appraised fair market value that is equal to the percentage of the total cost of acquisition paid by the Fund. If acquisition of such lands for public use by a public body other than the local organization holding title to the property is approved, the Department shall be reimbursed in the amount of the prorated share of the appraised fair market value that is equal to the percentage of the total cost of acquisition paid from the Fund and the local organization

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transferring the title to the acquiring public body shall be reimbursed in the amount of any remaining portion of the appraised fair market value, both reimbursements to occur within 90 days of such approval or approvals. All such proceeds to the Department shall be remitted to the State Treasurer for credit to the Fund.

020 Criteria for Acquisition by Public Bodies.

020.01 Whenever a public entity indicates in accordance with Section 2-019 that it desires to acquire or retain lands purchased in whole or in part with Small Watersheds Flood Control Funds, the Commission shall, no later than November 1 of the fiscal year in which the property is scheduled to be sold, determine whether the property should be so acquired or retained or whether it should be offered for sale at public auction in accordance with Sections 024 through 029. In making such determination, the Commission shall consider the following factors:

020.01A The nature of the public purpose for which acquisition or retention is requested and the demand for such purpose in the area to be served thereby.

020.01B The nature of probable alternative uses for such property and their relative importance in the community and the state.

020.01C The adequacy of the property to satisfy the proposed public purpose in comparison to its adequacy to satisfy probable alternative uses.

020.01D The relative economic impacts which could be anticipated in the community because of the proposed public purpose and probable alternative uses.

020.01E The legal and financial abilities of the public body to acquire or retain the property and to implement the proposed public purpose.

020.01F The compatibility of the proposed public purpose with operation and maintenance of the property for the purpose for which it was originally acquired and its consistency with accepted conservation principles.

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020.02 Prior to determining whether the property should be acquired or retained by the public body or offered for sale at public auction, the Commission shall consult with the local organization holding title thereto and other interested organizations and individuals. If the amount invested in such property from the Small Watersheds Flood Control Fund constituted the full purchase price, the decision of the Commission regarding the purchase or retention of such property by the public body shall be binding on the local organization. If, however, a portion of the original purchase price was contributed by the local organization, such local organization shall have independent authority to disapprove the purchase of such property by another public body, and any such disapproval shall result in the property being offered for sale at public auction as scheduled.

021 Desire to Acquire by Two or More Public Entities. In the event that two or more public entities indicate a desire to purchase or retain the same land or right-of-way, the Commission shall evaluate each separately in accordance with Section 2-020. If following such evaluation, more than one of the proposed purchases by public bodies are deemed preferable to offering the property for sale at public auction, the Commission shall evaluate such proposals on their relative merits to determine which proposal would best serve the public interest.

022 Acquisition or Retention of Less Than Full Parcel.

022.01 The acquisition or retention by public bodies of a parcel of land smaller in size than the parcel scheduled to be offered for sale will be approved only if such purchase or retention would satisfy the criteria of Section 2-020 and if

022.01A It would have no anticipated adverse effect on the marketability of the remainder of the full parcel, and

022.01B No additional public purpose would be served by acquisition or retention by such public body of the remainder of the full parcel.

022.02 The local organization shall be responsible for any surveys which are deemed necessary because of such acquisition or retention or for providing proper identification

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of such parcel prior to the sale at auction of the remaining portion of the full parcel. The public body acquiring such parcel shall reimburse the local organization for all actual and necessary costs incurred as a result of such survey and identification.

023 Agreement to Retain in Public Use. As a condition to acquiring or retaining for public purposes any lands acquired in whole or in part with funds from the Small Watersheds Flood Control Fund, the acquiring or retaining public body shall enter into an agreement with the Department. Such agreement, which shall remain in effect and be controlling as to the public body's utilization and disposition of the property for a period not to exceed 25 years, shall specify the following terms and conditions:

023.01 The property shall, unless otherwise approved by the Commission, be retained by the public body for the public purposes specified in the report submitted pursuant to Section 2-019.

023.02 No use shall be made of the property which is incompatible with the purposes for which it was originally acquired in whole or in part with funds from the Small Watersheds Flood Control Fund.

023.03 Such public body shall not utilize the property or any part thereof for income production unless such income results from activities necessary to the maintenance of the property or to serving the public purposes for which the property was acquired or retained.

023.04 Any other terms or conditions which the Commission deems appropriate. A copy of such agreement shall be filed by the Department in the register of deeds office of the county in which such land or right-of-way is located.

024 Public Auction. When any lands involving these funds are to be sold, whether those lands are to be sold with or without improvements, such sale, unless governed by Sections 2-019 through 2-023 shall be by public auction. Prior to such sale the Department shall:

024.01 Cause an appraisal to be made of such land,

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024.02 Retain the services of a public auctioneer,

024.03 Cause legal notice thereof to be published pursuant to Section 2-027.

025 Public Auctioneers. In retaining the services of a public auctioneer for the sale at auction of any lands purchased in whole or in part with these funds, the Department shall, not less than 60 days prior to the date established for the sale of any such lands, advertise for bids for the services of such public auctioneer. Selection of the auctioneer from those submitting bids shall be the responsibility of the Commission.

026 Sale of Improvements. When any improvements on lands involving these funds are to be sold separately from the land, such sale may be conducted by sealed bids or by public auction. Prior to such sale of improvements, the Department shall cause legal notice thereof to be published pursuant to Section 2-027.

027 Notice of Sales. Notice of all sales governed by these rules shall be published in a legal newspaper of general circulation in the county in which such land(s) and/or improvement(s) is (are) located and also in a legal newspaper with statewide circulation. Such notices shall be published once each week for three consecutive weeks, the last publication of which shall not be published less than seven days prior to the date set for the auction or for the opening of sealed bids. Such notices shall list and describe the land(s) and/or improvement(s) to be sold and the easements and/or rights-of-way, if any, which will be retained by the local organization, and shall state the date, time and place for the opening of the sealed bids. If appropriate, such notice shall state the address where sealed bids are to be mailed or delivered, and the deadline for receipt of the same. The terms of payment and any other information that in the particular case would be required to impart adequate notice to all interested parties shall also be provided.

028 Sealed Bids. In order to be eligible for consideration, sealed bids for improvements shall state which improvement(s) the bid is for and shall be accompanied by a certified check or bank draft made out in the full amount of the bid. If any sealed bid is not accepted, the deposit shall be returned to the bidder within thirty days after the day on which the bids are opened. All sealed bids shall be mailed or delivered to the Department. Such bids must be received at least three

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days prior to the date set for their opening. All sealed bids shall remain sealed until the time set for their opening, at which time the two highest bids shall be read.

029 Conduct of Auction. The public auction for each tract of land to be sold shall remain open for receipt of bids for a minimum of one hour, but may be closed at the end of such time period if there are no reasonable grounds to believe that a higher bid would be received were the auction held open for a longer period of time.

030 Earnest Money Deposit. The highest bid for a tract of land received at public auction shall, in order to be eligible for consideration by the Commission, be accompanied by a check, bank draft, or cash in an amount of not less than twenty percent of the bid.

031 Purchase Agreement. The highest bidder for the purchase of any of the lands governed by these rules shall, after being designated the highest bidder, enter into a purchase agreement with the local organization stating that the balance due shall be paid within thirty days of notification by the local organization of the acceptance of the bid by the Commission. The purchase agreement shall describe all applicable terms for the sale, including all terms specified by the Commission pursuant to Section 2-1503.03 R.S. Supp., 2000. Failure to comply with this rule or with the conditions of the purchase agreement shall result in the forfeiture of said bidder's deposit.

032 Approval or Rejection of Bids. The Commission reserves the right to refuse any and/or all bids. At the next regularly scheduled Commission meeting following the closing of all bidding, the Commission shall review the highest bid, considering, if applicable, such factors as the original purchase price, any increases or decreases in land valuation, the present appraised fair market value, and any other criteria which may reflect the adequacy of the bid. If a portion of the original purchase price was contributed by the local organization, such local organization shall be consulted regarding the adequacy of the bid prior to approving or rejecting the same. In the event the Commission approves a bid, it shall direct the local organization to proceed with the sale. Upon receiving full payment, the local organization shall convey title to the purchaser, reserving as applicable, such interests in the land as are necessary for the local organization to carry out its ongoing responsibilities relative to management of the land or to any improvements constructed thereon or necessary to effect any terms for the sale specified by the Commission

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pursuant to Section 2-1503.03 R.S. Supp., 2000. In the event that the Commission determines that a bid is inadequate, the bidder's deposit shall be returned within ten days after such determination, the land shall be leased for an additional year, and the land shall be rescheduled for sale according to the rules hereinabove set forth.

033 Sale Expenses. Any expenses incurred by the Department or the local organization in conducting this sale shall be subtracted from the sale price prior to a pro rata distribution of such sale proceeds between the local sponsor and the Department in accordance with Section 2-007.03.