

NEBRASKA ADMINISTRATIVE CODE

TITLE 25 NEBRASKA ADMINISTRATIVE CODE CHAPTER 4

NEBRASKA DEPARTMENT OF AGRICULTURE

BUFFER STRIP REGULATIONS

May 2008, Amendment

NEBRASKA ADMINISTRATIVE CODE

TITLE 25 - DEPARTMENT OF AGRICULTURE, PLANT INDUSTRY DIVISION

CHAPTER 4 - BUFFER STRIP REGULATIONS

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CHAPTER 4 - BUFFER STRIP REGULATIONS

001 Statement of Purpose. The purpose of these regulations is to aid in administering the Buffer Strip Act, Neb. Rev. Stat. §§2-5101 to 2-5111.

002 Administration. The Buffer Strip Act and these regulations shall be administered by the Department of Agriculture, Bureau of Plant Industry, located in the State Office Building, Fourth Floor, 301 Centennial Mall South, Lincoln, Nebraska. The mailing address is P.O. Box 94756, Lincoln, Nebraska 68509-4756. The telephone number is (402) 471-2394. The Department shall make available to the public, upon request, a map showing the location of buffer strips in each watershed.

003 Definitions. In addition to the terms listed below, the definition of terms found in the Buffer Strip Act shall apply to such terms when found in these regulations:

003.01 ACT shall mean the Buffer Strip Act.

003.02 ADMINISTRATOR shall mean the Nebraska Department of Agriculture.

003.03 CREP shall mean the Conservation Reserve Enhancement Program as established under 16 U.S.C. 3801 et. seq.

003.04 CRP shall mean the Conservation Reserve Program as established under 16 U.S.C. 3801 et. seq.

003.05 CRP SOIL RENTAL RATE shall mean the soil rental rates established by the Farm Service Agency.

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003.06 NRD shall mean the Natural Resources District which covers the area where the buffer strip application is located.

003.07 PERENNIAL STREAM shall mean solid blue line drains on USGS quadrangle maps.

003.08 PERMANENT BODY OF WATER shall mean any surface water body with a permanent pool of water eight out of ten years.

003.09 PRIORITY WATERSHED shall mean an eight-digit hydrologic unit code watershed identified as a Category 1 Watershed in the Nebraska Unified Watershed Assessment, which by this reference is made a part of these regulations.

003.10 SEASONAL STREAM shall mean an intermittent stream that flows only during a certain climatic season excluding gullies or sod waterways. Seasonal streams may be based on any of the following criteria:

003.10A Streams with perennial flow that are not solid blue lines on United States Geological Survey (USGS) quadrangle maps;

003.10B Three dot blue lines on USGS quadrangle maps. If the stream has been moved, the present location is the eligible site. If the channel or flow area is no longer present because of manipulation such as land leveling or filling, this criterion cannot be used; or,

003.10C Areas of concentrated flow with a bed and bank and with either a scoured bottom or hydrophytic vegetation.

003.11 WETLANDS shall mean areas capable of reducing damages by sedimentation and associated pollutants that meet one of the following categories:

003.11A Permanently Flooded - water covers the land surface throughout the year in all years;

003.11B Intermittently Exposed - surface water is present throughout the year except in years of extreme drought;

003.11C Semipermanently Flooded - surface water is present throughout the growing season in most years; or,

003.11D Seasonally Flooded - surface water is present for extended periods of not less than 21 consecutive calendar days especially early in the growing season, but is absent by the end of the growing season in most years.

004 Technical Requirements.

004.01 All buffer strips shall conform to the requirements for filter strips or riparian forest buffers as set forth in Section IV Natural Resources Conservation Service, Field Office Technical Guide Conservation Practice Standards, *Filter Strip*, Code 393, or *Riparian Forest Buffer*, Code 391, which by this reference are hereby adopted as part of these regulations. Such standards shall establish the criteria for appropriate location of the buffer strip, width of the buffer strip, species of grass, forbs, trees and shrubs, seeding

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rates, plant spacing, other establishment criteria, and the operation and maintenance of buffer strips, which by this reference are made a part of these regulations.

004.02 Land eligible for enrollment as a buffer strip shall include all cropland adjacent to perennial streams, seasonal streams, wetlands, or permanent bodies of water. All soil types and classifications shall be appropriate for protection by buffer strips.

004.03 Existing filter strips and riparian forest buffers meeting the technical requirements of 004.01 are eligible for enrollment as a buffer strip except that acres for which a buffer strip, CRP or CREP contract was canceled prior to its expiration, must wait 2 years (24 months) before becoming eligible for the program.

004.04 To remain eligible, land adjacent to the buffer strip must remain cropland.

004.05 The minimum size per application for a buffer strip is one (1) acre and the maximum width of any buffer strip shall be one hundred (100) feet unless NRCS guidelines set forth in section 004.01 above are greater.

005 Application Process.

005.01 An application to create a buffer strip may be submitted to the NRD where the land is located at any time using the form prescribed by the Department.

005.02 All applications to create a buffer strip shall be reviewed according to the Buffer Strip Act and section 006 of these regulations.

006 Review of Applications.

006.01 Applications can be received by the NRD any time.

006.02 All applications submitted to the NRD shall be reviewed by the NRD to determine compliance with these regulations.

006.03 Applications approved by the NRD shall be forwarded to the Department for review within 30 days of receipt of the completed application.

006.04 Following a review of all applications, the Department shall determine if sufficient funds exist to make payments on all applications determined to be in compliance with the Act and the regulations.

006.05 If sufficient funds exist to make payment for all applications determined to be in compliance with the Act and the regulations, the Department shall approve the applications and forward them back to the NRD within 30 days of receipt at the Department.

006.06 If sufficient funds do not exist to fund all applications determined to be in compliance with the Act and the regulations, the Department shall prioritize the applications. The prioritization shall be made by awarding points for that percentage of the buffer strip that meets the following stated criteria:

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006.06A A buffer strip immediately adjacent to a perennial stream shall be awarded nine points.

006.06B A buffer strip immediately adjacent to an seasonal stream or a permanent water body of at least five acres shall be awarded six points.

006.06C A buffer strip immediately adjacent to a wetland shall be awarded five points.

006.06D A buffer strip immediately adjacent to a permanent water body smaller than five acres shall be awarded three points.

006.06E A buffer strip located in a high priority Category 1 watershed shall be awarded three points.

006.06F A buffer strip located in a medium priority Category 1 watershed shall be awarded two points.

006.06G A buffer strip located in a low priority Category 1 watershed shall be awarded one point.

006.06H A buffer strip for which the applicant has not received payment under the Act during the preceding five years shall be awarded one point.

006.07 Using the prioritization under section 006.06, if sufficient funds are not available to fund those applications with identical points, the Department shall first fund those applications that create buffer strips at a lower cost per acre.

007 Buffer Strip Payments. Payments for contracts entered into on or after July 18, 2008, shall be made as follows:

007.01 Dryland Cropland. Individual payments to persons under the Buffer Strip Act shall be based on the county CRP soil rental rate for the three predominate soil types where the buffer strip is located.

007.01A On dryland cropland not enrolled in the CRP, CREP or any other governmentally funded program, the payment rate per acre shall equal 120% of the CRP soil rental plus \$5, minus any payment from any other source. In no case may the payment from all sources exceed \$250 per acre.

007.01B On dryland cropland that is, or will be, enrolled in the CRP, CREP, or any other governmentally funded program, the payment rate shall equal 20% of the CRP soil rental rate. In no case may the payment from all sources exceed \$250 per acre.

007.02 Irrigated Cropland.

007.02A On irrigated cropland, that is, or will be, enrolled in the CRP, CREP, or any other governmentally funded program, the payment rate per acre shall be \$250, minus payments received from all other sources. In no case may the payment from all sources exceed \$250 per acre.

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007.02B On irrigated cropland not enrolled in the CRP, CREP, or any other governmentally funded program, the payment rate per acre shall be \$225 minus payments from any other source.

008 Contractual Requirements Between NRD and Applicant. Following the acceptance of any application for buffer strip reimbursement, the applicant shall enter into a contractual agreement with the local NRD. Such contract shall, at a minimum, include:

008.01 The adoption of the buffer strip application as part of the agreement.

008.02 The mailing address or financial institution necessary to make payments to the applicant under the agreement.

008.03 Establishment requirements, grazing, haying and operation and maintenance requirements according to the technical requirements set forth in section 004 of these regulations.

008.04 A statement indicating an affirmative duty on the applicant to notify the NRD if the land enrolled in the buffer strip also becomes enrolled in the CRP or any other program, or if the cropland adjacent to the buffer strip is enrolled into the CRP, CREP, or otherwise planted to grass or other vegetation, causing the adjacent field to be considered as something other than cropland.

008.05 The amount of the payment and the dates that it will be paid.

008.06 A provision indicating that throughout the term of the agreement, the applicant shall maintain the buffer strip in accordance with the Noxious Weed Control Act, the Buffer Strip Act and the rules and regulations adopted and promulgated under it, and the provisions of the agreement.

008.07 A provision indicating that early cancellation of all, or a portion, of the contract may warrant a penalty not to exceed the total of all NRD payments received under the contract to date, plus 25% of one year's payment, for the portion of the contract to be canceled.

008.08 A provision indicating that if the applicant fails to plant or maintain the buffer strip or is otherwise in violation of the agreement, all future payments under the agreement may be forfeited, the agreement may be canceled, and the applicant may be required to repay any payments previously made.

008.09 A provision indicating that if sufficient funds are no longer available under the program, the local NRD may, at its option, terminate the agreement and all future payments.

008.10 The applicant's signature and a certification that the information provided on the application and in the agreement is true and correct and that the terms and conditions of the agreement, including the penalty for violating the terms, are understood.

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009 Compliance. The Department and the local NRDs shall both conduct inspections to insure compliance with the terms of the agreement. All buffer strips shall be inspected by the local NRDs at least once during the first three years of an agreement, and at least once during the remaining term of the agreement. The Department shall annually conduct spot checks for compliance with the Act, the regulations, and the agreements. Any buffer strip determined by the Department to be in noncompliance shall be referred to the NRD for action.

010 Administrative Costs. The funds from the Buffer Strip Incentive Fund that are allocated for administrative costs shall be divided annually between the Department and the NRDs. The funds allocated to the NRDs shall be distributed to each NRD according to the number of inspections performed pursuant to section 009 of these regulations, each year. NRDs shall be reimbursed at a rate of up to \$40 per inspection so long as statewide NRD administrative costs shall not exceed 7.5% of the total annual proceeds credited to the fund. In the event that the \$40 inspection payment rate would cause the total to exceed the 7.5% limit for a given year, the inspection rate would be lowered accordingly, for that year.

011 Publications Adopted.

011.01 Natural Resources Conservation Service, Field Office Technical Guide Conservation Practice Standard, *Filter Strip*, Code 393, Section IV.

011.02 Natural Resources Conservation Service, Field Office Technical Guide Conservation Practice Standard, *Riparian Forest Buffer*, Code 391,-Section IV.

011.03 Nebraska Unified Watershed Assessment dated October 1, 1998, as developed by the Watershed and Natural Resources Assessment Subcommittee of the USDA-NRCS Nebraska State Technical Committee.

012 Annotation. Neb. Rev. Stat. §§2-5101 to 2-5111 (Cum. Supp. 2006, LB 790 of 2008).

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