

implementing the plan will be determined at the time the plan is prepared.

(4) The project areas selected for detailed analysis are to be representative of agricultural and silvicultural nonpoint source pollution problems, categories of agriculture and silvicultural nonpoint source pollutants, agricultural enterprises, and BMPs used in the RCWP.

(5) Preference in the selection of project areas for comprehensive evaluation is to be given to those project areas for which long-term baseline information exists on land use, hydrologic data, and water quality.

(6) Monitoring and evaluation of selected project areas is to begin sufficiently in advance of the installation of BMPs to document, in a statistically satisfactory manner, existing land-use practices and baseline water-quality problems.

(7) The water quality monitoring and evaluation plan will provide sufficient basic information to adequately describe the land use, hydrologic water quality relationship. As a minimum, the plan will contain the following components:

- (i) Chemical and physical water quality monitoring,
- (ii) Biological monitoring,
- (iii) Appropriate hydrologic data,
- (iv) Soils properties and characteristics, topographic information,
- (v) Land use and farm inventory.

(b) *Program and project evaluation.* (1) There will be a continuing evaluation of the Rural Clean Water Program to measure its effectiveness and for each project for which cost-sharing funds are provided.

(2) Program and project evaluations will be conducted under the direction of the Assistant Secretary for Conservation, Research and Education, USDA, the Director of Economics, Policy Analysis, and Budget, USDA; and the Assistant Administrator for Water and Waste Management, EPA; or their representatives working through NRCWCC.

(3) Evaluative reports for the program and each project area will be submitted annually to the Secretary of Agriculture and the Administrator, EPA.

(c) *Funding.* (1) Research oriented activities will be from sources other than RCWP.

(2) Funding for program and project monitoring and evaluation will be provided through RCWP and other authorizations.

PART 635—EQUITABLE RELIEF FROM INELIGIBILITY

Sec.

- 635.1 Definitions and abbreviations.
- 635.2 Applicability.
- 635.3 Reliance on incorrect actions or information.
- 635.4 Failure to fully comply.
- 635.5 Forms of relief.
- 635.6 Equitable relief by State Conservationists.
- 635.7 Procedures for granting equitable relief.

AUTHORITY: 7 U.S.C. 7996.

SOURCE: 69 FR 56347, Sept. 21, 2004, unless otherwise noted.

§ 635.1 Definitions and abbreviations.

The following terms apply to this part:

Covered program means a natural resource conservation program specified in §635.3.

Chief means the Chief of the Natural Resources Conservation Service or the person delegated authority to act for the Chief.

FSA means the Farm Service Agency of the United States Department of Agriculture.

NRCS means the Natural Resources Conservation Service of the United States Department of Agriculture.

OGC means the Office of the General Counsel of the United States Department of Agriculture.

Secretary means the Secretary of the U.S. Department of Agriculture.

State Conservationist means the NRCS employee authorized to direct and supervise NRCS activities in a State, the Caribbean Area, or the Pacific Basin area, or the State Conservationist's designee.

§ 635.2

7 CFR Ch. VI (1–1–10 Edition)

§ 635.2 Applicability.

(a) This part is applicable to all covered conservation programs administered by the Natural Resources Conservation Service, except for the Highly Erodible Land and Wetland Conservation provisions of Title XII, subtitles B and C of the Food Security Act of 1985, as amended, (16 U.S.C. 3811 et seq.). Administration of this part shall be under the supervision of the Chief, except that such authority shall not limit the exercise of authority by State Conservationists of the Natural Resources Conservation Service provided in § 635.6.

(b) The equitable relief available under this part does not apply where the action for which relief is requested occurred before May 13, 2002. In such cases, authority that was effective prior to May 13, 2002, shall be applied.

(c) This part does not apply to a conservation program administered by the Farm Service Agency of the United States Department of Agriculture.

§ 635.3 Reliance on incorrect actions or information.

(a) The Chief, or designee, may grant relief by extending benefits or payments in accordance with § 635.5 when any participant that has been determined to be not in compliance with the requirements of a covered NRCS program, and therefore ineligible for a loan, payment, or other benefit under the covered program, if the participant, acting in good faith, relied upon the action or advice of an NRCS employee or representative of the United States Department of Agriculture, to the detriment of the participant.

(b) This section applies only to a participant who relied upon the action of, or information provided by, an NRCS employee, or representative of USDA, and the participant acted, or failed to act, as a result of that action or information. This part does not apply to cases where the participant had sufficient reason to know that the action or information upon which they relied was improper or erroneous or where the participant acted in reliance on their own misunderstanding or misinterpretation of program provisions, notices or information.

§ 635.4 Failure to fully comply.

(a) When a participant fails to fully comply with the terms and conditions of a covered program, the Chief, or designee, may grant relief in accordance with § 635.5 if the participant made a good faith effort to comply fully with the requirements of the covered program.

(b) This section only applies to participants who are determined by the Chief to have made a good faith effort to comply fully with the terms and conditions of the program and rendered substantial performance.

(c) In determining whether a participant acted in good faith and rendered substantial performance under paragraph (b) of this section, the Chief, or designee, shall consider such factors as whether—

(1) Performance of the primary conservation program requirements were completed; or

(2) The actions of the participant resulted in minimal damages or failure that were minor in nature.

§ 635.5 Forms of relief.

(a) The Chief, or designee, may authorize a participant in a covered program to:

(1) Retain loans, payments, or other benefits received under the covered program;

(2) Continue to receive loans, payments, and other benefits under the covered program;

(3) Continue to participate, in whole or in part, under any contract executed under the covered program;

(4) In the case of a conservation program, re-enroll all or part of the land covered by the program; and

(5) Receive such other equitable relief as determined to be appropriate.

(b) As a condition of receiving relief under this part, the participant may be required to remedy their failure to meet the program requirement or mitigate its affects.

§ 635.6 Equitable relief by State Conservationists.

(a) General nature of the authority. Notwithstanding provisions in this part providing supervision and relief authority to other officials, the State

Conservationist, without further review by other officials (other than the Secretary), may grant relief as set forth in § 635.5 to a participant under the provisions of §§ 635.3 and 635.4 so long as:

(1) The program matter with respect to which the relief is sought is a program matter in a covered program which is operated within the State under the control of the State Conservationist;

(2) The total amount of relief which will be provided to the participant (that is, to the individual or entity that applies for the relief) under this authority for errors during the fiscal year is less than \$20,000 (included in that calculation, any loan amount or other benefit of any kind payable for the fiscal year);

(3) The total amount of such relief which has been previously provided to the participant using this authority for errors in a fiscal year, as calculated in paragraph (a)(2) of this section, is not more than \$5,000;

(4) The total amount of loans, payments, and benefits of any kind for which relief is provided to similarly situated participants by a State Conservationist for errors for a fiscal year under the authority provided in this section, as calculated in paragraph (a)(2), is not more than \$1,000,000.

(b) Additional limits on the authority. The authority provided under this section does not extend to the administration of:

(1) Payment limitations under 7 CFR part 1400;

(2) Payment limitations under a conservation program administered by the Secretary; or

(3) The highly erodible land and wetland conservation requirements under subtitles B or C of Title XII of the Food Security Act of 1985 (16 U.S.C. 3811 *et seq.*).

(c) Relief shall only be made under this part after consultation with, and the approval of, the Office of the General Counsel.

(d) Secretary's reversal authority. A decision made under this part by the State Conservationist may be reversed only by the Secretary, who may not delegate that authority.

(e) Relation to other authorities. The authority provided under this section is in addition to any other applicable authority that may allow relief.

§ 635.7 Procedures for granting equitable relief.

(a) Application for equitable relief by covered program participants. For the purposes of this part, the following conservation programs administered by NRCS are identified as "covered programs":

(1) Agricultural Management Assistance (AMA);

(2) Conservation Security Program (CSP);

(3) Emergency Watershed Protection, Floodplain Easement Component (EWP-FPE);

(4) Environmental Quality Incentives Program (EQIP);

(5) Farm and Ranch Lands Protection Program (FRPP);

(6) Grassland Reserve Program (GRP);

(7) Resource Conservation and Development Program (RC&D);

(8) Water Bank Program (WBP);

(9) Watershed Protection and Flood Prevention Program, (WPFPP) (long-term contracts only);

(10) Wetlands Reserve Program (WRP);

(11) Wildlife Habitat Incentives Program (WHIP);

(12) Any other conservation program administered by NRCS which subsequently incorporates these procedures within the program regulations or policies.

(b) Participants may request equitable relief from the Chief or the State Conservationist with respect to:

(1) Reliance on the actions or advice of an authorized NRCS representative; or

(2) Failure to fully comply with the program requirements but made a good faith effort to comply.

(c) Only a participant directly affected by the non-compliance with the covered program requirements may seek equitable relief under § 635.6.

(d) Requests for equitable relief must be made in writing, no later than 30 calendar days from the date of receipt of the notification of non-compliance

with the requirements of the covered conservation program.

(e) Requests for equitable relief shall include the following information:

(1) The reason why the participant was unable to comply with the requirements of the conservation program;

(2) Details regarding how much of the required action had been completed;

(3) Why the participant did not have sufficient reason to know that the action or information relied upon was improper or erroneous;

(4) Whether the participant did not act in reliance on their own misunderstanding or misinterpretation of the conservation program provisions, notices, or information; and

(5) Any other pertinent facts or supporting documentation.

PART 636—WILDLIFE HABITAT INCENTIVES PROGRAM

Sec.

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- 636.2 Administration.
- 636.3 Definitions.
- 636.4 Program requirements.
- 636.5 National priorities.
- 636.6 Establishing priority for enrollment in WHIP.
- 636.7 Cost-share payments.
- 636.8 The WHIP Plan of Operation (WPO).
- 636.9 Cost-share agreements.
- 636.10 Modifications.
- 636.11 Transfer of interest in a cost-share agreement.
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- 636.16 Appeals.
- 636.17 Compliance with regulatory measures.
- 636.18 Technical services provided by qualified, non-USDA personnel.
- 636.19 Access to operating unit.
- 636.20 Equitable relief.
- 636.21 Environmental Services Credits for Conservation Improvements.

AUTHORITY: 16 U.S.C. 3839bb-1.

SOURCE: 74 FR 2794, Jan. 16, 2009, unless otherwise noted.

§ 636.1 Applicability.

(a) The purpose of the Wildlife Habitat Incentives Program (WHIP) is to help participants develop fish and wildlife habitat on private agricultural

land, nonindustrial private forest land, and Indian land.

(b) The regulations in this part set forth the requirements for the WHIP.

(c) The Chief, Natural Resources Conservation Service (NRCS) may implement WHIP in any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, and the Commonwealth of the Northern Mariana Islands.

§ 636.2 Administration.

(a) The regulations in this part will be administered under the general supervision and direction of the Chief, NRCS. The funds, facilities, and authorities of the Commodity Credit Corporation (CCC) are available to NRCS to carry out WHIP. Accordingly, where NRCS is mentioned in this part, it also refers to the CCC's funds, facilities, and authorities, where applicable.

(b) The State Conservationist will consult with the State Technical Committee in the implementation of the program and in establishing program direction for WHIP in the applicable State. The State Conservationist has the authority to accept or reject the State Technical Committee recommendation; however, the State Conservationist will give strong consideration to the State Technical Committee's recommendation.

(c) NRCS may enter into agreements with Federal and State agencies, Indian tribes, conservation districts, local units of government, public and private organizations, and individuals to assist with program implementation, including the provision of technical assistance. NRCS may make payments pursuant to said agreements for program implementation and for other goals consistent with the program provided for in this part.

(d) NRCS will provide the public with notice of opportunities to apply for participation in the program.

(e) No delegation in this part to lower organizational levels shall preclude the Chief of NRCS, or a designee, from determining any issues arising under this part or from reversing or modifying any determination made under this part.