

**Agricultural Research Service, USDA**

**§ 550.62**

Federal funds or received from the Federal Government in accordance with §§ 550.36 through 550.42.

(g) In the event a final audit has not been performed prior to the closeout of an award, the REE Agency shall retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

**§ 550.61 Subsequent adjustments and continuing responsibilities.**

The closeout of an award does not affect any of the following:

(a) The right of the REE Agency to disallow costs and recover funds on the basis of a later audit or other review.

(b) The obligation of the Cooperator to return any funds due as a result of later refunds, corrections, or other transactions.

(c) Audit requirements in § 550.24.

(d) Property management requirements in §§ 550.36 through 550.42.

(e) Records retention as required in § 550.56.

**§ 550.62 Collection of amounts due.**

(a) Any funds paid to a Cooperator in excess of the amount to which the Cooperator is finally determined to be entitled under the terms and conditions of the award constitute a debt to the Federal Government. If not paid within a reasonable period after the demand for payment, the REE Agency may in accordance with 7 CFR part 3, reduce the debt by—

(1) Making an administrative offset against other requests for reimbursements, or

(2) Withholding advance payments otherwise due to the Cooperator, or

(3) Taking other action permitted by statute.

(b) Except as otherwise provided by law, the REE Agency shall charge interest on an overdue debt in accordance with 31 CFR part 900, "Federal Claims Collection Standards."



# CHAPTER VI—NATURAL RESOURCES CONSERVATION SERVICE, DEPARTMENT OF AGRICULTURE

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EDITORIAL NOTE: Nomenclature changes to chapter VI appear at 60 FR 28514, June 1, 1995.

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## SUBCHAPTER A—GENERAL

### PART 600—ORGANIZATION

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AUTHORITY: 7 U.S.C. 6962.

SOURCE: 65 FR 14781, Mar. 20, 2000, unless otherwise noted.

#### § 600.1 General.

(a) The Natural Resources Conservation Service (NRCS) was authorized by the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103-354, 7 U.S.C. 6901 note) and established by Secretary's Memorandum 1010-1 (2.b.6), *Reorganization of the Department of Agriculture*, to provide national leadership in the conservation, development, and productive use of the Nation's natural resources. Such leadership encompasses the conservation of soil, water, air, plant, and animal resources with consideration of the many human (economic and sociological) interactions. NRCS is the Federal agency that works with landowners on private lands to help them conserve their natural resources. NRCS employees are highly skilled in many scientific and technical specialties, including soil science, soil conservation, agronomy, biology, agroecology, range conservation, forestry, engineering, geology, hydrology, wetlands science, cultural resources, and economics. NRCS was formerly the Soil Conservation Service (SCS) which was established by the Soil Conservation Act of 1935 (Pub. L. 74-46, 49 Stat. 163 (16 U.S.C. 590 (a-f))). NRCS has responsibility for three major areas:

- (1) Soil and water conservation;
- (2) Natural resource surveys including soil surveys, resources inventory, snow surveys, and water supply forecasting; and

(3) Community resource protection and management including watershed projects, river basin studies and investigations, resource conservation and development areas, land evaluation and site assessment, and emergency watershed protection. In addition, NRCS has leadership for the Wetlands Reserve Program, Environmental Quality Incentives Program, Grazing Lands Conservation Initiative, Farmland Protection Program, Wildlife Habitat Incentives Program, Forestry Incentives Program, and Conservation Farm Option. NRCS provides technical support for the Conservation Reserve Program.

(b) The NRCS organization consists of a National Headquarters located in Washington, DC; six regional offices; 50 state offices and two equivalent offices in the Caribbean Area and the U.S. Trust Territories of the Pacific Basin Area; approximately 2,500 field offices and 300 specialized offices; 26 plant materials centers; 17 major land resource area soil survey offices; nine national centers; and seven national institutes. A Chief who reports to the USDA Under Secretary for Natural Resources and Environment heads NRCS.

#### § 600.2 National headquarters.

(a) *Chief.* The Chief, with assistance of the Associate Chief, is responsible for administering a coordinated national program of natural resource conservation; planning, directing, and coordinating all program, technical, and administrative activities of NRCS; developing policies and procedures; correlating NRCS conservation programs with other agencies; accepting departmental leadership for programs for other activities assigned by the Secretary of Agriculture; and serving as Equal Employment Opportunity Officer for NRCS.

(b) *Deputy chiefs.* Five deputy chiefs assist the Chief as follows:

(1) *Deputy Chief for Management.* The Deputy Chief for Management is responsible for policies, guidelines, and standards for management services,

human resources management, financial management, information technology, administrative support (providing a coordinated administrative management program for National Headquarters activities), NRCS outreach, training, and correspondence management. This deputy chief also is responsible for the activities of three national centers: business management, information technology, and employee development.

(2) *Deputy Chief for Strategic Planning and Accountability.* The Deputy Chief for Strategic Planning and Accountability is responsible for policies, guidelines, and standards for strategic and performance planning, budget planning and analysis, and operations management and oversight.

(3) *Deputy Chief for Programs.* The Deputy Chief for Programs is responsible for policies, guidelines, and standards for conservation operations, resource conservation and community development, watersheds and wetlands, international programs, conservation compliance activities, conservation programs funded by the Commodity Credit Corporation, and animal husbandry and clean water programs.

(4) *Deputy Chief for Soil Survey and Resource Assessment.* The Deputy Chief for Soil Survey and Resource Assessment is responsible for policies, guidelines, and standards for NRCS technical activities, and provides leadership for soils, resource inventory, and resource assessment. This deputy chief also is responsible for the activities of two national centers (soil survey and cartography and geospatial) and two national institutes (soil quality and natural resources inventory and analysis).

(5) *Deputy Chief for Science and Technology.* The Deputy Chief for Science and Technology is responsible for policies, guidelines, and standards for the agency, and provides leadership for resource economics and social sciences, conservation engineering, and ecological sciences. This deputy chief also is responsible for the activities of four national centers (water and climate, water management, soil mechanics, and plant data) and five national institutes (grazing lands technology, social sciences, watershed science, wetlands

science, and wildlife habitat management). This deputy chief, working closely with the deputy chiefs for Management and Soil Survey and Resource Assessment, provides overall direction for the National Science and Technology Consortium.

(c) *National Science and Technology Consortium.* The consortium consists of three divisions, four centers, five technical institutes, and several cooperating scientists under the Deputy Chief for Science and Technology; two divisions, two centers, and two technical institutes under the Deputy Chief for Soil Survey and Resource Assessment; and one division and three centers under the Deputy Chief for Management.

(1) *Centers.* The nine centers provide specific products and services that maintain and enhance the technical quality of the agency. The centers are: water and climate, water management, soil mechanics, plant data, soil survey, cartography and geospatial, information technology, business management, and employee development.

(2) *Institutes.* The seven institutes are: soil quality, natural resources inventory and analysis, grazing lands technology, social sciences, watershed science, wetlands science, and wildlife habitat management. The institutes provide training; develop technical materials; and acquire, develop, and transfer needed technology in special emphasis areas so field employees can better serve their customers. The institutes often establish partnerships with other Federal agencies, universities, and public and private organizations.

(3) *Cooperating Scientists.* Cooperating scientists work in the areas of soil erosion and sedimentation, air quality, and agroforestry. These scientists are located at various universities and research centers.

(d) *Civil Rights.* The Civil Rights staffs provide coordination, assistance, and recommendations to the Chief on civil rights employment and program compliance issues.

(e) *Legislative Affairs.* The Legislative Affairs Staff provides coordination and assistance to the Chief on legislative affairs issues and activities.

(f) *Conservation Communications.* The Conservation Communications Staff is

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responsible for communications, volunteer programs, conservation education, and public affairs activities.

(g) *Strategic Natural Resource Issues.* The Strategic Natural Resource Issues Staff is responsible for coordinating priority strategic issues as determined by the Chief.

### § 600.3 Regional offices.

Each regional office is under the direction and supervision of a regional conservationist. Regional offices are responsible for

- (1) Providing agency leadership, guidance, coordination, and partnering for solutions to regional resource issues;
  - (2) Program implementation, consistency, and accountability;
  - (3) Region-wide strategic planning, performance measurement, and operations management;
  - (4) Administrative operations and support;
  - (5) Fund integrity and accountability;
  - (6) Technical quality of work; and
  - (7) All NRCS activities in the region.
- Regional offices are located in Beltsville, Maryland; Atlanta, Georgia; Fort Worth, Texas; Madison, Wisconsin; Lincoln, Nebraska; and Sacramento, California.

### § 600.4 State offices.

Each office is under the direction and supervision of a State conservationist. Each State conservationist is responsible for NRCS programs in a State. The Pacific Basin Area Office, under the direction and supervision of a director, serves the U.S. Trust Territories in that area. The Caribbean Area Office, under the direction and supervision of a director, serves the Commonwealth of Puerto Rico and the U.S. Virgin Islands. Directors of the Pacific Basin and Caribbean areas have the same responsibility and authority as a State conservationist. All references to State conservationists in this chapter include the directors of the Pacific Basin and Caribbean areas.

### § 600.5 Area offices.

Each area office is under the direction and supervision of an area conservationist or assistant State conservationist for field operations who is

responsible for NRCS activities in the geographical area served by the area office. Usually the geographical area includes multiple field offices and counties. Many area offices now consist of teams working on a watershed or other geopolitical basis.

### § 600.6 Field offices.

Each field office is under the direction and supervision of a district conservationist who is responsible for NRCS activities in the geographical area served by the field office. Usually the geographical area of a field office includes one or more conservation districts and one or more counties. Field offices are generally collocated with other USDA agencies in USDA Service Centers.

### § 600.7 Specialized field offices.

Other field offices serve specialized activities, such as watershed protection and flood reduction projects, construction projects, resource conservation and development areas, and soil survey activities. State conservationists designate direction and supervision of these offices.

### § 600.8 Plant materials centers.

Plant materials centers (PMC) assemble and test plant species for conservation uses. Usually a PMC serves two or more States, and is under the jurisdiction of the State conservationist where the center is located. Each PMC is directed and supervised by a manager who is responsible to a State office specialist/manager as designated by the State conservationist.

### § 600.9 Major land resource area soil survey offices.

The United States is divided into 17 major land resource areas (MLRA) for the purpose of soil survey production. Major land resource area soil survey offices (MO) provide the technical leadership, coordination, and quality assurance for all soil survey project activities within the respective MLRA. Each MO serves two or more States (except for the MO in Alaska), and is under the jurisdiction of the State conservationist where the office is located. Each MO is directed and supervised by

a leader who is designated by the State conservationist.

## PART 601—FUNCTIONS

Sec.

601.1 Functions assigned.

601.2 Functions reserved to the Secretary of Agriculture.

601.3 Defense responsibilities.

AUTHORITY: 7 U.S.C. 1010-1011; 16 U.S.C. 590a-590f, 1001-1008, 2001-2009, 2203-2205, 3801 *et seq.*; 33 U.S.C. 701b-1.

SOURCE: 65 FR 14783, Mar. 20, 2000, unless otherwise noted.

### § 601.1 Functions assigned.

The Natural Resources Conservation Service (NRCS) is the Federal agency that works with private landowners to conserve their natural resources. NRCS employees help land users and communities approach conservation planning and implementation with an understanding of how natural resources relate to each other and to people—and how human activities affect those resources. The agency emphasizes voluntary, science-based assistance, partnerships, and cooperative problem solving at the community level. The mission of NRCS is to work on the Nation's non-Federal lands to conserve, improve, and sustain natural resources. The following functions support the mission.

(a) NRCS facilitates and provides conservation technical assistance at the local level that helps people assess their natural resource conditions and needs, set goals, identify programs and other resources to address those needs, develop proposals and recommendations, implement solutions, and measure their success. The agency's role is to assist with:

- (1) Resource inventories,
- (2) Resource assessments,
- (3) Planning assistance, and/or
- (4) Technical assistance.

(b) NRCS provides technical assistance through local conservation districts to land users, communities, watershed groups, Federal and State agencies, other partners, and customers.

(c) NRCS provides assistance on a voluntary basis.

(d) The agency's work focuses on soil, water, air, plant, and animal conservation including erosion reduction, water quality improvement, wetland restoration and protection, fish and wildlife habitat improvement, range management, stream restoration, water management, and other natural resource issues.

(e) Through the conservation operations program, NRCS maintains a cadre of conservationists and interdisciplinary technical experts who provide landowners with advice and recommendations. Science based procedures and techniques are based on new knowledge and research provided by the Agricultural Research Service and others. NRCS developed and maintains a system of directives—including manuals, handbooks, and technical references—to institutionalize new methods, procedures, and standards used to deliver technical assistance at the field level.

(f) NRCS has general responsibility for administration of the following programs:

(1) Conservation operations, authorized by the Soil Conservation Act of 1935 and the Soil and Water Resources Conservation Act of 1977. Activities include:

(i) Conservation technical assistance to land users, communities, units of State and local government, and other Federal agencies in planning and implementing natural resource solutions to reduce erosion, improve soil and water quantity and quality, improve and conserve wetlands, enhance fish and wildlife habitat, improve air quality, improve pasture and range conditions, reduce upstream flooding, and improve woodlands. Assistance is also provided to implement the highly erodible land (HEL) and wetland conservation (Swampbuster) provisions and—on a reimbursable basis—the Wetlands Reserve Program (WRP) and Conservation Reserve Program (CRP) in the 1985 Food Security Act, as amended by the Food, Agriculture, Conservation and Trade Act of 1990 and Federal Agriculture Improvement and Reform Act of 1996. NRCS technical field staff make HEL and wetland determinations and assist land users to develop and implement conservation plans needed



to ensure compliance with the law. NRCS is also the lead Federal agency for delineating wetlands on agricultural lands for purposes of implementing both the provisions of the Food Security Act and Section 404 of the Clean Water Act.

(ii) Soil surveys that provide the public with local information on the uses and capabilities of their soil resource. Soil surveys are based on scientific analysis and classification of the soils and are used to determine land capabilities and conservation treatment needs. Surveys are conducted cooperatively with other Federal agencies, land grant universities, State agencies, and local units of government. NRCS is the world leader in soil classification and soil mapping, and is expanding into soil quality.

(iii) Snow survey and water supply forecasts that provide western States and Alaska with vital information and forecasts of seasonable variable water supplies. NRCS field staff in cooperation with partnering organizations manually collect data from 850 remote high mountain sites. Data is electronically collected from an additional 600 SNOTEL (automated snowpack telemetry network) sites. In cooperation with the National Weather Service, the data is assembled and analyzed. Then, NRCS staff develop seasonal water supply forecasts.

(iv) Plant Material Centers that assemble, test, and encourage increased plant propagation and usefulness of plant species for biomass production, carbon sequestration, erosion reduction, wetland restoration, water quality improvement, streambank and riparian area protection, coastal dune stabilization, and to meet other special conservation treatment needs. The work is carried out cooperatively with State and Federal agencies, private organizations, commercial businesses, and seed and nursery associations. After species are proven, they are released to the private sector for commercial production.

(v) National Resources Inventory (NRI) that is a statistically-based survey designed and implemented using scientific principles to assess conditions and trends of soil, water, and related resources on nonfederal lands in

the United States. The NRI captures data on land cover and use, soil erosion, prime farmland, wetlands, habitat diversity, selected conservation practices, and related attributes at thousands of scientifically selected sample sites in all 50 states, Puerto Rico, the U.S. Virgin Islands, and some Pacific Basin locations.

(2) Conservation programs in the Federal Agriculture Improvement and Reform Act of 1996, most of which are funded by the Commodity Credit Corporation (CCC). NRCS provides leadership and technical assistance for the following programs:

(i) *Environmental Quality Incentives Program (EQIP)*. EQIP provides a single, voluntary conservation program for farmers and ranchers who face serious threats to soil, water, and related natural resources. Nationally, it provides technical, financial, and educational assistance, half of it targeted to livestock-related natural resource problems and half to more general conservation priorities.

(ii) *Wetlands Reserve Program (WRP)*. WRP is a voluntary program to restore and protect wetlands on private property. It provides an opportunity for landowners to receive financial incentives to restore wetlands in exchange for retiring marginal agricultural land.

(iii) *Wildlife Habitat Incentives Program (WHIP)*. WHIP is a voluntary program for people who want to develop and improve wildlife habitat on private lands. It provides both technical assistance and cost sharing to help establish and improve fish and wildlife habitat.

(iv) *Farmland Protection Program (FPP)*. This program provides funds to help purchase development rights to keep productive farmland in agricultural use. Working through existing programs, USDA joins with State, tribal, or local governments to acquire voluntary conservation easements or other interests from landowners.

(v) *Forestry Incentives Program (FIP)*. FIP supports good forest management practices on privately owned, non-industrial forest lands nationwide. FIP is designed to benefit the environment while meeting future demands for wood products. Although not funded by CCC, Section 373 of the Federal Agriculture Improvement and Reform Act of 1996

extended the program under discretionary appropriations.

(3) Resource Conservation and Development (RC&D) Program, authorized by Section 102 of the Flood and Agriculture Act of 1962 (Pub. L. 87-702) and Sections 1528-1538 of the Agriculture and Food Act of 1981 (Pub. L. 97-98). This program is initiated and directed at the local level by volunteers who involve multiple communities, various units of government, municipalities, and grassroots organizations. RC&D is a catalyst for civic-oriented groups to share knowledge and resources in a collective attempt to solve common problems. The program offers aid in balancing the environmental, economic, and social needs of an area.

(4) Rural Abandoned Mine Program (RAMP) and other responsibilities assigned under the Surface Mining Control and Reclamation Act of 1977 (Pub. L. 95-87). Under RAMP, NRCS provides technical and financial assistance to landowners to reclaim certain abandoned coal-mined lands. This assistance can be used to reclaim these lands for approved uses, which include pasture, range, woodland, cropland, non-commercial recreation, and wildlife habitat. The program's first priority is to protect public health, welfare, safety, and property from hazards caused by past surface coal mining or by surface effects of deep mining.

(5) Watershed surveys and planning, authorized by the Watershed Protection and Flood Prevention Act (Pub. L. 83-566, Section 6 (16 U.S.C. 1001-1008)). The 1996 appropriations act combined the Small Watershed Planning and the River Basin Surveys and Investigations programs into a new program called the Watershed Surveys and Planning Program. The program involves cooperation with other Federal, State, and local agencies to conduct watershed planning, river basin surveys and investigations, flood hazard analysis, and floodplain management assistance, which aid in the development of coordinated water resource programs, including the development of guiding principles and procedures.

(6) Watershed and flood prevention operations include several activities. Watershed operations are authorized by the Flood Control Act of 1944 (Pub-

lic Law 78-534) and the Watershed Protection and Flood Prevention Act of 1954 (Public Law 87-566) and amendments; both of which are addressed by 7 CFR 622. Since 1998, the appropriations act for the Watershed Protection and Flood Prevention Act (Public Law 83-566) has included funds, not to exceed a specified amount, that may be used for Public Law 78-534 projects.

(i) Public Law 83-566 and Public Law 78-534, jointly called the Small Watershed Program, authorize the Secretary of Agriculture to cooperate with State and local agencies to plan and carry out works of improvement for flood prevention; for the conservation, development, utilization, and disposal of water; and for the conservation and proper use of land in watershed or sub-watershed areas. Under Public Law 83-566, these areas shall not exceed 250,000 acres. There is no acreage limitation under Public Law 78-534.

(ii) The Small Watershed Program provides for cooperation with State and other public agencies (called project sponsors) in the installation of planned works of improvement and land treatment measures in authorized watershed projects. Eligible measures include flood prevention, water conservation, recreation, agricultural water management, floodplain easements, municipal and industrial water, and rural water supply.

(7) Emergency Watershed Protection (EWP) Program, authorized by Section 216 of Public Law 81-516, 33 U.S.C. 701b-1, and Section 403 of the Agriculture Credit Act of 1978 (Public Law 95-334, 16 U.S.C. 2203), as amended by Section 382 of the Federal Agriculture Improvement and Reform Act of 1996 (Public Law 104-127, 110 Stat. 888, 1016). EWP provides assistance to reduce an imminent threat to life and property caused by a sudden impairment of a watershed from a natural disaster. Emergency work includes such measures as removing debris from streams, stabilizing streambanks, repairing levees, critical area stabilization, and purchasing floodplain easements. Technical and financial assistance is available to sponsoring local organizations (units of government, Indian tribes and tribal organizations, and organizations formed by State law) for this disaster

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recovery work. Sponsors are required to provide the local share of the costs; obtain real property rights, water rights, and permits; and do any needed operation and maintenance.

### § 601.2 Functions reserved to the Secretary of Agriculture.

(a) Designation of new Resource Conservation and Development (RC&D) areas. Once designated, these areas may receive RC&D Program assistance from NRCS.

(b) Administration of the Soil and Water Resources Conservation Act of 1977 (Public Law 95-192) to conduct an appraisal and develop a national conservation program every five years.

### § 601.3 Defense responsibilities.

In the event of nuclear attack, NRCS is responsible for providing:

(a) Technical guidance, based upon results of radiological monitoring and the extent of radiological contamination to farmers, ranchers, and others relating to:

(1) The selection and use of land for agricultural production.

(2) The harvesting of crops.

(3) The use of crops stored on the farm.

(4) The use, conservation, disposal, and control of water to insure adequate usable water for agricultural purposes and to prevent floods.

(5) The safety of livestock.

(b) Basic soil information, land use guides, and onsite technical assistance in selecting land for production and in applying practices to increase production of food and fiber with maximum efficiency.

## SUBCHAPTER B—CONSERVATION OPERATIONS

### PART 610—TECHNICAL ASSISTANCE

#### Subpart A—Conservation Operations

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610.23 State Technical Committee meetings.

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610.25 Subcommittees and Local Working Groups.

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610.31 Purpose and scope.

610.32 Technical assistance furnished.

AUTHORITY: 16 U.S.C. 590a-f, 590q, 2005b, 3861, 3862.

SOURCE: 42 FR 38169, July 27, 1977, unless otherwise noted.

#### Subpart A—Conservation Operations

##### § 610.1 Purpose.

This subpart sets forth Natural Resource Conservation Service (NRCS) policies and procedures for furnishing technical assistance in conservation operations.

[61 FR 27999, June 4, 1996]

##### § 610.2 Scope.

(a) Conservation operations, including technical assistance, is the basic soil and water conservation program of NRCS. This program is designed to:

- (1) Reduce soil losses from erosion;
- (2) Help solve soil, water, and agricultural waste management problems;
- (3) Bring about adjustments in land use as needed;
- (4) Reduce damage caused by excess water and sedimentation;
- (5) Enhance the quality of fish and wildlife habitat; and
- (6) Improve all agricultural lands, including cropland, forestland, and grazing lands that include pastureland, rangeland, and grazed forestland so that the long-term sustainability of the resource base is achieved.

(b) The Natural Resources Conservation Service is USDA's technical agency for providing assistance to private landowners, conservation districts, and other organizations in planning and carrying out their conservation activities and programs. NRCS works with individuals, groups, and units of government to help them plan and carry out conservation decisions to meet their objectives.

[64 FR 42003, Aug. 3, 1999]

##### § 610.3 Assistance through conservation districts.

(a) Technical assistance is provided through and in cooperation with conservation districts in the 50 States, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands. These districts, formed under authority of State laws, are operated and controlled by local citizens. They provide the leadership and the program needed to meet the conservation objectives of the district.

(b) NRCS furnishes technical assistance to conservation districts as specified in memorandums of understanding. Soil conservationists assigned to conservation districts work directly with land users and others according to the program needs and the priorities established by the conservation districts.

(c) The practical experience of land users is combined with the scientific knowledge and skills of professional conservationists to plan and carry out locally formulated conservation programs.

(d) When requested, technical assistance may be provided to owners, operators, or groups using land that is under the jurisdiction of the United States Department of the Interior if such land is included in a conservation district or if assistance is in accordance with memorandums of understanding identifying the coordination of agency activities.

**§ 610.4 Technical assistance furnished.**

The Natural Resources Conservation Service provides technical assistance to land users and others who are responsible for making decisions and setting policies that influence land use, conservation treatment, and resource management. Technical assistance furnished by NRCS consists of program assistance, planning assistance, application of conservation practices, and assistance in the technical phases of USDA cost-share programs.

(a) Program assistance is provided to conservation districts and other organizations concerned with the conservation of soil, water, plant, and wildlife resources. This assistance includes providing resource inventory data and identifying conservation problems and needs in order for districts to develop long-range soil and water conservation programs. Individuals, groups, and organizations requesting NRCS assistance through conservation districts include:

(1) Farmers, ranchers, and other land users concerned with the conservation of land and water resources.

(2) County and other local government units such as park authorities, departments of public works, planning, zoning (rural, urban, and flood plain), school, and institution boards, highway departments, and tax assessors.

(3) Citizen groups, youth groups, recreation groups, and garden clubs.

(4) State and local units of government (highway, health, recreation, water resources, and regional planning) involved in establishing public policy regarding the use of resources.

(5) Federal departments and agencies such as Defense, Housing and Urban Development, Public Roads, Health and Human Services; and Interior.

(6) Professional consultants who provide services such as engineering, plan-

ning, environmental assessment, tax assessment, and forest management.

(b) Planning assistance includes evaluation of soil, water, vegetation, and other resource data needed for making land use, environmental and conservation treatment decisions. NRCS helps land users make conservation plans for farms, ranches, and other land units. This help includes onsite planning assistance in making conservation plans. The plans are based on a soil survey and interpretations for the intended land uses and conservation treatment. Plans may also include other inventories of soil, water, plant, and related resources needed in the planning process. Information about the responses of each kind of soil and the conservation practices and resource management needed for different land uses is provided. The land user's decisions recorded in the plan are based on his conservation objectives. Conservation plans provide for the orderly installation of conservation practices. Conservation plans reflect changing conditions.

(c) Application assistance is provided to help land users apply and maintain planned conservation work. NRCS assistance for applying the conservation practices in the plan may include:

(1) Designing, constructing, and maintaining conservation practices;

(2) Selecting management alternatives and cultural practices needed to establish and maintain vegetation; and

(3) Other conservation practices needed to protect land and water resources.

(d) The Natural Resources Conservation Service assists in carrying out certain phases of USDA soil and water conservation cost-share programs. NRCS assists individual program participants with conservation plans needed for long-term cost-share agreements. NRCS is assigned responsibility by the Secretary of Agriculture for technical phases of applying conservation practices on the land. This assignment includes:

(1) Determining what practices are needed and feasible to install,

(2) Selecting sites and planning and designing practices,

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(3) Providing assistance for installing practices, and

(4) Certifying that the work done is in accordance with NRCS standards and specifications.

[42 FR 38169, July 27, 1977, as amended at 47 FR 56473, Dec. 17, 1982]

### §610.5 Interdisciplinary assistance.

Technical assistance is based on the principle that soil, water, plant, and related resources are interdependent and must be managed accordingly. Soil conservationists integrate the various technical fields in providing for the conservation of land and water resources. Staff scientists and specialists develop conservation standards, prepare necessary specifications, provide training, and review work performance. NRCS uses consultants for conservation problems that require special expertise.

## Subpart B—Soil Erosion Prediction Equations

SOURCE: 61 FR 27999, June 4, 1996, unless otherwise noted.

### §610.11 Purpose and scope.

This subpart sets forth the equations and rules for utilizing the equations that are used by the Natural Resources Conservation Service (NRCS) to predict soil erosion due to water and wind. Section 301 of the Federal Agriculture Improvement and Reform Act of 1996 (FAIRA) and the Food Security Act, as amended, 16 U.S.C. 3801-3813 specified that the Secretary would publish the universal soil loss equation (USLE) and wind erosion equation (WEQ) used by the Department within 60 days of the enactment of FAIRA. This subpart sets forth the equations, definition of factors, and provides the rules under which NRCS will utilize the USLE, the revised universal soil loss equation (RUSLE), and the WEQ.

### §610.12 Equations for predicting soil loss due to water erosion.

(a) The equation for predicting soil loss due to erosion for both the USLE and the RUSLE is  $A = R \times K \times LS \times C \times P$ . (For further information about USLE see the U.S. Department of Agri-

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culture Handbook 537, "Predicting Rainfall Erosion Losses—A Guide to Conservation Planning," dated 1978. Copies of this document are available from the Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013. For further information about RUSLE see the U.S. Department of Agriculture Handbook 703, "Predicting Soil Erosion by Water: A Guide to Conservation Planning with the Revised Universal Soil Loss Equation (RUSLE)." Copies may be purchased from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.)

(b) The factors in the USLE equation are:

(1) *A* is the estimation of average annual soil loss in tons per acre caused by sheet and rill erosion.

(2) *R* is the rainfall erosivity factor. Accounts for the energy and intensity of rainstorms.

(3) *K* is the soil erodibility factor. Measures the susceptibility of a soil to erode under a standard condition.

(4) *LS* is the slope length and steepness factor. Accounts for the effect of length and steepness of slope on erosion.

(5) *C* is the cover and management factor. Estimates the soil loss ratio for each of 4 or 5 crop stage periods throughout the year, accounting for the combined effect of all the inter-related cover and management variables.

(6) *P* is the support practice factor. Accounts for the effect of conservation support practices, such as contouring, contour stripcropping, and terraces on soil erosion.

(c) The factors in the RUSLE equation are defined as follows:

(1) *A* is the estimation of average annual soil loss in tons per acre caused by sheet and rill erosion.

(2) *R* is the rainfall erosivity factor. Accounts for the energy and intensity of rainstorms.

(3) *K* is the soil erodibility factor. Measures the susceptibility of a soil to erode under a standard condition and adjusts it bi-monthly for the effects of freezing and thawing, and soil moisture.

(4) *LS* is the slope length and steepness factor. Accounts for the effect of

length and steepness of slope on erosion based on 4 tables reflecting the relationship of rill to interrill erosion.

(5) *C* is the cover and management factor. Estimates the soil loss ratio at one-half month intervals throughout the year, accounting for the individual effects of prior land use, crop canopy, surface cover, surface roughness, and soil moisture.

(6) *P* is the support practice factor. Accounts for the effect of conservation support practices, such as cross-slope farming, stripcropping, buffer strips, and terraces on soil erosion.

#### § 610.13 Equations for predicting soil loss due to wind erosion.

(a) The equation for predicting soil loss due to wind in the Wind Erosion Equation (WEQ) is  $E = f(KCLV)$ . (For further information on WEQ see the paper by N.P. Woodruff and F.H. Siddaway, 1965, "A Wind Erosion Equation," Soil Science Society of America Proceedings, Vol. 29, No. 5, pages 602-608, which is available from the American Society of Agronomy, Madison, Wisconsin. In addition, the use of the WEQ in NRCS is explained in the Natural Resources Conservation Service (NRCS) National Agronomy Manual, 190-V-NAM, second ed., Part 502, March, 1988, which is available from the NRCS, P.O. Box 2890, Washington, DC 20013.)

(b) [Reserved]

(c) The factors in the WEQ equation are defined as follows:

(1) *E* is the estimation of the average annual soil loss in tons per acre.

(2) *f* indicates the equation includes functional relationships that are not straight-line mathematical calculations.

(3) *I* is the soil erodibility index. It is the potential for soil loss from a wide, level, unsheltered, isolated field with a bare, smooth, loose and uncrusted surface. Soil erodibility is based on soil surface texture, calcium carbonate content, and percent clay.

(4) *K* is the ridge roughness factor. It is a measure of the effect of ridges formed by tillage and planting implements on wind erosion. The ridge roughness is based on ridge spacing, height, and erosive wind directions in relation to the ridge direction

(5) *C* is the climatic factor. It is a measure of the erosive potential of the wind speed and surface moisture at a given location compared with the same factors at Garden City, Kansas. The annual climatic factor at Garden City is arbitrarily set at 100. All climatic factor values are expressed as a percentage of that at Garden City.

(6) *L* is the unsheltered distance. It is the unsheltered distance across an erodible field, measured along the prevailing wind erosion direction. This distance is measured beginning at a stable border on the upwind side and continuing downward to the nonerodible or stable area, or to the downwind edge of the area being evaluated.

(7) *V* is the vegetative cover factor. It accounts for the kind, amount, and orientation of growing plants or plant residue on the soil surface.

#### § 610.14 Use of USLE, RUSLE, and WEQ.

(a) All Highly Erodible Land (HEL) determinations are based on the formulas set forth in 7 CFR §12.21 using some of the factors from the USLE and WEQ and the factor values that were contained in the local Field Office Technical Guide (FOTG) as of January 1, 1990. In addition, this includes the soil loss tolerance values used in those formulas for determining HEL. The soil loss tolerance value is used as one of the criteria for planning soil conservation systems. These values are available in the FOTG in the local field office of the Natural Resources Conservation Service.

(b) RUSLE will be used to:

(1)(i) Evaluate the soil loss estimates of conservation systems contained in the FOTG.

(ii) Evaluate the soil loss estimates of systems actually applied, where those systems were applied differently than specified in the conservation plan adopted by the producer or where a conservation plan was not developed, in determining whether a producer has complied with the HEL conservation provisions of the Food Security Act of 1985, as amended, 16 U.S.C. 3801 *et seq.*, set forth in 7 CFR part 12; and

(2) Develop new or revised conservation plans.

### Subpart C—State Technical Committees

SOURCE: 74 FR 66912, Dec. 17, 2009, unless otherwise noted.

#### §610.21 Purpose and scope.

This subpart sets forth the procedures for establishing and using the advice of State Technical Committees. The Natural Resources Conservation Service (NRCS) will establish in each State a Technical Committee to assist in making recommendations relating to the implementation and technical aspects of natural resource conservation activities and programs. The Department of Agriculture (USDA) will use State Technical Committees in an advisory capacity in the administration of certain conservation programs and initiatives. Pursuant to 16 U.S.C. 3862(d), these State Technical Committees and Local Working Groups are exempt from the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2).

#### §610.22 State Technical Committee membership.

(a) State Technical Committees will include agricultural producers, non-industrial private forest land owners, and other professionals who represent a variety of disciplines in soil, water, wetlands, plant, and wildlife sciences. The State Conservationist in each State will serve as chairperson. The State Technical Committee for each State will include representatives from among the following, if willing to serve:

- (1) NRCS, USDA;
- (2) Farm Service Agency, USDA;
- (3) State Farm Service Agency Committee, USDA;
- (4) Forest Service, USDA;
- (5) National Institute of Food and Agriculture, USDA;
- (6) Each of the Federally recognized Indian Tribes in the State;
- (7) State departments and agencies within the State, including the:
  - (i) Fish and wildlife agency;
  - (ii) Forestry agency;
  - (iii) Water resources agency;
  - (iv) Department of agriculture;
  - (v) Association of soil and water conservation districts; and

(vi) Soil and water conservation agency;

(8) Agricultural producers representing the variety of crops and livestock or poultry raised within the State;

(9) Owners of nonindustrial private forest land;

(10) Nonprofit organizations, within the meaning of section 501(c)(3) of the Internal Revenue Code of 1986, with demonstrable conservation expertise and experience working with agriculture producers in the State; and

(11) Agribusiness.

(b) The State Conservationist will invite other relevant Federal, State, and regional agencies, organizations, and persons knowledgeable about economic and environmental impacts of natural resource conservation techniques and programs to participate as needed.

(c) To ensure that recommendations of State Technical Committees take into account the needs of the diverse groups served by USDA, membership will include, to the extent practicable, individuals with demonstrated ability to represent the conservation and related technical concerns of particular historically underserved groups and individuals; i.e., minorities, women, persons with disabilities, socially and economically disadvantaged groups, and beginning farmers and ranchers.

(d) In accordance with the guidelines in paragraphs (a), (b), and (c) of this section, it is the responsibility of the State Conservationist to seek a balanced representation of interests among the membership on the State Technical Committee. Individuals or groups wanting to participate on a State Technical Committee within a specific State may submit a request to the State Conservationist that explains their interest and outlines their credentials which they believe are relevant to becoming a member. Decisions regarding membership are at the discretion of the State Conservationist. State Conservationist decisions on membership are final and not appealable to any other individual or group within USDA.



**§ 610.23 State Technical Committee meetings.**

(a) The State Conservationist, as Chairperson, schedules and conducts the meetings, although a meeting may be requested by any USDA agency or State Technical Committee member.

(b) NRCS will establish and maintain national standard operating procedures governing the operation of State Technical Committees and Local Working Groups in its directive system. The standard operating procedures will outline items such as: The best practice approach to establishing, organizing, and effectively utilizing State Technical Committees and Local Working Groups; direction on publication of State Technical Committee and Local Working Group meeting notices and agendas; State Technical Committee meeting summaries; how to provide feedback on State Conservationist decisions regarding State Technical Committee recommendations; and other items as determined by the Chief.

(c) In addition to the standard operating procedures established under paragraph (b) of this section, the State Conservationist will provide public notice and allow public attendance at State Technical Committee and Local Working Group meetings. The State Conservationist will publish a meeting notice no later than 14 calendar days prior to a State Technical Committee meeting. Notification may exceed this 14-day minimum where State open meeting laws exist and provide for a longer notification period. This minimum 14-day notice requirement may be waived in the case of exceptional conditions, as determined by the State Conservationist. The State Conservationist will publish this notice in at least one or more newspaper(s), including recommended Tribal publications, to attain statewide circulation.

**§ 610.24 Responsibilities of State Technical Committees.**

(a) Each State Technical Committee established under this subpart will meet on a regular basis, as determined by the State Conservationist, to provide information, analysis, and recommendations to appropriate officials of USDA who are charged with implementing and establishing priorities and

criteria for natural resources conservation activities and programs under Title XII of the Food Security Act of 1985 including, but not limited to, the Conservation Reserve Program, Wetlands Reserve Program, Conservation Security Program, Conservation Stewardship Program, Farm and Ranch Lands Protection Program, Grassland Reserve Program, Environmental Quality Incentives Program, Conservation Innovation Grants, Cooperative Conservation Partnership Initiative, Agricultural Water Enhancement Program, Conservation of Private Grazing Land, Wildlife Habitat Incentive Program, Grassroots Source Water Protection Program, Great Lakes Basin Program, Chesapeake Bay Watershed Initiative, and the Voluntary Public Access and Habitat Incentive Program. The members of the State Technical Committee may also provide input on other natural resource conservation programs and issues as may be requested by the State Conservationist or other USDA agency heads at the State level as long as they are within the programs authorized by Title XII. Such recommendations may include, but are not limited to, recommendations on:

- (1) The criteria to be used in prioritizing program applications;
- (2) The State-specific application criteria;
- (3) Priority natural resource concerns in the State;
- (4) Emerging natural resource concerns and program needs; and
- (5) Conservation practice standards and specifications.

(b) The role of the State Technical Committee is advisory in nature, and the committee will have no implementation or enforcement authority. The implementing agency reserves the authority to accept or reject the committee's recommendations. However, the implementing USDA agency will give strong consideration to the State Technical Committee's recommendations.

(c) State Technical Committees will review whether Local Working Groups are addressing State priorities.

**§ 610.25 Subcommittees and Local Working Groups.**

(a) *Subcommittees.* In some situations, specialized subcommittees, made up of

## §610.31

State Technical Committee members, may be needed to analyze and examine specific issues. The State Conservationist may assemble certain members, including members of Local Working Groups and other knowledgeable individuals, to discuss, examine, and focus on a particular technical or programmatic topic. The subcommittee may seek public participation, but it is not required to do so. Nevertheless, recommendations resulting from these subcommittee sessions, other than sessions of Local Working Groups, will be made only in a general session of the State Technical Committee where the public is notified and invited to attend. Decisions resulting from recommendations of Local Working Groups will be communicated to NRCS in accordance with the standard operating procedures described in §610.23(b).

(b) *Local Working Groups.* (1) Local Working Groups will be composed of conservation district officials, agricultural producers representing the variety of crops and livestock or poultry raised within the local area, nonindustrial private forest land owners, and other professionals representing relevant agricultural and conservation interests and a variety of disciplines in the soil, water, plant, wetland, and wildlife sciences who are familiar with private land agricultural and natural resource issues in the local community;

(2) Local Working Groups will provide recommendations on local natural resource priorities and criteria for conservation activities and programs; and

(3) Local Working Groups will follow the standard operating procedures described in §610.23(b).

### Subpart D—Conservation of Private Grazing Land

SOURCE: 67 FR 68497, Nov. 12, 2002, unless otherwise noted.

#### §610.31 Purpose and scope.

(a) This subpart sets forth the policies for the Conservation of Private Grazing Land (CPGL) Program, as authorized by Section 386 of the Federal Agriculture Improvement and Reform Act of 1996, (Pub. L. 104-127, April 4, 1996) 16 U.S.C. 2005b. Under the CPGL

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Program, NRCS will provide technical assistance to landowners and managers who request assistance based on locally-established priorities and resource concerns. The purpose of the CPGL Program is to provide technical assistance to private grazing land owners and managers to voluntarily conserve or enhance grazing land resources to meet ecological, economic, and social demands.

(b) The term “private grazing land” means private, State-owned, tribally owned, and any other non-federally owned rangeland, pastureland, grazed forestland, hayland, and other lands used for grazing.

(c) The NRCS Chief may implement the CPGL Program in any of the 50 States, the District of Columbia, Commonwealth of Puerto Rico, Guam, the U.S. Virgin Islands, and American Samoa. NRCS will provide assistance in cooperation with conservation districts, or directly to a landowner or operator.

#### §610.32 Technical assistance furnished.

(a) Provide technical assistance to grazing-land owners and managers to plan and implement resource conservation on grazing land. The objective of planning on grazing land is to assist landowners and managers in understanding the basic ecological principles associated with managing their land. This objective can be met by implementing a plan that meets the needs of the resources (soil, water, air, plants, and animals) and management objectives of the owner or manager. NRCS may provide assistance, at the request of the private grazing-land owner or manager to:

(1) Maintain and improve private grazing land resources that provide multiple benefits;

(2) Ensure the long-term sustainability of private grazing land resources;

(3) Implement new grazing land management technologies;

(4) Manage resources on private grazing land through conservation planning, including, but not limited to; grazing management, nutrient management, and weed and invasive species control;

(5) Maintain and improve water quality and quantity, aquatic and wildlife habitat, recreational opportunities, and aesthetics on private grazing land;

(6) Harvest, process, and market private grazing land resources; and

(7) Identify opportunities to diversify private grazing land enterprises.

(b) Refer to 7 CFR 610.4 on other items relating to technical assistance.

(c) To receive technical assistance, a landowner or manager may contact NRCS or the local conservation district to seek assistance to solve identified natural resource problems or opportunities. Participation in this program is voluntary.

## PART 611—SOIL SURVEYS

### Subpart A—General

Sec.

611.1 Purpose and scope.

611.2 Cooperative relationships.

### Subpart B—Soil Survey Operations

611.10 Standards, guidelines, and plans.

611.11 Soil survey information.

### Subpart C—Cartographic Operations

611.20 Function.

611.21 Availability of aerial photography.

611.22 Availability of satellite imagery.

AUTHORITY: 16 U.S.C. 590a-590f, 590q, 42 U.S.C. 3271-3274.

SOURCE: 69 FR 60283, Oct. 8, 2004, unless otherwise noted.

### Subpart A—General

#### § 611.1 Purpose and scope.

(a) This part sets forth policy on soil survey operations of the Natural Resources Conservation Service (NRCS).

(b) NRCS is responsible for soil survey activities of the U.S. Department of Agriculture (USDA). A soil survey provides:

(1) An orderly, on-the-ground, scientific inventory of soil resources according to their potentialities and problems of use; and

(2) Information about each kind of soil in sufficient detail to meet all reasonable needs of farmers, agricultural technicians, community planners, engineers, and scientists in planning and

transferring the findings of research and experience to specific land areas.

#### § 611.2 Cooperative relationships.

(a) Soil surveys on nonfederal lands are carried out cooperatively with State agricultural experiment stations and other State agencies. The cooperative effort is evidenced in a memorandum of understanding setting forth guidelines for actions to be taken by each cooperating party in the performance of soil surveys. Similar cooperative arrangements exist between NRCS and other Federal agencies for soil surveys on Federal lands.

(b) Arrangements for nonfederal financial participation in the cost of soil surveys may be made with States, counties, soil conservation districts, planning agencies, and other local groups.

### Subpart B—Soil Survey Operations

#### § 611.10 Standards, guidelines, and plans.

(a) NRCS conducts soil surveys under national standards and guidelines for naming, classifying, and interpreting soils and for disseminating soil survey information.

(b) A soil survey Memorandum of Understanding (MOU) is prepared prior to the start of each soil survey project, or a work plan is prepared for soil survey maintenance activities. These documents provide specific details and technical specifications to support the interpretive and data needs of the area to be surveyed. The MOU is signed by representatives of NRCS, land grant universities, and in some States representatives of other State agencies. Federal land administering agencies also sign the MOU if federal lands are included in the survey.

#### § 611.11 Soil survey information.

(a) *Availability.* NRCS disseminates soil survey information to the public by any of the means described in paragraph (d) of this section. NRCS makes soil survey information available as soon as is practicable following field work or other soil survey activity that provides new soil survey information.

(b) *Content.* Soil survey information conforms with standards and meets the

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needs identified in the soil survey MOU or work plan as described in §611.10 of this part. Soil survey information includes:

- (1) Soil maps that delineate the location and extent of various soil areas;
- (2) Soil characteristics for each of the soil areas shown on soil maps;
- (3) Interpretations of the soil characteristics; and
- (4) Information about the source, version, and applicability or limitations associated with the soil survey information.

(c) *Maintenance.* Soil survey information is reviewed on a periodic basis to ensure that the information continues to meet evolving needs.

(d) *Distribution.* Soil survey information is disseminated to the public through electronically accessible maps and reports, electronic access to data files, or printed documents. To the extent practicable, as limited by commonly accepted technology, soil survey information is disseminated in electronic form.

(e) *Resource conservation plan data.* Information prepared specifically for use in developing resource conservation plans for soil conservation district co-operators is considered confidential. Soil maps and interpretations prepared for this use will not be made available to others without the consent of the landowner as well as the district governing body. However, soil survey information from which the conservation plan was developed may be disseminated as described in paragraph (a) of this section.

### Subpart C—Cartographic Operations

#### §611.20 Function.

The NRCS National Cartography and Geospatial Center provides cartographic services needed to carry out NRCS functions. Cartographic services include general cartography, photogrammetry, aerial photography, planimetric and topographic mapping, drafting, and specialized types of reproduction.

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#### §611.21 Availability of aerial photography.

The National Cartography and Geospatial Center obtains necessary clearance for all aerial photography for NRCS. New aerial photography of designated areas in the United States is obtained yearly by NRCS through competitive contracting. This photography is obtained only after it is determined that imagery of these areas available from other sources does not meet NRCS scale and quality requirements. Orders for reproductions of NRCS aerial photography are subject to the fee schedule cited in §1.2(b) of this title. Order reproductions from the National Cartography and Geospatial center: USDA—National Resources Conservation Service; P.O. Box 6567, FWFC-Bldg. 23; 501 W. Felix Street; Forth Worth, Texas 76115.

#### §611.22 Availability of satellite imagery.

Cloud-free maps of the United States based on imagery received from a satellite are prepared and released to the public by NRCS. The maps offer the first image of the United States not obscured by clouds or distortions. Orders or requests for information should be directed to the National Cartography and Geospatial Center, USDA—Natural Resources Conservation Service; P.O. Box 6567, FWFC-Bldg. 23; 501 W. Felix Street; Forth Worth, Texas 76115. Orders are subject to the fee schedule cited in §1.2(b) of this title.

### PART 612—SNOW SURVEYS AND WATER SUPPLY FORECASTS

Sec.

612.1 Purpose and scope.

612.2 Snow survey and water supply forecast activities.

612.3 Data collected and forecasts.

612.4 Eligible individuals or groups.

612.5 Dissemination of water supply forecasts and basic data.

612.6 Application for water supply forecast service.

612.7 Forecast user responsibility.

AUTHORITY: 26 Stat. 653; Sec. 8, Reorg. Plan No. IV of 1940, 54 Stat. 1234 (5 U.S.C. App. II); 5 FR 2421, 3 CFR 1938-1943 Comp. P. 1288.

SOURCE: 40 FR 12067, Mar. 17, 1975, unless otherwise noted.

## Natural Resources Conservation Service, USDA

## § 612.5

### § 612.1 Purpose and scope.

This part sets forth Natural Resources Conservation Service (NRCS) policy and procedure for the administration of a cooperative snow survey and water supply forecast program. The program provides agricultural water users and other water management groups in the western states area with water supply forecasts to enable them to plan for efficient water management. The program also provides the public and the scientific community with a data base that can be used to accurately determine the extent of the snow resource. The western states area comprises Alaska, Arizona, California (east side of the Sierra Nevada mountain range only), Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

### § 612.2 Snow survey and water supply forecast activities.

To carry out the cooperative snow survey and water supply forecast program, NRCS:

(a) Establishes, maintains, and operates manual and automated snow course and related hydro meteorological networks. Planning for such networks is carried out in accordance with OMB Circular A-62.

(b) Determines and provides information on the expected water supply, including seasonal streamflow data. If pertinent and appropriate to the needs of cooperators and not otherwise available to them, may provide necessary interpretative analyses and forecasts required for operation of water-control structures and/or agricultural operations.

(c) On request and to the extent NRCS resources and any required cooperator contributions are available, establishes hydrometeorological stations to collect and provide data and necessary interpretative analyses to the requesting party. By written agreement NRCS may accept cooperators' funds, materials, equipment, and services for this purpose.

(d) Develops and encourages use of new techniques and improving data collection and processing.

(e) Cooperates with other federal, state, and local agencies, organiza-

tions, and Canadian provinces and agencies.

### § 612.3 Data collected and forecasts.

(a) Basic data are currently collected at numerous sites in the western states area. Data sites generally include a snow course where both snow depth and water equivalent of snow are measured. However, special sites may measure only snow depth or water equivalent. Many of these sites also provide related meteorological data, such as precipitation, temperature, humidity, solar radiation, and wind.

(b) Water supply forecasts in the western states area are generally made monthly from January through June. Forecasts may be made more frequently for an established need when data are available to NRCS.

### § 612.4 Eligible individuals or groups.

(a) Any individual or group who is a significant water user and who would benefit from a water supply forecast may obtain forecasts from NRCS on a regular basis provided data are available to NRCS to develop a forecast at the desired location.

(b) The program collects and interprets data as a service and an aid to agricultural interests, particularly those served by or affiliated with soil, water, and other conservation districts. Information collected by NRCS for these agricultural users is also made available to other Federal, State, and private agencies and to the general public without charge. Cooperator financial contribution is usually required for special measurements or interpretations beyond the scope of the regular program.

### § 612.5 Dissemination of water supply forecasts and basic data.

Water supply outlook reports prepared by NRCS and its cooperators containing water supply forecasts and basic data are usually issued monthly by each NRCS state office in the western states area for the months of January through June. Other reports jointly issued by NRCS and its cooperators include a fall water supply summary, annual and accumulative summaries of data, and a western states area report covering water supply outlook.

## § 612.6

### § 612.6 Application for water supply forecast service.

Requests for obtaining water supply forecasts or related assistance may be directed to any NRCS office in the western states areas. NRCS offices are described in part 600 of this chapter.

### § 612.7 Forecast user responsibility.

The forecast user's obligation to the federal government is to give appropriate credit and recognition to NRCS for information furnished. The Federal Government does not assume any responsibility for management decisions the user makes which may be based in whole or part on information provided by NRCS.

## PART 613—PLANT MATERIALS CENTERS

Sec.

613.1 Purpose.

613.2 Policy and objectives.

613.3 NRCS responsibilities in plant materials.

613.4 Special production of plant materials.

613.5 PMCs.

AUTHORITY: 16 U.S.C. 590a-590f, 5908; 7 U.S.C. 1010-1011.

SOURCE: 73 FR 51351, Sept. 3, 2008, unless otherwise noted.

### § 613.1 Purpose.

This part provides NRCS policy on the operation of PMCs. The Centers have responsibilities for assembling, testing, releasing, and providing for the commercial production and use of plant materials and plant materials technology for programs of soil, water, and related resource conservation and development.

### § 613.2 Policy and objectives.

(a) It is NRCS policy to assemble, comparatively evaluate, release, and distribute for commercial increase new or improved plant materials and plant materials technology needed for broad programs of resource conservation and development for agriculture, wildlife, urban, recreation, and other land uses and environmental needs. It is the policy of NRCS to conduct plant materials work in cooperation with other agencies of the Department of Agriculture,

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such as the Agricultural Research Service, and with other Federal and State research agencies, including State agricultural experiment stations. The emphasis of the NRCS plant materials work is to find suitable plants to address conservation needs. In contrast, the emphasis of research agencies and organizations in plant development is to improve economically important crops. The NRCS program of testing and releasing new seed-propagated plant materials follows the guidelines in "Statement of Responsibilities and Policies Relating to the Development, Release, and Multiplication of Publicly Developed Varieties of Seed-Propagated Crops," which was adopted in June 1972, by Land Grant Colleges and interested Federal agencies. NRCS releases improved conservation plant materials requiring vegetative multiplication in ways appropriate for particular States and particular species by working with experiment stations, crop improvement associations, and other State and Federal agencies.

(b) The objective of the plant materials activity is to select or develop special and improved plants and techniques for their successful establishment and maintenance to solve conservation problems and needs related to:

(1) Controlling soil erosion on all lands;

(2) Conserving water;

(3) Protecting upstream watersheds;

(4) Reducing sediment movement into waterways and reservoirs through the stabilization of critical sediment sources, such as surface mined lands, highway slopes, recreation sites, and urban and industrial development areas;

(5) Stabilizing disposal areas for liquid and solid wastes;

(6) Improving plant diversity and lengthening the grazing season on dryland pastures and rangelands;

(7) Managing brush on mountain slopes with fire-retarding plant cover to reduce the possibility of fires that threaten life and property, or result in serious sediment sources;

(8) Improving the effectiveness of windbreaks and shelterbelts for reducing airborne sediment, controlling

snow drifting, and preventing crop damage from wind erosion;

(9) Protecting streambank, pond, and lake waterlines from erosion by scouring and wave action;

(10) Improving wildlife food and cover, including threatened and endangered and pollinator species;

(11) Selecting special purpose plants to meet specific needs for environment protection and enhancement;

(12) Selecting plants that tolerate air pollution agents and toxic soil chemicals;

(13) Selecting plants that mitigate odor, Particulate Matter (PM)-10, and PM-2.5;

(14) Testing plants for biofuels and other energy-related activities; and

(15) Evaluating plants and techniques to combat invasive plant species and for reestablishment of desirable species after eradication.

**§ 613.3 NRCS responsibilities in plant materials.**

NRCS operates or enters into agreements with State universities or other State organizations to operate PMCs. NRCS also cooperates, both formally and informally, with other Federal, State, county, and nonprofit agencies or organizations on the selection of plants and evaluation of plant technology to increase the capabilities of PMCs. NRCS employs specialists for testing and selecting plant materials for conservation uses and the development of plant materials technology. NRCS' responsibilities are to:

(a) Identify the resource conservation needs and cultural management methods for environmental protection and enhancement.

(b) Assemble and comparatively evaluate plant materials at PMCs and on sites where soil, climate, or other conditions differ significantly from those at the Centers.

(c) Make comparative field plantings for final testing of promising plants and techniques in cooperation with conservation districts and other interested cooperators.

(d) Release cooperatively improved conservation plants and maintain the breeder or foundation stocks in ways appropriate for particular State and plant species by working with experi-

ment stations, crop improvement associations, and other State and Federal agencies.

(e) Produce limited amounts of foundation or foundation-quality seed and plants available for allocation to conservation districts, experiment stations, other Federal and State research agencies, State seed certifying organizations and directly to commercial growers (if other options do not exist) that will use the material to establish seed fields, seed orchards, or vegetative plantings for large-scale increase.

(f) Encourage and assist conservation districts, commercial seed producers, and commercial and State nurseries to produce needed plant materials for conservation uses.

(g) Encourage the use of improved plant materials and plant materials technology in resource conservation and environmental improvement programs.

**§ 613.4 Special production of plant materials.**

NRCS can produce plant materials in the quantity required to do a specific conservation job if this production will serve the public welfare and only if the plant materials are not available commercially. This function will be performed only until the plant materials are available commercially. Specific production of plant materials by NRCS requires the approval of the Chief.

**§ 613.5 PMCs.**

(a) *The Norman A. Berg National PMC.* The Norman A. Berg National PMC at Beltsville, Maryland, focuses on national initiatives and provides coordination for plant materials work across all 50 States. In addition, the center provides plants and plant technology to address resource concerns in the mid-Atlantic region.

(b) *Other PMCs.* There are 26 other PMCs. Each serves several major land resource areas. NRCS operates 24 of these Centers, and 2 by cooperating agencies, as follows:

(1) Operated by NRCS: Tucson, AZ, Booneville, AR, Lockeford, CA, Brooksville, FL, Americus, GA, Molokai, HI, Aberdeen, ID, Manhattan, KS, Galliano, LA, East Lansing, MI, Coffeeville, MS, Elsberry, MO, Bridger,

MT, Fallon, NV, Cape May Courthouse, NJ, Los Lunas, NM, Big Flats, NY, Bismarck, ND, Corvallis, OR, Kingsville, TX, Knox City, TX, Nacogdoches, TX, Pullman, WA, and Alderson, WV.

(2) Operated by cooperating agencies with financial and technical assistance from NRCS: Meeker, CO—White River and Douglas Creek Soil Conservation Districts with partial funding from NRCS.

(3) Operated by cooperating agencies with technical assistance from NRCS: Palmer, AK—State of Alaska, Department of Natural Resources.

## PART 614—NRCS APPEAL PROCEDURES

Sec.

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AUTHORITY: 5 U.S.C. 301; 7 U.S.C. 6932 and 6995; and 16 U.S.C. 3822(a).

SOURCE: 77 FR 34190, June 11, 2012, unless otherwise noted.

### § 614.1 General.

This part sets forth the informal appeal procedures under which a participant may appeal adverse technical determinations or program decisions made by officials of the Natural Resources Conservation Service (NRCS), an agency under the Department of Agriculture (USDA). These regulations reflect NRCS policy to resolve at the agency level, to the greatest extent possible, disputes arising from adverse technical determinations and program decisions made by NRCS. Once a deci-

sion is rendered final by NRCS, participants may appeal to the National Appeals Division (NAD) as provided for under 7 CFR part 11, or to the Farm Service Agency (FSA) county committee pursuant to 7 CFR part 780 for decisions rendered under Title XII of the Food Security Act of 1985, as amended, 16 U.S.C. 3801 *et seq.* (Title XII).

### § 614.2 Definitions.

The following definitions are applicable for the purposes of this part:

*Adverse decision* means the final technical determination or the program decision issued by NRCS that is adverse to the individual participant and not a matter of general applicability.

*Agency* means NRCS and its employees.

*Agency exhibit* means those documents or materials that are used during the hearing to further explain, differentiate, or distinguish a point, concept, or criteria in an appeal but that were not those materials or documents that the agency relied upon in making the adverse decision. Agency exhibits are labeled alphabetically A, B, C, etc., with total pages in each exhibit numbered.

*Agency record* means all documents and materials, including documents submitted by the participant and those generated by NRCS, which the agency relies upon and bases its program decision or technical determination. The agency record will include all documents relevant to the adverse decision. NRCS maintains the agency record and will, upon request or appeal, make available a copy of the agency record for a specific adverse decision to the participant(s) involved in the dispute. Agency record documents are labeled numerically 1, 2, 3, etc., in the lower right hand of the document.

*Appeal* means a written request by a participant asking for review (including mediation) of an adverse NRCS technical determination or program decision under this part. An appeal must set out the reason(s) for appeal and include any supporting documentation. An appeal is considered filed when the participant's request has been received by the accepting official as indicated in the adverse decision notice.



*Chief* means the Chief of NRCS or his or her designee.

*Commodity Credit Corporation* means a wholly owned government corporation within USDA.

*Conservation district* means any district or unit of State or local government developed under State law for the express purpose of developing and carrying out a local soil and water conservation program. Such district or unit of government may be referred to as a conservation district, soil and water conservation district, natural resource district, conservation committee, or similar name.

*County committee* means a FSA county or area committee established in accordance with section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)).

*Designated conservationist* means the NRCS official, usually the district conservationist, whom the State Conservationist designates to be responsible for the program or compliance requirement to which this part is applicable.

*Final technical determination* means a preliminary technical determination issued under the Highly Erodible Land and Wetland Conservation (HELC/WC) provisions found in 7 CFR part 12 that have become final, and thus, appealable under sections 8 or 10 of this final rule.

*Hearing* means an informal appeal proceeding, either before the NRCS State Conservationist or the FSA county committee that affords a participant opportunity to present testimony and documentary evidence to show why an adverse program decision is in error and why the adverse decision should be reversed.

*Mediation* means a process in which a neutral third party, the mediator, meets with the disputing parties, usually the participant and the agency. Through mediation, the parties have the opportunity to work together with the assistance of the mediator to: Improve communications, understand the relevant issues, develop and explore alternatives, and reach a mutually satisfactory resolution.

*Mediator* means a neutral third party who serves as an impartial facilitator between two or more parties to assist them in resolving a dispute. The medi-

ator does not take sides or render decisions on the merits of the dispute. The mediator assists the parties in identifying areas of agreement and encourages the parties to explore potential options toward resolution.

*Participant* means any individual or entity who has applied for, or whose right to participate in or receive, a payment or other benefit in accordance with any program administered by NRCS to which the regulations in this part apply and is affected by a decision of NRCS. The term does not include those individuals or entities excluded in the definition of participant published at 7 CFR 11.1.

*Preliminary technical determination* means the initial written decision by NRCS for a technical matter under HELC/WC which has not become final under this part.

*Program decision* means a written decision by NRCS concerning eligibility for program benefits, program administration, or program implementation and based upon applicable regulations and program instructions and not a technical determination made solely for the HELC/WC provisions. Program decisions may include technical matters relative to the specific conservation program. These are final decisions upon receipt by the program participant.

*Qualified mediator* means a mediator who is accredited under State law in those States that have a mediation program certified by USDA pursuant to 7 CFR part 785, or in those States that do not have a mediation program certified by USDA, an individual who has attended a minimum of 40 hours of core mediator knowledge and skills training and, to remain in a qualified mediator status, completes a minimum of 20 hours of additional training or education during each 2-year period. Such training or education must be approved by USDA, an accredited college or university, or one of the following organizations: State Bar, a State mediation association, a State approved mediation program, or a society of dispute resolution professionals.

*Reconsideration* means a subsequent consideration of a preliminary technical determination by the designated

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conservationist or the State Conservationist.

*Secretary* means the Secretary of Agriculture.

*State Conservationist* means the NRCS official, or his or her designee, in charge of NRCS operations within a State.

*Title XII* means Title XII of the Food Security Act of 1985, as amended, 16 U.S.C. 3801 *et seq.*

*Verbatim transcript* means the official, written record of proceedings of a hearing on a decision appealable under this part.

#### § 614.3 Decisions subject to informal appeal procedures.

(a) This part applies to NRCS adverse program decisions and technical determinations made with respect to:

(1) Conservation programs and regulatory requirements authorized under Title XII, including:

- (i) Conservation Security Program;
- (ii) Conservation Stewardship Program;
- (iii) Conservation Reserve Program and the Conservation Reserve Enhancement Program;
- (iv) Environmental Quality Incentives Program, including the following:
  - (A) Agricultural Water Enhancement Program,
  - (B) Conservation Activity Plans,
  - (C) Colorado River Basin Salinity Control,
  - (D) Conservation Innovation Grants,
  - (E) Ground and Surface Water Conservation Program,
  - (F) Klamath Basin Program, and
  - (G) Organic Program Initiative;
- (v) Farm and Ranch Land Protection Program;
- (vi) Grassland Reserve Program;
- (vii) Highly Erodible Land Conservation;
- (viii) Wetland Conservation;
- (ix) Wetlands Reserve Program and Wetlands Reserve Enhancement Program; and
- (x) Wildlife Habitat Incentive Program.

(2) Non-Title XII conservation programs or provisions, including:

- (i) Agriculture Management Assistance Program;

(ii) Emergency Watershed Protection Program including Flood Plain Easements;

(iii) Great Lakes Restoration Initiative;

(iv) Healthy Forest Reserve Program;

(v) Water Bank Program;

(vi) Watershed Protection and Flood Prevention Program; and

(3) Any other program to which this part is made applicable.

(b) With respect to matters identified in paragraph (a) of this section, participants may appeal adverse decisions concerning:

(1) Denial of participation in a program;

(2) Compliance with program requirements;

(3) Issuance of payments or other program benefits to a participant in a program;

(4) Technical determinations made under Title XII HELC/WC provisions;

(5) Technical determinations or program decisions that affect a participant's eligibility for USDA program benefits;

(6) The failure of an NRCS official issue a technical determination or program decision subject to this part ("failure to act"); and

(7) Incorrect application of general policies, statutory or regulatory requirements.

(c)(1) Only a participant directly affected by a program decision or a technical determination made by NRCS may invoke the informal appeal procedures contained in this part.

(2) In order for the appeal request to be effective, the participant must personally make a written request for appeal that is signed by the participant identified in paragraph (c)(1) no later than 30 days after receipt of the adverse decision.

(d) Appeals of adverse final technical determinations and program decisions subject to this part are also covered by the NAD rules of procedure, set forth at 7 CFR part 11, and by the FSA county committee appeals process, set forth at 7 CFR parts 11 and 780 for informal appeals of Title XII decisions.

**§ 614.4 Decisions not subject to informal appeal procedures.**

(a) Decisions that are not appealable under this part include:

(1) Any general program provision, program policy, or any statutory or regulatory requirement that is applicable to all similarly situated participants, such as:

- (i) Program application ranking criteria;
- (ii) Program application screening criteria;
- (iii) Published soil surveys; or
- (iv) Conservation practice technical standards included in the local field office technical guide or the electronic FOTG (eFOTG).

(2) Mathematical or scientific formulas established under a statute or program regulation and a program decision or technical determination based solely on the application of those formulas;

(3) Decisions made pursuant to statutory provisions or implementing regulations that expressly make agency program decisions or technical determinations final;

(4) Decisions that are based on technical information provided by another Federal or State agency, e.g., lists of endangered and threatened species;

(5) Corrections by NRCS of errors in data entered on program contracts, easement documents, loan agreements, and other program documents; or

(6) Decisions issued by the Office of the General Counsel, in the exercise of authority delegated to it by the Attorney General, concerning the application of real property title standards issued by the Attorney General.

(b) Complaints involving discrimination in program delivery are not appealable under this part and are handled under the existing USDA civil rights rules and regulations.

(c) Appeals related to contractual issues that are subject to the jurisdiction of the Civilian Board of Contract Appeals are not appealable under the procedures within this part.

(d) Where NRCS is unable to fund an application for program participation due to a lack of funds. The agency may not deny appeal of the underlying computations used to rank and prioritize the application.

**§ 614.5 Reservation of authority.**

The Secretary of Agriculture, Chief of NRCS, if applicable, or designee, reserves the right to make a determination at any time on any question arising under the programs covered under this regulation within their respective authority, including reversing or modifying in writing, with sufficient reason given therefore, any program decision or technical determination made by an NRCS official.

**§ 614.6 Agency records and decision notices.**

(a) All NRCS decisions under this part are based upon an agency record. NRCS will supplement the agency record, as appropriate, during the informal appeals process.

(b) NRCS notifies participants of the agency's preliminary and final technical determinations and program decisions through decision notices. By certified mail, return receipt requested, NRCS will send to the participant a decision notice within 10 working days of rendering a technical determination or program decision. In lieu of certified mail, NRCS may hand deliver notices to participants with written acknowledgment of delivery by the participant. Each decision notice contains the following:

(1) The factual basis for the technical determination or program;

(2) The regulatory, statutory, or policy basis for the technical determination or program decision; and

(3) Information regarding any informal appeal rights available under this part; the process for requesting such appeal; and the procedure for requesting further review before the FSA county committee pursuant to 7 CFR part 780 or NAD pursuant to 7 CFR part 11.

**§ 614.7 Preliminary technical determinations.**

(a) A preliminary technical determination is limited to those determinations made pursuant to the HELC/WC provisions (16 U.S.C. 3801, *et seq.*) and becomes final 30 days after the participant receives the decision, unless the participant files an appeal with the appropriate NRCS official as indicated in the decision notice requesting:

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(1) Reconsideration with a field visit, office visit, or other designated location meeting site in accordance with paragraphs (b) and (c) of this section; or

(2) Mediation as set forth in §614.11.

(b)(1) If the participant requests reconsideration with a field visit, office visit, or other location visit, the designated conservationist, participant, and at the option of the conservation district, a district representative will make a field or office visit for the purpose of gathering additional information and discussing the facts relating to the preliminary technical determination. The participant may also provide any additional documentation to the designated conservationist.

(2) Within 15 days of the field or office visit, the designated conservationist, based upon the agency record as supplemented by the field visit and any participant submissions, will reconsider his or her preliminary technical determination.

(3) If the reconsidered determination is no longer adverse to the participant, the designated conservationist will issue the reconsidered determination as a final technical determination.

(4) If the preliminary technical determination remains adverse, then the designated conservationist will forward the revised decision and agency record to the State Conservationist for a final determination pursuant to paragraph (c) of this section, unless further appeal is waived in writing by the participant in accordance with paragraph (d) of this section.

(c) The State Conservationist will issue a final technical determination to the participant as soon as is practicable after receiving the reconsideration and agency record from the designated conservationist. The technical determination issued by the State Conservationist becomes a final NRCS technical determination upon receipt by the participant. Receipt triggers the running of the 30-day timeframe to appeal to NAD, or if applicable, to the FSA county committee.

(d) In order to address application needs or resource issues on the ground immediately (expedited finality), a participant may waive, in writing to the State Conservationist, the reconsider-

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ation rights stated in paragraph (a) of this section so that a preliminary technical decision becomes final before the expiration of the 30-day appeal period.

### §614.8 Final technical determinations.

(a) Preliminary HELC/WC technical determinations become final and appealable:

(1) Thirty days after receipt of the preliminary technical decision by the participant unless the determination is appealed in a timely manner as provided for in this regulation.

(2) Thirty calendar days after the beginning of a mediation session if a mutual agreement has not been reached by the parties; or

(3) Upon receipt by the participant of the final technical determination issued on reconsideration as provided in §614.7(c).

(b) The participant may appeal the final technical determination issued under the HELC/WC provisions to:

(1) The FSA county committee pursuant to 7 CFR part 780; or

(2) NAD pursuant to 7 CFR part 11.

### §614.9 Program decisions.

(a) Program decisions are final upon receipt of the program decision notice by the participant. Program decisions include all decisions issued by NRCS for programs that NRCS administers separate from the HELC/WC provisions. The participant has the following options for appeal of the program decision:

(1) An informal hearing before NRCS as provided for in paragraph (b) through paragraph (d) of this section;

(2) Mediation as provided for in §614.11;

(3) An informal hearing before the FSA county committee pursuant to 7 CFR part 780 if the program decision is made under Title XII; or

(4) A hearing before NAD pursuant to 7 CFR part 11.

(b) A program participant must file an appeal request for a hearing with the appropriate State Conservationist as indicated in the decision notice within 30 calendar days from the date the participant received the program decision.

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(c) The State Conservationist may accept a hearing request that is untimely filed under paragraph (b) of this section if the State Conservationist determines that circumstances warrant such an action.

(d) The State Conservationist will hold a hearing no later than 30 days from the date the appeal request was received. The State Conservationist will issue a written final decision no later than 30 days from the close of the hearing.

(e) NRCS will provide notice of the right to appeal to NAD on program decisions when equitable relief is denied by the Chief or the State Conservationist.

### § 614.10 Appeals before the Farm Service Agency county committee.

(a) In accordance with 7 CFR part 780, a participant may appeal a final technical determination or a program decision to the FSA county committee for those decisions made under Title XII.

(b) When the FSA county committee hearing the appeal requests review the technical determination by the applicable State Conservationist prior to issuing their decision, the State Conservationist will:

(1) Designate an appropriate NRCS official to gather any additional information necessary for review of the technical determination;

(2) Obtain additional oral and documentary evidence from any party with personal or expert knowledge about the facts under review; and

(3) Conduct a field visit to review and obtain additional information concerning the technical determination.

(c) After the actions set forth in paragraphs (b)(1) through (3) of this section are completed, provide the FSA county committee with a written technical determination in the form required by § 614.6(b)(1) through (2) as well as a copy of the agency record.

### § 614.11 Mediation.

(a) A participant who wishes to pursue mediation must file a request for mediation under this part with the official designated in the decision notice no later than 30 days after the date on which the decision notice was received.

Participants in mediation are normally required to pay fees established by the mediation program.

(b) A dispute will be mediated by a qualified mediator as defined at § 614.2(n).

(c) The parties will have 30 days from the date of the first mediation session to reach a settlement agreement. This date can be extended upon agreement of the parties. The mediator will notify the State Conservationist whether the parties have reached an agreement.

(d) Settlement agreement reached during, or as a result of, the mediation process must be in writing, signed by all parties to the mediation, and comply with the statutory and regulatory provisions and policies governing the program. In addition, the participant must waive all appeal and judicial rights as to the issues resolved by the settlement agreement.

(e) At the outset of mediation, the parties must agree to mediate in good faith. NRCS demonstrates good faith in the mediation process by, among other things:

(1) Designating an NRCS representative in the mediation;

(2) Making pertinent records available for review and discussion during the mediation; and

(3) To the extent the NRCS representative does not have authority to bind the agency, directing the NRCS representative to forward, in a timely manner, any written agreement proposed in mediation to the appropriate NRCS official for consideration.

(f) *Mediator impartiality.* (1) No person may serve as mediator in an adverse program dispute who has previously served as an advocate or representative for any party in the mediation.

(2) No person serving as mediator in an adverse program dispute may thereafter serve as an advocate for a participant in any other proceeding arising from or related to the mediated dispute including, without limitation, representation of a mediation participant before an administrative appeals entity of USDA or any other Federal agency.

(g) *Confidentiality.* Mediation is a confidential process except for those limited exceptions permitted by the Administrative Dispute Resolution Act

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at 5 U.S.C. 574. As a condition of participation, the participants and any interested parties joining the mediation must agree to the confidentiality of the mediation process. The mediator will not testify in administrative or judicial proceedings concerning the issues discussed in mediation, nor submit any report or record of the mediation discussions, other than the mediation agreement or the mediation report, except as required by law.

### **§ 614.12 Transcripts.**

(a) No recordings will be made of any informal hearing conducted under § 614.9. In order to obtain an official record of a hearing, a participant may obtain a verbatim transcript as provided in paragraph (b) of this section.

(b) Any party to an informal hearing appeal under § 614.9 may request that a verbatim transcript is made of the hearing proceedings and that such transcript is made the official record of the hearing. The party requesting a verbatim transcript must pay for the transcription service and provide a copy of the transcript to NRCS at no charge.

### **§ 614.13 Appealability review.**

If NRCS states that a decision is not adverse to the individual participant, and thus, no right to appeal exists, NRCS will notify the participant that he may seek review of that determination from the NAD Director.

### **§ 614.14 Computation of time.**

(a) The word “days” as used in this final rule means calendar days, unless specifically stated otherwise.

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(b) Deadlines for any action under this part, including deadlines for filing and decisions which fall on a Saturday, Sunday, Federal holiday, or other day on which the relevant NRCS office is closed during normal business hours, will be extended to close of business the next working day.

### **§ 614.15 Implementation of final NAD determinations.**

(a) No later than 30 days after a NAD determination becomes a final administrative decision of USDA, NRCS will implement the determination.

(b) Biannually, NRCS must file a report on the status of implementation of final administrative determinations in accordance with section 14009 of the 2008 Farm Bill.

### **§ 614.16 Participation of third parties in NRCS proceedings.**

When an appeal is filed under this part, NRCS will notify any third party whose interests may be affected of the right to participate as an appellant in the appeal. If the third party declines to participate, then NRCS' decision will be binding as to that third party as if the party had participated. If a formal hearing is conducted by NAD, third party issues will be decided by NAD.

### **§ 614.17 Judicial review.**

A participant must receive a final determination from NAD pursuant to 7 CFR part 11 prior to seeking judicial review in any U.S. District Court of competent jurisdiction.

## SUBCHAPTER C—WATER RESOURCES

### PART 621—RIVER BASIN INVESTIGATIONS AND SURVEYS

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621.1 Purpose.  
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AUTHORITY: Sec. 6 (Pub. L. 83-566) 68 Stat. 666 (16 U.S.C. 1006).

SOURCE: 48 FR 18788, Apr. 26, 1983, unless otherwise noted.

#### Subpart A—General

##### § 621.1 Purpose.

This part describes policies, requirements, and procedures governing the Department of Agriculture's (USDA's) investigations and surveys of watersheds of rivers and other waterways as

a basis for developing coordinated programs. These activities are undertaken in cooperation with other Federal, State, and local agencies. The delegation of authority to the Natural Resources Conservation Service (NRCS) to provide national leadership for the conservation, development, and productive use of the Nation's soil, water, and related resources, including the activities treated in this part is found at § 2.62 of this title.

##### § 621.2 Scope.

USDA river basin activities include:

(a) Cooperative river basin surveys in coordination with Federal, State, and local agencies;

(b) Floodplain management assistance in coordination with the responsible State agency and involved local governments;

(c) Joint investigations and reports with the Department of the Army under Pub. L. 87-639, 76 Statute 438 (16 U.S.C. 1009); and

(d) Interagency coordination of water resources activities.

#### Subpart B—USDA Cooperative Studies

##### § 621.10 Description.

Cooperative river basin studies provide USDA planning assistance to Federal, State, and local governments. The purpose of these studies is to assist in appraising water and related land resources; defining and determining the extent of the problems; and formulating alternative plans, including land treatment, nonstructural or structural measures, or combinations thereof, that would solve existing problems or meet existing and projected needs. These studies concentrate on specific objectives identified by the requesting agencies and citizen groups that are consistent with USDA authorities and responsibilities and current NRCS priorities. The objectives ordinarily include the formulation of a plan but may require only inventories of available resources and associated problems to be used by other agencies in plan

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formulation. USDA assistance is provided through field advisory committees composed of representatives of the Economic Research Service, Forest Service, and NRCS. The NRCS representative chairs the field advisory committee.

### § 621.11 Who may obtain assistance.

Assistance is available to conservation districts, communities, county governments, regional planning boards, other planning groups, and State and Federal agencies. Local groups express their desires for a cooperative study to the governor or appropriate State agency.

### § 621.12 How to request assistance.

For a cooperative study a governor, or a Federal, State, or local government agency must submit a written request and a Proposal to Study (PTS) through the NRCS State Conservationist to the Chief. Assistance in preparing the proposal may be obtained by contacting the State Conservationist. The State Conservationist sends the request and proposal with comments to the Chief for consideration. The proposal should:

- (a) Describe the basin or study area, including a map of the study area;
- (b) Explain the need for the study;
- (c) Explain the need for USDA participation;
- (d) State the responsibility and authority of the requesting agency in the study;
- (e) Estimate the extent of participation of other Federal and State agencies;
- (f) Discuss views and priorities of affected soil conservation districts regarding the proposed study;
- (g) Briefly describe the intended management organization of the study;
- (h) Specifically describe the expected results of the study;
- (i) Identify primary users of the study results and the manner in which the results will be used;
- (j) State the relationship of the study to ongoing and completed river basin studies;
- (k) State that procedures for informing clearinghouses and for eliciting public participation will be followed;

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(l) Estimate the duration and scope of the study; and

(m) Estimate the study costs by year and agency.

### § 621.13 Conditions for approval.

The Chief may authorize requested cooperative studies recommended by the State Conservationist. Priority for starting cooperative studies is based on the date of application, the readiness of the requesting agency to begin participation, the importance and significance of problems to be studied, the monetary or in-kind contributions toward the study, the sequence of ongoing and future studies, the type of study, the duration of study, the cost of study, the potential for implementation and other factors affecting the effectiveness and efficiency of the study. The number and location of cooperative studies started each year are governed by the availability of USDA funds and personnel.

### § 621.14 Recipient responsibility.

Leadership in arrangements for other needed Federal, State, and local agency participation is responsibility of the requesting agency. Consistent with national objectives and NRCS policy and procedures, the requesting agency has leadership responsibility for developing specific study objectives, providing the necessary study organization, and ensuring public participation in the planning process.

## Subpart C—Floodplain Management Assistance

### § 621.20 Description.

Floodplain management studies provide needed information and assistance to local and State entities so that they can implement programs for reducing existing and future flood damages in rural and urban communities. Assistance is targeted to communities where flood damage is a serious concern and local governments are sincerely interested in taking action to reduce damage.

### § 621.21 Who may obtain assistance.

Assistance is available to conservation districts, communities, county



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governments, regional planning boards, other planning groups, and State and Federal agencies.

### § 621.22 How to request assistance.

(a) A conservation district, local community or other jurisdiction may request floodplain management assistance for a local area for which they are responsible, by letter to the governor or the agency of State government responsible for floodplain management activities. Assistance in making application may be obtained by contacting any NRCS office.

(b) The governor or his designee may request floodplain management assistance for the State by submitting a written request to the State Conservationist.

### § 621.23 Conditions for approval.

(a) USDA floodplain management studies are authorized by the Director of the Basin and Area Planning Division. Priority for starting floodplain management studies is based on the same factors as for USDA Cooperative Studies as described in § 621.13.

(b) A study for an individual community may be started upon completion of a plan of work in which the Director of the Basin and Area Planning Division concurs and for which funds are available. Preparation of the plan of work is the responsibility of and must be approved by the applicant, the responsible State agency, and the State Conservationist. The plan sets forth the responsibilities of the applicant, the State, and USDA in carrying out the study and interpreting and using the data in a local floodplain management program. The State agency responsible for floodplain management activities may establish priorities on which to base the sequence of approval of floodplain management studies within its State. The number of studies started each Federal fiscal year is governed by the availability of funds and personnel and the amount of State and local assistance available.

(c) States and communities are encouraged to make monetary or in-kind contributions toward the floodplain management study. The State and local share may reflect in-kind contributions in lieu of fund transfers.

### § 621.24 NRCS responsibility.

NRCS is responsible for providing leadership for scheduling and implementing the technical phases of the studies and preparing the reports. NRCS assists in interpreting the study results.

### § 621.25 Recipient responsibility.

The State agency is responsible for developing State priorities for floodplain management studies and coordinating this work with related activities in the State. The cooperating local government entity is responsible for obtaining permission for carrying out field surveys. The State and local participants assist in distributing and interpreting the report and providing public information and educational services.

## Subpart D—Joint Investigations and Reports With the Department of the Army

### § 621.30 Description.

(a) As provided by Pub. L. 87-639, joint investigations and reports by USDA and the Department of the Army may be authorized by resolutions adopted by the Committee on Environment and Public Works of the U.S. Senate or the Committee on Public Works and Transportation of the U.S. House of Representatives for any watershed area in the 50 States, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands if the nature of the watershed area problems dictates need for a joint effort by the two Departments.

(b) Authorized joint investigations and reports are made to determine works of improvement needed in the study area for flood prevention; for the conservation, development, use, and disposal of water; for flood control; for the conservation and proper use of land; and for allied purposes. The joint report to Congress may include a water and related land resources plan recommended for implementation. Such an implementation plan must be accompanied by an environmental impact statement (EIS) and must be in sufficient detail to permit its implementation.

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(c) As mutually agreed by USDA and the Department of the Army Corps of Engineers, the report and EIS are forwarded to Congress through appropriate channels after technical, public, and interagency reviews in accordance with NRCS policy as described in § 622.34, or in accordance with the Corps of Engineers' policy concerning technical and public review. Implementation of these plans is contingent on congressional action.

### § 621.31 Who may request assistance.

Any organization, group, or State or local government may request assistance.

### § 621.32 How to request assistance.

Applicants for a joint investigation and report should request their congressional representative(s) to initiate appropriate action under Pub. L. 87-639.

### § 621.33 Conditions for approval.

A joint investigation and report is authorized by a resolution of the Committee on Environment and Public Works of the U.S. Senate or the Committee on Public Works and Transportation of the U.S. House of Representatives. Studies are initiated when funds for them are appropriated by the Congress.

### § 621.34 Recipient responsibility.

Participating local and State governments work with USDA and the Department of the Army representatives in developing objectives, collecting data, analyzing problems, planning and formulating proposals, and considering financial plans. Active public participation is solicited in the planning process through means such as questionnaires, public meetings, citizen advisory boards, and technical committees.

## Subpart E—Interagency Coordination

### § 621.40 Participation in Federal interagency policy activities at the national level.

(a) Policy development in water and related land resources is coordinated at the Federal level through the Cabinet Council on Natural Resources and Environment. NRCS provides staff sup-

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port and representation in these activities as requested.

(b) Within the Department, all interested USDA agencies participate in water policy development through the USDA Committee on Natural Resources and Environment and the Water Issues Work Group.

(c) NRCS provides appropriate staff support when requested for committees, work groups, and task forces established for interagency coordination of water resources related activities of Federal agencies.

### § 621.41 Participation in Federal-State policy and planning activities at the regional level.

(a) NRCS has a responsibility to represent the Department when needed to assist regional water planning entities and interagency committees which coordinate water resources planning activities.

(b) For the Arkansas-White-Red Basin Interagency Committee (AWRBIAC) and the Pacific Southwest Interagency Committee (PSIAC), the USDA member periodically serves as chairperson and provides an executive secretary. For the Southeast Basin Interagency Committee (SEBIAC), NRCS periodically provides an executive secretary for the chairperson, who is a State government official.

(c) Under the leadership of NRCS, other USDA agencies, principally the Forest Service and Economic Research Service, also participate.

### § 621.42 Federal-State compacts.

NRCS is designated to represent USDA in assisting the U.S. Commissioners of the Delaware River Basin Commission and the Susquehanna River Basin Commission. In carrying out this responsibility, NRCS provides a liaison officer to work with the U.S. Commissioners on policy level matters, as well as providing the USDA representatives on the Federal field committees to assist the Commissioners.

### § 621.43 Interstate compacts and commissions.

As assigned, an NRCS State Conservationist is the USDA point of contact for governing bodies of interstate compacts and commissions concerned

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with the conservation, development, and proper use of water, soil, and related resources.

### § 621.44 Special studies.

As designated, NRCS represents USDA on special study groups such as for the Colorado River Basin Salinity Control Program Studies.

### § 621.45 Flood insurance studies.

As requested by the Federal Emergency Management Agency (FEMA), and within the limits of available resources, NRCS carries out flood insurance studies of various types under the National Flood Insurance Program (Pub. L. 90-448, 82 Statute, 574 (42 U.S.C. 4012)), as amended. In this activity, NRCS performs detailed technical studies to determine the extent and frequency of flooding. The flood insurance program is administered by FEMA. NRCS is reimbursed by that agency for actual costs incurred in carrying out the studies. Local entities desiring flood insurance coverage should contact the responsible State agency or FEMA and apply in accordance with procedures of that agency.

## PART 622—WATERSHED PROJECTS

### Subpart A—General

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- 622.1 Purpose.
- 622.2 Scope.
- 622.3 Relationship to the Pub. L. 78-534 Program.
- 622.4 Relationship to other agencies.
- 622.5 Guidelines.
- 622.6 Equal opportunity.
- 622.7 Notification under Executive Order 12372.

### Subpart B—Qualifications

- 622.10 Sponsors.
- 622.11 Eligible watershed projects.

### Subpart C—Application Procedure

- 622.20 Application.
- 622.21 State agency approval.

### Subpart D—Planning

- 622.30 General.
- 622.31 Basic planning efforts.
- 622.32 Reviews and approvals.

AUTHORITY: Pub. L. 83-566, 68 Stat. 666 as amended (16 U.S.C. 1001, *et seq.*); Pub. L. 78-534, 58 Stat. 889, 33 U.S.C. 701b-1.

SOURCE: 49 FR 6078, Feb. 17, 1984, unless otherwise noted.

## Subpart A—General

### § 622.1 Purpose.

This part sets forth the general policies for planning and carrying out watershed projects under Pub. L. 83-566, 68 Stat. 666 (16 U.S.C. 1001 *et seq.*) and flood prevention projects under Pub. L. 78-534, 58 Stat. 889 (33 U.S.C. 701b-1).

### § 622.2 Scope.

(a) To assist sponsors in preparing and carrying out watershed plans, the Natural Resources Conservation Service (NRCS) shall conduct investigations and surveys, with the cooperation and assistance of other Federal agencies, to:

(1) Determine the extent of watershed problems and needs, and

(2) Set forth viable alternative solutions consistent with local, regional, and national objectives, including an alternative solution which makes the greatest net contribution to national economic development.

(b) Alternatives will consist of either land treatment, nonstructural or structural measures, or combinations thereof that will help accomplish one or more of the authorized project purposes.

(c) Authorized project purposes are watershed protection, conservation and proper utilization of land, flood prevention, agricultural water management including irrigation and drainage, public recreation, public fish and wildlife, municipal and industrial water supply, hydropower, water quality management, ground water supply, agricultural pollution control, and other water management.

(d) After a final plan for works of improvement is agreed upon between NRCS and the sponsors and the approval processes are completed, NRCS will provide technical and financial assistance to install the project, subject to the availability of funds and the budgeting and fiscal policies of the President.

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### § 622.3 Relationship to the Pub. L. 78-534 Program.

(a) *General.* The purposes and objectives of the programs under Pub. L. 83-566 and Pub. L. 78-534 are the same in most cases. Planning criteria, economic justification, local sponsorship, agency participation, financial assistance, eligible measures, operation and maintenance arrangements for the Pub. L. 78-534 program are consistent with those of the Pub. L. 83-566 program. The differences with the Pub. L. 78-534 program are outlined below.

(b) *Initiation.* Flood prevention projects are individually authorized by Federal legislation. The state conservationist and the sponsors agree on a plan of action and notify interested parties to solicit their participation. The sponsors keep the public informed and solicit their views and comments.

(c) *Subwatershed plans.* These plans are administratively approved by the state conservationist. If the plan involves purposes other than flood prevention, clearance must be obtained from the Office of Management and Budget before approval. Financial assistance available differs only in that program funds may be used for the purchase of land rights for single-purpose flood prevention structures and installing land treatment on Federal lands.

(d) *Installation.* NRCS shall award and administer contracts for the installation of project measures unless the sponsors agree to perform the work. Project agreements between the sponsors and NRCS are not required if the work consists of flood prevention structures built and funded by NRCS.

### § 622.4 Relationship to other agencies.

NRCS will coordinate responsibilities with other water and land resource development agencies on projects that may come under the jurisdictions of various authorities. This will include any land management agencies which may have land which would be affected by project measures. Coordination with the U.S. Department of the Interior's Fish and Wildlife Service will be in accordance with section 12 of Pub. L. 83-566 (as amended).

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### § 622.5 Guidelines.

Guidelines for carrying out programs authorized under Pub. L. 83-566 and Pub. L. 78-534 are contained in miscellaneous instructions, manuals, and handbooks issued by the Natural Resources Conservation Service, Regulations for Implementing NEPA (40 CFR parts 1500-1508) issued by the Council on Environmental Quality, and in Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies issued by the Water Resources Council. Watershed projects are to be planned and carried out in a way that will conform to conditions mandated by the above and other applicable laws, Executive orders, and codified rules.

### § 622.6 Equal opportunity.

The Pub. L. 83-566 and Pub. L. 78-534 programs will be conducted in compliance with all requirements respecting nondiscrimination as contained in the Civil Rights Act of 1964, as amended, and in the regulations of the Secretary of Agriculture (7 CFR Part 15), which provide that no person in the United States shall, on the grounds of race, color, national origin, sex, age, handicap, or religion be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity conducted or assisted by the Department of Agriculture.

### § 622.7 Notification under Executive Order 12372.

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs" and 7 CFR Part 3015, Subpart V, "Intergovernmental Review of the Department of Agriculture Programs and Activities." State processes or directly affected State, areawide, regional and local officials and entities have 60 days for comment starting from the date of submission of the application to the State Single Point of Contact.

## Subpart B—Qualifications

### § 622.10 Sponsors.

(a) Watershed projects are sponsored by one or more local organizations

qualifying as sponsors. All watershed plans shall be sponsored by entities legally organized under State law or by any Indian tribe or tribal organization having the authority to carry out, operate and maintain works of improvement. Those plans that incorporate the use of nonstructural or structural measures shall be sponsored by organizations that, individually or collectively, have:

- (1) The power of eminent domain,
- (2) The authority to levy taxes or use other adequate funding sources, including state, regional, or local appropriations, to finance their share of the project cost and all operation and maintenance costs.

(b) To receive Federal assistance for project installation, sponsors must commit themselves to use their powers and authority to carry out and maintain the project as planned.

**§ 622.11 Eligible watershed projects.**

(a) To be eligible for Federal assistance, a watershed project must:

- (1) Meet the definition of a watershed area as defined in NRCS's National Watersheds Manual.
- (2) Not exceed 250,000 acres in size.
- (3) Not include any single structure that provides more than 12,500 acre-feet of floodwater detention capacity nor more than 25,000 acre-feet of total capacity.
- (4) Have significant land or water management problems that can be solved or alleviated by measures for watershed protection, flood prevention, drainage, irrigation, recreation, fish and wildlife, municipal or industrial water supply, or other water management.
- (5) Produce substantial benefits to the general public, to communities, and to groups of landowners.
- (6) Cannot be installed by individual or collective landowners under alternative cost-sharing assistance.
- (7) Have strong local citizen and sponsor support through agreement to obtain land rights, contribute the local cost of construction, and carry out operation and maintenance.

(b) Works and improvement that may be included in a watershed project are those that:

- (1) Contribute to reducing flood-water, erosion, and sediment damages.
- (2) Further the conservation, development, utilization, and disposal of water and the conservation and proper utilization of land.
- (3) Have the greatest net national economic benefits consistent with protecting the Nation's environment (for structural water resource projects) relative to alternative works, unless an exception is granted by the Secretary.

**Subpart C—Application Procedure**

**§ 622.20 Application.**

Sponsors shall follow State developed procedures (based on Executive Order 12372) for coordination of proposed Federal financial assistance and also USDA's 7 CFR part 3015 in applying for Pub. L. 83-566 assistance. Standard forms for Federal assistance or other approved forms may be obtained from NRCS State, area, or field offices. These forms should be submitted to the Single Point of Contact in accordance with the State developed procedures.

**§ 622.21 State agency approval.**

The governor or designated State agency will approve or disapprove the application. If disapproved, no further action is required of NRCS. If approved or not disapproved within 45 days, the application shall be sent to the NRCS state conservationist. After the state conservationist has determined that the application is legally valid, he will notify the sponsor of receipt of the application. If found not legally valid, the state conservationist will return it to the originator with an opinion.

**Subpart D—Planning**

**§ 622.30 General.**

- (a) Watershed projects are to be planned and carried out in a way that will (1) minimize all adverse impacts, and (2) mitigate unavoidable losses to the maximum practicable degree. Projects must comply with the requirements of the National Environmental Policy Act of 1969 (Pub. L. 91-190, 83 Stat. 852) (42 U.S.C. 4321 *et seq.*).
- (b) Fish and Wildlife enhancement measures proposed by Federal or State

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fish and wildlife agencies will be included if they are technically and economically feasible and are acceptable to the sponsors and the NRCS. If additional sponsors are needed to carry out the recommended fish and wildlife measures, NRCS will assist fish and wildlife agencies in attempting to obtain such sponsors.

(c) All planning efforts by NRCS and the sponsors must include well publicized public meetings to obtain public input and views on the project.

(d) Sponsors who receive financial assistance awarded after October 1, 2010, must comply with applicable registration and reporting requirements of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109-282, as amended), and 2 CFR parts 25 and 170.

[49 FR 6078, Feb. 17, 1984, as amended at 76 FR 19684, Apr. 8, 2011]

### § 622.31 Basic planning efforts.

Upon receipt of an application, the NRCS will make any necessary field studies and develop a report to justify the need for planning effort. Once planning is authorized by the Chief of NRCS, a watershed plan-environmental impact statement (plan-EIS) or a watershed plan-environmental assessment (plan-EA) will be prepared by NRCS to request funding. This effort must be coordinated with other State and Federal agencies.

### § 622.32 Reviews and approvals.

(a) The watershed plan-environmental impact statement (or assessment) will be subject to internal technical reviews, sponsor and other local party review, interagency review by other Federal, state, and concerned groups, and a final review as stated in NRCS's National Watersheds Manual.

(b) After thorough review by NRCS and other agencies, the NRCS and the sponsors shall accept the plan-EIS or plan-EA by signing the watershed agreement. The watershed plan must be approved by the Committees of Congress or the Chief of NRCS. Funding for installation can then be granted by the Chief of NRCS.

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### PART 623—EMERGENCY WETLANDS RESERVE PROGRAM

#### Sec.

- 623.1 Purpose and scope.
- 623.2 Definitions.
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- 623.7 Terms of the easement.
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- 623.11 Obligations of the landowner.
- 623.12 Payments to landowners by NRCS.
- 623.13 Wetland Reserve Plan of Operations.
- 623.14 Easement modifications.
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- 623.16 Monitoring and enforcement of easement terms and conditions.
- 623.17 Violations and Remedies.
- 623.18 Access to land.
- 623.19 Assignments.
- 623.20 Appeals.
- 623.21 Scheme and device.
- 623.22 Filing of false claims.

AUTHORITY: 16 U.S.C. 3837-3837f; Pub. L. 103-75, Chapter 1, 107 Stat. 739, 742.

SOURCE: 58 FR 62497, Nov. 29, 1993, unless otherwise noted.

### § 623.1 Purpose and scope.

(a) The regulations in this part set forth the policies, procedures, and requirements for the Emergency Wetlands Reserve Program (EWRP). Under the EWRP, NRCS will make offers to purchase wetland conservation easements from persons owning croplands that were damaged by the 1993 Midwest floods if those lands have the potential for restoration to wetland conditions and if the owner voluntarily agrees to restore and maintain those conditions. The easements are to be purchased to promote the restoration and maintenance of wetland characteristics, such as hydrologic conditions of inundation or saturation of the soil and hydrophytic vegetation. The functions and values of the wetlands for wildlife habitat, water quality improvement, flood water retention, floodway enhancement, ground water recharge, open space, aesthetic values, and environmental education will thus be promoted. The wetland conservation easements will permanently prohibit use of

the affected land as cropland. Additionally, the easement shall require permanent maintenance of the wetland conditions, except in the case of natural disaster.

(b) The EWRP is available only in the following States: Illinois, Iowa, Kansas, Minnesota, Missouri, Nebraska, South Dakota, and Wisconsin. Certain cropland areas within these States have been determined to have been inundated by the Midwest floods of 1993. As more fully defined and described in this part, eligible land may include farmed wetlands or prior converted wetlands (wetlands converted prior to December 23, 1985), together with adjacent lands on which the wetlands are functionally dependent so long as the likelihood of successful restoration of such land and the potential wetland values merit inclusion in the program with reasonable costs.

#### § 623.2 Definitions.

The following definitions shall be applicable for the purposes of this part:

(a) *Agricultural commodity*—means any crop planted and produced by annual tilling of the soil, or on an annual basis by one trip planters, or alfalfa and other multiyear grasses and legumes in rotation as approved by the Secretary. For purposes of determining crop history, as relevant to eligibility to enroll land in the program, land shall be “considered planted to an agricultural commodity” during a crop year if, as determined by ASCS, as action of the Secretary prevented land from being planted to the commodity during the crop year.

(b) *Applicant*—means a person who submits to NRCS an application to participate in the EWRP.

(c) *Commodity Credit Corporation*—a wholly owned government corporation within the U.S. Department of Agriculture.

(d) *Conservation District (CD)*—means a subdivision of a State or local government organized pursuant to applicable State law to promote soil and water conservation practices.

(e) *Conservation Reserve Program*—means the program under which long-term payments and cost-share assistance is provided to individuals to establish permanent vegetative cover on

cropland that is highly erodible or environmentally sensitive.

(f) *Prior converted wetland*—means wetland that has been drained, dredged, filled, leveled, or otherwise manipulated (including any activity that results in impairing or reducing the flow, circulation, or reach of water) prior to December 23, 1985, for the purpose, or that has the effect, of making the production of agricultural commodities possible if such production would not have been possible but for such action.

(g) *Cost-share payment*—means the payment made by NRCS to assist program participants in establishing the practices required in a WRPO.

(h) *Chief*—means the Chief of the Natural Resources Conservation Service, or the Chief’s designee.

(i) *Easement*—means the real property interest acquired by NRCS under this part for wetland restoration and maintenance and which is properly filed with the appropriate local or State government official.

(j) *Easement area*—means the land to which the approved wetland restoration practices and wetland conservation restrictions are to be applied.

(k) *Fair market value (FMV)*—means the price that a willing seller would accept and a willing buyer would pay in an open, informed transaction.

(l) *Farmed wetland*—means wetland that was drained, dredged, filled, or otherwise manipulated prior to December 23, 1985 to the extent that the production of agricultural commodities was made possible, but which continues to meet wetland criteria [refer to 7 CFR 12.32(a)(3) for descriptions of farmed wetlands].

(m) *Floodwater control systems*—means dikes, levees, or other similar structural measures for the protection of cropland from flooding.

(n) *FWS*—means the Fish and Wildlife Service of the United States Department of the Interior.

(o) *Local NRCS office*—means the office of the Natural Resources Conservation Service serving the county or combination of counties in which the landowner’s farm or ranch is located.

(p) *Participant*—means a person(s) owning land subject to a perfected

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easement purchased by the Natural Resources Conservation Service under this part.

(q) *Offer*—means the total payment NRCS will make to a landowner to purchase an easement.

(r) *Permanent easement*—means an easement in perpetuity.

(s) *Substantially altered lands*—means lands which have not been and are not now wetlands but could likely develop wetland characteristics in the future, as a result of the Midwest floods of 1993.

(t) *Practice*—means the wetland and easement area development restoration measures agreed to in the WRPO to accomplish the desired program objectives.

(u) *Technical assistance*—means the assistance provided to land owners to facilitate implementation of the WRPO.

(v) *Wetland*—means land that (1) has a predominance of hydric soils; (2) is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and (3) does support a prevalence of such vegetation under normal circumstances.

#### § 623.3 Eligible person.

To be eligible to participate in the EWRP, a person must be the owner of eligible land for which enrollment is sought and must have been the owner of such land for at least the preceding 12 months prior to the time the enrollment offer is declared by NRCS, as provided in this part. The person shall provide to NRCS adequate proof of ownership of the land. NRCS may waive the 12 month ownership requirement if:

(a) The land was acquired by will or succession as a result of the death of the previous owner; or

(b) Adequate assurances have been presented that the new owner of such land did not acquire such land for the purpose of placing it in the EWRP.

#### § 623.4 Eligible land.

(a) Except as otherwise provided in this section, land is eligible for enrollment in the EWRP only if NRCS determines that the land:

(1) Was inundated by the Midwest floods of 1993;

(2) If restored to productive condition, would have a fair market value that is less than the estimated costs of restoring the land to productive condition and repairing related floodwater control systems;

(3) Is likely to have its wetland value restored with minimal costs; and

(4) Is wetland farmed under natural conditions, a farmed wetland or prior converted wetland, or substantially altered lands which are cropland; or

(5) Is wetland that has been restored on the land under a CRP contract, or under a Federal or State wetland restoration program with an easement for a period of less than 30 years.

(b) To be eligible for enrollment in the EWRP, land must also:

(1) Be determined by ASCS to have been annually planted or considered planted to an agricultural commodity in at least 1 of the 5 previous crop years; or

(2) Be land under a CRP contract, in which case, the land need only to have been planted to an agricultural commodity during 2 of the 1981 through 1985 crop years.

(c) Other lands may be considered eligible if the inclusion of such lands in the EWRP easement would significantly add to the functions and values of the wetlands to be restored under this part, as determined by NRCS.

(d) The criteria and procedures contained in 7 CFR part 12 will be used to identify wetlands, converted wetlands, and farmed wetlands.

#### § 623.5 Ineligible land.

Notwithstanding any other provisions of this part, the following land is not eligible for enrollment in the EWRP:

(a) Land that contains either timber stands or trees established in connection with a CRP contract;

(b) Lands owned or acquired by an agency of the Federal Government;

(c) Land already subject to a deed restriction prohibiting the production of agricultural commodities or the alteration of existing wetland hydrologic conditions;

(d) Land located between the pre-flood mainstem levees and the river; or



(e) Land that was restored to wetland conditions, as required under Part 12 of this title, to mitigate the conversion of wetland to cropland use.

**§ 623.6 Transfer of lands from the CRP to the EWRP.**

Land that is subject to an existing CRP contract administered under 7 CFR parts 704 and 1410 may be transferred into the EWRP only if:

- (a) The land and landowner(s) meet the requirements of this part; and
- (b) The application for transfer into the EWRP is approved by Commodity Credit Corporation (CCC), if found to be in the interest of the program. If such transfer is requested by the owner and approved by CCC, the CRP contract for the property will be terminated or otherwise modified subject to such terms and conditions as are mutually agreed by the landowner, CCC, and NRCS.

**§ 623.7 Terms of the easement.**

Landowners will grant to NRCS an easement which shall run with the land and be in favor of NRCS and its assigns or delegates. The easement shall require the land to be monitored as specified by the WRPO to promote the purposes of this part, including but not limited to maintenance of the restored wetland for entire length of the easement. Such easement shall: (a) be a permanent reserve interest easement; (b) require that the maintenance of the land be in accordance with the terms of the easement and with the terms of the WRPO and shall be the responsibility of the owners of the property and their successors of any kind, including, but not limited to, the owners' heirs and assigns; (c) grant to NRCS a right of access in favor of NRCS and its delegates, assigns and successors of any kind, to the portion of the property which is subject to the provisions of the easement. Maintenance of such access shall be the responsibility of the owner and their successors of any kind; (d) reserve to NRCS the right to permit such compatible uses of the easement area as may be identified in the WRPO; (e) reserve to the landowner those compatible uses identified in the WRPO that are permitted to be pursued by the landowner; (f) be signed by each person with an interest of any kind in the land

covered by the easement; (g) permanently prohibit use of the easement area for cropland, except to harvest an agricultural commodity planted before the easement is perfected; and (h) require permanent maintenance of the wetland conditions, except in the case of natural disaster.

**§ 623.8 Easement value.**

NRCS offers for easements will be based on the fair market value, as determined by the NRCS State Conservationist, of the land covered by the easements. Fair market value will be based on post-flood conditions as if reclaimed. Land easement values will be determined by the State Conservationist in consultation with a technical committee. A technical committee shall include representatives of: ASCS, Extension Service, and FWS. Additionally, the State Conservationist may collect information from other sources as he deems necessary. Coordination between States will be provided by the Chief, NRCS.

**§ 623.9 Easement priority.**

The State Conservationist, in consultation with the FWS and with input from a technical committee and other interested Federal agencies, will establish a ranking process to establish the priority of parcels offered into the EWRP. This process will rank the floodway enhancement and environmental benefits per dollar of government expenditure on restoration and easement purchase. The factors for determining the priority for selection will consider the following:

- (a) Protection and enhancement of habitat for migratory birds and wildlife, including the contribution the restoration may make to the recovery of threatened and endangered species,
- (b) Floodway expansion,
- (c) Proximity to other protected wetlands,
- (d) Level of hydrology restored,
- (e) Wetland function or values,
- (f) Likelihood of successful restoration of wetland values,
- (g) Cost of restoration and easement purchase, and
- (h) Other factors as determined appropriate by NRCS.

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### § 623.10 Application to participate.

(a) A person seeking to enroll land in the EWRP must apply for enrollment on an approved NRCS form. The application to participate must be filed with the local NRCS field office during an announced period for such submissions.

(b) A person submitting an application to participate shall not be obligated to accept an NRCS offer to purchase an easement if one is forthcoming.

(c) An application to participate must be signed by all owners of the property or their duly authorized representative(s).

### § 623.11 Obligations of the landowner.

(a) All owners of land who accept an EWRP offer from NRCS shall:

(1) Comply with the terms of the easement.

(2) Comply with all terms and conditions of the WRPO for the full life of the easement.

(3) Ensure that the easement granted to NRCS is superior to the interest of all other parties who may have an interest in the easement area, except as authorized by NRCS. Such action shall include, but not be limited to, obtaining a written statement of consent to such a superior easement from those holding a security interest or any other encumbrance on the land covered by the easement. Additionally, the landowner shall perfect the easement with superior NRCS interest in accordance with State law.

(4) Agree to the permanent retirement of the aggregate total of crop acreage bases, and allotment and mandatory quota on the farm or ranch in order to maintain the base allotment on quota acres at or below the number of acres of cropland after the easement has been perfected.

(5) Not allow grazing or commercial use of the land covered by an easement except as provided for in the WRPO, or harvesting of any agricultural commodity produced on the land subject to the EWRP easement.

(6) Comply with Federal or State noxious weed laws in the manner specified in the WRPO.

(7) Control other identified weed and pest species, in the manner specified in the WRPO.

(8) Be responsible for repairs, improvements, and inspections of the WRPO practices as necessary to maintain existing public drainage systems when the land is restored to the condition required by the terms of the easement, the contract, and the easement.

(9) Be permitted to control public access, in accordance with the WRPO, on the land enrolled in the program.

(10) Implement any additional provisions that are required by NRCS in consultation with FWS in the contract, WRPO, or easement, in order to, as determined by NRCS, facilitate the administration of the EWRP.

(11) Not alter the vegetation, except to harvest already planted crops or forage, or hydrology on such acres subsequent to perfection of the easement by the landowner, except as provided for in the easement or WRPO.

(12) Be responsible for the long-term management of the easement in accordance with the terms of the easement and related agreements including the WRPO. Owners may enter into agreements with Federal or State agencies or private organizations to assist in the management of the easement area. No NRCS funds will be provided to these agencies or organizations for management expenses. Responsibility for management of the easement shall in all cases remain with the owner and the owner's successors of any kind regardless of whether arrangements are made for third-party management.

(13) Agree that each person with an interest in the land covered by an easement under EWRP shall be jointly and severally responsible for compliance with the WRPO, the easement, the provisions of this part, and for any refunds or payment adjustment which may be required for violation of any terms or conditions of the WRPO, the easement, or provisions of this part.

(14) Refrain from taking any action on the easement area unless specifically authorized in the reserve interest easement or the WRPO; and

(15) Secure any necessary local, State and Federal permits prior to commencing restoration of the designated area.

(b) In addition, program participants and their successors of any kind may:

(1) Not alter wildlife habitat and other natural land features of the enrolled land unless authorized by the WRPO.

(2) Apply pesticides or fertilizers on enrolled land or mow such land, only as provided for in the WRPO.

(3) Not engage in any activities on other land on the farm on which the easement exists that will, as determined by NRCS; (i) alter the flow of surface or subsurface water into or out of the easement area except as specified in the WRPO; or (ii) be otherwise inconsistent with the terms of the easement.

(c) The activities of any person on the property shall be considered for purposes of this section to be the actions of the program participant. However, if the NRCS determines that the activities of the person were beyond the control of the program participants, NRCS may adjust the remedies provided for in this part to the extent determined consistent with program goals. Obligations created by the easement shall run with the land and shall bind all persons having an interest in the property at any time whether such interest is created by death of the owner, sale, assignment, or otherwise.

**§ 623.12 Payments to landowners by NRCS.**

(a) NRCS will share the cost with landowners of rehabilitating the enrolled land in the EWRP as provided in the WRPO. The amount of the cost-share assistance shall be specified in the contract. Eligible costs for such cost-share assistance by NRCS shall only include those costs which NRCS determines are appropriate and shall be subject to the following restrictions:

(1) The State Conservationist will establish cost-share rates of between 75 to 100 percent of the historical cost of establishing or installing the practices specified in the WRPO; or pay the average cost of establishing the practices specified in the WRPO, based on the historical cost of establishing the practices in the State;

(2) Cost-share payments may be made only upon a determination that an approved practice or an identifiable unit of the practice has been completed in

compliance with NRCS approved standards and specifications; and

(3) Cost-share payments may not be made for the maintenance of the practice except as specifically permitted in writing by the State Conservationist.

(b) Notwithstanding paragraph (a)(3) of this section, cost share payments may be authorized for the replacement or restoration of practices for which cost share assistance has been previously allowed under the EWRP, but only if:

(1) Replacement or restoration of the practice is needed to meet the objectives for which the easement was established; and

(2) The failure of the original practice was due to reasons beyond the control of the participant.

(c)(1) NRCS shall pay the amount agreed upon by NRCS and the landowner for the purchase of the easement in a lump-sum amount after the easement is perfected in compliance with State law, except in the case of paragraph (c)(2) of this section.

(2) For all easements, NRCS shall pay no more than 75 percent of the total easement price pending completion of the practices to restore the wetlands as provided under the WRPO. The remaining amount shall be paid when NRCS determines the restoration is complete.

(d) After an easement is perfected, NRCS will reimburse landowners for fair and reasonable expenses incurred for title searches, filing expenses, and related costs, as determined by NRCS.

**§ 623.13 Wetlands reserve plan of operations.**

(a) After NRCS has accepted the applicant for enrollment in the program, a WRPO will be developed by the landowner and NRCS, in consultation with FWS.

(b) The WRPO shall:

(1) Include an aerial photo displaying the land offered for enrollment;

(2) Specify the manner in which the eligible land shall be restored, operated, and maintained to accomplish the goal of the program, including, but not limited to: (i) measures to control noxious weeds and insect pests in order to comply with applicable Federal, or State noxious weed and pest control laws; and (ii) measures to control other

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specified species of weeds, insects or pests;

(3) Specify compatible land uses for personal enjoyment for which the landowner may be compensated. These compatible land uses shall be reserved to the landowner in the easement. Such uses may include, among others: (1) recreational use, hunting and fishing; (ii) manage timber production including harvesting; and (iii) managed haying or grazing consistent with the goals of the program;

(4) Set out cost estimates of the practices required by the WRPO, the offer for the easement, and other reimbursement costs;

(5) Identify access routes to be maintained for wetland restoration activities and future management and easement monitoring in connection with the land to be enrolled;

(6) Make provisions deemed necessary for maintaining public drainage systems if present on lands subject to the WRPO;

(7) Contain scheduled implementation dates for restoration practices;

(8) Contain other provisions or limitations as NRCS, in consultation with the FWS, determines to be necessary.

(c) NRCS in consultation with FWS will collect from State or Federal agencies whatever additional information is deemed necessary for the development of the WRPO with the landowner.

(d) The WRPO must be signed by NRCS, FWS, Conservation District (CD), and the landowner(s). However, if agreement between NRCS and FWS, or CD at the local level is not reached within 20 calendar days, the WRPO shall be developed by the State Conservationist of NRCS in consultation with FWS or CD.

(e) The WRPO may require that a temporary vegetative or water cover be established on the property if immediate establishment of a permanent cover is not practicable or otherwise desirable.

(f) The terms of an approved WRPO shall not relieve the program participant of any obligation or term imposed or provided for in the contract, the easement, or this part.

(g) WRPO, where appropriate, will provide for the development of a tree

planting plan with the assistance of the FS or State forestry agency.

(h) The WRPO, where appropriate, will provide for the development by NRCS of detailed plans for weed control, structural measures and their operation, vegetation establishment and management, and other measures as needed.

(i) Revisions of the WRPO to enhance or protect the value for which the easement was established may be made at any time at the request of either NRCS, FWS, the owner and upon the concurrence of all three parties.

**§ 623.14 Easement modifications.**

After the easement has been perfected, no change will be made in the easement without a written request by the participant and the written consent of the Chief. Approval may be granted to achieve the goals of EWRP or facilitate the practical administration and management of the easement area or the program and the approval will not adversely affect the functions and values for which the easement was established. A modified easement shall be perfected in accordance with State law and NRCS superior interest shall be reserved by the landowner in accordance with §§ 623.7 and 623.11(a)(3).

**§ 623.15 Transfer of land.**

(a) If a new owner purchases or obtains the right and interest in, or right to occupancy of, the land subject to a EWRP easement, such new owner shall be subject to the terms and conditions of the easement. The participant who is the signatory to the easement shall be entitled to receive all remaining payments, if any, for the purchase of the easement. Eligible cost-share payments shall be made to the participants, with respect to costs actually incurred.

(b) Upon the transfer of the property subject to an EWRP easement, any remaining cost-share payments shall be paid to the new owner or purchaser only if the new owner or purchaser becomes a party to the WRPO within 60 days of the perfection of the deed transferring title to the new owner. Such payments shall be paid in the manner agreed to by the participant

and the buyer. The new owner or purchaser shall be responsible for assuring completion of all measures and practices required by the contract and the WRPO.

(c) Any transfer of the property prior to the perfection of the easement shall void any NRCS offer or WRPO unless the new owner agrees to accept the offer within 60 days of the perfection of the deed transferring the land to the new owner.

**§ 623.16 Monitoring and enforcement of easement terms and conditions.**

(a) NRCS or its representative shall be permitted to inspect each easement area at any and all times determined necessary by NRCS to ensure that:

(1) Structural and vegetative restoration work are properly maintained;

(2) The wetlands and adjacent upland habitat of the easement area is being managed as required in the WRPO and the terms of the easement; and

(3) Uses of the area are consistent with the terms and conditions of the easement and the WRPO.

(b) If an owner or other interested party is unwilling to voluntarily correct, in a timely manner, deficiencies in compliance with the terms of the WRPO, the EWRP easement, or any related agreements, NRCS may at the expense of any person who is subject to the EWRP easement correct such deficiency. Such NRCS action shall be in addition to other remedies available to NRCS.

(c) Monitoring and enforcement responsibilities may be delegated by NRCS at any time to other Federal or State agencies. Landowners may transfer management responsibilities only to Federal, State, or local agencies or private organizations that have been approved by NRCS in advance as having the appropriate authority, expertise, and resources necessary to carry out such delegated responsibilities.

**§ 623.17 Violations and remedies.**

(a) If a violation of the terms and conditions of the contract, the WRPO, or the recorded EWRP easement occurs, the easement shall remain in force and NRCS may:

(1) Require the owner to fully restore the easement area to fulfill the terms

and conditions of the easement and WRPO; and

(2) Require the owner, who received payments from NRCS for any purpose under this part, to refund all or part of such payments received together with interest, as determined appropriate by NRCS.

(b) If an owner fails to carry out the terms and conditions of an easement, appropriate legal action may be initiated. The owner of the property shall reimburse NRCS for all costs incurred including, but not limited to, legal fees.

**§ 623.18 Access to land.**

In order to determine eligibility and compliance with respect to this part, representatives of the Department, or designee thereof, shall have the right of access to:

(a) Land which is the subject of an application made in accordance with this part,

(b) Land which is subject to an easement made in accordance with this part, and

(c) Records of the participant showing status of all ownership interest in lands subject to this part.

**§ 623.19 Assignments.**

Any participant entitled to any cash payment under this program may assign the right to receive such cash payments, in whole or in part.

**§ 623.20 Appeals.**

A participant in the EWRP may obtain a review of any administrative determination concerning land eligibility, development of a WRPO, or any adverse determination under this part in accordance with the administrative appeal regulations provided in part 614 of this title.

[60 FR 67316, Dec. 29, 1995]

**§ 623.21 Scheme and device.**

(a) If it is determined by NRCS that a landowner has employed a scheme or device to defeat the purposes of this part, any part of any program payment otherwise due or paid such landowner during the applicable period may be withheld or be required to be refunded with interest thereon, as determined

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appropriate by NRCS, and the contract with the landowner may be terminated. In such a case, NRCS may also continue to hold the easement interest acquired under this part.

(b) A scheme or device includes, but is not limited to, coercion, fraud, misrepresentation, depriving any other person of payments for cost-share practices or easements for the purpose of obtaining a payment to which a person would otherwise not be entitled.

(c) An owner of land subject to this part who succeeds to the responsibilities under this part shall report in writing to NRCS any interest of any kind in the land subject to this part that is retained by a previous participant. Such interest includes a present, future or conditional interest, reversionary interest or any option, future or present, with respect to such land and any interest of any lender in such land where the lender has, will, or can obtain, a right of occupancy to such land or an interest in the equity in such land other than an interest in the appreciation in the value of such land occurring after the loan was made. A failure of full disclosure will be considered a scheme or device under this section.

**§ 623.22 Filing of false claims.**

If it is determined by NRCS that any participant has knowingly supplied false information or has knowingly filed a false claim, such participant shall be ineligible for any payment under this part. False information or false claims include claims for payment for practices which do not meet the specifications of the applicable WRPO. Any amounts paid under these circumstances shall be refunded, together with interest as determined by NRCS, and any amounts otherwise due such participant shall be withheld.

**PART 624—EMERGENCY WATERSHED PROTECTION**

- Sec.
- 624.1 Purpose.
- 624.2 Objective.
- 624.3 Scope.
- 624.4 Definitions.
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- 624.11 Waivers.

AUTHORITY: Sec. 216, P.L. 81-516, 33 U.S.C. 701b-1; Sec. 403, P.L. 95-334, as amended, 16 U.S.C. 2203; 5 U.S.C. 301.

SOURCE: 70 FR 16926, Apr. 4, 2005, unless otherwise noted.

**§ 624.1 Purpose.**

The Natural Resources Conservation Service (NRCS) and United States Forest Service (FS) are responsible for administering the Emergency Watershed Protection (EWP) Program. This part sets forth the requirements and procedures for Federal assistance, administered by NRCS, under Section 216, Public Law 81-516, 33 U.S.C. 701b-1; and Section 403 of the Agricultural Credit Act of 1978, Public Law 95-334, as amended by Section 382, of the Federal Agriculture Improvement and Reform Act of 1996, Public Law 104-127, 16 U.S.C. 2203. The Secretary of Agriculture has delegated the administration of the EWP Program to the Chief of NRCS on state, tribal, and private lands, and Chief of FS on National Forest Systems lands, including any other lands that are administered under a formal agreement with the FS. The FS administers the EWP Program in accordance with the Forest Service Manuals 1950 and 3540, and the Forest Service Handbook 1909.15

**§ 624.2 Objective.**

The objective of the EWP Program is to assist sponsors, landowners, and operators in implementing emergency recovery measures for runoff retardation and erosion prevention to relieve imminent hazards to life and property created by a natural disaster that causes a sudden impairment of a watershed.

**§ 624.3 Scope.**

EWP Program technical and financial assistance may be made available to a qualified sponsor, or landowners when a floodplain easement is the selected alternative by the Secretary of Agriculture, upon a qualified sponsor or landowner's request when a Federal emergency is declared by the President or when a local emergency is declared

by the NRCS State Conservationist. The EWP Program is designed for emergency recovery work, including the purchase of floodplain easements. Emergency watershed protection is authorized in the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa.

**§ 624.4 Definitions.**

(a) *Defensibility* means the extent to which an action is:

- (1) More beneficial than adverse in the extent and intensity of its environmental and economic effects;
- (2) In compliance with Federal, State, and local laws;
- (3) Acceptable to affected individuals and communities;
- (4) Effective in restoring or protecting the natural resources;
- (5) Complete with all necessary components included; and
- (6) Efficient in achieving the desired outcome.

(b) *Exigency* means those situations that demand immediate action to avoid potential loss of life or property, including situations where a second event may occur shortly thereafter that could compound the impairment, cause new damages or the potential loss of life if action to remedy the situation is not taken immediately.

(c) *Floodplain easement* means a reserved interest easement, which is an interest in land, defined and delineated in a deed whereby the landowner conveys all rights and interest in the property to the grantee, but the landowner retains those rights, title, and interest in the property which are specifically reserved to the landowner in the easement deed.

(d) *Imminent threat* means a substantial natural occurrence that could cause significant damage to property or threaten human life in the near future.

(e)(1) *Limited resource area* is defined as a county where:

- (i) Housing values are less than 75 percent of the State housing value average; and

- (ii) Per capita income is 75 percent or less than the National per capita income; and

- (iii) Unemployment is at least twice the U.S. average over the past 3 years based upon the annual unemployment figures.

(2) NRCS will use the most recent National census information available when determining paragraphs (e)(1)(i) and (ii) of this section.

(f) *Natural occurrence* includes, but is not limited to, floods, fires, windstorms, ice storms, hurricanes, typhoons, tornadoes, earthquakes, volcanic actions, slides, and drought.

(g) *Project sponsor* means a State government or a State agency or a legal subdivision thereof, local unit of government, or any Native American tribe or tribal organization as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b), with a legal interest in or responsibility for the values threatened by a watershed emergency; is capable of obtaining necessary land rights; and is capable of carrying out any operation and maintenance responsibilities that may be required.

(h) *Watershed emergency* means adverse impacts to resources exist when a natural occurrence causes a sudden impairment of a watershed and creates an imminent threat to life or property.

(i) *Watershed impairment* means the situation that exists when the ability of a watershed to carry out its natural functions is reduced to the point where an imminent threat to health, life, or property is created. This impairment can also include sediment and debris deposition in floodplains and upland portions of the watershed.

**§ 624.5 Coordination.**

(a) If the President declares an area to be a major disaster area, NRCS will provide assistance which will be coordinated with the Federal Emergency Management Agency (FEMA) or its designee. FEMA is the lead federal agency for Presidentially-declared natural disasters.

(b) When an NRCS State Conservationist determines that a watershed impairment exists, but the President does not declare an area to be a major

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disaster area, FEMA does not coordinate assistance. In this situation, NRCS will assume the lead, provide assistance, and coordinate work with the appropriate State office of emergency preparedness and other Federal, tribal, or local agencies involved with emergency activities, as appropriate.

(c) In the case where the watershed impairment exists solely on FS System lands, the FS will determine the existence of the impairment, assume the lead, provide assistance and coordinate work with the appropriate State office of emergency preparedness and other Federal, tribal, or local agencies involved with emergency activities, as appropriate.

### § 624.6 Program administration.

(a) *Sponsors.* (1) When the State Conservationist declares that a watershed impairment exists, NRCS may, upon request, make assistance available to a sponsor which must be a State or political subdivision thereof, qualified Indian tribe or tribal organization, or unit of local government. Private entities or individuals may receive assistance only through the sponsorship of a governmental entity.

(2) Sponsors must:

(i) Contribute their share of the project costs, as determined by NRCS, by providing funds or certain services necessary to undertake the activity. Contributions that may be applied towards the sponsor's applicable cost-share of construction costs include:

(A) Cash;

(B) In-kind services such as labor, equipment, design, surveys, contract administration and construction inspection, and other services as determined by the State Conservationist; or

(C) A combination of cash and in-kind services;

(ii) Obtain any necessary real property rights, water rights, and regulatory permits;

(iii) Agree to provide for any required operation and maintenance of the completed emergency measures; and

(iv) Comply with applicable registration and reporting requirements of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109-282, as amended), and 2 CFR parts 25 and 170.

(b) *Eligibility.* NRCS will provide assistance based upon the NRCS State Conservationist's determination that the current condition of the land or watershed impairment poses a threat to health, life, or property. This assistance includes EWP practices associated with the removal of public health and safety threats, and restoration of the natural environment after disasters, including acquisition of floodplain easements.

(1) Priority EWP assistance is available to alleviate exigency situations. NRCS may approve assistance for temporary correction practices to relieve an exigency situation until a more acceptable solution can be designed and implemented.

(2) *Limitations.* (i) In cases where the same type of natural event occurs within a 10-year period and a structural measure has been installed or repaired twice within that period using EWP assistance, then EWP assistance is limited to those sites eligible for the purchase of a floodplain easement as described in § 624.10 of this part.

(ii) EWP assistance will not be used to perform operation or maintenance, such as the periodic work that is necessary to maintain the efficiency and effectiveness of a measure to perform as originally designed and installed.

(iii) EWP assistance will not be used to repair, rebuild, or maintain private or public transportation facilities, public utilities, or similar facilities.

(iv) EWP assistance, funded by NRCS, will not be provided on any Federal lands if such assistance is found to augment the appropriations of other Federal agencies.

(v) EWP assistance is not available for repair or rehabilitation of non-structural management practices, such as conservation tillage and other similar practices.

(3) *Repair of structural, enduring, and long-life conservation practices.* (i) Sponsors may receive EWP assistance for structural, enduring, and long-life conservation practices including, but not limited to, grassed waterways, terraces, embankment ponds, diversions, and water conservation systems, except where the recovery measures are



eligible for assistance under the Emergency Conservation Program administered by the Farm Service Agency.

(ii) EWP assistance may be available for the repair of certain structural practices (i.e., dams and channels) originally constructed under Public Law 83-566; Public Law 78-534; Subtitle H of Title XV of the Agriculture and Food Act of 1981 (16 U.S.C. 3451 *et seq.*, commonly known as the Resource Conservation and Development Program); and the Pilot Watershed Program of the Department of Agriculture Appropriation Act of 1954 (Pub. L. 83-156; 67 Stat. 214). EWP assistance may not be used to perform operation and maintenance activities specified in the agreement for the covered structure project entered into with the eligible local organization responsible for the works of improvement.

(iii) NRCS may authorize EWP assistance for modifying damaged practices when technology advances or construction techniques warrant modifications, including when modifications are the result of federal permitting or other requirements necessary to implement the recovery measure, and will be cost-shared as described in § 624.7.

(iv) EWP assistance is only available when public or private landowners, land managers, land users, or others document they have exhausted or have insufficient funding or other resources available to provide adequate relief from applicable hazards.

(4) Increased level of protection. In cases other than those described in paragraph (b)(3)(iii) of this section, if the sponsor desires to increase the level of protection that would be provided by the EWP practice, the sponsor will be responsible for paying 100 percent of the costs of the upgrade or additional work.

(c) *Eligible practices.* NRCS will only provide assistance for measures that:

(1) Provide protection from additional flooding or soil erosion; and,

(2) Reduce threats to life or property from a watershed impairment, including sediment and debris removal in floodplains and uplands; and

(3) Restore the hydraulic capacity to the natural environment to the maximum extent practical; and

(4) Are economically and environmentally defensible and technically sound.

(d) *Documentation.* NRCS will document the economic rationale of proposed practices in appropriate detail before the allocation of emergency funding, including projects under consideration for floodplain easements in § 624.10. Generally, the expected value of the property restored should exceed the cost of emergency measures, including taking into consideration environmental benefits. Documentation will include, but is not limited to:

(1) Number of locations and extent of damage, including environmental and cultural resources at risk, because of the watershed impairment;

(2) Estimated damages to the values at risk if the threat is imminent but not yet realized;

(3) Events that must occur for any imminent threat to be realized and the estimated probability of their occurrence both individually and collectively;

(4) Estimates of the nature, extent, and costs of the emergency practices to be constructed to recover from an actual threat or relieve an imminent threat;

(5) Thorough description of the beneficial and adverse effects on environmental resources, including fish and wildlife habitat;

(6) Description of water quality and water conservation impacts, as appropriate;

(7) Analysis of effects on downstream water rights; and

(8) Other information deemed appropriate by NRCS to describe adequately the environmental impacts to comply with the National Environmental Policy Act, Endangered Species Act, National Historic Preservation Act, and related requirements.

(e) *Implementation.* When planning emergency recovery practices, NRCS will emphasize measures that are the most economical and are to be accomplished by using the least damaging practical construction techniques and equipment that retain as much of the existing characteristics of the landscape and habitat as possible. Construction of emergency practices may include, but are not limited to, timing

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of the construction to avoid impacting fish spawning, clearing of right-of-ways, reshaping spoil, debris removal, use of bioengineering techniques, and revegetation of disturbed areas. Mitigation actions needed to offset potential adverse impacts of the EWP Program practices should be planned for installation before, or concurrent with, the installation of the EWP Program practices. In rare occurrences where mitigation cannot be installed concurrently, plans will require mitigation to be accomplished as soon as practical.

(f) NRCS may determine that a measure is not eligible for assistance for any reason, including economic and environmental factors or technical feasibility.

[70 FR 16926, Apr. 4, 2005, as amended at 76 FR 19684, Apr. 8, 2011]

### § 624.7 Cost-sharing.

(a) Except as provided in paragraph (b) of this section, the Federal contribution toward the implementation of emergency measures may not exceed 75 percent of the construction cost of such emergency measures, including work done to offset or mitigate adverse impacts as a result of the emergency measures.

(b) If NRCS determines that an area qualifies as a limited resource area, the Federal contribution toward the implementation of emergency measures may not exceed 90 percent of the construction cost of such emergency measures.

### § 624.8 Assistance.

(a) Sponsors must submit a formal request to the State Conservationist for assistance within 60 days of the natural disaster occurrence, or 60 days from the date when access to the sites becomes available. Requests must include a statement that the sponsors understand their responsibilities and are willing to pay its cost-shared percentage as well as information pertaining to the natural disaster, including the nature, location, and scope of the problems and the assistance needed.

(b) On receipt of a formal request for EWP assistance, the State Conservationist or designee shall immediately investigate the emergency situation to determine whether EWP is applicable

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and to prepare an initial cost estimation for submission to the NRCS Chief or designee. The cost estimation will be submitted no later than 60 days from receipt of the formal request from the sponsor. The State Conservationist will take into account the funding priorities identified in paragraph (c) (3) of this section. The State Conservationist will forward the damage survey report, which provides the information pertaining to proposed EWP practice(s) and indicates the amount of funds necessary to undertake the Federal portion, to the NRCS Chief or designee. This information will be submitted no later than 60 days from receipt of the formal request from the sponsor, or no later than 60 days from the date funding is made available to the State Conservationist, whichever is later. NRCS may not commit funds until notified by the Chief, or designee, of the availability of funds.

(c) Before the release of financial assistance, NRCS will enter into a Cooperative Agreement with a sponsor that specifies the responsibilities of the sponsor under this part, including any required operation and maintenance responsibilities. NRCS will not provide funding for activities undertaken by a sponsor prior to the signing of the agreement between NRCS and the sponsor.

(1) NRCS will only provide funding for work that is necessary to reduce applicable threats.

(2) Efforts must be made to avoid or minimize adverse environmental impacts associated with the implementation of emergency measures, to the extent practicable, giving special attention to protecting cultural resources and fish and wildlife habitat.

(3) Funding priorities for recovery measures. NRCS will provide EWP assistance based on the following criteria, which are ranked in the order of importance:

- (i) Exigency situations;
- (ii) Sites where there is a serious, but not immediate threat to human life;
- (iii) Sites where buildings, utilities, or other important infrastructure components are threatened;
- (iv) When reviewing paragraphs (c)(3)(i) through (iii) of this section,

NRCS will take into account the following resources as they may affect the priority, including, but not limited to:

(A) Sites inhabited by federally listed threatened and endangered species or containing federally designated critical habitat where the species or the critical habitat could be jeopardized, destroyed, or adversely modified without the EWP practice;

(B) Sites that contain or are in the proximity to cultural sites listed on the National Register of Historic Places where the listed resource would be jeopardized if the EWP practice were not installed;

(C) Sites where prime farmland supporting high value crops is threatened;

(D) Sites containing wetlands that would be damaged or destroyed without the EWP practice;

(E) Sites that have a major effect on water quality; and

(F) Sites containing unique habitat, including but not limited to, areas inhabited by State-listed threatened and endangered species, fish and wildlife management areas, or State-identified sensitive habitats; and

(v) Other funding priorities established by the Chief of NRCS.

**§ 624.9 Time limits.**

Funds must be obligated by the State Conservationist and construction completed within 220 calendar days after the date funds are committed to the State Conservationist, except for exigency situations in which case the construction must be completed within 10 days after the date the funds are committed.

**§ 624.10 Floodplain easements.**

(a) *General.* NRCS may purchase floodplain easements as an emergency measure. NRCS will only purchase easements from landowners on a voluntary basis.

(b) *Floodplain easements.* (1) Floodplain easements established under this part will be:

(i) Held by the United States, through the Secretary of Agriculture;

(ii) Administered by NRCS or its designee; and

(iii) Perpetual in duration;

(2) *Eligible land.* NRCS may determine land is eligible under this section if:

(i) The floodplain lands were damaged by flooding at least once within the previous calendar year or have been subject to flood damage at least twice within the previous 10 years; or

(ii) Other lands within the floodplain would contribute to the restoration of the flood storage and flow, erosion control, or that would improve the practical management of the easement; or

(iii) Lands would be inundated or adversely impacted as a result of a dam breach.

(3) *Ineligible land.* NRCS may determine that land is ineligible under this section if:

(i) Implementation of restoration practices would be futile due to “on-site” or “off-site” conditions;

(ii) The land is subject to an existing easement or deed restriction that provides sufficient protection or restoration, as determined by the Chief of NRCS, of the floodplain’s functions and values; or

(iii) The purchase of an easement would not meet the purposes of this part.

(4) *Compensation for easements.* NRCS will determine easement compensation in accordance with applicable regulation and other law.

(5) NRCS will not acquire any easement unless the landowner accepts the amount of the easement payment that is offered by NRCS. NRCS reserves the right not to purchase an easement if the easement compensation for a particular easement would be too expensive, as determined by NRCS.

(6) NRCS may provide up to 100 percent of the restoration and enhancement costs of the easement. NRCS may enter into an agreement with the landowner or another third party to ensure that identified practices are implemented. NRCS, the landowner, or other designee may implement identified practices. Restoration and enhancement efforts may include both structural and non-structural practices. An easement acquired under this part shall provide NRCS with the full authority to restore, protect, manage, maintain, and enhance the functions and values of the floodplain.

(7) The landowner must:

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(i) Comply with the terms of the easement;

(ii) Comply with all terms and conditions of any associated agreement; and

(iii) Convey title to the easement that is acceptable to NRCS and warrant that the easement is superior to the rights of all others, except for exceptions to the title that are deemed acceptable by NRCS.

(8) Structures, including buildings, within the floodplain easement may be demolished and removed, or relocated outside the 100-year floodplain or dam breach inundation area.

(c) Easements acquired under this part may not be modified or terminated. However, in limited situations, as determined by the Chief of NRCS and when in the best interest of the Government, land exchanges may be authorized pursuant to (7 U.S.C. 428a) and other applicable authorities.

(d) *Enforcement.* (1) In the event of a violation of an easement, the violator will be given reasonable notice and an opportunity to correct the violation within 30 days of the date of the notice, or such additional time as NRCS may allow.

(2) NRCS reserves the right to enter upon the easement area at any time to remedy deficiencies or easement violations. Such entry may be made at the discretion of NRCS when such actions are deemed necessary to protect important floodplain functions and values or other rights of the United States under the easement. The landowner will be liable for any costs incurred by the United States as a result of the landowner's negligence or failure to comply with easement or agreement obligations.

(3) In addition to any and all legal and equitable remedies as may be available to the United States under applicable law, NRCS may withhold any easement and cost-share payments owing to landowners at any time there is a material breach of the easement covenants or any associated agreements. Such withheld funds may be used to offset costs incurred by the United States, in any remedial actions, or retained as damages pursuant to court order or settlement agreement.

(4) NRCS will be entitled to recover any and all administrative and legal

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costs, including attorney's fees or expenses, associated with any enforcement or remedial action.

(5) On the violation of the terms or conditions of the easement or related agreement, the easement shall remain in force, and NRCS may require the landowner to refund all or part of any payments received by the landowner under this Part, together with interest thereon as determined appropriate by NRCS.

(6) All the general penal statutes relating to crimes and offenses against the United States shall apply in the administration of floodplain easements acquired under this part.

### § 624.11 Waivers.

To the extent allowed by law, the NRCS Deputy Chief for Programs may waive any provision of these regulations when the agency makes a written determination that such waiver is in the best interest of the Federal government.

## PART 625—HEALTHY FORESTS RESERVE PROGRAM

### Sec.

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AUTHORITY: 16 U.S.C. 6571-6578.

SOURCE: 75 FR 6546, Feb. 10, 2010, unless otherwise noted.

**§ 625.1 Purpose and scope.**

(a) The purpose of the Healthy Forests Reserve Program (HFRP) is to assist landowners, on a voluntary basis, in restoring, enhancing, and protecting forestland resources on private lands through easements, 30-year contracts, and 10-year cost-share agreements.

(b) The objectives of HFRP are to:

(1) Promote the recovery of endangered and threatened species under the Endangered Species Act of 1973 (ESA);

(2) Improve plant and animal biodiversity; and

(3) Enhance carbon sequestration.

(c) The regulations in this part set forth the policies, procedures, and requirements for the HFRP as administered by the Natural Resources Conservation Service (NRCS) for program implementation and processing applications for enrollment.

(d) The Chief may implement HFRP in any of the 50 States, District of Columbia, Commonwealth of Puerto Rico, Guam, Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.

**§ 625.2 Definitions.**

The following definitions will be applicable to this part:

*30-year Contract* means a contract that is limited to acreage owned by Indian tribes. The 30-year contract is not eligible for use on tribal lands held in trust or subject to Federal restrictions against alienation.

*Acreage Owned by Indian Tribes* means lands to which the title is held by individual Indians and Indian tribes. This term does not include land held in trust by the United States or lands where the fee title contains restraints against alienation.

*Biodiversity (Biological Diversity)* means the variety and variability among living organisms and the ecological complexes in which they live.

*Candidate Conservation Agreement with Assurances (CCA)* means a voluntary arrangement between the U.S. Fish and Wildlife Service (FWS) or the National Marine Fisheries Service (NMFS), and cooperating non-Federal landowners under the authority of section 10(a)(1) of the Endangered Species Act of 1973, 16 U.S.C. 1539(a)(1). Under the CCA and an associated enhancement of sur-

vival permit, the non-Federal landowner implements actions that are consistent with the conditions of the permit. CCAA with FWS are also subject to regulations at 50 CFR 17.22(d) for endangered species or 50 CFR 17.32(d) for threatened species, or applicable subsequent regulations.

*Carbon sequestration* means the long-term storage of carbon in soil (as soil organic matter) or in plant material (such as in trees).

*Chief* means the Chief of the Department of Agriculture (USDA) NRCS, or designee.

*Confer* means to discuss for the purpose of providing information; to offer an opinion for consideration; or to meet for discussion, while reserving final decision-making authority with NRCS.

*Conservation practice* means one or more conservation improvements and activities, including structural practices, land management practices, vegetative practices, forest management, and other improvements that benefit the eligible land and optimize environmental benefits, planned and applied according to NRCS standards and specifications.

*Conservation treatment* means any and all conservation practices, measures, activities, and works of improvement that have the purpose of alleviating resource concerns, solving or reducing the severity of natural resource use problems, or taking advantage of resource opportunities, including the restoration, enhancement, maintenance, or management of habitat conditions for HFRP purposes.

*Coordination* means to obtain input and involvement from others while reserving final decision-making authority with NRCS.

*Cost-share agreement* means a legal document that specifies the rights and obligations of any participant accepted into the program. A HFRP cost-share agreement is a binding agreement for the transfer of assistance from USDA to the participant to share in the costs of applying conservation. A cost-share agreement under HFRP has a duration of 10-years.

*Cost-share payment* means the payment made by NRCS to a program participant or vendor to achieve the restoration, enhancement, and protection goals of enrolled land in accordance with the HFRP restoration plan.

*Easement* means a conservation easement, which is an interest in land defined and delineated in a deed whereby the landowner conveys certain rights, title, and interests in a property to the United States for the purpose of protecting the forest ecosystem and the conservation values of the property.

*Easement area* means the land encumbered by an easement.

*Easement payment* means the consideration paid to a landowner for an easement conveyed to the United States under the HFRP.

*Fish and Wildlife Service* is an agency of the Department of Interior.

*Forest Service* is an agency of USDA.

*Forest ecosystem* means a dynamic set of living organisms, including plants, animals, and microorganisms interacting among themselves and with the environment in which they live. A forest ecosystem is characterized by predominance of trees, and by the fauna, flora, and ecological cycles (energy, water, carbon, and nutrients).

*HFRP restoration plan* means the document that identifies the conservation treatments that are scheduled for application to land enrolled in HFRP in accordance with NRCS standards and specifications.

*Indian tribe* means any Indian tribe, band, Nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688, 43 U.S.C. 1601 *et seq.*), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

*Landowner* means an individual or entity having legal ownership of land. The term landowner may also include all forms of collective ownership including joint tenants, tenants in common, and life tenants.

*Landowner protections* means protections and assurances made available by NRCS to HFRP participants, when re-

quested, and whose voluntary conservation activities result in a net conservation benefit for listed, candidate, or other species and meet other requirements of the program. These Landowner Protections are subject to a HFRP restoration plan and associated cost-share agreement, 30-year contract, or easement being properly implemented. Landowner protections made available by the Secretary of Agriculture to HFRP participants may include an incidental take authorization received by NRCS from FWS or NMFS, or may be provided by a Safe Harbor Agreement (SHA) or CCAA directly between the HFRP participant and FWS or NMFS, as appropriate.

*Liquidated damages* means a sum of money stipulated in the HFRP restoration agreement that the participant agrees to pay NRCS if the participant fails to adequately complete the terms of the restoration agreement. The sum represents an estimate of the expenses incurred by NRCS to service the restoration agreement, and reflects the difficulties of proof of loss and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy.

*Maintenance* means work performed to keep the applied conservation practice functioning for the intended purpose during its life span. Maintenance includes work to prevent deterioration of the practice, repairing damage, or replacement of the practice to its original condition if one or more components fail.

*Measure* means one or more specific actions that is not a conservation practice, but has the effect of alleviating problems or improving the treatment of the resources.

*National Marine Fisheries Service* is an agency of the United States Department of Commerce.

*Natural Resources Conservation Service* is an agency of USDA which has the responsibility for administering HFRP.

*Participant* means a person, entity, or Indian tribe who is a party to a 10-year cost share agreement, 30-year contract, or an agreement to purchase an easement.

*Private land* means land that is not owned by a local, State, or Federal governmental entity, and includes land

that meets the definition of “acreage owned by Indian tribes.”

*Restoration* means implementing any conservation practice (vegetative, management, or structural) or measure that improves forest ecosystem values and functions (native and natural plant communities).

*Restoration agreement* means a cost-share agreement between the program participant and NRCS to restore, enhance, and protect the functions and values of a forest ecosystem for the purposes of HFRP under either an easement, 30-year contract, or a 10-year cost-share agreement enrollment option.

*Safe Harbor Agreement* means a voluntary arrangement between FWS or NMFS and cooperating non-Federal landowners under the authority of section 10(a)(1) of the Endangered Species Act of 1973, 16 U.S.C. 1539(a)(1). Under the SHA and an associated enhancement of survival permit, the private property owner implements actions that are consistent with the conditions of the permit. SHAs with FWS are also subject to regulations at 50 CFR 17.22(c) for endangered species or 50 CFR 17.32(c) for threatened species, or applicable subsequent regulations.

*State-listed species* means a species listed as threatened or endangered under State endangered species laws, a candidate for such listing, or a species listed in a State Wildlife Action Plan as a Species of Greatest Conservation Need.

*Sign-up notice* means the public notification document that NRCS provides to describe the particular requirements for a specific HFRP sign-up.

*State Conservationist* means the NRCS employee authorized to implement HFRP and direct and supervise NRCS activities in a State, Caribbean Area, or Pacific Islands Area.

*Technical service provider* means an individual, private-sector entity, or public agency certified by NRCS to provide technical services to program participants in lieu of or on behalf of NRCS.

### § 625.3 Administration.

(a) The regulations in this part will be administered under the general supervision and direction of the Chief.

(b) The Chief may modify or waive a provision of this part if the Chief determines that the application of such provision to a particular limited situation is inappropriate and inconsistent with the goals of the program. This authority cannot be further delegated. The Chief may not modify or waive any provision of this part which is required by applicable law.

(c) No delegation in this part to lower organizational levels will preclude the Chief from determining any issue arising under this part or from reversing or modifying any determination arising from this part.

(d) The State Conservationist will develop a list of eligible restoration practices, payment rates and cost-share percentages, a priority ranking process, and any related technical matters.

(e) NRCS will coordinate with FWS and NMFS in the implementation of the program and in establishing program policies. In carrying out this program, NRCS may confer with private forest landowners, including Indian tribes, the Forest Service and other Federal agencies, State fish and wildlife agencies, State forestry agencies, State environmental quality agencies, other State conservation agencies, and nonprofit conservation organizations. No determination by the FWS, NMFS, Forest Service, any Federal, State, or tribal agency, conservation district, or other organization will compel NRCS to take any action which NRCS determines will not serve the purposes of the program established by this part.

### § 625.4 Program requirements.

(a) *General.* Under the HFRP, NRCS will purchase conservation easements from, or enter into 30-year contracts or 10-year cost-share agreements with, eligible landowners who voluntarily cooperate in the restoration and protection of forestlands and associated lands. To participate in HFRP, a landowner will agree to the implementation of a HFRP restoration plan, the effect of which is to restore, protect, enhance, maintain, and manage the habitat conditions necessary to increase the likelihood of recovery of listed species under the ESA, or measurably improve the well-being of species that are not listed as endangered

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or threatened under the ESA but are candidates for such listing, State-listed species, or species identified by the Chief for special consideration for funding. NRCS may provide cost-share assistance for the activities that promote the restoration, protection, enhancement, maintenance, and management of forest ecosystem functions and values. Specific restoration, protection, enhancement, maintenance, and management activities may be undertaken by the landowner or other NRCS designee.

(1) Of the total amount of funds expended under the program for a fiscal year to acquire easements and enter into 10-year cost-share agreements, not more than 40 percent will be used for cost-share agreements, and not more than 60 percent will be used for easements.

(2) The Chief may use any funds that are not obligated by April 1 of the fiscal year for which the funds are made available to carry out a different method of enrollment during that fiscal year.

(b) *Landowner eligibility.* To be eligible to enroll an easement in the HFRP, an individual or entity must:

(1) Be the landowner of eligible land for which enrollment is sought;

(2) Agree to provide such information to NRCS, as the agency deems necessary or desirable, to assist in its determination of eligibility for program benefits and for other program implementation purposes; and

(3) Comply with applicable registration and reporting requirements of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109-282, as amended), and 2 CFR parts 25 and 170.

(c) *Eligible land.* (1) NRCS, in coordination with FWS or NMFS, will determine whether land is eligible for enrollment and whether once found eligible, the lands may be included in the program based on the likelihood of successful restoration, enhancement, and protection of forest ecosystem functions and values when considering the cost of acquiring the easement, 30-year contract, or 10-year cost share agreement, and the restoration, protection, enhancement, maintenance, and management costs.

(2) Land will be considered eligible for enrollment in the HFRP only if NRCS determines that:

(i) Such private land will contribute to the restoration or enhancement of the habitat or otherwise measurably increase the likelihood of recovery for a selected species listed under section 4 of the ESA; and

(ii) Such private land will contribute to the restoration or enhancement of the habitat or otherwise measurably improve the well-being of a selected species not listed under section 4 of the ESA but is a candidate for such listing, or the selected species is a State-listed species, or is a species identified by the Chief for special consideration for funding.

(3) NRCS may also enroll land adjacent to eligible land if the enrollment of such adjacent land would contribute significantly to the practical administration of the easement area, but not more than it determines is necessary for such contribution.

(4) To be enrolled in the program, eligible land must be configured in a size and with boundaries that allow for the efficient management of the area for easement purposes and otherwise promote and enhance program objectives.

(5) In the case of acreage owned by an Indian tribe, NRCS may enroll acreage into the HFRP which is privately owned by either the tribe or an individual.

(d) *Ineligible land.* The following land is not eligible for enrollment in the HFRP:

(1) Land owned by the United States, States, or units of local government;

(2) Land subject to an easement or deed restriction that already provides for the protection of fish and wildlife habitat or that would interfere with HFRP purposes, as determined by NRCS; and

(3) Land that would not be eligible for HFRP under paragraphs (c)(1) through (c)(5).

[75 FR 6546, Feb. 10, 2010, as amended at 76 FR 19684, Apr. 8, 2011]

§ 625.5 Application procedures.

(a) *Sign-up process.* As funds are available, the Chief will solicit project proposals from the State Conservationist. The State Conservationist may consult



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with other agencies at the State, Federal, and local levels to develop proposals. The State Conservationist will submit the proposal(s) to the Chief for funding selection. Upon selection for funding, the State Conservationist will issue a public sign-up notice which will announce and explain the rationale for decisions based on the following information:

(1) The geographic scope of the sign-up;

(2) Any additional program eligibility criteria that are not specifically listed in this part;

(3) Any additional requirements that participants must include in their HFRP applications that are not specifically identified in this part;

(4) Information on the priority order of enrollment for funding;

(5) An estimate of the total funds NRCS expects to obligate during a given sign-up; and

(6) The schedule for the sign-up process, including the deadline(s) for applying.

(b) *Application for participation.* To apply for enrollment through an easement, 30-year contract, or 10-year cost-share agreement, a landowner must submit an application for participation in the HFRP during an announced period for such sign-up.

(c) *Preliminary agency actions.* By filing an application for participation, the applicant consents to an NRCS representative entering upon the land for purposes of determining land eligibility, and for other activities that are necessary or desirable for NRCS to make offers of enrollment. The applicant is entitled to accompany an NRCS representative on any site visits.

(d) *Voluntary reduction in compensation.* In order to enhance the probability of enrollment in HFRP, an applicant may voluntarily offer to accept a lesser payment than is being offered by NRCS. Such offer and subsequent payments may not be less than those rates set forth in § 625.8 and § 625.10 of this part.

### § 625.6 Establishing priority for enrollment in HFRP.

(a) *Ranking considerations.* Based on the specific criteria set forth in a sign-up announcement and the applications

for participation, NRCS, in coordination FWS and NMFS, may consider the following factors to rank properties:

(1) Estimated conservation benefit to habitat required by threatened or endangered species listed under section 4 of the ESA;

(2) Estimated conservation benefit to habitat required by species not listed as endangered or threatened under section 4 of the ESA but that are candidates for such listing, State-listed species, or species identified by the Chief for special consideration for funding;

(3) Estimated improvement of biological diversity, if enrolled;

(4) Potential for increased capability of carbon sequestration, if enrolled;

(5) Availability of contribution of non-Federal funds;

(6) Significance of forest ecosystem functions and values;

(7) Estimated cost-effectiveness of the particular restoration cost-share agreement, contract, or easement, and associated HFRP restoration plan; and

(8) Other factors identified in a HFRP sign-up notice.

(b) NRCS may place higher priority on certain forest ecosystems based regions of the State or multi-State area where restoration of forestland may better achieve NRCS programmatic and sign-up goals and objectives.

(c) Notwithstanding any limitation of this part, NRCS may enroll eligible lands at any time in order to encompass project areas subject to multiple land ownership or otherwise to achieve program objectives. Similarly, NRCS may, at any time, exclude otherwise eligible lands if the participation of the adjacent landowners is essential to the successful restoration of the forest ecosystem and those adjacent landowners are unwilling to participate.

(d) If available funds are insufficient to accept the highest ranked application, and the applicant is not interested in reducing the acres offered to match available funding, NRCS may select a lower ranked application that can be fully funded. In cases where HFRP funds are not sufficient to cover the costs of an application selected for funding, the applicant may lower the cost of the application by changing the duration of the easement or agreement

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or reducing the acreage offered, unless these changes result in a reduction of the application ranking score below that of the score of the next available application on the ranking list.

### § 625.7 Enrollment of easements, contracts, and agreements.

(a) *Offers of enrollment.* Based on the priority ranking, NRCS will notify an affected landowner of tentative acceptance into the program. This notice of tentative acceptance into the program does not bind NRCS or the United States to enroll the proposed project in HFRP, nor does it bind the landowner to convey an easement, or to contract or agree to HFRP activities. The letter notifies the landowner that NRCS intends to continue the enrollment process on their land unless otherwise notified by the landowner.

(b) *Acceptance of offer of enrollment.* An agreement to purchase or a restoration cost-share agreement or contract will be presented by NRCS to the landowner which will describe the easement, agreement, or contract area; the easement, agreement, or contract terms and conditions; and other terms and conditions for participation that may be required by NRCS.

(c) *Effect of the acceptance of the offer.* After the agreement to purchase or restoration cost-share agreement or contract is executed by NRCS and the landowner, the land will be considered enrolled in the HFRP. For easements, NRCS will proceed with various easement acquisition activities, which may include conducting a survey of the easement area, securing necessary subordination agreements, procuring title insurance, and conducting other activities necessary to record the easement or implement the HFRP, as appropriate for the enrollment option being considered. For restoration cost-share agreements and contracts, the landowner will proceed to implement the restoration plan with technical assistance and cost-share from NRCS.

(d) *Withdrawal of offers.* Prior to execution of an agreement to purchase, a restoration cost-share agreement, or contract between the United States and the landowner, NRCS may withdraw the land from enrollment at any time due to lack of availability of

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funds, inability to clear title, or other reasons. An agreement to purchase will be void, and the offer withdrawn, if not executed by the landowner within the time specified.

### § 625.8 Compensation for easements and 30-year contracts.

(a) *Determination of easement payment rates.*

(1) NRCS will offer to pay not less than 75 percent, nor more than 100 percent of the fair market value of the enrolled land during the period the land is subject to the easement, less the fair market value of the land encumbered by the easement for permanent easements or easements for the maximum duration allowed under State law.

(2) NRCS will offer to pay not more than 75 percent of the fair market value of the enrolled land, less the fair market value of the land encumbered by the easement for 30-year easements or 30-year contracts.

(b) *Acceptance and use of contributions.* NRCS may accept and use contributions of non-Federal funds to make payments under this section.

(c) *Acceptance of offered easement or 30-year contract compensation.*

(1) NRCS will not acquire any easement or 30-year contract unless the landowner accepts the amount of the payment that is offered by NRCS. The payment may or may not equal the fair market value of the interests and rights to be conveyed by the landowner under the easement or 30-year contract. By voluntarily participating in the program, a landowner waives any claim to additional compensation based on fair market value.

(2) Payments may be made in a single payment or no more than 10 annual payments of equal or unequal size, as agreed to between NRCS and the landowner.

(d) If a landowner believes they may be eligible for a bargain sale tax deduction that is the difference between the fair market value of the easement conveyed to the United States and the easement payment made to the landowner, it is the landowner's responsibility to discuss those matters with the Internal Revenue Service. NRCS disclaims any representations concerning

the tax implications of any easement or cost-share transaction.

(e) *Per acre payments.* If easement payments are calculated on a per acre basis, adjustment to stated easement payment will be made based on final determination of acreage.

(f) *Ecosystem Services Credits for Conservation Improvements.* USDA recognizes that environmental benefits will be achieved by implementing conservation practices and activities funded through HFRP, and that environmental credits may be gained as a result of implementing activities compatible with the purposes of a HFRP easement, 30-year contract, or restoration cost-share agreement. NRCS asserts no direct or indirect interest in these credits. However, NRCS retains the authority to ensure the requirements of a HFRP easement, contract, cost-share agreement, or restoration plan are met consistent with §§625.9 through 625.13 of this part. Where activities required under an environmental credit agreement may affect land covered under a HFRP easement, restoration cost-share agreement, or 30-year contract, participants are highly encouraged to request a compatibility assessment from NRCS prior to entering into such agreements.

**§ 625.9 10-year restoration cost-share agreements.**

(a) The restoration plan developed under § 625.13 forms the basis for the 10-year cost-share agreement and its terms are incorporated therein.

(b) A 10-year cost-share agreement will:

(1) Incorporate all portions of a restoration plan;

(2) Be for a period of 10 years;

(3) Include all provisions as required by law or statute;

(4) Specify the requirements for operation and maintenance of applied conservation practices;

(5) Include any participant reporting and recordkeeping requirements to determine compliance with the agreement and HFRP;

(6) Be signed by the participant;

(7) Identify the amount and extent of cost-share assistance that NRCS will provide for the adoption or implementation of the approved conservation

treatment identified in the restoration plan; and

(8) Include any other provision determined necessary or appropriate by the NRCS representative.

(c) Once the participant and NRCS have signed a 10-year cost-share agreement, the land will be considered enrolled in HFRP.

(d) The State Conservationist may, by mutual agreement with the parties to the 10-year cost-share agreement, consent to the termination of the restoration agreement where:

(1) The parties to the 10-year cost-share agreement are unable to comply with the terms of the restoration agreement as the result of conditions beyond their control;

(2) Compliance with the terms of the 10-year cost-share agreement would work a severe hardship on the parties to the agreement; or

(3) Termination of the 10-year cost-share agreement would, as determined by the State Conservationist, be in the public interest.

(e) If a 10-year cost-share agreement is terminated in accordance with the provisions of this section, the State Conservationist may allow the participants to retain any cost-share payments received under the 10-year cost-share agreement where forces beyond the participant's control prevented compliance with the agreement.

**§ 625.10 Cost-share payments.**

(a) NRCS may share the cost with landowners of restoring land enrolled in HFRP as provided in the HFRP restoration plan. The HFRP restoration plan may include periodic manipulation to maximize fish and wildlife habitat and preserve forest ecosystem functions and values, and measures that are needed to provide the Landowner Protections under section 7(b)(4) or section 10(a)(1) of the ESA, including the cost of any permit.

(b) Landowner Protections may be made available to landowners enrolled in the HFRP who agree, for a specified period, to restore, protect, enhance, maintain, and manage the habitat conditions on their land in a manner that is reasonably expected to result in a net conservation benefit that contributes to the recovery of listed species

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under the ESA, candidate, or other species covered by this regulation. These protections operate with lands enrolled in the HFRP and are valid for as long as the landowner is in compliance with the terms and conditions of such assurances, any associated permit, the easement, contract, or the restoration agreement.

(c) If the Landowner Protections, or any associated permit, require the adoption of a conservation practice or measure in addition to the conservation practices and measures identified in the applicable HFRP restoration plan, NRCS and the landowner will incorporate the conservation practice or measure into the HFRP restoration plan as an item eligible for cost-share assistance.

(d) Failure to perform planned management activities can result in violation of the easement, 10-year cost-share agreement, or the agreement under which Landowner Protections have been provided. NRCS will work with landowners to plan appropriate management activities.

(e) The amount and terms and conditions of the cost-share assistance will be subject to the following restrictions on the costs of establishing or installing NRCS approved conservation practices or implementing measures specified in the HFRP restoration plan:

(1) On enrolled land subject to a permanent easement or an easement for the maximum duration allowed under State law, NRCS will offer to pay not less than 75 percent nor more than 100 percent of the average cost, and;

(2) On enrolled land subject to a 30-year easement or 30-year contract, NRCS will offer to pay not more than 75 percent of the average cost.

(f) On enrolled land subject to a 10-year cost-share agreement without an associated easement, NRCS will offer to pay not more than 50 percent of the average costs.

(g) Cost-share payments may be made only upon a determination by NRCS that an eligible conservation practice or measure has been established in compliance with appropriate standards and specifications. Identified conservation practices and measures may be implemented by the landowner or other designee.

(h) Cost-share payments may be made for the establishment and installation of additional eligible conservation practices and measures, or the maintenance or replacement of an eligible conservation practice or measure, but only if NRCS determines the practice or measure is needed to meet the objectives of HFRP, and the failure of the original conservation practices or measures was due to reasons beyond the control of the landowner.

**§ 625.11 Easement participation requirements.**

(a) To enroll land in HFRP through a permanent easement, an easement for the maximum duration allowed under State law, or 30-year enrollment option, a landowner will grant an easement to the United States. The easement deed will require that the easement area be maintained in accordance with HFRP goals and objectives for the duration of the term of the easement, including the restoration, protection, enhancement, maintenance, and management of habitat and forest ecosystem functions and values.

(b) For the duration of its term, the easement will require, at a minimum, that the landowner and the landowner's heirs, successors, and assignees, will cooperate in the restoration, protection, enhancement, maintenance, and management of the land in accordance with the easement and with the terms of the HFRP restoration plan. In addition, the easement will grant to the United States, through NRCS:

(1) A right of access to the easement area by NRCS or its representative;

(2) The right to determine and permit compatible uses on the easement area and specify the amount, method, timing, intensity, and duration of the compatible use, if such use is consistent with the long-term protection and enhancement of the purposes for which the easement was established;

(3) The rights, title, and interest to the easement area as specified in the conservation easement deed; and

(4) The right to perform restoration, protection, enhancement, maintenance, and management activities on the easement area.

(c) The landowner will convey title to the easement which is acceptable to NRCS. The landowner will warrant that the easement granted to the United States is superior to the rights of all others, except for exceptions to the title which are deemed acceptable by NRCS.

(d) The landowner will:

(1) Comply with the terms of the easement;

(2) Comply with all terms and conditions of any associated agreement or contract;

(3) Agree to the long-term restoration, protection, enhancement, maintenance, and management of the easement in accordance with the terms of the easement and related agreements;

(4) Have the option to enter into an agreement with governmental or private organizations to assist in carrying out any landowner responsibilities on the easement area; and

(5) Agree that each person who is subject to the easement will be jointly and severally responsible for compliance with the easement and the provisions of this part, and for any refunds or payment adjustment which may be required for violation of any terms or conditions of the easement or the provisions of this part.

**§ 625.12 30-year contracts.**

(a) To enroll land in HFRP through the 30-year contract option, a landowner will sign a 30-year contract with NRCS. The contract will require that the contract area be maintained in accordance with HFRP goals and objectives for the duration of the term of the contract, including the restoration, protection, enhancement, maintenance, and management of habitat and forest ecosystem functions and values.

(b) For the duration of its term, the 30-year contract will require, at a minimum, that the landowner and the landowner's assignees, will cooperate in the restoration, protection, enhancement, maintenance, and management of the land in accordance with the contract and with the terms of the HFRP restoration plan. In addition, the contract will grant to the United States through NRCS:

(1) A right of access to the contract area by NRCS or its representative;

(2) The right to allow such activities by the landowner as hunting and fishing, managed timber harvest, or periodic haying or grazing, if such use is consistent with the long-term protection and enhancement of the purposes for which the contract was established;

(3) The right to specify the amount, method, timing, intensity, and duration of the activities listed in paragraph (b)(2) of this section, as incorporated into the terms of the contract; and

(4) The right to perform restoration, protection, enhancement, maintenance, and management activities on the contract area.

(c) The landowner will:

(1) Comply with the terms of the contract;

(2) Comply with all terms and conditions of any associated agreement or contract; and

(3) Agree to the long-term restoration, protection, enhancement, maintenance, and management of the contract area in accordance with the terms of the contract and related agreements.

(d) A 30-year contract will:

(1) Be signed by the participant;

(2) Identify the amount and extent of cost-share assistance that NRCS will provide for the adoption or implementation of the approved conservation treatment identified in the restoration plan; and

(3) Include any other provision determined necessary or appropriate by the NRCS representative.

(e) Once the landowner and NRCS have signed a 30-year contract, the land will be considered enrolled in HFRP.

**§ 625.13 The HFRP restoration plan development and Landowner Protections.**

(a) The development of the HFRP restoration plan will be made through an NRCS representative, who will confer with the program participant and with the FWS and NMFS, as appropriate.

(b) The HFRP restoration plan will specify the manner in which the enrolled land under easement, 30-year

contract, or 10-year cost-share agreement will be restored, protected, enhanced, maintained, and managed to accomplish the goals of the program.

(c) Eligible restoration practices and measures may include land management, vegetative, and structural practices and measures that will restore and enhance habitat conditions for listed species, candidate, State-listed, and other species identified by the Chief for special funding consideration. To the extent practicable, eligible practices and measures will improve biodiversity and optimize the sequestration of carbon through management that maintains diverse and high quality native forests to accomplish the goals of the restoration plan. NRCS, in coordination with FWS and NMFS, will determine the conservation practices and measures. The State Conservationist will develop and make available to the public a list of eligible practices, and will determine payment rates and cost-share percentages within statutory limits.

(d) Landowner Protections. An HFRP participant who enrolls land in HFRP and whose conservation treatment results in a net conservation benefit for listed, candidate, or other species, may request such Landowner Protections as follows:

(1) Incidental Take Authorization.

(i) NRCS will extend to participants the incidental take authorization received by NRCS from FWS or NMFS through biological opinions issued as part of the interagency cooperation process under section 7(a)(2) of the ESA;

(ii) NRCS will provide assurances, as a provision of the restoration plan, that when a participant is provided authorization for incidental take of a listed species, NRCS will not require management activities related to that species to be undertaken in addition to or different from those specified in the restoration plan without the participant's consent;

(iii) The program participant will be covered by the authorization to NRCS for incidental take associated with restoration actions or management activities. The incidental take may include a return to baseline conditions at

the end of the applicable period, if the landowner so desires.

(iv) Provided the landowner has acted in good faith and without intent to violate the terms of the HFRP restoration plan, NRCS will pursue all appropriate options with the participant to avoid termination in the event of the need to terminate an HFRP restoration plan that is being properly implemented; and

(v) If the 30-year contract or 10-year restoration cost-share agreement is terminated, any requested assurances, including an incidental take authorization under this section, provided by NRCS will be voided. As such, the landowner will be responsible to FWS or NMFS for any violations of the ESA.

(2) SHA or CCAA.

(i) NRCS will provide technical assistance to help participants design and use their HFRP restoration plan for the dual purposes of qualifying for HFRP financial assistance and as a basis for entering into a SHA or CCAA with FWS or NMFS and receiving an associated permit under section 10(a)(1)(a) of the ESA.

(ii) In exchange for a commitment to undertake conservation measures, the landowner may receive a permit under section 10 of the ESA from FWS or NMFS authorizing incidental take of species covered by the SHA or CCAA that may occur as a result of restoration actions, management activities, and for a listed species covered by a SHA, a return to baseline conditions at the end of the applicable period.

(iii) All SHAs and associated permits issued by FWS or NMFS are subject to the Safe Harbor Policy jointly adopted by FWS and NMFS according to the regulations at 64 FR 32717 or applicable subsequently adopted policy, and SHAs with FWS also are subject to regulations at 50 CFR 17.22(c) for endangered species or 50 CFR 17.32(c) for threatened species, or applicable subsequent regulations.

(iv) All CCAAs and associated permits issued by FWS or NMFS are subject to the CCAAs policy jointly adopted by FWS and NMFS according to the regulations at 64 FR 32706 or applicable subsequently adopted policy, and CCAAs with FWS also are subject to

regulations at 50 CFR 17.22(d) for endangered species or 50 CFR 17.32(d) for threatened species, or applicable subsequent regulations.

(v) If the 30-year contract or 10-year restoration cost-share agreement is terminated, the landowner will be responsible to notify and coordinate with FWS and NMFS or any other relevant party to the specific SHA or CCAA, as appropriate, for any modifications related to the SHA or CCAA.

**§ 625.14 Modification of the HFRP restoration plan.**

The State Conservationist may approve modifications to the HFRP restoration plan that do not modify or void provisions of the easement, contract, restoration agreement, or Landowner Protections, and are consistent with applicable law. NRCS may obtain and receive input from the landowner and coordinate with FWS and NMFS to determine whether a modification to the restoration plan is justified. Any HFRP restoration plan modification must meet HFRP program objectives, and must result in equal or greater wildlife benefits and ecological and economic values to the United States. Modifications to the HFRP restoration plan which are substantial and affect provisions of the contract, restoration cost-share agreement, or Landowner Protections will require agreement from the landowner, any relevant party to a specific SHA or CCAA, FWS, or NMFS, as appropriate, and may require execution of an amended contract or 10-year restoration cost-share agreement and modification to the Landowner Protection provisions.

**§ 625.15 Transfer of land.**

(a) *Offers voided prior to enrollment.* Any transfer of the property prior to the applicant's acceptance into the program will void the offer of enrollment. At the option of the State Conservationist, an offer can be extended to the new landowner if the new landowner agrees to the same or more restrictive easement, agreement, and contract terms and conditions.

(b) *Actions following transfer of land.*

(1) For easements or 30-year contracts with multiple annual payments, any remaining payments will be made

to the original landowner unless NRCS receives an assignment of proceeds.

(2) Eligible cost-share payments will be made to the new landowner upon presentation of an assignment of rights or other evidence that title has passed.

(3) Landowner protections will be available to the new landowner, and the new landowner will be held responsible for assuring completion of all measures and conservation practices required by the contract, deed, and incidental take permit.

(4) If a SHA or CCAA is involved, the previous and new landowner may coordinate with FWS or NMFS, as appropriate, to transfer the agreement and associated permits and assurances.

(5) The landowner and NRCS may agree to transfer a 30-year contract. The transferee must be determined by NRCS to be eligible to participate in HFRP and must assume full responsibility under the contract, including operation and maintenance of all conservation practices and measures required by the contract.

(c) *Claims to payments.* With respect to any and all payments owed to a person, the United States will bear no responsibility for any full payments or partial distributions of funds between the original landowner and the landowner's successor. In the event of a dispute or claim on the distribution of cost-share payments, NRCS may withhold payments without the accrual of interest pending an agreement or adjudication on the rights to the funds.

**§ 625.16 Violations and remedies.**

(a) *Easement Violations.*

(1) In the event of a violation of the easement or any associated agreement involving a landowner, the landowner will be given reasonable notice and an opportunity to voluntarily correct the violation within 30 days of the date of the notice, or such additional time as the State Conservationist determines is necessary to correct the violation.

(2) Notwithstanding paragraph (a)(1) of this section, NRCS reserves the right to enter upon the easement area at any time to remedy deficiencies or easement violations. Such entry may be made at the discretion of NRCS

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when such actions are deemed necessary to protect important listed species, candidate species, and forest ecosystem functions and values or other rights of the United States under the easement. The landowner will be liable for any costs incurred by the United States as a result of the landowner's negligence or failure to comply with easement or contractual obligations.

(3) In addition to any and all legal and equitable remedies as may be available to the United States under applicable law, NRCS may withhold any easement and cost-share payments owed to landowners at any time there is a material breach of the easement covenants, associated restoration agreement, or any associated contract. Such withheld funds may be used to offset costs incurred by the United States in any remedial actions or retained as damages pursuant to court order or settlement agreement.

(4) The United States will be entitled to recover any and all administrative and legal costs, including attorney's fees or expenses, associated with any enforcement or remedial action.

(b) *30-year Contract and 10-year Cost-Share Agreement Violations.*

(1) If NRCS determines that a participant is in violation of the terms of a 30-year contract, or 10-year cost-share agreement, or documents incorporated by reference into the 30-year contract or 10-year cost-share agreement, the landowner will be given reasonable notice and an opportunity to voluntarily correct the violation within 30 days of the date of the notice, or such additional time as the State Conservationist determines is necessary to correct the violation. If the violation continues, the State Conservationist may terminate the 30-year contract or 10-year cost-share agreement.

(2) Notwithstanding the provisions of paragraph (b)(1) of this section, a 10-year cost-share agreement or 30-year contract termination is effective immediately upon a determination by the State Conservationist that the participant has: submitted false information; filed a false claim; engaged in any act for which a finding of ineligibility for payments is permitted under this part; or taken actions NRCS deems to be suf-

ficiently purposeful or negligent to warrant a termination without delay.

(3) If NRCS terminates a 10-year cost-share agreement or 30-year contract, the participant will forfeit all rights for future payments under the 10-year cost-share agreement or 30-year contract, and must refund all or part of the payments received, plus interest, and liquidated damages.

(4) When making any 30-year contract or 10-year cost-share agreement termination decisions, the State Conservationist may provide equitable relief in accordance with 7 CFR part 635.

**§ 625.17 Payments not subject to claims.**

Any cost-share, contract, or easement payment or portion thereof due any person under this part will be allowed without regard to any claim or lien in favor of any creditor, except agencies of the United States Government.

**§ 625.18 Assignments.**

Any person entitled to any cash payment under this program may assign the right to receive such cash payments in whole or in part.

**§ 625.19 Appeals.**

(a) A person participating in the HFRP may obtain a review of any administrative determination concerning eligibility for participation utilizing the administrative appeal regulations provided in 7 CFR parts 11 and 614.

(b) Before a person may seek judicial review of any administrative action concerning eligibility for program participation under this part, the person must exhaust all administrative appeal procedures set forth in paragraph (a) of this section, and for purposes of judicial review, no decision will be a final agency action except a decision of the Chief under these procedures.

(c) Any appraisals, market analysis, or supporting documentation that may be used by NRCS in determining property value are considered confidential information, and will only be disclosed as determined at the sole discretion of NRCS in accordance with applicable law.

(d) Enforcement actions undertaken by NRCS in furtherance of its federally



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held property rights are under the jurisdiction of the Federal District Court, and are not subject to review under administrative appeal regulations.

**§ 625.20 Scheme and device.**

(a) If it is determined by NRCS that a person has employed a scheme or device to defeat the purposes of this part, any part of any program payment otherwise due or paid to such person during the applicable period may be withheld or be required to be refunded with interest thereon, as determined appropriate by NRCS.

(b) A scheme or device includes, but is not limited to, coercion, fraud, misrepresentation, depriving any other person of payments for 10-year cost-share agreements, contracts, or easements for the purpose of obtaining a payment to which a person would otherwise not be entitled.

(c) A person who succeeds to the responsibilities under this part will report in writing to NRCS any interest of any kind in enrolled land that is held by a predecessor or any lender. A failure of full disclosure will be considered a scheme or device under this section.

## SUBCHAPTER D—LONG TERM CONTRACTING

### PART 630—LONG TERM CONTRACTING

AUTHORITY: Pub. L. 75-430, 49 Stat. 1151 (16 U.S.C. 590d); Pub. L. 84-1021, 70 Stat. 1115 (16 U.S.C. 590p(b)); Pub. L. 91-118, 83 Stat. 194 (16 U.S.C. 590d).

#### § 630.1 Purpose.

The purpose of this subchapter is to provide for programs to extend cost sharing and technical assistance through long term contracts to landowners and others for making land use changes and to install measures to conserve, develop, and utilize the soil, water, and related natural resources on their lands.

[40 FR 53370, Nov. 18, 1975]

### PART 631—GREAT PLAINS CONSERVATION PROGRAM

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AUTHORITY: 16 U.S.C. 590p(b).

SOURCE: 49 FR 11142, Mar. 27, 1984, unless otherwise noted.

### Subpart A—General Provisions

#### § 631.1 Purpose.

(a) The Great Plains Conservation Program (GPCP) is a special program targeted to the total conservation treatment of farm or ranch units with the most severe soil and water resources problems. The purpose of the program is to assist farm, ranch and other land users to make changes in their cropping systems and land uses which are needed to conserve, develop, protect, and utilize the soil and water resources of their lands. This purpose is achieved by controlling erosion, conserving water, and adjusting land use to mitigate climatic, soil, topographic, flood, saline and other natural hazards.

(b) Program participation is voluntary and is carried out by applying a conservation plan encompassing an entire operating unit. A conservation plan is developed with the land user in consultation with the local conservation district and is used to establish a GPCP contract. This contract provides for cost sharing between the land user and the Secretary of Agriculture for applying needed land use adjustments and conservation treatment within a specified time schedule. The program is supplemental to, not a substitution for, other programs in the Great Plains area.

#### § 631.2 Definitions.

The terms defined shall have the following meaning in this part and in all contracts, forms, documents, instructions, and procedures in connection therewith, unless the contract or subject matter requires otherwise.

*Applicant.* A land user who has requested in writing to participate in the GPCP.

*Area conservationist.* The NRCS employee who is the supervisor with primary responsibility for quality control. This person serves as contracting officer if designated by the state conservationist.

*Chief.* The Chief of the Natural Resources Conservation Service (NRCS), USDA.

*Conservation district (CD).* A conservation district, soil conservation district, soil and water conservation district, natural resource district, or similar legally constituted body with which the Secretary of Agriculture cooperates pursuant to the Soil Conservation and Domestic Allotment Act. The members of governing bodies of these organizations may be known as supervisors, directors, or commissioners.

*Conservation plan.* A written record of the land user's decisions regarding planned land use and treatment, including estimates of extent and cost. The timing of applications for each practice and/or identifiable unit is scheduled in the conservation plan.

*Conservation practice.* A specific treatment which is planned and applied according to NRCS standards and specifications as a part of a resource management system for land, water, and related resources.

*Contract.* A legal document that binds both the participants and the federal government to carry out the terms and conditions of the conservation plan. The contract forms the basis for GPCP sharing the costs of implementing the conservation plan.

*Contracting officer.* The NRCS employee authorized to sign GPCP contracts on behalf of NRCS.

*County program committee.* A group of Federal, State, and local officials selected by the designated conservationist. The committee provides ideas to the designated conservationist regarding program development and interagency program coordination.

*Designated county.* A county within a Great Plains state that the Chief has designated for participation.

*Designated conservationist.* A district conservationist or other NRCS employee who the state conservationist has designated to be responsible for administration of the GPCP in a designated county.

*District conservationist.* The NRCS employee assigned to direct and supervise NRCS activities in one or more conservation districts.

*Great Plains area.* The area comprising those counties within the Great Plains states designated for GPCP participation.

*Great Plains states.* Colorado, Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming.

*Identifiable unit.* A discernibly distinct component of a conservation practice.

*Land user.* An individual, partnership, firm, joint-stock company, corporation, association, trust, estate, or other nonpublic legal entity having control of a unit of land. This definition includes two or more persons having a joint or common interest.

*Life span.* The period of time specified in the contract and/or operation and maintenance agreement during which the resource management systems of component practices are to be maintained and used for the intended purpose. Most practices will have a useful life beyond the specified life span.

*Operation and maintenance agreement.* A document signed by both the participant and the contracting officer outlining the operation and maintenance requirements for applied conservation treatment.

*Operating unit.* A parcel or parcels of land, whether contiguous or noncontiguous, constituting a single management unit for agricultural purposes.

*Other land.* Nonagricultural land on which erosion must be controlled to protect agricultural land and which can be covered by contract.

*Participant.* A land user who is a party to a GPCP contract.

*Resource management system.* A combination of conservation practices identified by the land or water use that, if installed, will protect or improve the soil or water resource base.

*Specifications.* Minimum quantity or quality requirements established by NRCS to meet the standard for a specific conservation practice.

*State conservationist.* The NRCS employee authorized to direct and supervise NRCS activities within the state.

*State program committee.* A group of Federal, state, and local officials selected by the state conservationist. The committee provides ideas to the state conservationist regarding program development, coordination, general policies, and operating procedures of GPCP in the state.

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*Technical assistance.* Guidance provided to land users regarding the use and treatment of soil, water, plant, animal, and related resources. This assistance may include conservation plan formulation, application, and maintenance and is usually confined to those activities which the recipient could not reasonably be expected to do without specialized assistance.

*Technical guide.* A document containing detailed information on the conservation of soil, water, plant, animal, and related resources applicable specifically to the area for which it is prepared.

#### § 631.3 Administration.

(a) NRCS is responsible for the administration of the Great Plains Conservation Program (GPCP).

(b) The program shall be carried out in close cooperation with interested Federal, state, and local government units and organizations. The program in designated counties shall be coordinated with the long-range program of conservation districts operating in such counties and with other USDA activities.

(c) Applicants who have USDA-Farmers Home Administration (FmHA) loans must furnish to NRCS satisfactory evidence that the conservation plan used as a basis for the GPCP contract is compatible with assistance provided by FmHA. Such evidence may consist of written acknowledgement by the authorized FmHA official that the GPCP conservation plan is compatible with the farm management plan prepared for FmHA program purposes.

#### § 631.4 Program applicability.

The program is applicable only to designated counties within the Great Plains states. County designation is a responsibility of the NRCS Chief.

#### § 631.5 Land user eligibility.

Any land user in a designated county may file an application for participation in the GPCP with the NRCS field office. A land user who develops an acceptable conservation plan in cooperation with NRCS and the conservation district that is in compliance with the terms and conditions of the program is eligible to sign a contract.

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#### § 631.6 Land eligible for the program.

The program is applicable to:

- (a) Privately owned land,
- (b) Nonfederally owned public land under private control for the contract period and included in the participant's operating unit, and
- (c) Federally owned land, if installation of conservation practices would directly benefit nearby or adjoining privately owned land of persons who maintain and use the Federal land.

#### § 631.7 Conservation treatment eligible for cost sharing.

(a) The state conservationist, in consultation with the state program committee, shall select the resource management systems, conservation practices, or identifiable units eligible for GPCP cost sharing in the state.

(b) The designated conservationist, in consultation with the county program committee, shall select from the state list the eligible conservation systems, practices, or identifiable units eligible for GPCP cost sharing in the county.

#### § 631.8 Cost-share rates.

(a) The Federal rate may not exceed 80 percent.

(b) The maximum Federal rate (percentage) within each state for each practice or identifiable unit shall be established by the state conservationist.

(c) The maximum rate (percentage) for each county is established by the designated conservationist not to exceed the state rate (percentage).

(d) The rate (percentage) established by a state conservationist or a designated conservationist shall not exceed the amount necessary and appropriate to apply conservation treatment.

#### § 631.9 Conservation plan.

(a) An applicant is responsible for developing a conservation plan, in cooperation with the conservation district, that protects the resource base in a manner acceptable to NRCS. This plan will be used as a basis for developing a contract. Conservation treatment is to be planned and implemented as a resource management system.

(b) The applicant decides how the land will be used and selects the resource management systems that will

achieve the applicant's objectives and provide protection of soil, water, and related resources acceptable to NRCS. Eligible practices may be included in the conservation plan to enhance fish and wildlife and recreation resources, promote the economic use of land, and reduce or control agriculture-related pollution.

(c) Technical assistance will be provided by NRCS, as needed by the land user. NRCS may utilize the services of private, local, state, and other Federal agencies in discharging its responsibilities for technical assistance.

(d) Participants are responsible for accomplishing the conservation plan and may use all available sources of assistance, including other USDA programs that are consistent with the conservation plan.

(e) All conservation practices scheduled in the conservation plan are to be carried out in accordance with the applicable NRCS technical guide.

**Subpart B—Contracts**

**§ 631.10 Contracts.**

(a) To participate in the program, an applicant must enter into a contract agreeing to implement a conservation plan. All persons who control or share control of the operating unit for the proposed contract period must sign the contract or one person with power-of-attorney may sign the contract for all persons. The applicant must provide the contracting officer with satisfactory evidence of control of the operating unit for the life of the proposed contract.

(b) Contracts may be entered into not later than September 30, 1991. The contract shall be for a period needed to establish the conservation treatment scheduled in the conservation plan and must extend at least 3 years but not more than 10 years.

(c) Contracts may be transferred or modified by mutual consent. The transferee assumes full responsibility for the contract including operation and maintenance of all land treatment installed under the contract. Also included are payments made under the contract to the participant or preceding participants before and after the transfer.

(d) Contracts may be terminated by mutual consent or by NRCS for cause.

**§ 631.11 Conservation practice maintenance.**

(a) Each participant is obligated to maintain the resource management systems or conservation practices applied under the contract for the duration of the contract. Practices installed before execution of the contract are to be maintained as specified in the contract.

(b) If the life span of the practices or resource management systems extends beyond the period of the contract, state conservationists may make the operation and maintenance of those practices or systems a condition of the contract. The length of such operation and maintenance shall extend for the expected life span.

**§ 631.12 Cost-share payments.**

(a) Federal cost sharing shall be adjusted so that the combined cost share by Federal and state government or subdivision of a state shall not exceed 100 percent of the cost.

(b) Cost-share payments for completing resource management systems or a practice or an identifiable unit according to specifications will be made by NRCS as specified in the contract or as adjusted according to § 631.12(a).

**§ 631.13 Disputes and appeals for matters other than contract violations.**

Applicants or participants may appeal decisions regarding matters other than contract disputes under this part in accordance with part 614 of this title.

[60 FR 67316, Dec. 29, 1995]

**§ 631.14 Contract violations.**

Contract violations, determinations and appeals will be handled in accordance with the terms of the contract and attachments thereto. Violations involving fraud are to be handled in accordance with current USDA regulations.

**Subpart C—Miscellaneous**

**§ 631.20 Setoffs.**

(a) If any participant to whom compensation is payable under the program is indebted to U.S. Department of Agriculture (USDA), or any agency thereof, or is indebted to any other agency of the United States, and such indebtedness is listed on the county claim control record maintained in the office of the county ASC committee, the compensation due the participant shall be set off against the indebtedness. Indebtedness owing to USDA, or any agency thereof, shall be given first consideration. Setoffs made pursuant to this section shall not deprive the participant of any right to contest the justness of the indebtedness involved either by administrative appeal or by legal action.

(b) Participants who are indebted to this program for any reason will be placed on the USDA claim control record promptly by the state conservationist after the participant has been given opportunity to pay the debt.

**§ 631.21 Compliance with regulatory measures.**

Participants who carry out conservation practices shall be responsible for obtaining the authorities, rights, easements, or other approvals necessary for the implementation and maintenance of the conservation practices in keeping with applicable laws and regulations. Participants shall save the United States harmless from any infringements upon the rights of others or from any failure to comply with applicable laws or regulations.

**§ 631.22 Access to operating unit.**

Any authorized NRCS representative shall have the right to enter an operating unit for the purpose of ascertaining the accuracy of any representations made in a contract or leading up to a contract, and as to the performance of the terms and conditions of the contract. Access shall include the right to measure acreages, render technical assistance, and inspect any work undertaken under the contract.

**§ 631.23 State conservationist's authority.**

The state conservationist may take the initiative to revise or require revision of any determination made by the contracting officer or the district conservationist in connection with the program, except that the state conservationist may not revise any executed contract other than as may specifically be authorized herein.

**PART 632—RURAL ABANDONED MINE PROGRAM**

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AUTHORITY: Sec. 406, Pub. L. 95-87; 91 Stat. 460 (30 U.S.C. 1236).

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SOURCE: 43 FR 44749, Sept. 28, 1978, unless otherwise noted.

### Subpart A—General

#### § 632.1 Purpose and scope.

(a) The purpose of this part is to set forth the Natural Resources Conservation Service (NRCS) rules and regulations to carry out the Rural Abandoned Mine Program under section 406, Pub. L. 95-87; 91 Stat. 460 (30 U.S.C. 1236).

(b) The Rural Abandoned Mine Program:

(1) Through the NRCS delivery system, assists land users to voluntarily develop reclamation plans and apply conservation treatment for the reclamation, conservation, and development of eligible coal-mined lands and water, and

(2) Provides cost sharing through long-term contracts according to an approved reclamation plan, to land users for establishing land use and conservation treatment on these lands.

#### § 632.2 Objectives.

(a) The objectives of the program are to protect people and the environment from the adverse effects of past coal-mining practices and to promote the development of the soil and water resources of unreclaimed mined lands by:

(1) Stabilizing mined lands.

(2) Controlling erosion and sediment on mined areas and areas affected by mining.

(3) Reclaiming lands and water for useful purposes.

(4) Enhancing water quality or quantity where it has been disturbed by past coal-mining practices.

#### § 632.3 Responsibilities.

(a) The Rural Abandoned Mine Program is administered by the U.S. Department of Agriculture (USDA) through NRCS in accordance with the delegation of responsibility contained in § 601.1(h) of this chapter.

(1) The Chief of NRCS is responsible for national program management and administration and for coordinating program operations with the Office of Surface Mining (OSM), U.S. Department of the Interior.

(2) State conservationists (Responsible Federal Officials) are responsible

for program operations within a State including program coordination with the State reclamation agency and the representatives of OSM.

(b) The primary public contacts for program assistance are the district conservationists located in local NRCS field offices.

(c) NRCS is assisted by other USDA agencies in accordance with existing authorities and agreements in carrying out the program.

(d) NRCS is to coordinate Rural Abandoned Mine Program activities with NRCS programs and the other reclamation programs authorized by Pub. L. 95-87 that are carried out by the Office of Surface Mining of the U.S. Department of the Interior, State reclamation agencies, and Indian tribes. Coordination includes program development, development of reclamation standards, preparation of special reports, requests for funding, and related actions required to achieve coordination between programs.

(e) NRCS is to consult with State and local reclamation committees to obtain recommendations on program operation, evaluation of applications for reclamation assistance, and public participation. The NRCS State Conservationist is to use existing reclamation committees or encourage the organization of a new State committee for this purpose. The State Conservationist is to serve as a member when the committee is functioning for the purposes of this program. Representatives of the Office of Surface Mining, State reclamation agency, State water quality agency, State conservation agency, and other agencies or groups are to be invited to participate as members. Individual citizens may participate through the State committee. Local committees, if needed, are to be organized on a multicounty, county, conservation district, or other appropriate area with a local membership structure similar to the State committee. The district conservationist is to be a member of a local reclamation committee organized to provide program guidance.

[43 FR 44749, Sept. 28, 1978, as amended at 45 FR 65181, Oct. 2, 1980]

## § 632.4

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### § 632.4 Definitions.

*Abandoned mined lands.* Unreclaimed coal-mined lands that existed before August 3, 1977, and for which there is no continuing reclamation responsibility on the part of a mine operator, permittee, or agent under State or Federal law or on the part of the State as a result of a bond forfeiture. See § 632.13.

*Average costs.* The calculated cost, determined by recent actual costs and current cost estimates, considered necessary for a land user to carry out a conservation practice or an identifiable unit of a conservation practice.

*Conservation district.* A legal subdivision of State government responsible for developing and carrying out programs of soil and water conservation with which the Secretary of Agriculture cooperates under the Soil Conservation and Domestic Allotment Act of 1935.

*Conservation treatment.* Specific conservation or reclamation practices applied to the land according to current standards and specifications in NRCS technical guides.

*Contract.* A binding agreement between NRCS and the land user that includes the reclamation plan and provides for cost sharing the conservation treatment.

*Contracting officer.* The NRCS official authorized to enter into and administer contracts for the Rural Abandoned Mine Program.

*Cost.* The monetary amount actually paid or obligated to be paid by the land user for equipment use, materials, and services for carrying out a conservation practice or identifiable unit. If the land user uses his own resources, it includes the computed value of his labor, equipment use, and materials.

*Cost-share payments.* Payments made to or on behalf of land users at established rates as specified in contracts for carrying out a conservation practice or an identifiable unit of such practices according to the contract.

*Financial burden.* The land user's cost of reclamation that cannot be expected to be recovered within the contract period and that would probably prevent participation in the program. The land user must sign a statement to substantiate financial burden.

*Identifiable unit.* A component of a conservation practice that can be clearly identified as a step in carrying out the conservation practice.

*Inadequately reclaimed.* Lands or water that are mined for coal or are affected by mining conducted before August 3, 1977, which continue in their present condition to substantially degrade the quality of the environment, prevent or damage beneficial use of land or water resources, or endanger the health or safety of the public.

*Landrights.* An interest acquired by fee simple title, easements, and rights-of-way to occupy or use land, buildings, structures, or other improvements.

*Land user.* Any person, partnership, firm, company, corporation, association, trust, estate, other entity, or agent that owns or has management control of the surface rights of the land during the contract period or owns water rights on eligible lands. Also included are State or local public entities that own or control eligible land and water.

*Main benefits.* The principal values or benefits that can be identified and/or quantified as a result of reclamation. Main offsite benefits are those values that accrue to surrounding land users or the public in general as a result of the reclamation. Main onsite benefits are those that accrue to the participant. Examples of principal values or benefits include but are not limited to human lives and property protected, reduction of erosion or sediment damage, elimination of public safety or health hazards, improvement of water quality, improved visual quality, improved fish or wildlife habitat, or restoration of beneficial uses of reclaimed areas.

*Reclamation committee.* A committee on a local or State level consisting of representatives of Federal and State agencies and other organizations or individuals that have responsibilities or interest in abandoned mine reclamation. The committee provides guidance to NRCS on the operation of the Rural Abandoned Mine Program.

*Reclamation plan.* A conservation and development plan as referred to in Pub. L. 95-87, consisting of a written record of land user decisions on proposed use,



conservation treatment, and maintenance of eligible lands and water that will protect, enhance, and maintain the resource base. A reclamation plan contains pertinent soils data, a planned land use map or drawing, a record of use and treatment decisions including a schedule of conservation treatment, and other resource data as appropriate.

*Specified maximum costs.* The maximum amount of cost-share money that is to be paid to a land user for carrying out a conservation practice or an identifiable unit of a conservation practice.

*Standards and specifications.* Requirements that establish the acceptable quality level for planning, designing, and installing a conservation practice so it achieves its intended purpose. NRCS standards and specifications are contained in the NRCS field office technical guides and are designed to be sound and practicable under local conditions. Technical guides are on file in local NRCS field offices.

*Water rights.* Any interest acquired in, priority established for, or permission obtained for the use of water.

[43 FR 44749, Sept. 28, 1978, as amended at 45 FR 65181, Oct. 2, 1980]

### Subpart B—Qualifications

#### § 632.10 Applicability.

This program applies to any county or other designated area within a State that had abandoned or inadequately reclaimed coal-mined lands within its borders before August 3, 1977.

#### § 632.11 Availability of funds.

(a) The provisions of the program are subject to the annual appropriation by Congress of funds from the Abandoned Mine Reclamation Fund and the transfer of as much as 20 percent of these funds from the Office to Surface Mining to NRCS for program operation.

(b) Allotments of Rural Abandoned Mine Program funds to state conservationists are to reflect the national program needs, the geographic areas from which the funds were derived, the funding priority assigned to applications for program assistance, including benefits expected to be derived, and the

practicability and feasibility of the reclamation work proposed.

#### § 632.12 Funding priorities.

(a) All eligible applications within a State are to be assigned a funding priority and subpriority. Assignment of a priority and subpriority establishes the order in which the proposed reclamation work will be selected and evaluated for funding. (See § 632.20(b) for additional selection criteria.) Applications for individual, joint, or special projects (See § 632.18) for areas of different priorities or subpriorities are to be assigned the highest applicable priority or subpriority. The funding priorities are as follows:

(1) *Priority 1.* Protection of public health, safety, general welfare, and property from extreme danger of adverse effects of coal-mining practices. Extreme danger means a condition that could be expected to cause substantial physical harm to persons, property, or the environment and to which persons or improvements on real property are exposed.

(2) *Priority 2.* Protection of public health, safety, and general welfare from the adverse effects of coal-mining practices that do not constitute an extreme danger.

(3) *Priority 3.* Restoration of the land and water resources and the environment where previously degraded by the adverse effects of coal-mining practices, including measures for the conservation and development of soil, water (excluding channelization), woodland, fish and wildlife, recreation resources, and agricultural productivity. First consideration in this priority is to be the reduction of offsite damage affecting the public. Second consideration is to be given to restoring to beneficial uses for the main benefit of the land user.

(b) Eligible and feasible applications for program assistance within each priority category (§ 632.12(a)) are to be funded in the following order:

(1) Individual persons or public entities who owned the eligible area before May 2, 1977, and who neither consented to nor exercised control over the mining operation.

## § 632.13

(2) Individual persons who would actively use the area, if reclaimed, for agricultural or silvicultural purposes.

(3) All other participants.

[43 FR 44749, Sept. 28, 1978, as amended at 45 FR 65181, Oct. 2, 1980]

### § 632.13 Eligible lands and water.

Lands and water eligible for reclamation are those that were mined for coal or were affected by coal-mining processes and were abandoned or inadequately reclaimed before August 3, 1977. These lands and water are not eligible if:

(a) There is continuing reclamation responsibility on the part of a mine operator, permittee, or agent under State or Federal law or on the part of the State as a result of bond forfeiture. However, if the amount of the bond forfeiture was insufficient to reclaim the area covered by the bond, the area will be considered eligible.

(b) They are under Federal ownership and control.

(c) The surface rights are under easement or lease to be mined for coal or other minerals.

### § 632.14 Eligible land users.

Landowners holding surface land and water rights, residents, tenants, or their agents who own or have management control of eligible land and/or water are eligible to participate in the program. Residents or tenants who do not own the land must have control of the land for the period of the proposed contract and have the written consent of the landowner. Land users may participate by operating as persons, partnerships, associations, corporations, estates, trusts, or non-Federal public entities, and by acting individually or jointly with other eligible land users. However, joint participation with other eligible land users is required if the primary purpose of reclamation is enhancement of water quality or quantity.

### § 632.15 Eligible uses and treatment of reclaimed lands.

(a) Reclaimed lands and water may be used for cropland, hayland, pasture land, rangeland, woodland, wildlife land, natural areas, noncommercial recreation land, and the supporting

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uses associated with these land uses. Other land uses proposed by public entities for public use and benefit such as open space, conservation uses, natural areas, and recreation sites may be approved by the NRCS State conservationist in accordance with the priorities stated in § 632.12. However, development of public sites, such as the installation of recreation facilities, is not eligible for cost sharing.

(b) Reclaimed land use is determined by the objectives of the land user, compatibility of the land use with surrounding land use, and the practicability and feasibility of restoring the soil and water resources to support the use selected.

(c) The maximum acreage of eligible lands and water that may be offered for contract under one ownership is 320 acres for the life of the program.

(d) Conservation treatment eligible for Federal cost sharing includes the combination of practices needed and feasible to achieve:

(1) Protection of life, property, and elimination of public health and safety hazards, including land stabilization.

(2) Restoration of the environment where degraded by past mining, including water quality, visual quality, recreation resources, fish and wildlife habitat, and erosion and sediment control.

(3) A site that can be developed for a beneficial use as specified in § 632.15(a). Examples of eligible treatment that may be cost shared include but are not limited to: Land shaping and grading, critical area planting or other plantings for stabilization, improving visual quality, wildlife food and cover, diversions or terraces, waterways or lined ditches, grade stabilization structures, sediment basins, and special practices for sealing shafts and tunnels, correcting subsidence problems, or other unusual situations. Practices not eligible for cost sharing are those that are solely applied to develop a reclamation site (including sites developed by public entities for public use), increase the production of crops, or for the recurring maintenance of applied reclamation.

(e) Applied conservation treatment is to meet the applicable Federal and State standards for the reclamation

and conservation treatment of abandoned or inadequately reclaimed coal-mined lands and water. Where needed, these standards are incorporated in local NRCS technical guides as the NRCS standards and specifications applicable to the program. Special practices as specified in § 632.15(d) are to be developed in cooperation with appropriate State or Federal agencies having the expertise or responsibility for the practices.

(f) NRCS State conservationists, in consultation with the State reclamation committee, are to:

(1) Develop a list of practices that are eligible for cost sharing, and

(2) Maintain, as applicable, lists of average costs of applying conservation treatment to eligible lands and waters.

**§ 632.16 Methods of applying planned land use and treatment.**

(a) Land users may arrange to apply the planned land uses and conservation treatment specified in the contract by one or more of the following methods:

(1) By performing the required treatment with his own labor and equipment.

(2) By hiring a qualified contractor to install the required treatment.

(3) By requesting NRCS to award and administer a contract to perform the required treatment in accordance with 41 CFR chapters I and IV.

(b) State conservationists are to develop criteria specifying the conditions for which NRCS will award and administer a contract. Criteria will consider: Type of equipment required, type and amount of conservation treatment required, costs of the required reclamation, needs of the land user, and the applicable cost-share rate. If the Federal share is less than 100 percent, a land user must put up his estimated share of the cost before NRCS awards the contract.

**§ 632.17 Cost-share rates.**

(a) Cost-share rates paid by the Federal Government are to be established and issued as instructions by the NRCS Administrator in accordance with the following criteria:

(1) For 120 acres or less, the cost-share rate is to provide up to 80 percent of the costs of land use and conserva-

tion treatment depending on the income-producing potential of the land after reclamation. However, this rate may be increased to a level required to obtain participation if the main benefits of reclamation are offsite (in the public interest) and there is a declaration of financial burden by the participant.

(2) The rate on acreage in excess of 120 acres up to 320 acres maximum is to be reduced by up to 0.5 percent per acre. This reduced rate applies to the entire acreage offered for contract.

**§ 632.18 Special projects.**

(a) The NRCS State conservationist may approve the following types of special projects subject to the eligibility requirements, funding priorities, and cost-share rates as stated in §§ 632.12, 632.13, 632.14, 632.15, and 632.17:

(1) Field trials or demonstration projects recommended by the State reclamation committee.

(2) Projects to enhance water quality and quantity where past coal-mining practices disturbed local water supplies and where joint action by a group of eligible land users in cooperation with Federal and State agencies is needed to restore the water resource.

**§ 632.19 Crop history and allotments.**

(a) Most crop history and allotments on eligible lands were discontinued at the time of mining. However, if eligible lands are classified as cropland at the time the contract is signed, the cropland crop history and allotment, if any, may be:

(1) Preserved for a period not to exceed twice the length of the contract as provided in 7 CFR part 719, or

(2) Voluntarily surrendered by the land user.

**Subpart C—Participation**

**§ 632.20 Application for assistance.**

(a) Land users must submit an application for program assistance through the local conservation district or NRCS field office. NRCS is to announce dates for receiving applications through local media. Applications are to be reviewed by the conservation district and/or local reclamation committee,

## § 632.21

which is to verify eligibility and recommend funding priorities to the NRCS district conservationist. The NRCS district conservationist is to assign funding priorities according to the recommendations unless he determines that applications are incomplete, ineligible, or unfeasible. Low priority applications that cannot be serviced within specific time periods established by the State conservationist are to be returned to the applicant with an appropriate explanation. These applicants may reapply at a later date if they are still interested.

(b) Eligible applicants are serviced within each subpriority according to the following criteria:

(1) The specific type, amount, and relative importance of benefits to be derived. (Public benefits and offsite environmental improvement will take precedence over onsite benefits.)

(2) Feasibility and practicability of reclaiming for the proposed uses.

(3) Land user's ability to proceed.

(4) Date of the application.

## § 632.21 Reclamation plan.

(a) *Responsibility.* Land users are responsible for developing a reclamation plan that will serve as a basis for a contract. Normally, a land user will need the technical services of NRCS and the conservation district or another professional to develop an acceptable plan.

(b) *Objectives and priorities.* The reclamation plan is to provide for the appropriate program objectives and priorities as stated in §§ 632.2 and 632.12 and meet the definition of a reclamation plan as defined in § 632.4.

(c) *Review.* (1) In areas served by conservation districts, reclamation plans are to be reviewed and signed by the district board to insure that planned land use and treatment is compatible with surrounding land uses and that proposed assistance is consistent with the district plan of work and priorities. In areas not served by conservation districts, the land use compatibility review may be performed by the local reclamation committee.

(2) If reclamation plans include lands within or adjacent to Federal lands, the plan is to be reviewed with the appropriate Federal land management

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agency to insure that the planned land use is compatible with that of the surrounding area.

(3) Land users are responsible for insuring that the proposed land use and treatment is compatible with local land use ordinances.

(d) *Approval.* Proposed land use, conservation treatment, and sequence of application contained in the plan are to be agreed to by both NRCS and the land user. The district conservationist is to sign the reclamation plan to indicate technical approval.

## § 632.22 Contracts.

(a) *Cost-sharing contracts.* A land user who has an approved reclamation plan may enter into a contract with NRCS to receive Federal cost-share assistance. All land users are to sign the contract. A land user is required to furnish evidence of management control, such as a long-term lease, recorded deed, or land contract, and must have the written consent of the landowner. The NRCS contracting officer is to sign the contract after determining that all documents meet program requirements.

(b) *Effect of contract.* A land user who signs a contract is obligated to apply or arrange for the application of the land use and conservation treatment as scheduled in the reclamation plan according to approved standards and specifications. A land user may request NRCS to award and administer a contract to apply the conservation treatment as scheduled in the reclamation plan in accordance with § 632.16(a)(3).

(c) *Permits, landrights, and water rights.* The land user is responsible for obtaining the permits, surface landrights, and water rights that may be required to perform the planned work. NRCS is to assist land users in identifying the specific permit, landright, or water right required.

(d) *Operation and maintenance.* During the contract period the land user is responsible for the operation and maintenance of applied conservation treatment. Operation and maintenance requirements are to be included in the contract.

(e) *Period of contract.* The contract period is to be no less than 5 nor more than 10 years. A contract is to extend

for at least 3 years after the application of the last cost-shared conservation treatment to insure adequate establishment of vegetation and other treatment. Exceptions to the 3-year provision may be granted by the state conservationist for unusual circumstances.

(f) *Transfer of contract.* (1) If during the contract period all or part of the right and interest in the land is transferred by sale or other action, the contract is terminated on the land unit that was transferred and the land user:

(i) Forfeits all right to any future cost-share payments on the transferred land unit, and

(ii) Must refund cost-share payments that have been made on the transferred land unit not to exceed the difference between the estimated value of the land at the time of entering into the contract and at the time of transfer, unless the new land user becomes a party to the contract as provided in paragraph (f)(2) of this section.

(2) If the new land user becomes a party to the contract:

(i) He is to assume all obligations of the previous land user on the transferred land unit.

(ii) The contract with the new land user is to remain in effect with the original terms and conditions.

(iii) The contract is to be modified in writing to show the changes caused by the transfer. If the modification is not acceptable to the contracting officer, the provisions of paragraphs (f)(1) (i) and (ii) of this section apply.

(3) The transfer of all or part of a land unit by a land user does not affect the rights and obligations of other land users who have signed the contract.

(g) *Modification of contract.* (1) A contract previously entered into with a land user may be modified only with the approval of the State conservationist or as authorized under established policies. No contract may be modified unless it is determined that the modification is desirable to carry out the program.

(2) Contracts may be modified to add, delete, substitute, or reapply conservation treatment if:

(i) Applied conservation treatment failed to achieve the desired results through no fault of the land user,

(ii) Applied treatment deteriorated because of conditions beyond the control of the land user, or

(iii) Other treatment is substituted that will achieve the desired results.

(h) *Joint contract.* A land user may enter a contract jointly with other land users subject to the 320 acres maximum limitation per landowner. However, joint participation is permitted only if it will result in better land use and treatment than individual participation or if it is required by §§ 632.14 and 632.18(a)(2).

(i) *Termination of contract.* Contracts may be terminated by mutual consent of the signatories only if the State conservationist determines that the termination is authorized under established policies and is in the public interest. In this case, the State conservationist is to determine the amount of refund.

**§ 632.23 Access to land unit and records.**

Any authorized NRCS employee or agent is to have the right of access to land under application or contract and the right to examine any program records to ascertain the accuracy of any representations made in the application or contract. This includes the right to furnish technical assistance and to inspect work done under the contract.

**Subpart D—Cost-Share Procedures**

**§ 632.30 Applicability.**

This subpart contains procedures for making cost-share payments to a land user when land use and conservation treatment is applied as specified in § 632.16(a)(1) or (2).

**§ 632.31 Cost-share payment.**

(a) *Amount of cost-share payment.* Cost-share payments are to be made at rates specified in the contract. The cost-share payment is to be determined by one of the following methods:

(1) Average cost.

(2) Actual cost but not more than the average cost.

(3) Specified maximum cost. If the average cost or the specified maximum cost at the time of starting the installation of a conservation practice or

identifiable unit is less than the cost specified in the contract, payment is to be made at the lower rate. If the cost at the start of installation is higher, payment may be made at the higher rate. A contract modification is necessary if NRCS determines that the higher cost is a significant increase in the total cost-share obligation. If costs are significant, cost-share payment is not to be made until the modification reflecting the increase is approved. If the higher costs are not significant, cost-share payments may be made if funds are available.

(b) *Time of payment.* Cost-share payments are to be made to the land user after a practice or an identifiable unit has been satisfactorily applied. The land user is to submit claims for payment to the district conservationist no later than September 30 of the year after application. Late claims require approval of the State conservationist before payment can be made. A claim is to show the proportion of each land user's contribution to the applied practice or identifiable unit.

(c) *Approval.* The district conservationist must certify that a practice or identifiable unit has been satisfactorily applied before NRCS can make cost-share payments.

(d) *Ineligible claim.* A land user is not eligible to receive cost-share payments for a practice or an identifiable unit that was not carried out under program requirements.

(e) *Authorization for payment.* (1) Materials or services needed to carry out contracts are to be obtained by land users. Contracts may provide for part or all of the cost-share payment for a practice or identifiable unit to be made directly to suppliers of materials or services. The materials or services must be delivered or performed before payment is made.

(2) The contracting officer is to authorize payment for materials or services not exceeding:

(i) The cost share of the material or service used, or

(ii) The total cost share of the practices or identifiable unit if requested by the land user.

(3) The land user who purchases materials or services to carry out a contract is responsible for them until the

district conservationist determines that the material or service was used for the intended purpose. If a material or service cost-shared by NRCS is used for a purpose other than to carry out the contract, the land user is indebted to the United States for the cost of the misused material or service. This indebtedness is to be repaid to NRCS as a refund or withheld from cost-share payments otherwise due the land user under the contract.

(4) NRCS has the right to inspect materials or services and to take samples for testing. Inspections by NRCS will not be necessary if NRCS considers State inspection regulations adequate.

(5) Materials or services must meet the quality standards as specified. NRCS may make exceptions for materials or services that do not meet the standards only if they will satisfactorily serve the intended purpose. NRCS is to deduct from the cost-share payment the difference between the price of the materials or services specified and the actual value of the different materials or services.

(f) *Division of cost-share payments.* Federal cost-share payments made directly to suppliers of materials or services are credited to the land user who was issued the authorization. The remainder of the cost share is credited to the land user who carried out the remainder of the practice or identifiable unit. If more than one land user contributed to carrying out a practice or identifiable unit, the cost-share payment is to be divided proportionately according to the contribution made by each of the land users. Furnishing a landright or water right is not a contribution for cost-share payment purposes.

(g) *Other aid.* Non-Federal public entities may furnish all or part of the land user's portion of the cost of applying a practice or identifiable unit with no reduction in the Federal cost share.

(h) *Assignments and claims.* Land users may not assign cost-share payments except as provided under the authority of 31 U.S.C. 203, as amended by 41 U.S.C. 15. Federal cost-share payments due any land user are not subject to claims for advances except as provided in this section.

**Subpart E—Appeals and Violations**

**§ 632.40 Appeals.**

Land users may appeal decisions under this part in accordance with part 614 of this title.

[60 FR 67316, Dec. 29, 1995]

**§ 632.41 Violations.**

(a) *Actions causing violation.* The following actions constitute violation of a contract by a land user:

(1) Knowingly or negligently damaging or causing conservation treatment to be impaired.

(2) Adopting land use or treatment that tends to defeat the program purposes during the period of the contract.

(3) Failing to comply with the terms of the contract.

(4) Filing a false claim.

(5) Misusing an authorization.

(b) *Effect of violation*—(1) *Contract to be terminated.* (i) By signing a contract, the land user agrees to forfeit all rights to further cost-share payments under a contract and to refund cost-share payments received not to exceed the difference between the estimated value of the land at time of entering into the contract and the value at time of termination, if the contracting officer, with approval of the State conservationist, determines that:

(A) There was a violation of the contract during the time the land user had control of the land, and

(B) The violation was of a nature as to warrant termination of the contract.

(ii) The land user is to be obligated to refund cost-share payments and cost shares paid under authorizations not to exceed the difference between the estimated value of the land at time of entering into the contract and the value at time of termination.

(2) *Contract not terminated.* (i) By signing a contract, the land user agrees to refund cost-share payments received under the contract or to accept payment adjustment if the contracting officer, with the approval of the State conservationist, determines that:

(A) There was a violation of the contract during the time the land user had control of the land, and

(B) The nature of the violation does not warrant termination of the contract.

(ii) Payment adjustments may include decreasing the rate of a cost share, deleting a cost-share commitment from the contract, or withholding cost-share payments earned but not paid. The land user who signs the contract may be obligated to refund cost-share payments and cost shares paid under authorizations.

**§ 632.42 Violation procedures.**

(a) *Scope.* This section prescribes the regulations dealing with contract violations. The Chief reserves the right to revise or supplement any of the provisions of this section at any time if the action does not adversely affect the land user, or if the land user has been officially notified before this action is taken. No cost-share payment shall be made pending the decision on whether a contract violation has occurred.

(b) *Determination by contracting officer.* On notification that a contract violation may have occurred, the contracting officer is to:

(1) Determine, with the approval of the State conservationist, that a violation did not occur or that the violation was of such a nature that no penalty of forfeiture, refund, or payment adjustment is necessary. No notice is issued to the land user, and no further action is to be taken; or

(2) Determine that a violation did occur, but the land user agrees to accept the penalty. If the land user agrees in writing to accept a penalty of forfeiture, refund, payment adjustment or termination, no further action is to be taken. The land user's agreement to accept the penalty must be approved by the contracting officer and State conservationist.

(c) *Notice of possible violation.* (1) When the State conservationist is notified that a contract violation may have occurred that may warrant a penalty of forfeiture, refund, payment adjustment, or termination, he is to notify, in writing, each land user who signed the agreement of the alleged violation. This notice may be personally delivered or sent by certified or registered mail. A land user is considered to have

received the notice at the time of personal receipt acknowledged in writing, at the time of the delivery of a certified or registered letter, or at the time of the return of a certified or registered letter where delivery was refused.

(2) The notice setting forth the nature of the alleged violation is to give the land user an opportunity to appear at a hearing before a hearing officer designated by the State conservationist. The land user's request for a hearing is to be submitted in writing and must be received in the NRCS field office within 30 days after receipt of the notice. The land user is to be notified in writing by the hearing officer of the time, date, and place for the hearing. The land user is to have no right to a hearing if he does not file a written request for a hearing, or if he or his representative does not appear at the appointed time, unless the hearing officer, at his discretion, permits an appearance. A request for a hearing filed by a land user is considered to be a request by all land users who signed the contract.

(d) *Hearing.* A public hearing is to be conducted to obtain the facts about the alleged violation. The hearing officer is to limit the hearing to relevant facts and evidence and is not to be bound by the strict rules of evidence as required in courts of law. Witnesses may be sworn in at the discretion of the hearing officer.

(1) The land user or his representative is to be given full opportunity to present oral or documentary evidence about the alleged violation. Likewise, the United States may submit statements and evidence. Individuals not otherwise represented at the hearing may be permitted, at the discretion of the hearing officer, to give information of evidence. The hearing officer, at his discretion, may permit witnesses to be cross-examined.

(2) The hearing officer is to make a record of the hearing so that the testimony can be summarized. A summary of the testimony may be made if both the land user and the State conservationist agree. A transcript of the hearing is to be made if requested by either the State conservationist or the land user within 10 days of the hearing. If a

transcript is requested by the land user, the land user may be assessed the cost of a copy of the transcript.

(3) The hearing officer is to close the hearing after a reasonable period of time if the land user or his representative is not present at the scheduled time. The hearing officer may, at his discretion, accept information and evidence submitted by others present for the hearing.

(4) The hearing officer is to furnish the State conservationist with a written report setting forth his findings, conclusions, and recommendations. The report is to include the summary of testimony or transcript made of the hearing and any other information that would aid the State conservationist in reaching his decision.

(e) *Decision by State conservationist.* The State conservationist is to make a decision after considering the hearing officer's report, including recommendations of the conservation district board if any, and any other information available to him, including, if applicable, the amount of the forfeiture, refund, or payment adjustment. The decision is to state whether the violation is of such a nature as to warrant termination of the contract. The State conservationist is to notify, in writing, each land user who signed the contract of his decision. The State conservationist may authorize or require the reopening of any hearing before a hearing officer for any reason at any time before his decision.

(f) *Appeal to Chief.* Any land user affected by a decision of the State conservationist has the right of appeal to the Chief. The appeal and any briefs or statements must be received in the Office of the Chief within 30 days after the land user has received notice of the State conservationist's decision. The State conservationist is to file a brief or statement in the Office of the Chief within 20 days after the land user's brief or statement is received there. The appeal is to be limited to the records and the issues made before the State conservationist. The Chief's decision is final. The decision is to be determined by the record before him and the issues presented in the appeal, and the land user is to be notified in writing.



(1) If the decision provides for termination of the contract, it is to state that the contract is terminated, that all rights to further cost-share payments under the contract are forfeited, and that cost-share payments received under the contract are to be refunded, but the refund is not to exceed the difference between the estimated value of the land at time of entering into the contract and the value at time of termination. The decision is to state the amount of refund and method of payment.

(2) If the decision does not provide for termination of the contract, the land user may be required to make a refund of cost-share payments or to accept payment adjustments. The decision is to state the amount of refunds of cost-share payments or payment adjustments. In determining amounts of refund or payment adjustments, the following are to be considered:

- (i) The extent of the violation.
- (ii) Whether the violation was deliberate or the result of negligence or was caused by circumstances beyond the control of the land user.
- (iii) The effect on the program if no refund or payment adjustment is required.
- (iv) The extent to which the land user benefited by the violation.
- (v) The effect of the violation on the contract as a whole.
- (vi) Other considerations including the appropriateness and reasonableness of the refund or payment adjustment.

[43 FR 44749, Sept. 28, 1978, as amended at 45 FR 65181, Oct. 2, 1980]

**Subpart F—Environment**

**§ 632.50 Environmental evaluation.**

(a) Environmental evaluation is an integral part of planning used by NRCS in developing each reclamation plan under this program. Planning includes site inventory and analysis, evaluation of reasonable alternatives, and identification of significant environmental impacts. Major points in planning when NRCS or the land user can make decisions concerning further action are:

- (1) After an evaluation of the application for program assistance to verify

eligibility, land user objectives, and priorities for funding.

(2) After a site-specific inventory and analysis to evaluate feasible treatment alternatives, costs, and environmental impacts.

(3) After development of an acceptable reclamation plan as a basis for contract.

(4) Before the signing of a mutually acceptable contract for financial cost-share assistance.

(b) The scope and complexity of the assessment is to be consistent with the scope and complexity of the proposed reclamation.

(c) An interdisciplinary team, consisting of NRCS and/or other cooperating agency personnel as needed, is used in making the assessment.

(d) The Responsible Federal Official (RFO) is to use the environmental evaluation to make a decision concerning the need to prepare an environmental impact statement (EIS) in accordance with § 632.52.

[43 FR 44749, Sept. 28, 1978, as amended at 45 FR 65181, Oct. 2, 1980]

**§ 632.51 Accord with environmental laws and orders.**

(a) A final program EIS is available in compliance with section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA). This statement discloses the cumulative program impacts that significantly affect the quality of the human environment.

(b) The program is to be conducted in accordance with other laws and Executive orders concerning environmental protection.

(c) Channelization of streams is prohibited under this program. Channelization as used herein means the overall widening, deepening, realining, or constructing a nonvegetative protective lining over all or part of the perimeter of a perennial stream channel as described in NRCS Channel Modification Guidelines, Part B, Items 4, 5, 6, and 7, as published in the FEDERAL REGISTER on March 1, 1978 (43 FR 8278).

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§ 632.52 Identifying typical classes of action.

(a) The RFO will analyze the environmental assessment of the proposed action to determine which of the following classes of action applies. This determination will be recorded and will be available to the public on request.

(1) Actions not requiring a site-specific EIS. All proposed actions and their impacts that are determined to be adequately discussed in the program EIS or determined not to be major Federal actions will not require a site-specific EIS. However, if the assessment reveals that these proposed actions will have significant adverse effects on the quality of the human environment, the RFO will:

(i) Modify the action to eliminate or mitigate the significant adverse impacts, or

(ii) Withdraw further Federal assistance if significant adverse impacts cannot be eliminated or mitigated.

(2) Actions requiring a site-specific EIS. A site-specific EIS is required for proposed actions if their impacts are not adequately discussed in the program EIS, and the proposal is determined to be a major Federal action significantly affecting the quality of the human environment in accordance with § 650.7(b) of this chapter. When a decision is made to prepare an EIS, a Notice of Intent will be published in the FEDERAL REGISTER. The content and format of the EIS is to be consistent with the format of the program EIS and use scoping and tiering techniques to focus on the significant environmental issues.

(3) Actions excluded from the EIS requirements. Those actions taken to prevent loss of life or property under the extreme danger provisions of priority 1 as described in § 632.12. These actions are determined by a limited environmental assessment that reasonably identifies the possible loss of life or property.

PART 633—WATER BANK PROGRAM

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AUTHORITY: 16 U.S.C. 1301-1311.

SOURCE: 62 FR 48472, Sept. 16, 1997, unless otherwise noted.

§ 633.1 Purpose and scope.

The regulations in this part set forth the policies, procedures, and requirements for the Water Bank Program (WBP) as administered by the Natural Resources Conservation Service (NRCS) for program implementation.

§ 633.2 Definitions.

The following definitions shall be applicable to this part:

Adjacent land means land on a farm which adjoins designated types 1 through 7 wetlands and is considered essential for the protection of the wetland or for the nesting, breeding, or feeding of migratory waterfowl. Adjacent land need not be contiguous to the land designated as wetland, but cannot be located more than one quarter of a mile away.

Agreement means the document that specifies the obligations and rights of any person who has been accepted for participation in the WBP.

Annual payment means the consideration paid to a participant each year for entering an agreement with the NRCS under the WBP.

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

Conservation District is a subdivision of a State government organized pursuant to applicable State law to promote and undertake actions for the conservation of soil, water, and other natural resources.

*Conservation plan* means a written record of the land user's decision on the use and management of the wetland and adjacent areas covered by the agreement.

*Cost-share payment* means the payment made by the NRCS to achieve the protection of the wetland functions and values of the agreement area in accordance with the conservation plan.

*Landowner* means a person or persons having legal ownership of farmland, including those who may be buying farmland under a purchase agreement. Landowner may include all forms of collective ownership including joint tenants, tenants in common, and life tenants and remaindermen in a farm property.

*Natural Resources Conservation Service (NRCS)* is an agency of the United States Department of Agriculture, formerly called the Soil Conservation Service.

*Operator* means the person who is in general control of the farming operations on the farm during the crop year.

*Person* means one or more individuals, partnerships, associations, corporations, estates or trusts, or other business enterprises or other legal entities and, whenever applicable, a State, a political subdivision of a State, or any agency thereof.

*Practice* means a measure necessary or desirable to accomplish the desired program objectives.

*State Technical Committee* means a committee established by the Secretary of the United States Department of Agriculture in a State pursuant to 16 U.S.C. 3861. The State Conservationist will be the chairperson of the State Technical Committee.

*U.S. Fish and Wildlife Service* is an agency of the United States Department of the Interior.

*Wetlands* mean the inland fresh areas defined under 16 U.S.C. 1302 and described as types 1 through 7 in Circular 39, Wetlands of the United States, as published by the United States Department of the Interior.

*Wetlands functions and values* mean the hydrological and biological characteristics of wetlands and the social worth placed upon these characteristics, including:

- (1) Habitat for migratory birds and other wildlife, in particular at risk species;
- (2) Protection and improvement of water quality;
- (3) Attenuation of water flows due to flooding;
- (4) The recharge of ground water;
- (5) Protection and enhancement of open space and aesthetic quality;
- (6) Protection of flora and fauna which contributes to the Nation's natural heritage; and
- (7) Contribution to educational and scientific scholarship.

*WBP* means the Water Bank Program.

**§ 633.3 Administration.**

(a) The regulations in this part will be administered under the general supervision and direction of the Chief.

(b) As determined by the Chief and the Administrator of the Farm Service Agency, the NRCS will seek the agreement of the Farm Service Agency in establishing policies, priorities, and guidelines related to the implementation of this part.

(c) The State Conservationist will consult with the State Technical Committee, on program administration and related policy matters. No determination by the State Technical Committee shall compel the NRCS to take any action which the NRCS determines will not serve the purposes of the program established by this part.

(d) The NRCS may enter into cooperative agreements with Federal or State agencies and with private conservation organizations to assist the NRCS with educational efforts, agreement management and monitoring, program implementation assistance, and to assure a solid technical foundation for the program.

(e) The NRCS shall consult with the U.S. Fish and Wildlife Service in the implementation of the program and in establishing program policies.

(f) The Chief may allocate funds for such purposes related to special pilot programs for wetland management and monitoring, emergencies, cooperative agreements with other Federal or State agencies for program implementation, coordination of enrollment

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across State boundaries, or for other goals of the WBP found in this part.

##### § 633.4 Program requirements.

(a) *General.* Under the WBP, the NRCS will enter 10-year agreements with eligible persons who voluntarily cooperate in the protection of wetlands and associated lands. To participate in WBP, a person will agree to the implementation of a conservation plan, the effect of which is to protect, enhance, maintain, and manage the hydrologic conditions of inundation or saturation of the soil, native vegetation, and natural topography of eligible lands. The NRCS may provide cost-share assistance for the activities that promote the protection of wetland functions and values. Specific protection actions may be undertaken by the participant or other NRCS designee.

(b) *Participant eligibility.* To be eligible to participate in the WBP, a person must:

(1) Be the landowner of eligible land for which enrollment is sought; or

(2) Have possession of the land by written lease over all designated acreage in the agreement for at least two years preceding the date of the agreement and will have possession over the all designated acreage for the agreement period.

(c) *Eligible land.* (1) The NRCS shall determine whether land is eligible for enrollment and whether, once found eligible, the lands may be included in the program based on the likelihood of successful protection of wetland functions and values when considering the cost of entering the agreement and protection costs. Land placed under an agreement shall be specifically identified and designated for the period of the agreement.

(2) The following land is eligible for enrollment in the WBP:

(i) Privately owned inland fresh wetland areas of types 1 through 7.

(ii) Privately owned inland fresh wetland areas of types 1 through 7 which are under a drainage easement with the U.S. Department of the Interior or with a State government which permits agricultural use; or

(iii) Other privately owned land which is adjacent to or within one quarter mile of designated types 1

through 7 wetlands and which is determined by the State Conservationist to be essential for the nesting, breeding, or feeding of migratory waterfowl, or for the protection of wetland.

(d) *Ineligible land.* The following land is not eligible for enrollment in the WBP:

(1) Converted wetlands if the conversion was in violation of 16 U.S.C. 3821 *et seq.*;

(2) Lands owned by an agency of the United States;

(3) Land which is set aside or diverted under any other program administered by the Department of Agriculture;

(4) Land which is harvested in the first year of the agreement period prior to being designated, except for land on which timber is harvested in accordance with a Forest Management Plan which is included in the conservation plan and is approved by the State forester or equivalent State official;

(5) Lands where implementation of agreement practices would be futile due to on-site or off-site conditions; and

(6) Land on which the ownership has changed during the 2-year period preceding the first year of the agreement period unless:

(i) The new ownership was acquired by will or succession as a result of the death of the previous owner,

(ii) The land was acquired by the owner or operator to replace eligible land from which he was displaced because of its acquisition by any Federal, State, or other agency having the right of eminent domain, or

(iii) The new owner operated the land to be designated for as long as 2 years preceding the first year of the agreement and has control of such land for the agreement period.

##### § 633.5 Application procedures.

(a) Application for participation. To apply for enrollment, a person must submit an application for participation in the WBP.

(b) Preliminary agency actions. The NRCS must certify that the designated acreage that would be placed under an agreement constitutes a viable wetland unit, contains sufficient adjacent land

to protect the wetland, and provides essential habitat for the nesting, breeding or feeding of migratory waterfowl.

(c) Where funds allocated to the State do not permit accepting all requests which are filed, the State Conservationist, in consultation with the State Technical Committee, may establish ranking criteria and limit the approval of requests for agreements in accordance with the ranking scheme. Any ranking scheme shall consider estimated costs of the agreement, costs of protection, availability of matching funds, significance of wetland functions and values, and estimated success of protection measures.

(d) The NRCS may place higher priority on certain geographic regions of the State where the protection of wetlands may better achieve NRCS State and regional goals and objectives.

(e) Notwithstanding any limitation of this part, the State Conservationist may enroll eligible lands at any time in order to encompass total wetland areas subject to multiple ownership or otherwise to achieve program objectives. Similarly, the State Conservationist may, at any time, exclude otherwise eligible lands if the participation of the adjacent landowners is essential to the successful protection of the wetlands and those adjacent landowners are unwilling to participate.

#### § 633.6 Program participation requirements.

(a) *WBP Agreement.* An agreement shall be executed for each participating farm. The agreement shall be signed by the owner of the designated acreage and any other person who, as landlord, tenant, or share cropper, will share in the payment or has an interest in the designated acreage. There may be more than one agreement for a farm.

(b) *Agreement period.* The agreement period shall:

- (1) Be for a term of 10 years;
- (2) Become effective on January 1 of the year in which the agreement is approved except that the agreement shall become effective on January 1 of the next succeeding year in cases where, at the time the agreement is approved, the NRCS determines that the agreement signers will be unable to comply with the provisions of paragraph (c) of

this section in the year in which such agreement is approved.

(c) *Agreement terms and conditions.* The acreage designated under an agreement shall:

(1) Be maintained for the agreement period in a manner which will preserve, restore, or improve the wetland character of the land;

(2) Not be drained, burned, filled, or otherwise used in a manner which would destroy the wetland character of the acreage, except that the provisions of this paragraph shall not prohibit the carrying out of management practices which are specified in a conservation plan for the farm;

(3) Not be used as a dumping area for draining other wetlands, except where the State Conservationist determines that such use is consistent with the sound management of wetlands and is specified in the conservation plan;

(4) Not be used as a source of irrigation water;

(5) Not be used for the harvesting of a crop;

(6) Not be hayed except for during periods of severe drought and only under conditions prescribed by the State Conservationist in consultation with the Secretary of the Interior or his designee; and

(7) Not be grazed, except as may be specified in the conservation plan.

#### § 633.7 Annual payments.

(a) Person on the farm having an interest in the designated acreage, including tenants and sharecroppers, shall be eligible for an annual payment in the manner agreed upon by them as representing their respective contributions to compliance with the agreement. The State Conservationist shall not approve an agreement if it is determined that the proposed division of payment is not fair and equitable.

(b) The annual per acre payment rates for wetlands and for adjacent land shall be determined for each county by the State Conservationist, based on recommendations of the State Technical Committee.

(c) Maximum payments. In order to ensure that limited program funds are expended to maximize program benefits, the State Conservationist, in consultation with the State Technical

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Committee, may establish uniform maximum annual payment limits for agreements within a State or for geographic areas within a State.

(d) Preliminary estimates of annual payments. Upon request prior to filing an application for enrollment, a person may be apprised of the maximum annual payment rates.

(e) Adjustment of annual rates.

(1) The State Conservationist, in consultation with the State Technical Committee, shall reexamine the payment rates with respect to each agreement at the beginning of the fifth year of any ten-year initial or renewal period and before the renewal expires.

(2) An adjustment in the payment rates shall be made for any initial or renewal period taking into consideration the current land rental rates and crop values in the area. No adjustment shall be made in a payment rate which will result in a reduction of an annual payment rate from the rate which is specified in the initial or renewal agreement.

(3) The rate or rates of annual payments may be increased if the program participant permits access by the general public to the designated acreage for hunting, trapping, fishing, and hiking, subject to applicable State and Federal regulations.

### § 633.8 Cost-share payments.

(a) In addition to annual payments, the NRCS may share the cost with program participants of protecting the wetland functions and values of the enrolled land as provided in the conservation plan. The NRCS may pay up to 75 percent of such costs.

(b) Cost-share payments may be made only upon a determination by the NRCS that an eligible practice or an identifiable unit of the practice has been established in compliance with appropriate standards and specifications. Identified practices may be implemented by the program participant or other designee.

(c) A program participant may seek additional cost-share assistance from other public or private organizations as long as the activities funded are in compliance with this part. In no event shall the program participant receive

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an amount which exceeds 100 percent of the total actual cost of the practices.

### § 633.9 Conservation plan.

(a) The program participant, with assistance from NRCS and in consultation with the Conservation District, shall prepare a conservation plan for the acreage designated under an agreement.

(b) The conservation plan is the basis for the agreement and is incorporated therein. It includes a schedule of conservation treatment and management required to protect and to maintain the wetland and adjacent land as a functional wetland unit for the life of the agreement.

(c) Conservation treatment and management of the vegetation for wetland protection, wildlife habitat, or other authorized objectives are consistent with the program objectives and priorities.

### § 633.10 Modifications.

The NRCS may approve modifications to the agreement or associated conservation plan after consultation with the Conservation District. Any modification must meet WBP program objectives, and must be in compliance with this part.

### § 633.11 Transfer of interest in an agreement.

(a) If the ownership or operation of a farm changes in such a manner that the agreement no longer contains the signatures of the persons required by § 633.6(a) to sign the agreement, the agreement shall be modified to reflect the new interested persons and new divisions of payments.

(b) If such persons are not willing to become parties to the modified agreement or for any other reason a modified agreement is not executed, the agreement shall be terminated and all unearned payments shall be forfeited or refunded.

(c) The annual payment for the year in which the change of ownership or operation occurs shall not be considered to have been earned unless the designated acreage is continued in the program and there is compliance with the agreement for the full agreement year.

(d) The signatories to the agreement prior to the change of ownership or operation shall be jointly and severally responsible for refunding the unearned payments previously made.

**§ 633.12 Termination of agreements.**

(a) The State Conservationist may, by mutual agreement with the parties to the agreement, consent to the termination of the agreement where:

(1) The parties to the agreement are unable to comply with the terms of the agreement as the result of conditions beyond their control;

(2) Compliance with the terms of the agreement would work a severe hardship on the parties to the agreement; or

(3) Termination of the agreement would be in the public interest.

(b) If an agreement is terminated in accordance with the provisions of this section, the annual payment for the year in which the agreement is terminated shall not be considered to have been earned unless there is compliance with the terms and conditions of the agreement for the entire calendar year.

**§ 633.13 Violations and remedies.**

(a) In the event of a violation of an agreement or any associated conservation plan, the parties to the agreement shall be given reasonable notice and an opportunity to voluntarily correct the violation within 30 days of the date of the notice, or such additional time as the State Conservationist may allow.

(b) In addition to any and all legal and equitable remedies as may be available to the NRCS under applicable law, the NRCS may withhold any annual or cost-share payments owing to the parties of the agreement at any time there is a material breach of the agreement or any conservation plan. Such withheld funds may be used to offset costs incurred by the NRCS in any remedial actions or retained as damages pursuant to court order or settlement agreement.

(c) The NRCS shall be entitled to recover any and all administrative and legal costs, including attorney's fees or expenses, associated with any enforcement or remedial action.

**§ 633.14 Debt collection.**

Any debts arising under this program are governed with respect to their collection by the Federal Claims Collection Act of 1966 (31 U.S.C. 3701) and the regulations found in 4 CFR chapter II.

**§ 633.15 Payments not subject to claims.**

(a) Any payments due any person shall be determined and allowed without regard to State land and without regard to any claim or lien against any crop, or proceeds thereof, which may be asserted by any creditor, except as provided in paragraph (b) of this section.

(b) The regulations governing setoffs and withholdings, in part 13 of this title, as amended, shall be applicable to this program.

**§ 633.16 Assignments.**

Any person entitled to any cash payment under this program may assign the right to receive such cash payments, in whole or in part.

**§ 633.17 Appeals.**

(a) Any person may obtain reconsideration and review of determinations affecting participation in this program in accordance with part 614 of this chapter.

(b) Before a person may seek judicial review of any action taken under this part, the person must exhaust all administrative appeal procedures set forth in paragraph (a) of this section, and for purposes of judicial review, no decision shall be a final agency action except a decision of the Chief of NRCS under these procedures.

**§ 633.18 Scheme and device.**

(a) If it is determined by the NRCS that a person has employed a scheme or device to defeat the purposes of this part, any part of any program payment otherwise due or paid such person during the applicable period may be withheld or be required to be refunded with interest thereon, as determined appropriate by the NRCS.

(b) A scheme or device includes, but is not limited to, coercion, fraud, misrepresentation, depriving any other person of an annual payment or payments for cost-share practices for the

purpose of obtaining a payment to which a person would otherwise not be entitled.

(c) A program participant who succeeds to the responsibilities under this part shall report in writing to the NRCS any interest of any kind in enrolled land that is held by a predecessor or any lender. A failure of full disclosure will be considered a scheme or device under this section.

## PART 634—RURAL CLEAN WATER PROGRAM

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AUTHORITY: Sec. 35, Pub. L. 95-217, 91 Stat. 1579 (33 U.S.C. 1288).

SOURCE: 43 FR 50855, Nov. 1, 1978, unless otherwise noted.

### Subpart A—General

#### § 634.1 Purpose and scope.

(a) The purpose of this part is for the U.S. Department of Agriculture (USDA), with the concurrence of the U.S. Environmental Protection Agency (EPA), to set forth regulations to carry out a Rural Clean Water Program (RCWP) under section 35, Pub. L. 95-217; 91 Stat. 1579; 33 U.S.C. 1288.

(b) The Rural Clean Water Program provides financial and technical assistance to private landowners and operators (participants) having control of rural land. The assistance is provided through long-term contracts (5 to 10 years) to install best management practices (BMP's) in project areas which have critical water quality problems resulting from agricultural activities. The proposed project area must be within a high priority area in an approved agricultural portion of a 208 water quality management plan. Participation in RCWP is voluntary.

(c) The program is a new USDA program and an extension of existing water-quality management programs of EPA.

#### § 634.2 Objective.

The RCWP is designed to reduce agricultural nonpoint source pollutants to improve water quality in rural areas to meet water quality standards or water quality goals. The objective is to be achieved in the most cost-effective manner possible in keeping with the provision of adequate supplies of food and fiber and a quality environment.

#### § 634.3 Administration.

At the national level, the Secretary of Agriculture, with the concurrence of the Administrator, EPA, administers RCWP. The Secretary of Agriculture has delegated responsibility for administration of the program (43 FR 8252) to the Administrator, Natural Resources Conservation Service (NRCS). NRCS will be assisted by other USDA agencies in accordance with existing authorities.



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(a) A National Rural Clean Water Coordinating Committee (NRCWCC), chaired by the Administrator, NRCS, is to assist in carrying out the Rural Clean Water Program.

(b) At the State level, a State Rural Clean Water Coordinating Committee (SRCWCC) is to assist the State Conservationist, NRCS, in administering the program. The State Conservationist will chair the SRCWCC.

(c) To assure coordination at the project level, a local Rural Clean Water Coordinating Committee is to be established at the time the application is developed. An existing local committee may be used, where practicable, to perform the functions of this committee.

(d) The Administrator, NRCS, through the State Conservationists, NRCS, is to enter into agreements, where practicable, with soil conservation districts, State soil and water conservation agencies, or State water quality agencies to administer all or part of the program for a project area. That portion of program administration to be conducted by these agencies will be defined in the project application and grant agreement. Where this is not practicable, USDA will administer the program in a project area. In those instances where USDA retains administration of the program in a project area, NRCS will enter into agreements for the transfer of funds to the Agricultural Stabilization and Conservation Service (ASCS) for the administration of part of the program.

### § 634.4 Responsibilities.

(a) *Environmental Protection Agency (EPA) will—*

(1) Approve 208 water quality management plans,

(2) Participate in the National and State Rural Clean Water Coordinating Committees,

(3) Review and concur in project applications approved for funding in accordance with § 634.14,

(4) Advise the Secretary of Agriculture of practices which tend to defeat the purposes of contracts with rural landowners or operators in accordance with section 208(j)(1)(iv) of the act,

(5) Assist USDA in evaluating the effectiveness of the program in improving water quality, and

(6) Concur in the selection of project areas and the criteria for comprehensive, joint USDA-EPA water quality monitoring, evaluation, and analysis in accordance with § 634.50.

(b) *U.S. Department of Agriculture (USDA) will—*

(1) With the concurrence of EPA, administer a program to enter into contracts to install and maintain best management practices to control agricultural nonpoint source pollution for improved water quality,

(2) Act through NRCS and such other USDA agencies as the Secretary may designate,

(3) Provide technical assistance and share the cost of carrying out best management practices that are set forth in the contracts,

(4) Where practicable, enter into agreements with soil conservation districts, State soil and water conservation agencies, or State water quality agencies to administer all or part of the program for a project area,

(5) Administer the program where it is not practicable for soil conservation districts, State soil and water conservation agencies, or State water quality agencies to administer all or part of the program for a project area,

(6) Together with local soil conservation districts, determine the priorities for assistance to individual participants to assure that the most critical water quality problems are addressed,

(7) Assist in evaluating the overall effectiveness of the program in improving water quality, and

(8) Within the framework of the 208 planning process, make additional investigations or plans, where necessary, to supplement information contained in the approved agricultural portion of 208 water quality management plans for the purpose of selecting among projects to be funded.

(c) *Natural Resources Conservation Service (NRCS) will—*

(1) Provide RCWP leadership,

(2) Retain major technical responsibility for RCWP, and provide leadership to assure the adequacy of standards and specifications for use by all administering agencies,

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(3) Manage budgeting, accounting, and reporting,

(4) Chair NRCWCC and assure that RCWP applications are distributed to the NRCWCC, including EPA, for review,

(5) For the Secretary of Agriculture, with the concurrence of the Administrator, EPA, approve RCWP projects for funding,

(6) For the Secretary of Agriculture, select and enter into agreements with either soil conservation districts, State soil and water conservation agencies, or State water quality agencies, where practicable, to administer all or part of the program,

(7) Enter into fund transfer agreements to transfer funds to ASCS in those instances where the administration of contracts is retained by USDA,

(8) Enter into agreements with other USDA agencies, as appropriate, for support which they are to provide,

(9) Chair SRCWCC,

(10) For the Secretary of Agriculture, in coordination with NRCWCC, determine the maximum Federal contribution to the total cost of the project,

(11) Provide technical assistance through soil conservation districts or arrange for other Federal, State, local agencies, or private individuals or firms to provide technical assistance as appropriate,

(12) Provide technical assistance to soil conservation districts and County Agricultural Stabilization and Conservation (ASC) Committees to assist them in determining priorities of assistance among individual participants,

(13) Develop appropriate technical and administrative training programs,

(14) Provide leadership for USDA for comprehensive joint USDA-EPA water quality monitoring, evaluation, and analysis in selected project areas,

(15) Provide leadership for USDA in evaluating the effectiveness of the program in improving water quality,

(16) Carry out the function of soil conservation districts for approving water quality plans where no soil conservation district exists, and

(17) Through the State Conservationist, after considering recommendations of the SRCWCC, reach agreement with the Governor on the recommended

administering agency to be included in the project application.

(d) *The Agricultural Stabilization and Conservation Service (ASCS) will—*

(1) Participate on the National, State, and local coordinating committees.

(2) Provide guidance to State and County ASC Committees and coordinate the Agricultural Conservation Program (ACP) and the Forestry Incentives Program (FIP) with RCWP,

(3) Where the administration of contracts is retained by USDA, enter into agreements with NRCS for the transfer of funds to be allocated to County ASC Committees,

(4) Consolidate reports of the annual cost-share disbursements made by the State ASC Committee, and report these disbursements to NRCS,

(5) Furnish data on land use, crop history, and cost-shared conservation measures,

(6) Review plans and contracts to assure coordination with other farm programs, and

(e) *The Forest Service (FS) will—*

(1) Retain technical responsibility for forestry,

(2) Provide technical assistance through the State forestry agency (State Forester as appropriate) for planning, applying, and maintaining forestry best management practices, and

(3) Participate on the National, and as appropriate, State, and local coordinating committees.

(f) *The Science and Education Administration (SEA) will—*

(1) Develop, implement, and coordinate educational programs for agricultural nonpoint source water pollution control,

(2) Participate on the National, and as appropriate, State, and local coordinating committees, and

(3) Provide technical assistance for appropriate BMP's.

(g) *The Economics, Statistics, and Cooperatives Service (ESCS) will:*

(1) Participate on the National coordinating committee and, as appropriate, participate in State, and local coordinating committee activities,

(2) Assist in the economic evaluation of best management practices and RCWP projects,

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(3) Make data available from existing and planned ESCS surveys relating to water quality and related matters,

(4) Assist in RCWP evaluation by making available the ESCS land and water resource economic modeling systems, and

(5) Conduct socioeconomic research, within ESCS authorities and funds, on relevant policy and program issues pertinent to RCWP.

(h) *The Farmers Home Administration (FmHA) will—*

(1) Participate on the National, and as appropriate, State and local coordinating committees, and

(2) Provide assistance and coordinate their farm loan and grant programs with RCWP.

(i) The NRCWCC is chaired by the Administrator, NRCS. Other members of the National Committee are the Administrators of ASCS, FmHA, and ESCS; the Chief of FS; the Director of SEA; and the Assistant Administrator for Water and Waste Management, EPA. Non-Federal agencies such as conservation districts, State soil and water conservation agencies, State water quality agencies, and other organizations are invited to attend as observers. The duties of the Committee are to:

(1) Coordinate individual agency programs with the Rural Clean Water Program,

(2) Recommend to the Administrator, NRCS, the project applications to be funded,

(3) Advise the Administrator, NRCS, on the maximum Federal contribution to the total cost of the project,

(4) Assist the Administrator, NRCS, in mediating agency differences at the State level,

(5) Periodically advise the Secretary and Assistant Secretary for Conservation, Research and Education of program and policy issues, and

(6) Recommend project areas and criteria for comprehensive, joint USDA/EPA water quality monitoring, evaluation, and analyses.

(j) The SRCWCC is chaired by the State Conservationist, NRCS. Other members of the State committee are the State 208 water quality agency, a designated representative of the areawide agencies, the State soil and

water conservation agency, a designated representative of soil and water conservation districts, other State and local agencies or individuals as the Governor deems appropriate, and representatives of the agency members of the NRCWCC. The duties of the committee are to insure that a process exists:

(1) To consult with the Governor or his designee on the Governor's determination of priority project areas,

(2) To assure coordination of activities at the project level by assisting in determining the composition and responsibilities of the local rural clean water coordinating committee,

(3) To prepare the RCWP applications for the Governor to submit to the State Conservationist, NRCS, based on priorities established by the Governor,

(4) To incorporate adequate public participation, including public meeting(s), and appropriate environmental assessment in the preparation of RCWP applications,

(5) To monitor and evaluate the RCWP in the State and to assist USDA and EPA in their comprehensive, joint water quality monitoring and evaluation of selected project areas in accordance with §634.50,

(6) To develop procedures for coordination between conservation districts and county ASC committees and between RCWP and other water quality programs at the local level,

(7) To assist the State Conservationist, NRCS, in mediating agency differences at the local level,

(8) To initiate a written agreement setting forth any or all of the above activities when the Governor and the Secretary of Agriculture or his designee deem it appropriate, and

(9) To make recommendations to the State Conservationist, NRCS, concerning the selection of the administering agency to be included in the project application.

(k) The State soil and water conservation agency will, as appropriate:

(1) Assist in preparing and submitting applications for RCWP,

(2) Administer all or part of the RCWP for a project area,

(3) Carry out the responsibilities of soil conservation districts for determining priority for assistance among

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individual participants where no soil conservation district exists, and

(4) Participate on the State and local coordinating committees.

(1) The State 208 water quality agency will, as appropriate:

(1) Assist in preparing and submitting applications for rural clean water projects,

(2) Administer all or part of the RCWP for a project area,

(3) Participate on the State and local coordinating committees, and

(4) Assist in monitoring and evaluating the water quality effectiveness of projects.

(m) The soil conservation district will:

(1) As appropriate, assist in the preparation and submission of applications for rural clean water projects,

(2) As appropriate, administer all or part of the RCWP in a project area.

(3) As appropriate, participate on the local coordinating committees,

(4) Approve participants' water quality plans, and

(5) Together with the county ASC Committee, determine the priority for assistance among individual participants to assure that the most critical water quality problems are addressed.

(n) The county ASC committee will:

(1) Together with the soil conservation district, determine the priority for assistance among individual participants to assure that the most critical water quality problems are addressed,

(2) Receive applications for assistance for individual participants where USDA retains administration of the program,

(3) Make cost-share payments to individual participants where USDA retains administration of the program, and

(4) As appropriate, participate on the local coordinating committees.

(o) The designated management agency(s) for the agricultural portion of a 208 plan for the project area will:

(1) Assist in preparing and submitting an application for a rural clean water project in an area for which they were designated,

(2) Submit a letter, as part of the project application, certifying that the BMP's proposed for cost sharing are

consistent with the BMP's in the approved 208 plan,

(3) Submit a letter, including a schedule, giving assurance that an adequate level of participation in the project will be achieved within 5 years, and

(4) As appropriate, serve as the administering agency.

(p) The administering agency will:

(1) As appropriate, enter into a grant agreement or fund transfer agreement with the Natural Resources Conservation Service for:

(i) Receiving funds from the Natural Resources Conservation Service for administrative costs, cost sharing, and technical assistance, as appropriate, associated with carrying out the project,

(ii) Establishing detailed work schedules in accordance with the approved project application,

(iii) Establishing the maximum amount of administrative costs chargeable to the grant,

(iv) Establishing an adequate financial management system,

(v) Preparing a cost allocation plan,

(vi) Monitoring and reporting performance,

(vii) Reviewing applications for assistance from landowners or operators,

(viii) Certifying availability of funds, and

(ix) Complying with OMB Circular A-102 and other appropriate regulations,

(2) Enter into contracts with participants for the installation and maintenance of BMP's based on water quality plans developed by participants,

(3) Make cost-share payments to participants upon receipt of certification by NRCS,

(4) Issue modifications to participant RCWP contracts,

(5) Develop average cost rates for each practice applicable in the project area.

(6) Sample and inspect materials used in the installation of BMP's,

(7) Establish a contract violations and appeals and collections process,

(8) Provide for public involvement in the implementation of RCWP in a project area, and maintain a mailing list of interested individuals and organizations for informing the public

about the activities contemplated and carried out in the project area, and

(9) Maintain records, provide necessary facilities, personnel, and legal counsel for carrying out these responsibilities.

(q) The Governor of each State will:

(1) In order to qualify for assistance under RCWP:

(i) Establish priorities for RCWP project areas in the State,

(ii) Coordinate the development of RCWP project applications with the SRCWCC and local agencies,

(iii) Submit, in order of priority, RCWP project applications to the Administrator, NRCS, through the State Conservationist, NRCS, and

(iv) Recommend an eligible State or local agency to serve as the administering agency of the project, or request USDA to be the administering agency.

(2) Where appropriate, with the State Conservationist, NRCS, set forth the activities of the SRCWCC in a written agreement,

(3) Assign additional State and local agencies or individuals to membership on the SRCWCC, as appropriate, and

(4) Reach agreement with the State Conservationist, NRCS, in selecting the administering agency.

#### § 634.5 Definitions.

(a) *Adequate level of participation.* An adequate level of participation is reached when participants, having control of 75 percent of the identified critical area or source of the pollution problem in the project area, are under contract. Exceptions may be made where the approved agricultural portion of the 208 plan provides data and analyses which indicate that a greater or lesser percentage of the critical area or source treated is needed to attain water quality standards or water quality goals. Fifty (50) percent of the adequate level of participation is to be achieved within 3 years; the remainder within 5 years.

(b) *Administering agency.* A soil conservation district, State soil and water conservation agency, or State water quality agency that enters into an agreement with the State Conservationist, NRCS, to administer assigned responsibilities for RCWP projects; or

ASCS, when USDA retains contract administration.

(c) *Administrative cost.* Grant and fund transfer costs, including allowable costs incurred by the Administering agency in contract administration. These costs, indirect and direct, include charges for personnel, travel, materials, and supplies. The costs are limited to a maximum of 5 percent of the Federal share for BMP cost.

(d) *Agreement.* A legal instrument reflecting the relationship between NRCS and the administering agency for performance of RCWP activities.

(e) *Agricultural nonpoint source pollution.* Pollution originating from existing nonpoint sources that are (a) agriculturally related, including runoff from animal waste disposal areas and from land used for livestock and crop production, or (b) silviculturally related pollution.

(f) *Agricultural portion of a 208 plan.* That portion of the 208 plan that deals with agriculture and those silvicultural activities related to farming and ranching enterprises.

(g) *Appeals board.* A group of three or more individuals, including a hearing officer, established by the administering agency with the concurrence of the State conservationist, NRCS, to review asserted contract violations, hear associated appeals, and report its findings, conclusions, decisions, and recommendations in State or locally administered projects.

(h) *Average cost.* The calculated cost, determined by recent actual local costs and current cost estimates, considered necessary for carrying out BMP's or an identifiable unit thereof.

(i) *Best Management Practice (BMP).* A single practice or a system of practices included in the approved RCWP application that reduces or prevents agricultural nonpoint source pollution to improve water quality.

(j) *BMP cost.* The amount of money actually paid or obligated to be paid by the participant for equipment use, materials, and services for carrying out BMP's or an identifiable unit of a BMP. If the participant uses his or her own resources, the cost includes the computed value of his or her own labor, equipment use, and materials.

(k) *Contract*. The legal document, that includes the water-quality plan and is executed by the participant and the administering agency. It details the agreement between parties for carrying out BMP's on the participant's land.

(l) *Cost-share level*. The percentage of the total cost of installing BMP's included in the participant's contract that is paid by the administering agency.

(m) *Critical areas or sources*. Those finite areas or sources of agricultural nonpoint source pollutants identified as having the most significant impact on the quality of the receiving waters.

(n) *Federal Management Circular FMC 74-4*. "Cost Principles Applicable to Grants and Contracts with State and Local Governments."

(o) *Financial burden*. The participant's contribution to the total cost of BMP's that would be inequitable or probably prevent participation in RCWP.

(p) *Identifiable unit*. A component of a BMP that can be clearly identified in carrying out BMP's in the water quality plan.

(q) *Letter of Credit—Treasury Regional Disbursing Officer System*. The system whereby the letters of credit are maintained and serviced by Treasury disbursing centers and Treasury regional disbursing officers.

(r) *Management agency*. The Federal, State, interstate, regional, or local agency designated by the Governor to carry out the approved agricultural portion of the 208 water-quality management plan.

(s) *OMB Circular A-34*. "Instructions on Budget Execution."

(t) *OMB Circular A-102 (Rev.)* Office of Management and Budget Uniform Administrative Requirements for Grants-in-Aid to State and local governments.

(u) *Offsite benefits*. Those favorable effects of BMP's that occur away from the land of the participant receiving RCWP assistance and accrue to the public as a result of improved water quality.

(v) *Participant*. A landowner or operator who applies for and receives assistance under RCWP.

(w) *Participants water quality plan*. The plan which identifies critical agricultural nonpoint source(s) of water

quality problems and sets forth BMP's which contribute to meeting the water quality objectives of the project.

(x) *Privately owned rural land*. Those lands not held by Federal, State, or local governments which include cropland, pastureland, forest land, rangeland, and other associated lands.

(y) *RCWP projects*. The total system of BMP's, institutional arrangements, and technical, cost-sharing, and administrative assistance activities that are authorized in a RCWP project area.

(z) *Standards and specifications*. Requirements that establish the minimum acceptable quality level for planning, designing, installing, and maintaining BMP's.

(aa) *State*. Any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Marianas, and the Trust Territory of the Pacific Islands.

(bb) *Technical assistance cost*. Those direct and indirect costs associated with the preparation and review of participant water quality plans; design, layout and application of BMP's; and investigations associated with monitoring and evaluating progress toward meeting project objectives.

(cc) *Treasury Circular 1075 (Rev.)*. Uniform Administrative Requirements for Grants-in-Aid to State and local governments.

### Subpart B—Project Authorization and Funding

#### § 634.10 Applicability.

RCWP is applicable in project areas that meet the criteria for eligibility contained in § 634.12 and are authorized for funding by the Administrator, NRCS.

#### § 634.11 Availability of funds.

(a) The provisions of the program are subject to the appropriation of funds by Congress to the U.S. Department of Agriculture.

(b) The allocation of funds to the administering agencies is to be made on the basis of the total funds needed to carry out the project.

(c) The obligation of Federal funds for RCWP contracts with participants

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is to be made on the basis of the total contract costs.

### § 634.12 Eligible project areas.

(a) Only those project areas which are included in an approved agricultural portion of a 208 water quality management plan, or revised portions thereof, and have identified agricultural nonpoint source water quality problems are eligible for authorization under RCWP. Those critical areas or sources of pollutants significantly contributing to the water quality problems are eligible for financial and technical assistance.

(b) The management agency designated by the Governor under section 208(c)(1) of the Act to implement the agricultural portion of the 208 plan must assure in writing in the project application that there will be an adequate level of participation by land owners or operators with critical areas or sources in a project area.

(c) An RCWP project area is a hydrologically related land area. Exceptions may be made for ease of administration, or to focus on concentrated critical areas. To be designated as an RCWP project area eligible for authorization, the area's water quality problems must be related to agricultural nonpoint source pollutants, including sediment animal waste, irrigation return flows, runoff, or leachate that contain high concentrations of nitrogen, phosphorus, dissolved solids, toxics (pesticides and heavy metals), or high pathogen levels. Generally, the project areas will be less than 200,000 acres.

### § 634.13 Project applications.

(a) The SRCWCC is to assure that a process exists to prepare the RCWP project applications for submission by the Governor in order of priority to the Administrator, NRCS, through the State Conservationist, NRCS. This process must include the opportunity for public participation, especially participation by potential RCWP participants. Applications will be submitted in conformance with OMB Circular A-95.

(b) The preparation and submission of applications are to be based on the priorities established by the Governor

and data and information in the approved agricultural portion of the State or areawide 208 water quality management plan.

(c) Applications shall contain the following components. Additional material may be added when, in the judgment of the applicant, it is needed to fully support the application and/or would enhance the probability of project authorization. Information provided under each component shall be in sufficient detail to permit the NRCWCC to evaluate the application using priority criteria in § 634.14.

(1) Description of the project area,

(2) Severity of the water quality problem

(3) Objectives and planned action,

(4) Schedule for carrying out the plan, and

(5) *Estimated cost.* This component is to identify and show the basis for those costs associated with completing the project. The project application shall include an estimate of the total cost of the project, the Federal contribution, and the non-Federal contribution. The Federal contribution shall not exceed 50 percent unless the application, based on offsite benefits and financial burden, show that a higher level is appropriate.

(6) *Estimated water quality benefits and effects.*

(7) *Arrangements for project administration.* This component is to set out the applicant's plan for carrying out the program in the project area. The plan should:

(i) Identify the administering agency and document the capability of the agency to carry out the responsibilities described in § 634.4(p). In addition, information should be included to describe the administering agency staff, the location of that staff relative to the project area, and the experience of the agency in administering comparable grant programs.

(ii) Where appropriate, describe the specific arrangements that have been made, or that are anticipated, for local, State, and Federal agency participation such as technical assistance and other cost-sharing programs.

(8) *Attachments.* The following attachments are the minimum required with each application:

(i) A letter from the water-quality management agency designated by the Governor to carry out the approved agricultural portion of the 208 water quality management plan for the area or source certifying that the BMPs to be cost shared are consistent with the BMP's in the 208 plan,

(ii) A letter from the designated management agency which assures and sets out a strategy for reaching an adequate level of participation (§ 634.5(a)).

(iii) As appropriate, the preapplication for Federal assistance (OMB Circular A-102) from the identified administering agency, and

(iv) A listing of the prevailing cost-share levels of other programs in the project area.

**§ 634.14 Review and approval of project applications.**

(a) In reviewing applications and recommending priorities, the NRCWCC will consider the following:

(1) Severity of the water quality problem caused by agricultural and silvicultural related pollutants, including:

(i) State designated uses of the water affected,

(ii) Kinds, sources, and effects of pollutants, and

(iii) Miles of stream or acres of water bodies affected,

(2) Demonstration of public benefits from the project, including:

(i) Effects on human health,

(ii) Population benefited by improved water quality,

(iii) Effects on the natural environment, and

(iv) Additional beneficial uses of the waters that result from improvement of the water quality,

(3) Economic, and technical feasibility to control water quality problems within the life of the project, including:

(i) Cost effectiveness of BMP's,

(ii) Size of the area and BMP's needed, and

(iii) Cost per participant and cost per acre for solution of problem,

(4) State and local input in the project area, including:

(i) Funds for cost-sharing, technical, and administrative costs. States or local governments with their own cost-

share programs may receive greater consideration for the funding of RCWP projects,

(ii) Commitment of local leadership to promote the program, and

(5) The project area's contribution to meeting the national water quality goals.

(b) Based on the project applications, the NRCWCC is to recommend an upper limit of the Federal contribution to the total cost of the project.

(c) All project applications will be reviewed by EPA. Project applications approval for funding require written EPA concurrence, except that the Administrator, NRCS, may assume EPA's concurrence if EPA does not act within 45 days following receipt of the project application. EPA review of project applications will occur concurrently with review by the NRCWCC.

(d) The Administrator, NRCS, will approve projects for funding. The NRCWCC acting through the Chairman will announce the approval of the project. The State Conservationist, NRCS, through the SRCWCC, will also inform the other involved Federal, State, and local agencies of the approval.

**§ 634.15 Agreements.**

The State Conservationist, NRCS, upon receiving notice of an approved project, is to enter into a grant agreement with the administering agency, except in those cases where USDA is to administer the program. When USDA retains administration, the State Conservationist, NRCS, is to enter into a fund transfer agreement with the State Executive Director, ASCS.

(a) *Grant agreements.* Grant agreements detail the working arrangements and applicable operating regulations between NRCS and the administering agency. A written grant agreement identifying the parties involved, their responsibilities for carrying out the program, and the amount of program funds to be encumbered by NRCS is to be executed by the parties. This agreement is the fund obligating document. It also sets out the necessary working arrangements between parties for determining and allocating the administering agency's costs. All grants to administering agencies are to be in



accordance with OMB Circular No. A-102, Department of the Treasury Circular No. 1075, and Federal Management Circular No. 74-4. State or local administering agency grants will be funded under Letter-of-Credit serviced by the U.S. Treasury Regional Disbursing Office, or by NRCS approved advance/reimbursement financing arrangements subject to the terms and conditions of the grant agreement.

(1) The grant agreement will provide for payment of cost-sharing for BMP (§634.5(j)) and administrative costs (§634.5(c)).

(2) The grant agreement may provide for payment of technical assistance costs when the administering agency has the capability, and the NRCS designates that agency to provide this assistance to RCWP participants.

(3) The administering agency is to monitor the performance of activities supported by RCWP grant funds to assure that time schedules and participant RCWP contract requirements are being met. Performance goals are to be measured against the terms of the grant agreement and program directives. When NRCS determines that on-site technical inspections, certified completion data, and financial status reports do not provide adequate grant evaluation data, the following information may be requested:

(i) A comparison of actual accomplishments with the objectives established for the plan,

(ii) Reasons why established objectives were not met, and

(iii) Objectives established for the next reporting period.

(4) Grant agreements may be amended by mutual agreement of the parties to the agreement. NRCS may unilaterally amend agreements when the sole consideration is a change in the cost and the Administrator, NRCS, based on NRCWCC recommendations, determines that such an adjustment is necessary to carry out the program efficiently and effectively.

(b) *Fund transfer agreements.* When it is impractical for NRCS to enter into agreements with local soil conservation districts, State soil and water conservation agencies, or State water quality agencies to administer the program in a project area, USDA will re-

tain program administration. In this case, the State Executive Director, ASCS, and the State Conservationist, NRCS, are to enter into an agreement for the transfer of funds to ASCS through county ASC committees for activities included in administrative cost (§634.5(c)) and BMP cost (§634.5(j)). The following general working arrangements are to apply:

(1) Administering contracts, making cost-share payment, and program reporting are to be provided by ASCS as the administering agency.

(2) NRCS, or its designee, with appropriate Federal or State agency support, will provide technical assistance to participants in preparing RCWP contracts and in carrying out their water-quality plans.

(c) *Agreements for services.* NRCS may enter into an agreement for services with a State or local agency. The designee must meet the requirements of OMB Circular No. A-102.

(d) *Contracts for services.* NRCS may enter into contracts for services with individuals or firms for providing technical assistance.

#### § 634.16 Suspension of grants.

(a) *Suspension orders.* Work on a project or on a portion or phase of a project for which a grant has been awarded, may be suspended by order of the State Conservationist, NRCS. Suspension does not affect RCWP contracts existing at the time the suspension order is issued, or the administering agency's responsibility to make payments under such contracts unless specifically provided for in the suspend order. In no event will the participant's right to cost-share payment be diminished by action taken under this section.

(b) *Use of suspension orders.* Suspension may be required for good cause, such as default by the administering agency, failure to comply with the terms and conditions of the grant, realignment of programs, or advancements in the state of the art.

(c) *Contents of suspension orders.* Prior to issuance, suspension orders will be discussed with the administering agency and may be appropriately modified, in the light of such discussions. Suspension orders are to include:

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(1) A clear description of the work to be suspended,

(2) Instructions as to the issuance of further orders by the administering agency for materials or services,

(3) Instructions as to the administering agency entering into new RCWP contracts in the project area,

(4) Instructions as to the administering agency servicing existing RCWP contracts in the project area, and

(5) Other instructions to the administering agency for minimizing Federal costs.

(d) *Issuance of suspension order.* Suspension orders are issued by the State Conservationist, NRCS, by letter to the administering agency (certified mail, return receipt requested). A suspension order may not exceed forty-five (45) calendar days.

(e) *Effect of suspension order.* (1) Upon receipt of a suspension order, the administering agency shall promptly comply with its terms and take all reasonable steps to minimize costs allocable to the work covered by the order during the period of work suspension. During the suspension period, NRCS shall either:

(i) Cancel the suspension order, in full or in part, and authorize resumption of work, or

(ii) Take action to terminate the work covered by such order as provided by § 634.17.

(2) If a suspension order is canceled, or the period of the order expires, the administering agency shall promptly resume the suspended work. An equitable adjustment shall be made in the grant period, the project period, or grant amount, or all of these, and the grant agreement may be amended:

(i) The suspension order results in an increase in the time, or cost properly allocable to, the performance of any part of the project; and

(ii) The administering agency asserts a written claim for such adjustment within thirty (30) days after the end of the period of work suspension. If no written claim is made, NRCS may unilaterally make such adjustments.

(iii) Reasonable costs resulting from the suspension order shall be allowed in arriving at any terminations settlement.

(3) Costs incurred by the administering agency after a suspension order is delivered that are not authorized by this section or specifically authorized in writing by the State Conservationist, NRCS, shall not be allowable costs.

**§ 634.17 Termination of grant agreement.**

(a) *Termination agreement or notice.* (1) The State Conservationist, NRCS, may, based on evidence of failure to comply with the terms of the grant agreement, issue a notice of intent to terminate the grant agreement. The notice of intent to terminate has the force and effect of extending or modifying the conditions of the suspend order. Any modification of the conditions of the suspend order shall be shown in the notice and discussed with the administering agency. The State Conservationist shall give not less than ten (10) days written notice to the administering agency (certified mail, return receipt requested) of intent to terminate the grant in whole or in part.

(2) After the administering agency has been afforded an opportunity for consultation, the State Conservationist, NRCS, may request authorization from the Administrator, NRCS, to terminate the grant in whole or in part. If the Administrator, NRCS, concurs in the termination action, the proposed termination notice will be forwarded to the Administrator, EPA, for concurrence.

(3) After the Administrators, NRCS and EPA, have been informed of any expressed views of the administering agency and concurred in the proposed termination, the State Conservationist, NRCS, may, in writing (certified mail, return receipt requested), terminate the grant in whole or in part.

(4) Termination of all or part of the grant agreement may be carried out by either execution of a termination agreement by the State Conservationist, NRCS, or issuance of a grant termination notice by the State Conservationist, NRCS. The agreement or notice shall establish the effective date of termination of the grant, the basis for settlement of grant termination

costs, and the amount and date of payment of any sums due either party.

(b) *Basis for termination.* A grant may be terminated by NRCS for good cause subject to negotiation and payment of appropriate termination settlement costs. Cause for termination by NRCS includes:

(1) Failure by the administering agency to make satisfactory progress toward achieving an adequate level of participation; or other evidence satisfactory to the NRCWCC, Administrator, EPA, and the Administrator, NRCS, that the administering agency has failed or is unable to perform in accordance with the provisions of the grant agreement; or

(2) Failure through no fault of the administering agency to achieve an adequate level of participation; or other evidence satisfactory to the NRCWCC, Administrator, EPA, and the Administrator, NRCS, that the planned actions approved in the project application cannot be achieved.

(c) *Effect of grant termination.* (1)(i) In those cases where cause for grant termination is based on the administering agency's failure or inability to perform (§634.17(b)(1)), upon termination, the administering agency must refund or credit to the United States that portion of the grant funds paid or owed to the administering agency and allocable to the terminated project work. Funds needed to meet unavoidable commitments may be retained. All other funds, including unexpended cost-sharing monies for existing RCWP contracts executed prior to the termination date, shall be refunded to the United States. The administering agency shall not make any new commitments or enter into any new RCWP contracts. The administering agency shall reduce the amount of other outstanding commitments insofar as possible and report to the State Conservationist, NRCS, the uncommitted balance of funds awarded under the grant. The allowability of termination costs will be determined in conformance with applicable Federal cost principles.

(ii) Upon termination of a grant agreement, existing RCWP contracts and their related obligations will immediately, and in no case later than 5 calendar days be transferred to the

ASCS county office to assure continuity in payments to participants. The State Conservationist, NRCS, will immediately initiate action under §634.15 to establish a new administering agency for completion of the project.

(2) In those cases where cause for grant termination is based on failure to achieve the planned actions through no fault of the administering agency, the termination agreement and amended grant agreement are to permit the administering agency to fulfill the obligations of its existing RCWP contracts. The administering agency shall not make any new commitments or enter into any new RCWP contracts without NRCS approval.

#### § 634.18 Termination of project.

(a) An RCWP project is terminated by the State Conservationist because an adequate level of participation cannot be achieved. Upon this determination, the State Conservationist shall publish in a newspaper of public record in the project area a notice of intent to terminate all or part of the grant agreement and the project (§634.7(c)), and an announcement of the time and place of a public hearing.

(b) No sooner than 15 days from the publication of the notice of intent to terminate all or part of the project and grant agreement, the State Conservationist will conduct a public hearing in the project area.

(c) If, based on the hearing record, the performance record of the administering agency, and the recommendations of the SRCWCC, the State Conservationist determines that the project will be terminated pursuant to §634.17(c), the State Conservationist will enter into a grant termination agreement or issue a grant termination notice.

(d) The existing RCWP contracts will be transferred to the ASCS county office pursuant to §634.17(c)(1)(ii).

(e) The State Conservationist will prepare a project close-out report summarizing the actions accomplished.

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**§ 634.19 Project completion and close-out.**

(a) The maximum total life of a project shall be fifteen (15) years or less.

(b) The allowable contracting period may be increased if an adequate level of participation has been achieved and the designated management agency assures a significant increase in participation can be reached in a reasonable time.

(c) The grant or fund transfer agreement with an administering agency shall expire when the administering agency has fulfilled all of its obligations in the long-term RCWP contracts.

(d) When a project is completed, the administering agency is to provide the State Conservationist, NRCS, a close-out report which summarizes the actions accomplished.

**Subpart C—Participant RCWP Contracts**

**§ 634.20 Eligible land.**

RCWP is only applicable to privately owned land. Land owned by corporations whose ownership is public (i.e., their stock is publicly traded over the market) is eligible for program assistance only if the corporation can document that the installation of BMP's places an inappropriate financial burden on the corporation.

**§ 634.21 Eligible participants.**

(a) Any landowner or operator whose land or activities in a project area is contributing to the area's agricultural nonpoint source water quality problems and who has an approved water quality plan is eligible to enter into an RCWP contract.

(b) This program will be conducted in compliance with all nondiscrimination requirements as contained in the Civil Rights Act of 1964 and amendments thereto and the Regulations of the Secretary of Agriculture (7 CFR 15.1 through 15.12).

**§ 634.22 Application for assistance.**

(a) Landowners or operators must apply for RCWP assistance through the office of the administering agency or

its designee(s) by completing the prescribed application form.

(b) The priority for assistance among landowners and operators in developing water quality plans is to be determined jointly, through an agreed-to process, by the county ASC committee and the soil conservation district, with technical assistance from NRCS.

(c) Applications that are ineligible or technically infeasible are to be returned to the applicant with a letter stating the reasons for disapproval. Applications that are of a low priority will be retained and the applicant will be sent a notice that the application is being held for a period to be determined locally for future consideration.

**§ 634.23 Water quality plan.**

(a) The participant's water quality plan, developed with technical assistance by the NRCS or its designee, is to include appropriate BMP's identified in the approved agricultural portion of the 208 water quality management plan. Such BMP's must reduce the amount of pollutants that enter a stream or lake by:

(1) Methods, such as reducing the application rates or changing the application methods of potential pollutants, and

(2) Methods, such as practices or combinations of practices which prevent potential pollutants from leaving source areas or reduce the amount of potential pollutants that reach a stream or lake after leaving a source area.

(b) Participant's water quality plans shall as a minimum include BMP's for all critical areas or sources. The plans will include BMP's which are required but not cost-shared. Non-cost-shared BMP's, essential for the performance and maintenance of cost-shared BMP's shall be required as a condition of the RCWP contract.

(c) The participant is responsible for compliance with all other applicable Federal, State, and local laws that deal with the participant's nonpoint source water quality problems, such as the treatment, storage, and disposal of hazardous waste. BMP's required for compliance may be cost shared.

(d) It is recognized that the participants' water-quality plans upon which

the RCWP contracts are to be based may include conservation measures other than those related to water quality improvement. These measures are not eligible for cost sharing under this program. The installation of such conservation measures will not be required as a condition of the RCWP contract and will not be shown in the time schedules for implementing BMP's.

(e) Time schedules for implementing BMP's are to be provided in the participant's water quality plan. The time schedule is to establish the length of the contract within the 5 to 10 year period established by law.

(f) The Natural Resources Conservation Service will certify as to the technical adequacy of the water-quality plan.

(g) The soil conservation districts are to review and approve all water-quality plans and modifications.

**§ 634.24 Cost sharing.**

(a) The portion of BMP cost (including labor) to be cost shared shall be that part which the Secretary determines is necessary and appropriate. The value of land upon which BMP's are applied, or the participant's water rights, cannot be considered a part of the participant's share of the cost.

(b) The administering agency, in consultation with the county ASC committee(s), soil conservation district(s), and designated management agency will annually set maximum individual BMP cost-share levels for the project area. However, the Federal share of the cost of the contract cannot exceed 50 percent unless a variance has been granted.

(c) Recommended variances exceeding the 50 percent level must be in the public interest and based on the following criteria:

(1) The main benefits to be derived from measures are related to improving offsite water quality, and

(2) The matching share requirements would place a burden on the landowner or operator which would probably prevent him or her from participating in the program.

(d) BMP's to be cost shared must have a positive effect on water quality by reducing the amount of agricultural

nonpoint source pollutants that enter a stream or lake.

(e) Cost sharing is not to be made available for:

(1) Measures installed primarily for bringing additional land into crop production, including but not limited to land clearing and brush removal;

(2) Measures installed primarily for increasing production on existing cropland, including but not limited to bedding, field ditches, open drains, and tile drains;

(3) Measures having flood protection as the primary purpose, including but not limited to open channels, clearing and snagging, and obstruction removal;

(4) Structural measures authorized for installation under Pub. L. 83-566.

(f) The Federal cost-share level is not to be reduced by the contribution of a State or subdivision thereof. Total payments from Federal, State, and local sources for a BMP may not exceed the total cost of that BMP.

**§ 634.25 Contracting.**

(a) To participate in RCWP, a landowner or operator must enter into a contract in which he or she agrees to apply his or her water-quality plan. Any person who controls, or shares control, of the farm, ranch, or other land for the proposed contract period (5 to 10 years) must sign the contract.

(b) Cost-sharing payments cannot be provided for any measure that is initiated before the contract is approved by the administering agency.

(c) The participant must furnish satisfactory evidence of his or her control of the farm, ranch, or other land. The administering agency is to determine the acceptability of the evidence and maintain current ownership evidence in the contract file.

(d) RCWP contracts shall include the basic contract document, special provisions as needed, the participant's water-quality plan, schedule of operations, and any other data necessary.

(e) NRCS or its designee shall approve the technical adequacy of the RCWP contract and obtain the required signature of the participants. The NRCS or its designee will provide the contract to the administering agency for certification of fund availability and for execution.

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(f) Participants shall install best management practices according to the specifications that are applicable at the time measures are installed.

(g) NRCS will provide technical assistance to participants for installing BMPs. The State Conservationist, NRCS, or its designee may enter into contracts with qualified soil conservation districts or others to provide technical assistance.

(h) The RCWP contract is to require BMPs to be operated and maintained by the participant at no cost to that administering agency.

(i) The contract period is to be not less than 5 and not more than 10 years. A contract is to extend for at least 1 year after the application of the last cost-shared BMPs. All contract items are to be accomplished prior to contract expiration.

(j) A land owner or operator may enter into a contract jointly (pooling agreement) with other land owners or operators to solve mutual water quality problems. Each participant must enter into an RCWP contract to treat water quality problems not covered by the joint arrangement.

(k) Participants may use all available sources of assistance to accomplish their water-quality objectives. They are responsible for:

- (1) Accomplishing the water-quality plan;
- (2) Keeping the administering agency informed of their current mailing address;
- (3) Obtaining, having in hand, and maintaining any required permits and landrights necessary to perform the planned work;
- (4) Applying or arranging for the application of BMPs, as scheduled in the plan, according to approved standards and specifications;
- (5) The operation and maintenance of BMPs installed during the contract period; and
- (6) Obtaining the authorities, rights, easements, or other approvals necessary to maintain BMPs in keeping with applicable laws and regulations.

(1) Unless otherwise approved by the Administrator, NRCS, and Administrator, EPA, the administering agency shall not enter into any new RCWP contracts after five (5) years of elapsed

time from the date when RCWP funds are first made available to begin the project.

(m) Contracts may be terminated due to hardship by mutual agreement if the administering agency and the State Conservationist, NRCS, determine that such action would be in the public interest.

**§ 634.26 Contract modifications.**

(a) The administering agency may modify contracts previously entered into if it is determined to be desirable to carry out the purposes of the program, facilitate the practical administration thereof, or to accomplish equitable treatment with respect to other conservation, land-use, or water-quality programs.

(b) Requirements of active contracts may be waived or modified by the administering agency only if such waiver or modification is specifically provided for in these regulations. NRCS concurrence in modifications is necessary when modifications involve a technical aspect of the participant's water-quality plan. A contract may be modified only if it is determined that such modifications are desirable to carry out purposes of the program or to facilitate the program's practical administration.

(c) Contracts may be modified to add, delete, substitute, or reinstall best management practices when:

- (1) The installed measure failed to achieve the desired results through no fault of the participant,
- (2) The installed measure deteriorated because of conditions beyond the control of the participant, or
- (3) Another BMP is substituted that will achieve the desired results.

(d) Contract modifications are not required when items of work are accomplished prior to scheduled completion or within 1 year following the year of scheduled completion.

(e) If, during the contract period, all or part of the right and interest in the land is transferred by sale or other transfer action, the contract is terminated on the land unit that was transferred and the participant having control over such land:

(1) Forfeits all right to any future cost-share payments on the transferred land unit, and

(2) Must refund with interest all cost-share payments that have been made on the transferred land unit unless the new land owner or operator becomes a party to the contract, except that where it is determined by the administering agency, with the approval of the State conservationist, NRCS, that the established BMPs will provide water quality benefits for the design life of the BMP, the payment may be retained.

(f) If the new land owner or operator becomes a party to the contract:

(1) Payment which has been earned, but not made to the participant who applied the BMPs and had control prior to the transfer, can be made,

(2) Such land owner or operator is to assume all obligations of the previous participant on the transferred land unit,

(3) The contract with the new participant is to remain in effect with the original terms and conditions, and

(4) The contract is to be modified in writing to show the changes caused by the transfer. If the modification is not acceptable to the administering agency, the provisions of paragraphs (e) (1) and (2) of this section apply.

(g) The transfer of all or part of a land unit by a participant does not affect the rights and obligations of other participants who have signed the contract.

#### § 634.27 Cost-share payment.

(a) *General.* Participants are to obtain or contract for materials or services as needed to install BMPs. Federal Cost-share payments are to be made by the administering agency upon certification by the District Conservationist, NRCS, or its designee, that the BMPs, or an identifiable unit thereof, have been properly carried out and meet the appropriate standards and specifications.

(b) *Payment maximum.* The maximum total Federal cost-share payment to a participant shall be limited to \$50,000. Exceptions to this limit may be made by the administering agency with concurrence of the Administrator, NRCS, upon recommendation of the NRCWCC,

where it determines that the main benefits to be derived are essential for meeting the water quality objectives in the project area.

(c) *Basis for cost-share payment.* (1) Cost-share payments are to be made by the administering agency at the cost-share percentage and by one of the following methods designated by the administering agency and set out in the contract:

(i) Average cost, or

(ii) Actual cost not to exceed average cost.

(2) If the average cost at the time of starting the installation of a BMP or identifiable unit is less than the costs specified in the contract, payment is to be at the lower rate. If the costs at the start of installation are higher, payment may be made at the higher rate. A modification will be necessary if the higher cost results in a significant increase in the total cost-share obligation. Cost-share payment is not to be made until the modification reflecting the increase is approved.

(d) *Average cost development.* Average costs are to be developed by the administering agency for each project using cost data from the local area. These costs should be reviewed by the SRCWCC for consistency with average costs in other USDA programs. The average cost list is to be updated annually by the administering agency.

(e) *Application for payment.* Cost-share payments can be made by the administering agency after a participant has carried out a BMP or an identifiable unit of a BMP. Application for payment must be submitted to the administering agency, be certified by the NRCS or its designee, and be supported by such cost receipts as are required by the administering agency. It is the participant's responsibility to apply for payments.

(f) *Authorizations for payments to suppliers.* (1) The contract may authorize that part or all of the Federal cost share for a BMP or an identifiable unit be made directly to suppliers of materials or services. The materials or services must be delivered or performed before payment is made.

(2) Federal cost shares will not be in excess of the cost share attributable to the material or service used or not in

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excess of the cost share for all identifiable units as may be requested by the participant.

(g) *Material inspection and analysis.* When authorizations for payments to suppliers are specified, the administering agency, its representatives, or the Government reserve the right to inspect, sample, and analyze materials or services prior to their use.

(h) *Assignments, set-offs, and claims.* (1) A State or local administering agency may allow the assignment of payments to the extent provided by State law. When ASCS is designated as the administering agency, assignments by any participant who may be entitled to cost-share payment under the program are prohibited unless they are made in accordance with the provisions of section 203, Title 31, U.S.C., as amended, and section 15, Title 41, U.S.C., as amended.

(2) If any participant to whom compensation is payable under RCWP is indebted to the United States and such indebtedness is listed on the county register of indebtedness maintained by the County ASC committee, the compensation due the participant must be used (set-off) to reduce that indebtedness. Indebtedness to USDA is to be given first consideration. Deductions for setoffs involving a non-resident alien shall be made as provided by 26 U.S.C. 871. Setoffs made pursuant to this section are not to deprive the participant of any right to contest the justness of the indebtedness involved, either by administrative appeal or by legal action.

(3) Any cost-share payment due any participant shall be allowed without deduction of claims for advances except as provided for above and without regard to any claim or lien against any crop, or proceeds thereof, in favor of the participant or any other creditor.

(i) *Access to land unit and records.* Any authorized administering agency, or NRCS employees or agents, shall have the right of access at reasonable times to land under application or contract, and the right to examine any program records to ascertain the accuracy of any representations made in the application or contract. This is limited to the right to furnish technical assist-

ance and to inspect work performed under the contract.

(j) *Suspension of payments.* No cost-share payments will be made pending a decision on whether or not a contract violation has occurred.

(k) *Ineligible payments.* The filing of requests for payment for BMP's not carried out, or for BMP's carried out in such a manner that they do not meet contract specifications, constitutes a violation of the contract.

**§ 634.28 Appeals not related to contract violations.**

(a) The participant may, prior to execution of the contract, request that the administering agency review or reconsider criteria being used in developing his or her contract. Such review or reconsideration may include the eligibility of BMP's which had not been approved for application in the project area, cost-sharing levels for BMP's, priorities for developing water quality plans, and standards and specifications.

(1) If verbal agreement is not reached, the participant may make a written request within 30 days after receiving notice of the decision of his or her verbal request.

(2) The administering agency shall have 30 days in which to make a decision and notify the participant in writing.

(3) The decision of the administering agency shall be final.

(b) If, after the contract has been executed, the participant and the administering agency are unable to reach written agreement relative on matters which are not related to contract violations, the participant may request and receive a review by the appeals board. The administering agency will:

(1) Notify the participant, in writing, of the date the appeals board will consider the appeal.

(2) Within 30 days after receiving the administering agency's notice, the participant may file a request to appear and present oral and other evidence. If the participant does not request an appearance, the administering agency appeals board will decide the dispute on



the evidence available to them, including statements or briefs of the authorized representatives of the soil conservation district and NRCS. The administering agency shall notify the participants of the appeals board's decision in writing. There shall be no further administrative appeal of this decision.

(c) *Filing of documents.* A document is considered filed when it is received in the office of the person or agency concerned.

**§ 634.29 Violations.**

(a) *Actions causing violations.* The following actions constitute violation of a contract by a participant:

(1) Knowingly or negligently damaging or causing BMP's to become impaired.

(2) Adopting a land use or practice during the contract period which tends to defeat the purposes of the program.

(3) Failing to comply with the terms of the contract.

(4) Filing a false claim.

(5) Misusing authorizations for payment.

(b) *Contract termination as a result of violations.* (1) By signing a contract, the participant agrees to forfeit all rights to further cost-sharing payments under a contract and to refund all cost-share payments received, with interest, if the administering agency, with the concurrence of the State Conservationist, NRCS, determines that:

(i) There was a violation of the contract during the time the participant had control of the land; and

(ii) The violation was of such a nature as to warrant termination of the contract.

(2) The participant shall be obligated to refund all cost-share payments and all cost shares paid under authorizations, with interest, at the rates established by the Secretary of the Treasury pursuant to Pub. L. 92-41, 85 Stat. 97.

(c) *Payment adjustments and refunds resulting from violations.* (1) By signing a contract, the participant agrees to refund cost-share payments received under the contract or to accept payment adjustments if the administering agency determines and the State Conservationist, NRCS, concurs that:

(i) There was a violation of the contract during the time the participant had control of the land; and

(ii) The nature of the violation does not warrant termination of the contract.

(2) Payment adjustments may include decreasing the rate of cost share, or deleting from the contract a cost-share commitment, or withholding cost-share payments earned but not paid. The participant who signs the contract may be obligated to refund cost-share payments.

**§ 634.30 Appeals in USDA administered projects.**

The participant in a USDA-administered RCWP project may appeal decisions of the administering agency in accordance with part 614 of this title.

[60 FR 67316, Dec. 29, 1995]

**§ 634.31 Appeals of contract violations.**

(a) *Scope.* This section prescribes the regulations dealing with contract violations. The Administrator, NRCS, reserves the right to revise or supplement any of the provisions of this section at any time if the action does not adversely affect the participant, or if the participant has been officially notified before this action is taken.

(b) *Determination by administering agency.* Upon notification that a contract violation may have occurred, the administering agency:

(1) Determines that a violation did not occur or that the violation was of such a nature that no further action is to be taken; or

(2) Determines that a violation did occur and the participant agrees to accept a written penalty of forfeiture, refund, payment adjustment, or termination. If no agreement is reached, further action is to be taken.

(c) *Notice of possible violation.* (1) When the administering agency is notified that a contract violation may have occurred and the matter is not resolved under §634.31(b)(1) it shall notify, in writing, each participant who signed the contract of the alleged violation. This notice setting forth the alleged violation may be personally delivered or sent by certified or registered mail.

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A participant is considered to have received the notice at the time of personal receipt acknowledged in writing, at the time of delivery of a certified or registered letter, or at the time of the return of a refused certified or registered letter.

(2) The notice shall give the participant an opportunity to appear at a hearing before an appeals board. The participant's request for a hearing shall be submitted in writing, and must be received by the appeals board within 30 days after receipt of the notice. The participant shall be notified in writing by the appeals board of the time, date, and place for the hearing. The participant shall have no right to a hearing if he does not file a written request for a hearing, or if he or his representative does not appear at the appointed time, unless the appeals board, at its discretion, permits an appearance. A request for a hearing filed by a participant shall be considered to be a request by all participants who signed the contract.

(d) *Hearing.* The appeals board shall conduct an open hearing to obtain the facts about the alleged violation. The appeals board shall limit the hearing to relevant facts and evidence, and shall not be bound by the strict rules of evidence. Witnesses may be sworn in at the discretion of the appeals board.

(1) The participant or his or her representative shall be given full opportunity to present oral or documentary evidence about the alleged violation. Likewise, the administering agency may submit statements and evidence. Individuals not otherwise represented at the hearing may, at the discretion of the appeals board, be permitted to give information or evidence. The appeals board, at its discretion, may permit witnesses to be cross-examined.

(2) The appeals board shall make a record of the hearing. A summary of the testimony may be made if both the participant and the appeals board agree. A transcript of the hearing shall be made if requested by either the appeals board or the participant within 10 days prior to the hearing. If a transcript is requested by the participant, the participant may be assessed the cost of a copy of the transcript.

(3) The appeals board shall, after a reasonable period of time, close the hearing if the participant or his or her representative is not present at the scheduled time. The appeals board may, at its discretion, accept information and evidence submitted by others present for the hearing.

(4) The appeals board shall furnish the administering agency and the State Conservationist, NRCS, with a written report setting forth their findings, conclusions, and recommendations. The report shall include the summary of testimony or transcript made of the hearing and any other information which would aid the administering agency in reaching a decision.

(e) *Decision by the administering agency.* The administering agency shall make a decision within 30 days on the basis of the appeals board report, recommendations of soil conservation district board, if any, and any other information available, including if applicable, the amount of the forfeiture, refund, or payment adjustment. The decision shall state whether the violation is of such a nature as to warrant termination of the contract. The administering agency shall notify, in writing, each participant who signed the contract of its decision. The administering agency may authorize or require the reopening of any hearing before the appeals board for any reason at any time before their decision. The administering agency's decision shall be final.

(1) If the decision provides for termination of the contract, it shall state that the contract is terminated and that all rights to further cost-share payments under the contract are forfeited and that all cost-share payments received under the contract shall be refunded with interest. The decision is to state the amount of refund and method of payment.

(2) If the decision does not provide for termination of the contract, the participant may be required to make a refund of cost-share payments or to accept payment adjustments. The decision shall state the amount and justification for refunds of cost-share payments or payment adjustments.

### Subpart D—Financial Management

#### § 634.40 Financial management.

(a)(1) Finance and accounting will be in conformance with Office of Management & Budget Circular A-102, (Rev.); U.S. Department of Health, Education & Welfare Brochure OASC-10, Federal Management Circular FMC 74-4, “Cost Principles Applicable to Grants and Contracts with State and Local Government”; Department of the Treasury, Department Circular No. 1075 (4th Rev.), “Withdrawal of Cash from the Treasury for Advances under Federal Grant and other Programs”; Office of Management & Budget Circular No. A-34, “Instruction on Budget Execution”; U.S. Treasury Requirements Manual for Guidance of Departments and Agencies; and General Accounting Office Policy & Procedures Manual for Guidance of Federal Agencies.

(2) Administering agency RCWP grants will be funded under Letter-of-Credit serviced by the U.S. Treasury Regional Disbursing Office (RCO), subject to the terms and conditions of the grant agreement or by NRCS approved advance/reimbursement financing agreements.

(3) The State of local administering agency shall maintain a financial management system which provides accurate and complete disclosure of the financial status of the RCWP grant in accordance with prescribed reporting requirements.

(4) The State or local administering agency shall upon request make its financial management system records available to NRCS, USDA Office of Inspector General, and the General Accounting Office.

(5) Participation in comprehensive USDA/EPA joint water quality monitoring, evaluating, and analysis will be funded according to the plan approved in § 634.50(a)(3).

(b)(1) The carrying out of RCWP will require both financial and performance reporting to the Natural Resources Conservation Service by participating USDA and State or local agencies.

(2) USDA participating agencies shall furnish NRCS with reports prescribed by the U.S. Treasury Department; Office of Management and Budget; Ad-

ministrative Regulations of the U.S. Department of Agriculture; and other reports required by law, regulation, or agreement.

(3) State or local administering agencies shall furnish financial status reports to NRCS on a quarterly basis as required by the grant agreement. The administering agency is also to provide an audit report upon request. The audit report is to be prepared in sufficient detail to allow NRCS to determine that funds have been used in compliance with applicable laws, regulations, and the grant agreement.

### Subpart E—Monitoring and Evaluation

#### § 634.50 Program and project monitoring and evaluation.

(a) *Comprehensive USDA/EPA joint water quality monitoring, evaluation, and analysis.* (1) Representative RCWP project areas will be selected to evaluate the improvement in water quality in the project area and to make projections on a nationwide basis. Water-quality monitoring, evaluation, and analysis will be conducted to evaluate the overall cost and effectiveness of projects and BMPs to provide information on the impact of the program on improved water quality and for general RCWP program management.

(2) Monitoring, evaluation, and analysis is a joint USDA/EPA responsibility. Subject to appropriation of funds, the Administrator, NRCS, and EPA are jointly to select the project areas to be monitored and evaluated based on a list of project areas recommended by the NRCWCC.

(3) The Administrator, NRCS, and Administrator, EPA, are jointly to determine the criteria to be used for comprehensive water-quality monitoring, evaluation, and analysis in the selected project areas. A monitoring and evaluation plan is to be developed and agreed to by NRCS and EPA prior to initiating a project selected for monitoring and evaluation. The State water-quality agency and other Federal, State, and local agencies will be involved in the development of the plan for water-quality evaluation. The involvement of concerned agencies in

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.

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### § 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

## § 635.7

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.

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(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 INCENTIVE PROGRAM**

- Sec.
- 636.1 Applicability.
- 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.
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- 636.18 Technical services provided by qualified personnel not affiliated with USDA.
- 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: 75 FR 71338, Nov. 23, 2010, unless otherwise noted.

**§ 636.1 Applicability.**

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

land, nonindustrial private forest land (NIPF), and Indian land.

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

(c) The Chief, Natural Resources Conservation Service (NRCS), may implement WHIP in any of the 50 States, District of Columbia, 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. 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 CCC's funds, facilities, and authorities, where applicable.

(b) The State Conservationist may accept recommendations from the State Technical Committee and Tribal Conservation Advisory Council (for tribal land) in the implementation of the program and in establishing program direction for WHIP in the applicable State or tribal land. The State Conservationist has the authority to accept or reject the State Technical Committee and the Tribal Conservation Advisory Council's (for tribal land) recommendation; however, the State Conservationist will give strong consideration to the State Technical Committee and the Tribal Conservation Advisory Council'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.

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

#### § 636.3 Definitions.

The following definitions will apply to this part, and all documents issued in accordance with this part, unless specified otherwise:

*Agricultural lands* means cropland, grassland, rangeland, pastureland, and other land determined by NRCS to be suitable for fish and wildlife habitat development on which agricultural and forest-related products or livestock are or have the potential to be produced. Agricultural lands may include cropped woodland, wetlands, waterways, streams, incidental areas included in the agricultural operation, and other types of land used for or have the potential to be used for production.

*Applicant* means a person, legal entity, joint operation, or Indian tribe that has an interest in agricultural land, NIPF, Indian land, or other lands identified in 636.4(c)4, who has requested in writing to participate in WHIP.

*At-risk species* means any plant or animal species listed as threatened or endangered; proposed or candidate for listing under the Endangered Species Act (ESA); a species listed as threatened or endangered under State law or tribal law on tribal land; State or tribal land species of conservation concern; or other plant or animal species or community, as determined by the State Conservationist, with advice from the State Technical Committee and Tribal Conservation Advisory Council (for tribal land), that has undergone, or likely to undergo, population decline and may become imperiled without direct intervention.

*Beginning farmer or rancher* means an individual or entity who:

(1) Has not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 consecutive years. This requirement applies to all members of an entity, who will materially and substantially participate in the operation of the farm or ranch.

(2) In the case of a cost-share agreement with an individual, individually, or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch consistent with the practices in the county or State where the farm is located.

(3) In the case of a cost-share agreement with an entity or joint operation, all members must materially and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that each of the members provide some amount of the management, or labor and management necessary for day-to-day activities, such that if each of the members did not provide these inputs, operation of the farm or ranch would be seriously impaired.

*Chief* means the Chief of NRCS or designee.

*Conservation activities* means conservation systems, practices, or management measures needed to address a resource concern or improve environmental quality through the treatment of natural resources, and includes structural, vegetative, and management activities, as determined by NRCS.

*Conservation district* means any district or unit of State, tribal, or local government formed under State, tribal, or territorial law for the express purpose of developing and carrying out a local soil and water conservation program. Such district or unit of government may be referred to as a conservation district, soil conservation district, soil and water conservation district, resource conservation district, natural resource district, land conservation committee, or similar name.

*Conservation practice* means one or more conservation improvements and activities, including structural practices, land management practices, vegetative practices, forest management, and other improvements that benefit the eligible land and achieve program purposes. Approved conservation practices are listed in the NRCS Field Office Technical Guide (FOTG).

*Cost-share agreement* means a financial assistance document that specifies



the rights and obligations of any participant accepted into the program. A WHIP cost-share agreement is a binding agreement for the transfer of assistance from the Department of Agriculture (USDA) to the participant to share in the costs of applying conservation activities.

*Cost-share payment* means the payments under the WHIP cost-share agreement to develop fish and wildlife habitat or accomplish other goals consistent with the program provided for in this part.

*Designated conservationist* means an NRCS employee whom the State Conservationist has designated as responsible for WHIP administration in a specific area.

*Field Office Technical Guide* means the official local NRCS source of resource information and interpretations of guidelines, criteria, and requirements for planning and applying conservation practices and conservation management systems. It contains detailed information on the conservation of soil, water, air, plant, and animal resources applicable to the local area for which it is prepared.

*Habitat development* means the conservation activities implemented to establish, improve, protect, enhance, or restore the conditions of the land for the specific purpose of improving conditions for fish and wildlife.

*Historically underserved producer* means an eligible person, joint operation, legal entity, or Indian tribe who is a beginning farmer or rancher, socially disadvantaged farmer or rancher, limited resource farmer or rancher, or NIPF landowner who meets the beginning, socially disadvantaged, or limited resource qualifications set forth in § 636.3.

*Indian land* means:

(1) Land held in trust by the United States for individual Indians or Indian tribes, or

(2) Land, the title to which is held by individual Indians or Indian tribes subject to Federal restrictions against alienation or encumbrance, or

(3) Land which is subject to rights of use, occupancy, and benefit of certain Indian tribes, or

(4) Land held in fee title by an Indian, Indian family, or Indian tribe.

*Indian tribe* means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*) that is eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

*Joint operation* means, as defined in 7 CFR part 1400, a general partnership, joint venture, or other similar business organization in which the members are jointly and severally liable for the obligations of the organization.

*Legal entity* means, as defined in 7 CFR part 1400, an entity created under Federal or State law that:

(1) Owns land or an agricultural commodity, product, or livestock; or

(2) Produces an agricultural commodity, product, or livestock.

*Lifespan* means the period of time during which a conservation practice is to be operated and maintained for the intended purpose.

*Limited resource farmer or rancher* means:

(1) A person with direct or indirect gross farm sales of not more than \$142,000 in each of the previous 2 years (this is the amount for 2010, and adjusted for inflation using Prices Paid by Farmer Index as compiled by National Agricultural Statistical Service); and

(2) Has a total household income at or below the national poverty level for a family of four, or less than 50 percent of county median household income in each of the previous 2 years (to be determined annually using the Department of Commerce Data).

*Liquidated damages* means a sum of money stipulated in the WHIP cost-share agreement that the participant agrees to pay NRCS if the participant fails to adequately complete the terms of the cost-share agreement. The sum represents an estimate of the technical assistance expenses incurred to service the agreement, and reflects the difficulties of proof of loss and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy.

*Livestock* means all animals produced on farms and ranches, as determined by the Chief.

*Natural Resources Conservation Service* is an agency of USDA, which has the responsibility for administering WHIP using the funds, facilities, and authorities of the CCC.

*Nonindustrial private forest land* means rural land, as determined by the Secretary, that has existing tree cover or is suitable for growing trees and is owned by any nonindustrial private individual, group, association, corporation, Indian tribe, or other private legal entity that has definitive decisionmaking authority over the land.

*Operation and maintenance* means work performed by the participant to keep the applied conservation activities functioning for the intended purpose during the conservation practice lifespan. Operation includes the administration, management, and performance of non-maintenance actions needed to keep the completed activity functioning as intended. Maintenance includes work to prevent deterioration of the practice, repairing damage, or replacement of the practice to its original condition if one or more components fail.

*Operation and maintenance agreement* means the document that, in conjunction with the WHIP plan of operations, specifies the operation and maintenance (O&M) responsibilities of the participants for conservation activities implemented with WHIP assistance.

*Participant* means a person, legal entity, joint operation, or Indian tribe that is receiving payment or is responsible for implementing the terms and conditions of a WHIP cost-share agreement.

*Person* means, as defined in 7 CFR part 1400, an individual, natural person and does not include a legal entity.

*Producer* means, as defined in 7 CFR part 1400, a person, legal entity, joint operation, or Indian tribe who has an interest in the agricultural operation or who is engaged in agricultural production or forestry management.

*Resource concern* means a specific natural resource problem that represents a significant concern in a State or region, and is likely to be addressed successfully through the implementa-

tion of the conservation activities by participants.

*Secretary* means the Secretary of USDA.

*Socially disadvantaged farmer or rancher* means a farmer or rancher who has been subjected to racial or ethnic prejudices because of their identity as a member of a group without regard to their individual qualities. Those groups include African Americans, American Indians or Alaskan Natives, Hispanics, and Asians or Pacific Islanders.

*State Conservationist* means the NRCS employee authorized to implement WHIP and direct and supervise NRCS activities in a State, Caribbean Area, or the Pacific Islands Area.

*State Technical Committee* means a committee established by the Secretary in a State pursuant to 16 U.S.C. 3861.

*Technical assistance* means technical expertise, information, and tools necessary for the conservation of natural resources on land active in agricultural, forestry, or related uses. The term includes the following:

(1) Technical services provided directly to farmers, ranchers, and other eligible entities, such as conservation planning, technical consultation, and assistance with design and implementation of conservation practices; and

(2) Technical infrastructure, including activities, processes, tools, and agency functions needed to support delivery of technical services, such as technical standards, resource inventories, training, data, technology, monitoring, and effects analyses.

*Technical service provider* means an individual, entity, Indian tribe, or public agency either:

(1) Certified by NRCS and placed on the approved list to provide technical services to participants; or

(2) Selected by the Department to assist the Department in the implementation of conservation programs covered by this part through a procurement contract, contribution agreement, or cooperative agreement with the Department.

*Tribal Conservation Advisory Council* means a committee established by a State Conservationist to implement consultation as defined in General Manual 410 Part 405.

*WHIP plan of operations* means the document that identifies the location and timing of conservation activities that the participant agrees to implement on eligible land in order to develop fish and wildlife habitat and provide environmental benefits. The WHIP plan of operations is a part of the WHIP cost-share agreement.

*Wildlife* means non-domesticated birds, fishes, reptiles, amphibians, invertebrates, and mammals.

*Wildlife habitat* means the aquatic and terrestrial environments required for fish and wildlife to complete their life cycles, providing air, food, cover, water, and spatial requirements.

#### § 636.4 Program requirements.

(a) To participate in WHIP, an applicant must:

(1) Be in compliance with the highly erodible and wetland conservation provisions found in 7 CFR part 12;

(2) Be in compliance with the terms of all other USDA-administered conservation program contracts to which the participant is a party;

(3) Develop and agree to comply with a WHIP plan of operations and O&M agreement, as described in § 636.8;

(4) Enter into a cost-share agreement for the development of fish and wildlife habitat as described in § 636.9;

(5) Provide NRCS with written evidence of ownership or legal control of land for the term of the proposed cost-share agreement, including the O&M agreement. An exception may be made by the Chief in the case of land allotted by the Bureau of Indian Affairs (BIA) or Indian land where there is sufficient assurance of control;

(6) Agree to provide all information to NRCS determined to be necessary to assess the merits of a proposed project and to monitor cost-share agreement compliance;

(7) Agree to grant to NRCS or its representatives access to the land for purposes related to application, assessment, monitoring, enforcement, verification of certifications, or other actions required to implement this part;

(8) Provide a list of all members of the legal entity and embedded entities along with members' tax identification numbers and percentage interest in the

entity. Where applicable, American Indians, Alaska Natives, and Pacific Islanders may use another unique identification number for each individual eligible for payment;

(9) With regard to cost-share agreements with individual Indians or Indians represented by the BIA, payments exceeding the payment limitation may be made to the tribal participant if a BIA or tribal official certifies in writing that no one individual, directly or indirectly, will receive more than the payment limitation. The BIA or tribal entity must also provide annually, a listing of individuals and payments made, by tax identification number or other unique identification number, during the previous year for calculation of overall payment limitations. The tribal entity must also produce, at the request of NRCS, proof of payments made to the person or legal entity that incurred costs related to conservation activity implementation;

(10) Supply information, as required by NRCS, to determine eligibility for the program including, but not limited to, information to verify the applicant's status as a limited resource farmer or rancher or beginning farmer or rancher and payment eligibility as established by 7 CFR part 1400, Adjusted Gross Income (AGI);

(11) With regard to any participant that utilizes a unique identification number as an alternative to a tax identification number, the participant will utilize only that identifier for any and all other WHIP cost-share agreements to which the participant is a party. Violators will be considered to have provided fraudulent representation and are subject to § 636.13; and

(12) Comply with applicable registration and reporting requirements of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109-282, as amended) and 2 CFR parts 25 and 170.

(b) Eligible land includes:

(1) Private agricultural land;

(2) NIPF;

(3) Indian land; and

(4) Trust land owned in fee title by a State, including an agency or subdivision of a State, when such trust land is held under a long-term lease by a person or nongovernmental entity and

## § 636.5

when the Chief determines that (i) by the nature of the lease, such land is tantamount to private agricultural land; (ii) the duration of the lease is at least the length of any WHIP agreement; and (iii) no funds under the WHIP program are paid to a governmental entity.

(c) *Ineligible land.* NRCS will not provide cost-share assistance with respect to land:

(1) Enrolled in a program where fish and wildlife habitat objectives have been sufficiently achieved, as determined by NRCS;

(2) With onsite or offsite conditions which NRCS determines would undermine the benefits of the habitat development or otherwise reduce its value;

(3) On which habitat for threatened or endangered species, as defined in section 3 of the ESA, 16 U.S.C. 1532, would be adversely affected; or

(4) That is owned in fee title by an agency of the United States, other than:

(i) Land held in trust for Indian tribes, and

(ii) Lands owned in fee title by a State, including an agency or subdivision of a State or a unit of government except as provided in § 636.4(b)(4).

## § 636.5 National priorities.

(a) The following national priorities will be used in WHIP implementation:

(1) Promote the restoration of declining or important native fish and wildlife habitats;

(2) Protect, restore, develop, or enhance fish and wildlife habitat to benefit at-risk species;

(3) Reduce the impacts of invasive species on fish and wildlife habitats;

(4) Protect, restore, develop, or enhance declining or important aquatic wildlife species' habitats; and

(5) Protect, restore, develop, or enhance important migration and other movement corridors for wildlife.

(b) NRCS, with advice of other Federal agencies, will undertake periodic reviews of the national priorities and the effects of program delivery at the State, tribal, and local levels to adapt the program to address emerging resource issues. NRCS will:

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(1) Use the national priorities to guide the allocation of WHIP funds to the State offices;

(2) Use the national priorities in conjunction with State, tribal, and local priorities to assist with prioritization and selection of WHIP applications; and

(3) Periodically review and update the national priorities utilizing input from the public, Indian tribes, and affected stakeholders to ensure that the program continues to address priority resource concerns.

## § 636.6 Establishing priority for enrollment in WHIP.

(a) NRCS, in consultation with Federal and State agencies, tribal, and conservation partners, may identify priorities for enrollment in WHIP that will complement the goals and objectives of relevant fish and wildlife conservation initiatives at the State, regional, tribal land, or national levels. In response to national, tribal, regional, or State fish and wildlife habitat concerns, the Chief may focus program implementation in any given year to specific geographic areas or to address specific habitat development needs.

(b) The State Conservationist, with recommendations from the State Technical Committee and Tribal Conservation Advisory Council (for tribal land), may give priority to WHIP projects that will address unique habitats or special geographic areas identified in the State. Subsequent cost-share agreement offers that would complement previous cost-share agreements due to geographic proximity of the lands involved or other relationships may receive priority consideration for participation.

(c) NRCS will evaluate the applications and make enrollment decisions based on the fish and wildlife habitat need using some or all of the following criteria:

(1) Contribution to resolving an identified habitat concern of national, tribal, regional, or State importance including at-risk species;

(2) Relationship to any established wildlife or conservation priority areas;

(3) Duration of benefits to be obtained from the habitat development practices;

(4) Self-sustaining nature of the habitat development practices;

(5) Availability of other partnership matching funds or reduced funding request by the person applying for participation;

(6) Estimated costs of fish and wildlife habitat development activities;

(7) Other factors determined appropriate by NRCS to meet the objectives of the program; and

(8) Willingness of the applicant to complete all conservation improvements during the first 2 years of the WHIP cost-share agreement.

**§ 636.7 Cost-share payments.**

(a) NRCS may share the cost with a participant for implementing the conservation activities as provided in the WHIP plan of operations that is a component of the WHIP cost-share agreement:

(1) Except as provided in paragraph (a)(2) of this section and in § 636.9(c), NRCS will offer to pay no more than 75 percent of the costs to develop fish and wildlife habitat. The cost-share payment to a participant will be reduced proportionately below 75 percent to the extent that direct Federal financial assistance is provided to the participant from sources other than NRCS, except for certain cases that merit additional cost-share assistance to achieve the intended goals of the program, as determined by the State Conservationist.

(2) Historically underserved producers, as defined in § 636.3, and Indian tribes may receive the applicable payment rate and an additional rate that is not less than 25 percent above the applicable rate, provided that this increase does not exceed 90 percent of the estimated costs associated with WHIP plan of operations implementation.

(b) Cost-share payments may be made only upon a determination by NRCS that a conservation activity or an identifiable component of a conservation activity has been established in compliance with appropriate standards and specifications.

(c) Payments will not be made for a conservation activity that was:

(1) Applied prior to application for the program; or

(2) Initiated or implemented prior to cost-share agreement approval, unless a waiver was granted by the State Conservationist or designated conservationist prior to implementation.

(d) NRCS, in consultation with the State Technical Committee, will identify and provide public notice of the conservation activities eligible for payment under the program.

(e) Cost-share payments may be made for the establishment and installation of additional eligible conservation activities, or the maintenance or replacement of an eligible conservation activity, but only if NRCS determines the conservation activity is needed to meet the objectives of the program, or that the failure of the original project was due to reasons beyond the control of the participant.

(f) Payments made or attributed to a participant, directly or indirectly, may not exceed, in the aggregate, \$50,000 per year.

(g) Eligibility for payment in accordance with 7 CFR part 1400, subpart G, average AGI limitation, will be determined prior to cost-share agreement approval.

(h) Subject to fund availability, the payment rates identified in a WHIP contract may be adjusted by NRCS to reflect increased costs.

(i) A participant will not be eligible for payments for conservation activities on eligible land if the participant receives payments or other benefits for the same activity on the same land under any other conservation program administered by USDA.

(j) Before NRCS will approve and issue final payment, the participant must certify that the conservation activity has been completed in accordance with the cost-share agreement, and NRCS or an approved Technical Service Provider (TSP) must certify that the activity has been carried out in accordance with the applicable FOTG.

(k) NRCS, for a fiscal year, may use up to 25 percent of WHIP funds to carry out cost-share agreements described in § 636.9(c).

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### § 636.8 WHIP plan of operations.

(a) As a condition of participation, the participant develops a WHIP plan of operations with the assistance of NRCS or other public or private natural resource professionals who are approved by NRCS. A WHIP plan of operations encompasses the parcel of land where habitat will be established, improved, protected, enhanced, or restored. The WHIP plan of operations will be approved by NRCS and address at least one of the following as determined by NRCS:

(1) Fish and wildlife habitat conditions that are of concern to the participant;

(2) Fish and wildlife habitat concerns identified in State, regional, tribal land, or national conservation initiatives, as referenced in § 636.6(a); or

(3) Fish and wildlife habitat concerns identified in an approved area-wide plan that addresses the wildlife resource habitat concern.

(b) The WHIP plan of operations forms the basis for the WHIP cost-share agreement and will be attached and included as part of the cost-share agreement, along with the O&M agreement. The WHIP plan of operations includes a schedule for implementation and maintenance of the conservation activities, as determined by NRCS.

(c) The WHIP plan of operations may be modified in accordance with § 636.10.

(d) All conservation activities in the WHIP plan of operations must be approved by NRCS and developed and carried out in accordance with the applicable FOTG.

(e) The participant is responsible for the implementation of the WHIP plan of operations.

### § 636.9 Cost-share agreements.

(a) To apply for WHIP cost-share assistance, a person, tribe, or legal entity must submit an application for participation at a USDA Service Center to an NRCS representative.

(b) A WHIP cost-share agreement will:

(1) Incorporate the WHIP plan of operations;

(2) Be for a time period agreed to by the participant and NRCS, with a minimum duration of one year after the completion of conservation activities

identified in the WHIP plan of operations and a maximum of 10 years, except for agreements entered into under paragraph (c) of this section;

(3) Include all provisions as required by law or statute;

(4) Include any participant reporting and recordkeeping requirements to determine compliance with the cost-share agreement and program;

(5) Be signed by the participant;

(6) Specify payment limits described in § 636.7(f) including any additional payment limitation associated with determinations made under § 636.7(g);

(7) Include an O&M agreement that describes the O&M for each conservation activity and the agency expectation that WHIP-funded conservation activities will be operated and maintained for their expected lifespan; and

(8) Include any other provision determined necessary or appropriate by the NRCS representative.

(c) Notwithstanding any limitation of this part, NRCS may enter into a long-term cost-share agreement that:

(1) Is for a term of at least 15 years;

(2) Protects and restores essential plant or animal habitat, as determined by NRCS; and

(3) Provides cost-share payments of no more than 90 percent of the cost of implementing the WHIP plan of operations to develop fish and wildlife habitat.

### § 636.10 Modifications.

(a) The participant and NRCS may modify a cost-share agreement if both parties agree to the modification. The WHIP plan of operations is revised in accordance with NRCS requirements, and the agreement is approved by the designated conservationist.

(b) Any modifications made under this section must meet WHIP program objectives and must be in compliance with this part.

(c) In the event implementation of a conservation activity fails through no fault of the participant, the State Conservationist may modify the cost-share agreement in order to issue payments to re-implement the activity, at the rates established in accordance with § 636.7, provided such payments do not exceed the payment limitation requirements as set forth in § 636.7.

(d) Where circumstances beyond the participant's control or when it is in the public interest, such as matters of health or safety, the State Conservationist may independently or by mutual agreement with the parties modify or terminate the cost-share agreement as provided for in § 636.12.

**§ 636.11 Transfer of interest in a cost-share agreement.**

(a) A participant is responsible for notifying NRCS when he or she anticipates the voluntary or involuntary loss of control of the land covered by a WHIP cost-share agreement during the term of the agreement.

(b) The participant and NRCS may agree to transfer a cost-share agreement to another potential participant. The transferee must be determined by NRCS to be eligible to participate in WHIP and must assume full responsibility under the cost-share agreement.

(c) With respect to any and all payments owed to participants who wish to transfer ownership or control of land subject to a cost-share agreement, the division of payment will be determined by the original party and that party's successor. In the event of a dispute or claim on the distribution of cost-share payments, NRCS may withhold payments without the accrual of interest pending a settlement or adjudication on the rights to the funds.

(d) If new participants are not willing or not eligible to assume the responsibilities of an existing WHIP cost-share agreement, including the O&M agreement, and the participant fails to implement the cost-share agreement, then NRCS will terminate the agreement and may require that all cost-share payments be forfeited, refunded, or both, with applicable interest in accordance with § 636.12. Participants may be subject to liquidated damages in accordance with § 636.12.

**§ 636.12 Termination of cost-share agreements.**

(a) The State Conservationist may, independently or by mutual agreement with the parties to the cost-share agreement, terminate the cost-share agreement where:

(1) The parties to the cost-share agreement are unable to comply with

the terms of the cost-share agreement as the result of conditions beyond their control;

(2) Termination of the cost-share agreement would, as determined by the State Conservationist, be in the public interest; or

(3) A participant fails to correct a violation of a cost-share agreement within the period provided by NRCS in accordance with § 636.13.

(b) If NRCS terminates a cost-share agreement, in accordance with the provisions of paragraphs (a)(1) and (a)(2) of this section the State Conservationist may allow the participant to retain a portion of any payments received appropriate to the effort the participant has made to comply with the contract.

(1) NRCS may require a participant to provide only a partial refund of the payments received if a previously implemented conservation activity can function independently, and is not adversely affected by the violation or the absence of other conservation activities that would have been implemented under the cost-share agreement; and

(2) The State Conservationist will have the option to waive all or part of the liquidated damages assessed, depending upon the circumstances of the case.

(c) When making termination decisions, NRCS may reduce the amount of money owed by the participant by a proportion that reflects:

(1) The good faith effort of the participant to comply with the cost-share agreement; or

(2) The existence of hardships beyond the participant's control that have prevented compliance. If a participant claims hardship, that claim must be documented and cannot have existed when the applicant applied for participation in the program.

**§ 636.13 Violations and remedies.**

(a) If NRCS determines that a participant is in violation of a cost-share agreement, NRCS will give the parties to the cost-share agreement notice of the violation and a minimum of 60 days to correct the violation and comply with the terms of the cost-share agreement and attachments thereto.

(b) If the participant fails to correct the violation of a cost-share agreement

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within the period provided by NRCS under paragraph (a) of this section, NRCS may terminate the agreement and require the participant to refund all or part of any of the funds issued under that cost-share agreement, plus interest, and may assess liquidated damages as indicated in the cost-share agreement appendix, as well as require the participant to forfeit all rights to any future payment under the agreement.

(c) If NRCS terminates a cost-share agreement due to breach of contract, the participant will forfeit all rights to future payments under the agreement, may be required to pay liquidated damages in an amount determined by the State Conservationist in accordance with the terms of the agreement, and will refund all or part of the payments received, plus interest. Participants violating WHIP cost-share agreements may be determined ineligible for future NRCS-administered conservation program funding.

### § 636.14 Misrepresentation and scheme or device.

(a) A participant who is determined to have erroneously represented any fact affecting a program determination made in accordance with this part, will not be entitled to cost-share agreement payments and must refund to NRCS all payments and pay liquidated damages, plus interest, as determined by NRCS.

(b) A participant will refund to NRCS all payments, plus interest, as determined by NRCS, with respect to all NRCS cost-share agreements to which they are a party if they are determined to have knowingly:

(1) Adopted any scheme or device that tends to defeat the purpose of the program;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a program determination.

(c) Other NRCS cost-share agreements where this person is a participant may be terminated.

### § 636.15 Offsets and assignments.

(a) Except as provided in paragraph (b) of this section, any payment or portion thereof to any person or legal entity will be made without regard to

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questions of title under State law and without regard to any claim or lien against the land, or proceeds thereof, in favor of the owner or any other creditor except agencies of the United States Government. The regulations governing offsets and withholdings found at 7 CFR part 1403 of this title will be applicable to cost-share agreement payments.

(b) WHIP participants may assign any payments in accordance with 7 CFR part 1404.

### § 636.16 Appeals.

(a) Any participant may obtain reconsideration and review of determinations affecting participation in this program in accordance with 7 CFR parts 11 and 614, except as provided in paragraph (b) of this section.

(b) In accordance with the provisions of the Department of Agriculture Reorganization Act of 1994, Public Law 103-354 (7 U.S.C. 6901), the following decisions are not appealable:

(1) Payment rates, payment limits, and cost-share percentages;

(2) The designation of approved fish and wildlife priority areas, habitats, or activities;

(3) NRCS program funding decisions;

(4) Eligible conservation activities; and

(5) Other matters of general applicability.

(c) Before a participant may seek judicial review of any action taken under this part, the participant must exhaust all administrative appeal procedures set forth in paragraph (a) of this section.

### § 636.17 Compliance with regulatory measures.

(a) Participants who implement the WHIP plan of operations will be responsible for obtaining the authorities, rights, easements, permits, or other approvals necessary for the implementation, operation, and maintenance of the conservation activities in keeping with applicable laws and regulations. The requirement for the participant to obtain necessary permits is included in the terms and conditions of the contract appendix.

(b) Participants will be responsible for compliance with all laws and for all



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effects or actions resulting from the participants' performance under the cost-share agreement.

### **§ 636.18 Technical services provided by qualified personnel not affiliated with USDA.**

(a) NRCS may use the services of qualified TSPs in performing its responsibilities for technical assistance.

(b) Participants may use technical services from qualified personnel of other Federal, State, and local agencies, Indian tribes, or individuals who are certified as TSPs by NRCS.

(c) Technical services provided by qualified personnel not affiliated with USDA may include, but are not limited to, conservation planning; conservation practice survey, layout, design, installation, and certification; and related technical services as defined in 7 CFR part 652.

(d) NRCS retains approval authority over certification of work done by non-NRCS personnel for the purpose of approving WHIP payments.

### **§ 636.19 Access to operating unit.**

As a condition of program participation, any authorized NRCS representative will have the right to enter an agricultural operation or tract for the purposes of determining eligibility and for ascertaining the accuracy of any representations related to cost-share agreements and performance. Access will include the right to provide technical assistance; determine eligibility; inspect any work undertaken under the cost-share agreements, including the WHIP plan of operations and O&M agreement; and collect information necessary to evaluate the habitat development performance specified in the cost-share agreements. The NRCS representative will make a reasonable effort to contact the participant prior to the exercising of this provision.

### **§ 636.20 Equitable relief.**

(a) If a participant relied upon the advice or action of any authorized NRCS representative and did not know, or have reason to know, that the ad-

vice or action was improper or erroneous, NRCS may grant relief in accordance with 7 CFR part 635. Where a participant believes that detrimental reliance on the advice or action of a NRCS representative resulted in an ineligibility or program violation, the participant may request equitable relief under 7 CFR 635.3. The financial or technical liability for any action by a participant that was taken based on the advice of a NRCS certified non-USDA TSP is the responsibility of the certified TSP and will not be assumed by NRCS when NRCS authorizes payment.

(b) If during the term of a WHIP cost-share agreement a participant has been found in violation of a provision of the cost-share agreement, the O&M agreement, or any document incorporated by reference through failure to fully comply with that provision, the participant may be eligible for equitable relief under 7 CFR 635.4.

### **§ 636.21 Environmental services credits for conservation improvements.**

USDA recognizes that environmental benefits will be achieved by implementing conservation activities funded through WHIP, and that environmental credits may be gained as a result of implementing activities compatible with the purposes of a WHIP cost-share agreement. NRCS asserts no direct or indirect interest on any such credits. However, NRCS retains the authority to ensure that program purposes are met and the requirements for WHIP funded improvements are met and maintained consistent with §§ 636.8 and 636.9. Where activities required under an environmental credit agreement may affect land covered under a WHIP cost-share agreement, participants are highly encouraged to request a compatibility assessment from NRCS prior to entering into such agreements. The WHIP cost-share agreement may be modified, in accordance with policies outlined in § 636.10, provided the modification meets WHIP purposes and is in compliance with this part.

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**SUBCHAPTER E [RESERVED]**

## SUBCHAPTER F—SUPPORT ACTIVITIES

### PART 650—COMPLIANCE WITH NEPA

#### Subpart A—Procedures for NRCS-Assisted Programs

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  - 650.2 Applicability.
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  - 650.8 When to prepare an environmental assessment (EA).
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- 650.20 Reviewing and commenting on EIS's prepared by other agencies.
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- 650.22 Rare, threatened, and endangered species of plants and animals.
- 650.23 Natural areas.
- 650.24 Scenic beauty (visual resource).
- 650.25 Flood-plain management.

#### Subpart A—Procedures for NRCS-Assisted Programs

AUTHORITY: 42 U.S.C. 4321 *et seq.*; Executive Order 11514 (Rev.); 7 CFR 2.62, unless otherwise noted.

SOURCE: 44 FR 50579, Aug. 29, 1979, unless otherwise noted.

##### § 650.1 Purpose.

(a) This rule prescribes procedures by which NRCS is to implement the provisions of NEPA. The Natural Resources Conservation Service recognizes NEPA as the national charter for protection, restoration, and enhancement of the human environment. NEPA establishes policy, sets goals (Section 101), and provides means (Section 102) for carrying out this policy.

(b) The procedures included in this rule supplement CEQ's NEPA regula-

tions, 40 CFR parts 1500-1508. CEQ regulations that need no additional elaboration to address NRCS-assisted actions are not repeated in this rule, although the regulations are cited as references. The procedures include some overlap with CEQ regulations. This is done to highlight items of importance for NRCS. This does not supersede the existing body of NEPA regulations.

(c) These procedures provide that—

(1) Environmental information is to be available to citizens before decisions are made about actions that significantly affect the human environment;

(2) NRCS-assisted actions are to be supported to the extent possible by accurate scientific analyses that are technically acceptable to NRCS;

(3) NRCS-prepared NEPA documents are to be available for public scrutiny; and

(4) Documents are to concentrate on the issues that are timely and significant to the action in question rather than amassing needless detail.

(d) Procedures for implementing NEPA are designed to ensure that environmental consequences are considered in decisionmaking. They allow NRCS to assist individuals and nonfederal public entities to take actions that protect, enhance, and restore environmental quality.

(e) These procedures make possible the early identification of actions that have significant effects on the human environment to avoid delays in decisionmaking.

##### § 650.2 Applicability.

This rule applies to all NRCS-assisted programs including the uninstalled parts of approved projects that are not covered by environmental documents prepared under previous rules for compliance with NEPA. It is effective on the date of publication of the final rule. NRCS is to consult with CEQ in the manner prescribed by 40 CFR 1506.11 if it is necessary to take emergency actions.

##### § 650.3 Policy.

(a) *NRCS mission.* The NRCS mission is to provide assistance that will allow

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use and management of ecological, cultural, natural, physical, social, and economic resources by striving for a balance between use, management, conservation, and preservation of the Nation's natural resource base. The NRCS mission is reemphasized and expanded to carry out the mandate of section 101(b) of NEPA, within other legislative constraints, in all its programs of Federal assistance. NRCS will continue to improve and coordinate its plans, functions, programs, and recommendations on resource use so that Americans, as stewards of the environment for succeeding generations—

(1) Can maintain safe, healthful, productive, and esthetically and culturally pleasing surroundings that support diversity of individual choices; and

(2) Are encouraged to attain the widest range of beneficial uses of soil, water, and related resources without degradation to the environment, risk to health or safety, or other undesirable and unintended consequences.

(b) *NRCS environmental policy.* NRCS is to administer Federal assistance within the following overall environmental policies:

(1) Provide assistance to Americans that will motivate them to maintain equilibrium among their ecological, cultural, natural, physical, social, and economic resources by striving for a balance between conserving and preserving the Nation's natural resource base.

(2) Provide technical and financial assistance through a systematic interdisciplinary approach to planning and decisionmaking to insure a balance between the natural, physical, and social sciences.

(3) Consider environmental quality equal to economic, social, and other factors in decisionmaking.

(4) Insure that plans satisfy identified needs and at the same time minimize adverse effects of planned actions on the human environment through interdisciplinary planning before providing technical and financial assistance.

(5) Counsel with highly qualified and experienced specialists from within and outside NRCS in many technical fields as needed.

(6) Encourage broad public participation in defining environmental quality objectives and needs.

(7) Identify and make provisions for detailed survey, recovery, protection, or preservation of unique cultural resources that otherwise may be irrevocably lost or destroyed by NRCS-assisted project actions, as required by Historic Preservation legislation and/or Executive Order.

(8) Encourage local sponsors to review with interested publics the operation and maintenance programs of completed projects to insure that environmental quality is not degraded.

(9) Advocate the retention of important farmlands and forestlands, prime rangeland, wetlands, or other lands designated by State or local governments. Whenever proposed conversions are caused or encouraged by actions or programs of a Federal agency, licensed by or require approval by a Federal agency, or are inconsistent with local or State government plans, provisions are to be sought to insure that such lands are not irreversibly converted to other uses unless other national interests override the importance of preservation or otherwise outweigh the environmental benefits derived from their protection. In addition, the preservation of farmland in general provides the benefits of open space, protection of scenery, wildlife habitat, and in some cases, recreation opportunities and controls on urban sprawl.

(10) Advocate actions that reduce the risk of flood loss; minimize effects of floods on human safety, health, and welfare; and restore and preserve the natural and beneficial functions and values of flood plains.

(11) Advocate and assist in the reclamation of abandoned surface-mined lands and in planning for the extraction of coal and other nonrenewable resources to facilitate restoration of the land to its prior productivity as mining is completed.

(12) Advocate the protection of valuable wetlands, threatened and endangered animal and plant species and their habitats, and designated ecosystems.

(13) Advocate the conservation of natural and manmade scenic resources to insure that NRCS-assisted programs

or activities protect and enhance the visual quality of the landscape.

(14) Advocate and assist in actions to preserve and enhance the quality of the Nation's waters.

[44 FR 50579, Aug. 20, 1979, as amended at 44 FR 54981, Sept. 24, 1979]

#### § 650.4 Definition of terms.

Definitions of the following terms or phrases appear in 40 CFR part 1508, CEQ regulations. These terms are important in the understanding and implementation of this rule. These definitions are not repeated in the interest of reducing duplication:

*Categorical exclusion.* (40 CFR 1508.4)

*Cooperating agency.* (40 CFR 1508.5)

*Cumulative impact.* (40 CFR 1508.7)

*Environmental impact statement (EIS).* (40 CFR 1508.11)

*Human environment.* (40 CFR 1508.14)

*Lead agency.* (40 CFR 1508.16)

*Major Federal action.* (40 CFR 1508.18)

*Mitigation.* (40 CFR 1508.20)

*NEPA process.* (40 CFR 1508.21)

*Scope.* (40 CFR 1508.25)

*Scoping.* (40 CFR 1501.7)

*Tiering.* (40 CFR 1508.28)

(a) *Channel realignment.* Channel realignment includes the construction of a new channel or a new alignment and may include the clearing, snagging, widening, and/or deepening of the existing channel. (Channel Modification Guidelines, 43 FR 8276).

(b) *Environmental assessment (EA).* (40 CFR 1508.9)

(1) An environmental assessment is a concise public document for which a Federal agency is responsible that—

(i) Briefly provides sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.

(ii) Aids an agency's compliance with the Act when no environmental impact statement is necessary.

(iii) Facilitates preparation of an environmental impact statement when one is necessary.

(2) An environmental assessment includes brief discussions of the need for the proposal, alternatives as required by section of the environmental impacts of the proposed action and alternatives, and a list of agencies and persons consulted.

(c) *Environmental evaluation.* The environmental evaluation (EE) (formerly referred to by NRCS as an environmental assessment) is the part of planning that inventories and estimates the potential effects on the human environment of alternative solutions to resource problems. A wide range of environmental data together with social and economic information is considered in determining whether a proposed action is a major Federal action significantly affecting the human environment. The environmental evaluation for a program, regulation, or individual action is used to determine the need for an environmental assessment or an environmental impact statement. It also aids in the consideration of alternatives and in the identification of available resources.

(d) *Federally-assisted actions.* These actions are planned and carried out by individuals, groups, or local units of government largely on nonfederal land with technical and/or financial assistance provided by NRCS.

(e) *Interdisciplinary planning.* NRCS uses an interdisciplinary environmental evaluation and planning approach in which specialists and groups having different technical expertise act as a team to jointly evaluate existing and future environmental quality. The interdisciplinary group considers structure and function of natural resource systems, complexity of problems, and the economic, social, and environmental effects of alternative actions. Public participation is an essential part of effective interdisciplinary planning. Even if an NRCS employee provides direct assistance to an individual land user, the basic data used is a result of interdisciplinary development of guide and planning criteria.

(f) *Nonproject actions.* Nonproject actions consist of technical and/or financial assistance provided to an individual, group, or local unit of government by NRCS primarily through a cooperative agreement with a local conservation district, such as land treatment recommended in the Conservation Operations, Great Plains Conservation, Rural Abandoned Mine, and Rural Clean Water Programs. These actions may include consultations, advice, engineering, and other technical

assistance that land users usually cannot accomplish by themselves. Non-project technical and/or financial assistance may result in the land user installing field terraces, waterways, field leveling, onfarm drainage systems, farm ponds, pasture management, conservation tillage, critical area stabilization and other conservation practices.

(g) *Notice of intent (NOI)* (40 CFR 1508.22). A notice of intent is a brief statement inviting public reaction to the decision by the responsible Federal official to prepare an EIS for a major Federal action. The notice of intent is to be published in the FEDERAL REGISTER, circulated to interested agencies, groups, individuals, and published in one or more newspapers serving the area of the proposed action.

(h) *Project actions*. A project action is a formally planned undertaking that is carried out within a specified area by sponsors for the benefit of the general public. Project sponsors are units of government having the legal authority and resources to install, operate, and/or maintain works of improvement.

(i) *Record of Decision*. (ROD) (40 CFR 1505.2). A record of decision is a concise written rationale by the RFO regarding implementation of a proposed action requiring an environmental impact statement. This was previously defined by NRCS as a Statement of Findings (SOF).

(j) *Responsible Federal official (RFO)*. The NRCS Administrator is the responsible Federal official (RFO) for compliance with NEPA regarding proposed legislation, programs, legislative reports, regulations, and program EIS's. NRCS state conservationists (STC's) are the RFO's for compliance with the provisions of NEPA in other NRCS-assisted actions.

(k) *Significantly*. (40 CFR 1508.27) "Significantly" as used in NEPA requires considerations of both context and intensity:

(1) *Context*. This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, for a site-specific action, sig-

nificance usually depends on the effects in the locale rather than in the world as a whole. Both short- and long-term effects are relevant.

(2) *Intensity*. This refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action.

The following should be considered in evaluating intensity:

(i) Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.

(ii) The degree to which the proposed action affects public health or safety.

(iii) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

(iv) The degree to which the effects on the quality of the human environment are likely to be highly controversial.

(v) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

(vi) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.

(vii) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.

(viii) The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.

(ix) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical

under the Endangered Species Act of 1973 as amended.

(x) Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

(1) *Finding of no significant impact (FNSI)*. (40 CFR 1508.13) "Finding of No Significant Impact" means a document by a Federal agency briefly presenting the reasons why an action not otherwise excluded (§1508.4) will not have a significant effect on the human environment, and an environmental impact statement therefore will not be prepared. It shall include the environmental assessment or a summary of it and shall note any other environmental documents related to it (§1501.7(a)(5)). If the assessment is included, the finding need not repeat any of the discussion in the assessment but may incorporate it by reference.

[44 FR 50579, Aug. 29, 1979, as amended at 44 FR 54981, Sept. 24, 1979]

**§ 650.5 Environmental evaluation in planning.**

(a) *General*. Environmental evaluation (EE) integrates environmental concerns throughout the planning, installation, and operation of NRCS-assisted projects. The EE applies to all assistance provided by NRCS, but planning intensity, public involvement, and documentation of actions vary according to the scope of the action. NRCS begins consideration of environmental

concerns when information gathered during the environmental evaluation is used:

(1) To identify environmental concerns that may be affected, gather baseline data, and predict effects of alternative courses of actions;

(2) To provide data to applicants for use in establishing objectives commensurate with the scope and complexity of the proposed action;

(3) To assist in the development of alternative courses of action; (40 CFR 1502.14). In NRCS-assisted project actions, nonstructural, water conservation, and other alternatives that are in keeping with the Water Resources Council's Principles and Standards are considered, if appropriate.

(4) To perform other related investigations and analyses as needed, including economic evaluation, engineering investigations, etc.

(5) To assist in the development of detailed plans for implementation and operation and maintenance.

(b) *Procedures*. NRCS's Guide for Environmental Assessment issued in March 1977 and published in the FEDERAL REGISTER on August 8, 1977, provides guidance for conducting an environmental evaluation. (42 FR 40123-40167).

(c) *Decision points*. Figure 1 illustrates the decision points for compliance with NEPA in NRCS decision-making.

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[44 FR 50579, Aug. 29, 1979, as amended at 73 FR 35884, June 25, 2008]

**§ 650.6 Categorical exclusions.**

(a) Some NRCS programs or parts of programs do not normally create significant individual or cumulative impacts on the human environment. Therefore, an EA or EIS is not needed.

These are data gathering and interpretation programs and include:

- (1) Soil Survey—7 CFR part 611;
- (2) Snow Survey and Water Supply Forecasts—7 CFR part 612;
- (3) Plant Materials for Conservation—7 CFR part 613;



(4) Inventory and Monitoring—Catalog of Federal Domestic Assistance—10.908; and

(5) River Basin Studies under section 6 of Pub. L. 83-566 as amended—7 CFR part 621.

(b) When any new action is planned under the programs identified in paragraph (a) of this section, the EE performed by the RFO is to identify extraordinary circumstances that might lead to significant individual or cumulative impacts. Actions that have potential for significant impacts on the human environment are not categorically excluded.

(c)(1) The NRCS restoration and conservation actions and activities identified in paragraph (d) of this section are eligible for categorical exclusion and require the RFO to document a determination that a categorical exclusion applies. Agency personnel will use the EE review process detailed in §650.5 to evaluate proposed activities for extraordinary circumstances and document the determination that the categorical exclusion applies. The extraordinary circumstances address the significance criteria provided in 40 CFR 1508.27.

(2) The extraordinary circumstances identified in paragraph (c)(1) of this section include:

(i) The proposed action cannot cause significant effects on public health or safety.

(ii) The proposed action cannot significantly affect unique characteristics of the geographic area such as proximity to historic properties or cultural resources, park lands, prime farmlands, floodplains, wetlands, wild and scenic rivers, or ecologically critical areas.

(iii) The effects of the proposed action on the quality of the human environment cannot be highly controversial.

(iv) The proposed action cannot have highly uncertain effects, including potential unique or unknown risks on the human environment.

(v) The proposed action cannot include activities or conservation practices that establish a potential precedent for future actions with significant impacts.

(vi) The proposed action is known to have or reasonably cannot be expected

to have potentially significant environment impacts to the quality of the human environment either individually or cumulatively over time.

(vii) The proposed action cannot cause or promote the introduction of invasive species or have a significant adverse effect on any of the following special environmental concerns not previously identified in paragraph (c)(2)(B) of this section, such as: endangered and threatened species, environmental justice communities as defined in Executive Order 12898, wetlands, other waters of the United States, wild and scenic rivers, air quality, migratory birds, and bald and golden eagles.

(viii) The proposed action will not violate Federal or other applicable law and requirements for the protection of the environment.

(3) In the absence of any extraordinary circumstances as determined through NRCS' EE review process, the activities will be able to proceed without preparation of an EA or EIS. Where extraordinary circumstances are determined to exist, the categorical exclusion will not apply, and the appropriate documentation for compliance with NEPA will be prepared. Prior to determining that a proposed action is categorically excluded under paragraph (d) of this section, the proposed action must:

(i) Be designed to mitigate soil erosion, sedimentation, and downstream flooding;

(ii) Require disturbed areas to be vegetated with adapted species that are neither invasive nor noxious;

(iii) Be based on current Federal principals of natural stream dynamics and processes, such as those presented in the Federal Interagency Stream Corridor Restoration Working Group document, "Stream Corridor Restoration, Principles, Processes, and Practices;"

(iv) Incorporate the applicable NRCS conservation practice standards as found in the Field Office Technical Guide;

(v) Not require substantial dredging, excavation, or placement of fill; and

(vi) Not involve a significant risk of exposure to toxic or hazardous substances.

(d) The use of the following categorical exclusions for a proposed action

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does not waive NRCS compliance with any applicable legal requirement including, but not limited to, the National Historical Preservation Act or the Endangered Species Act. The following categorical exclusions are available for application to proposed actions provided the conditions described in paragraph (c) of this section are met:

(1) Planting appropriate herbaceous and woody vegetation, which does not include noxious weeds or invasive plants, on disturbed sites to restore and maintain the sites ecological functions and services;

(2) Removing dikes and associated appurtenances (such as culverts, pipes, valves, gates, and fencing) to allow waters to access floodplains to the extent that existed prior to the installation of such dikes and associated appurtenances;

(3) Plugging and filling excavated drainage ditches to allow hydrologic conditions to return to pre-drainage conditions to the extent practicable;

(4) Replacing and repairing existing culverts, grade stabilization, and water control structures and other small structures that were damaged by natural disasters where there is no new depth required and only minimal dredging, excavation, or placement of fill is required;

(5) Restoring the natural topographic features of agricultural fields that were altered by farming and ranching activities for the purpose of restoring ecological processes;

(6) Removing or relocating residential, commercial, and other public and private buildings and associated structures constructed in the 100-year floodplain or within the breach inundation area of an existing dam or other flood control structure in order to restore natural hydrologic conditions of inundation or saturation, vegetation, or reduce hazards posed to public safety;

(7) Removing storm debris and sediment following a natural disaster where there is a continuing and eminent threat to public health or safety, property, and natural and cultural resources and removal is necessary to restore lands to pre-disaster conditions to the extent practicable. Excavation will not exceed the pre-disaster condition;

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(8) Stabilizing stream banks and associated structures to reduce erosion through bioengineering techniques following a natural disaster to restore pre-disaster conditions to the extent practicable, *e.g.*, utilization of living and nonliving plant materials in combination with natural and synthetic support materials, such as rocks, riprap, geo-textiles, for slope stabilization, erosion reduction, and vegetative establishment and establishment of appropriate plant communities (bank shaping and planting, brush mattresses, log, root wad, and boulder stabilization methods);

(9) Repairing or maintenance of existing small structures or improvements (including structures and improvements utilized to restore disturbed or altered wetland, riparian, in stream, or native habitat conditions). Examples of such activities include the repair or stabilization of existing stream crossings for livestock or human passage, levees, culverts, berms, dikes, and associated appurtenances;

(10) Constructing small structures or improvements for the restoration of wetland, riparian, in stream, or native habitats. Examples of activities include installation of fences and construction of small berms, dikes, and associated water control structures;

(11) Restoring an ecosystem, fish and wildlife habitat, biotic community, or population of living resources to a determinable pre-impact condition;

(12) Repairing or maintenance of existing constructed fish passageways, such as fish ladders or spawning areas impacted by natural disasters or human alteration;

(13) Repairing, maintaining, or installing fish screens to existing structures;

(14) Repairing or maintaining principal spillways and appurtenances associated with existing serviceable dams, originally constructed to NRCS standards, in order to meet current safety standards. Work will be confined to the existing footprint of the dam, and no major change in reservoir or downstream operations will result;

(15) Repairing or improving (deepening/widening/armoring) existing auxiliary/emergency spillways associated with dams, originally constructed to

NRCS standards, in order to meet current safety standards. Work will be confined to the dam or abutment areas, and no major change in reservoir or downstream operation will result;

(16) Repairing embankment slope failures on structures, originally built to NRCS standards, where the work is confined to the embankment or abutment areas;

(17) Increasing the freeboard (which is the height from the auxiliary (emergency) spillway crest to the top of embankment) of an existing dam or dike, originally built to NRCS standards, by raising the top elevation in order to meet current safety and performance standards. The purpose of the safety standard and associated work is to ensure that during extreme rainfall events, flows are confined to the auxiliary/emergency spillway so that the existing structure is not overtopped which may result in a catastrophic failure. Elevating the top of the dam will not result in an increase to lake or stream levels. Work will be confined to the existing dam and abutment areas, and no major change in reservoir operations will result. Examples of work may include the addition of fill material such as earth or gravel or placement of parapet walls;

(18) Modifying existing residential, commercial, and other public and private buildings to prevent flood damages, such as elevating structures or sealing basements to comply with current State safety standards and Federal performance standards;

(19) Undertaking minor agricultural practices to maintain and restore ecological conditions in floodplains after a natural disaster or on lands impacted by human alteration. Examples of these practices include: mowing, haying, grazing, fencing, off-stream watering facilities, and invasive species control which are undertaken when fish and wildlife are not breeding, nesting, rearing young, or during other sensitive timeframes;

(20) Implementing soil control measures on existing agricultural lands, such as grade stabilization structures (pipe drops), sediment basins, terraces, grassed waterways, filter strips, riparian forest buffer, and critical area planting; and

(21) Implementing water conservation activities on existing agricultural lands, such as minor irrigation land leveling, irrigation water conveyance (pipelines), irrigation water control structures, and various management practices.

[44 FR 50579, Aug. 29, 1979, as amended at 74 FR 33322, July 13, 2009; 75 FR 6556, Feb. 10, 2010]

**§ 650.7 When to prepare an EIS.**

The following are categories of NRCS action used to determine whether or not an EIS is to be prepared.

(a) *An EIS is required for:*

(1) Projects that include stream channel realignment or work to modify channel capacity by deepening or widening where significant aquatic or wildlife habitat exists. The EE will determine if the channel supports significant aquatic or wildlife habitat;

(2) Projects requiring Congressional action;

(3) Broad Federal assistance programs administered by NRCS when the environmental evaluation indicates there may be significant cumulative impacts on the human environment (§650.7(e)); and

(4) Other major Federal actions that are determined after environmental evaluation to affect significantly the quality of the human environment (§650.7(b)). If it is difficult to determine whether there is a significant impact on the human environment, it may be necessary to complete the EE and prepare an EA in order to decide if an EIS is required.

(b) The RFO is to determine the need for an EIS for each action, program, or regulation. An environmental evaluation, using a systematic interdisciplinary analysis and evaluation of data and information responding to the five provisions of Section 102(2)(C) of NEPA, will assist the RFO in deciding if the action requires the preparation of an EIS. In analyzing and evaluating environmental concerns, the RFO will answer the following questions:

(1) *Environmental impact.* Will the proposed action significantly affect the quality of the human environment (40 CFR 1508.14)? For example, will it significantly alter or destroy valuable

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wetlands, important farmlands, cultural resources, or threatened and endangered species? Will it affect social values, water quality, fish and wildlife habitats, or wilderness and scenic areas?

(2) *Adverse environmental effects that cannot be avoided.* What are the important environmental amenities that would be lost if the proposed action were implemented?

(3) *Alternatives.* Are there alternatives that would achieve the planning objectives but avoid adverse environmental effects?

(4) *Short-term uses versus long-term productivity.* Will the proposed actions, in combination with other actions, sacrifice the enhancement of significant long-term productivity as a tradeoff for short-term uses?

(5) *Commitment of resources.* Will the proposed action irreversibly and irretrievably commit the use of resources such as important farmlands, wetlands, and fish and wildlife habitat?

(c) Criteria for determining the need for a program EIS:

(1) A program EIS is required if the environmental evaluation reveals that actions carried out under the program have individually insignificant but cumulatively significant environmental impacts.

(2) A project EIS, in lieu of a program EIS, is required if the environmental evaluation reveals that actions carried out under the program will have both individually and cumulatively significant environmental impacts. (7 CFR Parts 620 through 623 and 640 through 643).

(d) The RFO, through the process of tiering, is to determine if a site-specific EA or EIS is required for an individually significant action that is included in a program EIS.

### § 650.8 When to prepare an environmental assessment (EA).

An environmental assessment (EA) is to be prepared for:

(a) Land and water resource projects that are not included in § 650.7(a) (1) through (4) for which State and local units of government receive Federal technical and financial assistance from NRCS (7 CFR parts 620 through 623; and 640 through 643); and

(b) Other actions that the EE reveals may be a major Federal action significantly affecting the quality of the human environment.

(c) Criteria for determining the need for a program EA:

(1) A program EA is to be prepared when NRCS has determined, based on the environmental evaluation, that a program EIS is not required and the program and actions to implement the program are not categorically excluded; and

(2) A program EA may also be prepared to aid in NRCS decision-making and to aid in compliance with NEPA.

(d) The RFO, through the process of tiering, is to determine if a site-specific EA or EIS is required for an action that is included in a program EA or EIS.

[44 FR 50579, Aug. 29, 1979, as amended at 73 FR 35886, June 25, 2008]

### § 650.9 NEPA and interagency planning.

(a) *Lead agency.* (1) NRCS is to be the lead agency for actions under programs it administers. If the actions affect more than one State, the NRCS Administrator is to designate one NRCS state conservationist as the RFO.

(2) NRCS normally takes the role of lead agency in actions that share program responsibilities among USDA agencies if NRCS provides the majority of funds for the actions. If the lead agency role is in question, the role of NRCS and other USDA agencies is to be determined by the USDA Environmental Coordinator, Office of Environmental Quality Activities.

(3) If NRCS and Federal agencies outside USDA cannot agree on which will be the lead agency and which will be the cooperating agencies, the procedures in 40 CFR 1501.5(e) are to be followed.

(4) NRCS, as lead agency, is to coordinate the participation of all concerned agencies in developing the EIS according to the provisions of 40 CFR 1501.6(a).

(b) *Cooperating agencies.* (1) NRCS is to request, as appropriate, the assistance of cooperating agencies in preparing the environmental evaluation. This assistance will broaden the expertise in the planning and help to avoid

future conflict. NRCS is to request assistance in determining the scope of issues to be addressed and identifying the significant issues related to a proposed action from Federal agencies that have jurisdiction by law or special expertise.

(2) NRCS is to act as a cooperating agency if requested. NRCS may request to be designated as a cooperating agency if proposed actions may affect areas of NRCS expertise, such as prime farmlands, soils, erosion control, and agricultural sources of nonpoint pollution. NRCS, as a cooperating agency, is to comply with the requirements of 40 CFR 1501.6(b) to the extent possible depending on funds, personnel, and priority. If insufficient funds or other resources prevent NRCS from participating fully as a cooperating agency, NRCS is to request the lead agency to provide funds or other resources which will allow full participation.

(c) *Scoping*. See 40 CFR 1501.7 for a definition of scoping.

(1) NRCS is to use scoping to identify and categorize significant environmental issues in its environmental evaluation. Formalized scoping is used to insure that an analytical EIS can be prepared that will reduce paperwork and avoid delay. Scoping allows NRCS to obtain the assistance and consultation of affected agencies that have special expertise or legal jurisdiction in the proposed action. If early environmental evaluation identifies a need for an EIS, NRCS is to publish a notice of intent (NOI) to prepare an EIS. The NOI is to request the assistance of all interested agencies, groups, and persons in determining the scope of the evaluation of the proposed action.

(2) Normally a scoping meeting is held and Federal, State, or local agencies that have special expertise or legal jurisdiction in resource values that may be significantly affected are requested to participate. The scoping meeting will identify agencies that may become cooperating agencies.

(3) In the scoping meeting, the range of actions, alternatives, and impacts to be evaluated and included in the EIS as defined in (40 CFR 1508.25) are to be determined. Tiering (40 CFR 1508.28) may be used to define the relation of the

proposed statement to other statements.

(4) Periodic meetings of the cooperating agencies are to be held at important decisionmaking points to provide timely interagency, interdisciplinary participation.

(5) Scoping is to include the items listed in 40 CFR 1501.7(a) and may also include any of the activities in 40 CFR 1501.7(b). Appropriate, timely requests and notification are to be made to promote public participation in scoping in accordance with paragraph (d) of this section.

(6) The RFO through the scoping process will set time and page limits as prescribed in 40 CFR 1501.8. Time and page limits are established by NRCS in consultation with sponsors and others according to the projected availability of resources. The RFO is to make the applicant aware of the possible need for revising time and page limits because of changes in resources.

(d) *Public participation*—(1) *General*. Public participation activities begin early in the EE and are to be appropriate to the proposed action. For example, extensive public participation activities are required in the implementation of new programs and project actions, but limited public participation is appropriate for nonproject technical and financial assistance programs on nonfederal land.

(2) *Early public involvement*. The public is to be invited and encouraged to participate in the early stages of planning, including the consideration of the potential effects of NRCS-assisted actions on significant environmental resources such as wetlands, flood plains, cultural values, endangered species, important farmland.

(3) *Project activities*. The following are general considerations for providing opportunities for public participation:

(i) *Identification of interested public*. The interested public consisting of but not limited to individuals, groups, organizations, and government agencies are to be identified, sought out, and encouraged to participate in and contribute to interdisciplinary planning and environmental evaluation.

(ii) *Public notices*. (40 CFR 1506.6) If the effects of an action are primarily of local concern, notice of each public

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meeting or hearing should be: Submitted to State and areawide clearing-houses pursuant to OMB Circular A-95 (revised); submitted to Indian tribes if they are interested; published in local newspapers; distributed through other local media; provided to potentially interested community organizations including small business associations; published in newsletters that may be expected to reach potentially interested persons; mailed directly to owners and occupants of nearby or affected property; and posted onsite and offsite in the area where the action is to be located.

(iii) *State statutes.* If official action by the local units of government cooperating in the proposal is governed by State statute, the public notice and mailing requirement of the statute is to be followed. If the effects of an action are of national concern, notice is to be published in the FEDERAL REGISTER and mailed to national organizations reasonably expected to be interested.

(iv) *Public meetings.* The RFO, after consultation with the sponsors, is to determine when public meetings or hearings are to be held. Public meetings may be in the form of a workshop, tour, open house, etc. Public involvement will include early discussion of flood-plain management and protection of wetlands, where appropriate. Environmental information is to be presented and discussed along with other appropriate information. To the extent practical, pertinent information should be made available before the meetings.

(v) *Documentation.* The RFO is to maintain a reviewable record of public participation in the environmental evaluation process.

(4) *Nonproject activities.* Public participation in the planning and application of conservation practices with individual land users is accomplished primarily through conservation districts. These districts are governed by boards of supervisors directors, commissioners, etc., who are elected and/or appointed to insure that soil, water, related resources, and environmental qualities in the district are maintained and improved. The public is to be encouraged to participate in the development of long-range district programs

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and district annual plans. The district keeps the public informed through public meetings, district newsletters, news stories, radio and television programs, and annual reports.

### § 650.10 Adoption of an EIS prepared by a cooperating agency.

(a) If NRCS adopts an EIS prepared by another Federal or State agency, the RFO is to review the document to insure that it meets the requirements of the CEQ regulations and NRCS-NEPA procedures.

(b) If the actions included in the EIS are substantially the same as those proposed by NRCS, the RFO is to recirculate the EIS as "final." The final EIS is to include an appropriate explanation of the action. If these actions are not substantially the same, the EIS is to be supplemented and recirculated as a draft EIS. The RFO is to inform the preparing agency of the proposed action.

(c) If the adopted EIS is not final, if it is the subject of a referral under 40 CFR part 1504, or if the statement's adequacy is in litigation, the RFO is to include an appropriate explanation in the EIS.

(d) The RFO is to take appropriate action to inform the public and appropriate agencies of the proposed action.

### § 650.11 Environmental documents.

(a) NRCS is to use the following documents in compliance with NEPA (see § 650.4):

- (1) Environmental assessments (EA)
- (2) Environmental impact statements (EIS)
- (3) Notice of intent (NOI)
- (4) Finding of no significant impact (FNSI)
- (5) Record of decision (ROD)

(b) The format and content of each document is to be appropriate to the action being considered and consistent with the CEQ regulations.

(1) To reduce duplication, NRCS may combine environmental documents with other planning documents of the same proposal, as appropriate. For example, NRCS, in consultation with CEQ and the office of the Secretary of Agriculture, has determined that each EIS is to satisfy the requirements for a regulatory impact analysis as required

by Executive Order 12044. This may necessitate modifying the recommended CEQ format. If documents are combined, the RFO is to include the information and sections required by the CEQ regulations (40 CFR 1502.10). The environmental impact statement should indicate those considerations, including factors not related to environmental quality, that are likely to be relevant to a decision.

(2) The RFO is to establish the format and content of each document giving full consideration to the guidance and requirements of the CEQ regulations. The NRCS technical service center director is to provide guidance and concurrence on the format and content if the NRCS state conservationist is the RFO. The results of scoping are to determine the content of the EA or the EIS and the amount of detail needed to analyze the impacts.

(3) In addition to the minimum requirements of the CEQ regulations (40 CFR 1502.10), environmental assessments and environmental impact statements are to include—

(i) A brief description of public participation activities of agencies, groups, and individuals during the environmental evaluation;

(ii) A description of the hazard potential of each alternative, including an explanation of the rationale for dam classification and the risk of dam failure from overtopping for other causes;

(iii) Information identifying any approved regional plans for water resource management in the study area (40 CFR 1506.2(d)) and a statement on whether the proposed project is consistent with such plans;

(iv) All Federal permits, licenses, and other entitlements that must be obtained (40 CFR 1502.25(b)); and

(v) A brief description of major environmental problems, conflicts, and disagreements among groups and agencies and how they were resolved. Unresolved conflicts and the NRCS's proposal for resolving the disagreements before the project is implemented are to be summarized.

(4) *Letters of comment and responses.* (40 CFR 1503.4, 1502.9(b)) Letters of comment that were received and the responses to these comments are to be appended to the final EIS. Opposing views

and other substantive comments that were not adequately discussed in the draft EIS are to be incorporated in the final EIS.

(5) *Appendix.* The RFO may use an appendix to an EA or EIS. If an appendix is too voluminous to be circulated with the EIS, the RFO is to make it available on request. If an appendix is included it is to—

(i) Meet the requirements of 40 CFR 1502.18;

(ii) Identify any methodologies used (40 CFR 1502.24) and make explicit reference to other sources relied on for conclusions; and

(iii) Briefly describe the relationship between the benefit-cost analysis and any analyses of unquantified environmental impacts, values, and amenities. “For purposes of complying with the Act, *the weighing of the merits or drawbacks of the various alternatives need not be displayed* in a monetary cost benefit and should not be when these are important qualitative considerations.” (40 CFR 1502.23).

#### § 650.12 NRCS decisionmaking.

(a) *General.* The purpose of these procedures is to insure that environmental information is provided to decision makers in a timely manner. The NEPA process is a part of NRCS decisionmaking. The RFO is to insure that the policies and purposes of NEPA and CEQ regulations are complied with in NRCS decisionmaking by:

(1) Including in all decision documents and supporting environmental documents a discussion of all alternatives considered in the decision. Alternatives to be considered in reaching a decision will be available to the public.

(2) Submitting relevant environmental documents, comments, and responses with other decision documents through the review process.

(3) Including in the record of formal rulemaking or adjudicatory proceedings relevant environmental documents, comments and responses.

(4) Providing for pre- and post-project monitoring (40 CFR 1505.2(c), 1505.3) and evaluation in representative projects to insure that planning and evaluation procedures are performed according to sound criteria.

(b) *Decision points in NRCS-assisted projects.* NRCS administers programs that may have a significant effect on the human environment. Program procedures incorporate provisions for compliance with NEPA and for providing environmental information to the public, other agencies, and decision makers in a timely manner. NRCS provides technical and financial assistance for projects under the Watershed Protection and Flood Prevention and the Resource Conservation and Development (RC&D) programs. These usually require the preparation of project EA's or EIS's. The major decisionmaking points and their relation to NEPA compliance are as follows:

(1) For Watershed Protection and Flood Prevention projects:

(i) Application for assistance by the sponsoring local organization (SLO).

(ii) A preauthorization report identifying goals, alternatives, and effects of alternatives (including environmental impacts) prepared by the RFO and submitted to the applicant for decision. It is circulated to local, State, and Federal agencies and public comment is solicited. A decision is made to stop planning assistance or to develop a watershed plan.

(iii) Granting of planning authorization by the Administrator. The RFO must provide an evaluation of the potential environmental impacts to obtain the authorization.

(iv) A watershed agreement between the SLO and NRCS. The agreement is based on a completed watershed plan and associated environmental documents, which have been adequately reviewed within NRCS.

(v) A project agreement between the SLO and the RFO executed after the NEPA process is complete and the watershed plan has been approved and final plans and specifications have been developed.

(2) For RC&D measure plans:

(i) A request for assistance (measure proposal) is reviewed by the RC&D council to insure that the proposal is in accordance with the RC&D area plan. The proposal is then referred to NRCS.

(ii) A preliminary report is prepared by the RFO to identify goals, alternatives, and effects (including environ-

mental impacts). The report is submitted to the sponsor for review. The sponsor may then apply to NRCS for planning assistance for measures considered in the preliminary report.

(iii) An authorization for planning assistance is granted by the RFO.

(iv) The RC&D measure plan is signed by the applicant and the RFO after the preparation and review of the measure plan and environmental documents.

(v) A project agreement is signed between the applicant and the RFO after the NEPA process is complete, and the measure plan has been approved, and final plans and specifications have been prepared.

(c) *Environmental Impact Statement (EIS) and Record of decision.* The RFO is to prepare a concise record of decision (ROD) for actions requiring an EIS. The record of decision is to be prepared and signed by the RFO following the 30-day administrative action period initiated by the EPA's publication of the notice of availability of the final EIS in the FEDERAL REGISTER. It is to serve as the public record of decision as described in 40 CFR 1505.2 of the CEQ regulations. The ROD is to be distributed to all who provided substantive comments on the draft EIS and all others who request it. A notice of availability of the ROD will be published in the FEDERAL REGISTER and local newspaper(s) serving the project area. The RFO may choose to publish the entire ROD.

(d) *Environmental Assessments and Finding of No Significant Impact (FNSI)—(1) EA's.* If the EA indicates that the proposed action is not a major Federal action significantly affecting the quality of the human environment, the RFO is to prepare a finding of no significant impact (FNSI).

(2) *Availability of the FNSI (40 CFR 1501.4(e)(2)).* In accordance with CEQ regulations at 40 CFR 1501.4(e)(2), NRCS shall make the EA/FNSI available for public review for thirty days in the following instances: The proposed action is, or closely similar to, one which normally requires the preparation of an EIS as defined by NRCS NEPA implementing regulations at § 650.7, or the nature of the action is one without precedent. When availability for public review for thirty days



is not required, NRCS will involve the public in the preparation of the EA/FONSI and make the EA/FONSI available for public review in accordance with CEQ regulations at 40 CFR 1501.4(b) and 1506.6.

(e) *Changes in actions.* When it appears that a project or other action needs to be changed, the RFO will perform an environmental evaluation of the authorized action to determine whether a supplemental NEPA analysis is necessary before making a change.

[44 FR 50579, Aug. 29, 1979, as amended at 73 FR 35886, June 25, 2008]

#### § 650.13 Review and comment.

In addition to the requirements of 40 CFR 1503, 1506.10 and 1506.11, NRCS will take the following steps in distributing EIS's for review and comment:

(a) *Draft EIS's.* Five copies of the draft EIS are to be filed by the RFO with the Office of Environmental Review, A-104, Environmental Protection Agency (EPA), Washington, D.C. At the same time, the RFO is to send copies of the draft EIS to the following:

(1) *Other Federal agencies.* The regional office of EPA and other agencies that have jurisdiction by law or special expertise with respect to any environmental effect, other Federal agencies (including appropriate field and regional offices), and affected Indian tribes.

(2) *State and local agencies.* OMB Circular No. A-95 (Revised), through its system of State and areawide clearinghouses, provides a means for obtaining the views of State and local environmental agencies that can assist in the preparation and review of EIS's

(3) *Organizations, groups, and individuals.* A copy of the draft EIS is to be sent to the appropriate official of each organization or group and each individual of the interested public (§650.9(d)(3)(i)) and to others as requested. A charge may be made for multiple copy requests.

(b) *Time period for comment.* The time period for review ends 45 days after the date EPA publishes the notice of public availability of the draft in the FEDERAL REGISTER. A 15-day-extension of time for review and comment is to be considered by the RFO when such requests are submitted in writing. If nei-

ther comments nor a request for an extension is received at the end of the 45-day period, it is to be presumed that the agency or party from whom comments were requested has no comments to make.

(c) *News releases.* In addition to the notice of availability published in the FEDERAL REGISTER by EPA, the RFO is to announce the availability of the draft EIS in one or more newspapers serving the area.

(d) *Revising a draft EIS.* If significant changes in the proposed action are made as a result of comments on the draft EIS, a revised draft EIS may be necessary. The revised draft EIS is to be recirculated for comment in the same manner as a draft EIS.

(e) *Final EIS's.* After the review period for the draft EIS, the RFO is to prepare a final EIS, making adjustments where necessary by taking into consideration and responding to significant comments and opposing viewpoints received on the draft EIS. The following steps are to be taken in filing and distributing the final EIS:

(1) Letters of comment are to be appended to the final EIS. If numerous repetitive responses are received, summaries of the repetitive comments and a list of the groups or individuals who commented may be appended in lieu of the actual letter.

(2) The RFO is to send five copies of the final EIS to EPA's Office of Environmental Review, and a copy of the final EIS to each State and Federal agency, organization, group, and individual who commented on the draft EIS. Single copy requests for copies of the final EIS will be provided without charge. A charge may be made for multiple copy requests.

(3) During the 30-day administrative action period noted in §650.12(c), NRCS will make its final EIS available to the public (40 CFR 1506.10).

(f) *Supplements to EIS's.* (1) If NRCS determines that it is necessary to clarify or amplify a point of concern raised after the final EIS is filed, appropriate clarification or amplification is to be sent to EPA with information copies furnished to those who received copies of the final EIS. The waiting periods do not apply.

(2) If the RFO determines that the final EIS or supplement to the original EIS previously filed becomes inadequate because of a major change in the plan for the proposed action that significantly affects the quality of the human environment, a new EIS is to be prepared, filed, and distributed as described in this section.

### Subpart B—Related Environmental Concerns

AUTHORITY: Pub. L. 86-523, 74 Stat. 220 as amended, Pub. L. 93-291, 88 Stat. 174 (16 U.S.C. 469); Pub. L. 89-665, 80 Stat. 915 (16 U.S.C. 470); Pub. L. 93-205, 87 Stat. 884 (16 U.S.C. 1531 *et seq.*); Secretary of Agriculture Memorandum 1695, May 28, 1970; 42 U.S.C. 4332(2)(C); E.O. 11514, 16 U.S.C. 1001-1008; 7 U.S.C. 1010-1011; 16 U.S.C. 590 a-f, q; 7 CFR 2.62.

SOURCE: 39 FR 43993, Dec. 20, 1974, unless otherwise noted.

#### § 650.20 Reviewing and commenting on EIS's prepared by other agencies.

(a) *NRCS employees assigned to review and comment on EIS's prepared by other agencies* are to be familiar with NRCS policies and guidelines contained in this part, and NEPA.

(b) *EIS's received for review by NRCS for which NRCS has expertise or interest* shall be responded to promptly. Comments are to be objective with the intent to offer suggestions to help minimize adverse impacts of the proposed action to ensure the health and welfare of the agricultural community. Comments are to be based on knowledge readily available. Field office technical guides, soil surveys, field investigation reports, and other resource data and reference materials developed by NRCS and other agencies should be used and cited. It is not intended that special surveys or investigations be conducted to acquire additional information for use in preparing comments.

(c) *The NRCS reviewer should consider the following kinds of concerns—(1) The suitability or limitations of the soils for the proposed action.* Would an alternative route, location, or layout minimize land use problems and adverse environmental impacts?

(2) *Provisions for control of erosion and management of water during construction.* Are there resources downstream that would be affected by sediment from the construction area, and does the statement provide for adequate control measures? Will lack of erosion control cause air pollution? Is the stockpiling of topsoil for future use considered in the EIS?

(3) *Provisions for soil and water conservation management measures on project lands, rights-of-way, access roads, and borrow areas.* Does the statement indicate that enduring soil and water practices are to be installed and maintained?

(4) *The effect of water discharges from project lands or rights-of-way onto other properties.* Will discharges cause erosion or flooding on other lands? Will discharges affect water quality?

(5) *The effects of disruption of the natural drainage patterns and severance of private land units.* Does the statement indicate that natural drainage patterns will be maintained? Will bridges, culverts, and other water control structures be located to ensure that adjacent lands are not flooded or otherwise restricted in use? Does the EIS describe the effects of severance on private land ownerships?

(6) *The impact on existing soil and water conservation management systems.* To what extent will conservation systems be altered, severed, or suffer blocked outlets? Will land use or cover be affected?

(7) *Impacts on prime and unique farmland.* Would an alternative location or route require less prime farmland? Does the EIS consider secondary effects on prime farmland? What benefits are foregone if prime farmland is taken?

(8) *Impacts on ecosystems.* Does the EIS describe impacts on major plant communities, and terrestrial and aquatic ecosystems?

(9) *Impacts on NRCS-assisted projects.* Does the statement reflect the effect of the proposed action on present or planned NRCS assisted projects?

(d) *EIS's referred to NRCS for departmental comments.* EIS's referred by the USDA Coordinator for Environmental Quality Activities to the NRCS national office may designate NRCS as

the lead agency for preparing comments for USDA. In this case, the NRCS national office determines whether inputs from STC's and other USDA agencies are needed. If so, STC's and other USDA agencies are requested to forward comments to the Environmental Services Division for use in preparing the USDA response.

(e) *EIS's referred to NRCS for agency comments.* EIS's received by the NRCS national office are screened by the Director, Environmental Services Division to determine which office within NRCS will prepare comments. If the proposed action is within one State, the draft EIS will be forwarded to the appropriate STC and he will reply directly to the agency requesting the comments. If the proposed action involves more than one State, one STC will be designated to forward NRCS comments directly to the agency requesting the comments. In some cases, the action may be national or regional in scope, and require inputs from several offices within NRCS. In this instance, comments will be assembled in the Environmental Services Division for preparation of a response to the agency requesting comments. A copy of each response prepared by a STC should be sent to the Director, Environmental Services Division.

(f) *EIS's sent to NRCS offices other than the national office.* If a STC receives an EIS from another agency, he is to respond to the initiating agency. A copy of his comments should be sent to the Director, Environmental Services Division.

(1) *EIS's addressed to NRCS area or field offices.* If an EIS is received by a field or area office of NRCS, the STC will coordinate the response.

(2) *EIS's submitted to conservation districts.* NRCS may furnish needed soil, water, and related resource information to the district for their use in preparing comments.

(g) *Distribution of NRCS comments on other agencies' draft EIS's.* Five copies of review comments made by NRCS on draft EIS's prepared by other Federal agencies are to be sent to CEQ.

(h) *Third party requests for a copy of NRCS comments on another agency's EIS* will be filled after NRCS has forwarded

copies of its letter of comments to CEQ.

[42 FR 40118, Aug. 8, 1977]

**§ 650.21 Working relations with the U.S. Environmental Protection Agency (EPA) and related State environmental agencies.**

(a) *Background.* The authorities and missions of NRCS, EPA, and state environmental agencies make it imperative that an effective cooperative and coordinative working relationship be developed and maintained in areas of mutual concern. These common areas include air quality, water quality, pesticides, waste recycling and disposal, environmental considerations in land use, Environmental Impact Statements (EIS's) and environmental considerations in the conservation and development of natural resources.

(b) *Policy.* NRCS will work closely with EPA in accordance with the provisions of the EPA-USDA Memorandum of Understanding July 31, 1974, at all administrative levels and with related state agencies to meet statutory requirements and to achieve harmonious implementation of all actions of mutual concern directed to improving or maintaining the quality of the environment.

(c) *Responsibility*—(1) *NRCS national office.* The Deputy Administrator for Field Services is responsible for overall coordination with EPA at the national office level. The Deputy Administrator for Water Resources is responsible for contacts with EPA in relation to activities of the Water Resources Council on water and related land resource planning and for coordinating work with EPA on EIS development.

(2) *Technical service center.* The TSC director is responsible for contacts and coordination with EPA regional offices within the group of states served by the TSC.

(3) *NRCS state office.* The state conservationist is responsible for contacts and coordination with regional representatives of EPA and state environmental agencies in matters of mutual concern within his state.

(d) *Coordination and implementation.* (1) The NRCS national office will:

(i) Within the framework of USDA agreements and guidelines, develop

agreements for undertaking specific activities or projects of national significance and mutual advantage.

(ii) Assist EPA as requested in developing EPA policy, guidelines, and standards.

(iii) Consider EPA needs in soil survey and land, inventory, and monitoring activities.

(iv) Maintain needed liaison and develop mutual guidelines with EPA on water resources work and in coordinating EIS's.

(v) Advise EPA regarding soils, plant materials, and soil and water conservation techniques.

(vi) Establish procedures for periodic review of NRCS national standards for treatment systems and practices for agricultural pollution abatement, including wind and water erosion and sediment control, transport of pesticides, organic matter and fertilizers, and burning of residues or clearing debris.

(2) The TSC director will:

(i) Within the framework of NRCS memorandums and guidelines coordinate with the EPA regional administrator(s) the development of needed agreements for undertaking specific activities or projects of multistate significance and mutual advantage.

(3) The state conservationist will:

(i) Obtain early input of EPA and interested state and local environmental agencies in the planning process for projects or measures within the state impacting on the environment.

(ii) Coordinate preparations of NRCS practice standards and procedures for agricultural pollution abatement within the state with EPA and related state agencies.

(iii) Encourage the development of a coordinated review and approval process within the state with EPA and appropriate state and local agencies including conservation districts for actions of mutual concern.

(iv) Attempt to resolve all EPA areas of concern on NRCS assisted project-type actions within the state before a final EIS is prepared.

**§ 650.22 Rare, threatened, and endangered species of plants and animals.**

(a) *Background.* (1) A variety of plant and animal species of the United States

are so reduced in numbers that they are threatened with extinction. The disappearance of any of these would be a biological, cultural, and in some instances an economic loss. Their existence contributes to scientific knowledge and understanding, and their presence adds interest and variety to life.

(2) The principal hazard to threatened and endangered species is the destruction or deterioration of their habitats by human activities such as industrialization, urbanization, agriculture, lumbering, recreation, and transportation. These activities of man will continue but the necessity of recognizing their adverse impacts and selecting alternatives that minimize or eliminate such impacts on threatened and endangered species is imperative.

(3) The Endangered Species Act of 1973 (Pub. L. 93-205, 87 Stat. 884 (16 U.S.C. 1531 *et seq.*)) provides a means whereby the ecosystems upon which endangered and threatened species depend may be maintained and a program for the conservation of such species. The Act also provides that, in addition to the Department of the Interior, "All other federal departments and agencies shall, in consultation with and with the assistance of the Secretary (of Interior), utilize their authorities for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act and by taking such action necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of such endangered species and threatened species or result in the destruction or modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected states, to be critical." The Act also:

(i) Defines endangered species as any species in danger of extinction throughout all or a significant portion of its range and threatened species as any species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act uses the category "threatened." The term "rare" is not used.

(ii) Further defines species as including any subspecies of fish or wildlife or plants and any other group of fish and

wildlife of the same species or smaller taxa in common spatial arrangements that interbreed when mature.

(iii) Provides for the Secretary of the Interior to enter into cooperative agreements with states for the purpose of implementing state programs for the conservation of endangered and threatened fish and wildlife. This assistance may include financial grants.

(iv) Provides national lists of endangered and threatened animal and plant species to be maintained by the Secretary of the Interior and published in the FEDERAL REGISTER. When resident fish and wildlife are added to the list, the affected states are to be consulted by the Secretary. The Secretary of the Smithsonian Institution is preparing a list of endangered or threatened plant species.

(b) *Policy.* The Act gives NRCS additional direction for participation in the conservation and protection of endangered and threatened species. As the principal federal agency concerned with land use planning of privately owned rural land and with professional conservation employees headquartered in almost every county, NRCS is uniquely capable of playing a vital role. Additional training will be provided as needed to meet NRCS responsibilities. NRCS will assist in the conservation of threatened and endangered species and consistent with legal requirements avoid or prevent activities detrimental to such species. NRCS concern for these species will not be limited to those listed by the Secretary of the Interior and published in the FEDERAL REGISTER, but will include species designated by state agencies as rare, threatened, endangered, etc.

(c) *Responsibility*—(1) *NRCS national office.* The Administrator will arrange for consultation and coordination of NRCS national office activities with the U.S. Fish and Wildlife Service, other federal agencies, and national organizations.

(2) *Technical service center.* The TSC director will, within the group of states served by the TSC arrange for consultation and coordination with regional representatives of the U.S. Fish and Wildlife Service, other Federal agencies, and national and regional organizations.

(3) *NRCS state office.* The state conservationist will arrange for consultation and coordination with the state fish and game or conservation agency, other state agencies, state organizations and foundations, conservation districts, and state representatives of federal agencies and national organizations.

(d) *Coordination and implementation.*  
(1) The NRCS national office will:

(i) Within the framework of national legislation, USDA agreements, and NRCS objectives, develop NRCS policies and directives for guiding agency efforts that will protect threatened and endangered species and for avoiding actions that jeopardize the continued existence of such species and their critical habitats.

(ii) Maintain needed liaison and develop mutual understanding with the U.S. Fish and Wildlife Service and other concerned federal agencies.

(iii) Establish procedures for periodic review of NRCS participation in the national effort to conserve these species.

(2) The TSC director will: (i) Within the framework of NRCS policies and guidelines, arrange for needed liaison and understanding with regional counterparts of other federal agencies within the group of states served by the TSC and keep state conservationists informed of developments within such states.

(ii) Provide guidance and assistance to state conservationists in carrying out NRCS policies and guidelines.

(3) The state conservationist will develop procedures to establish working relationships with other concerned federal agencies, state fish and wildlife or conservation agencies, conservation districts, concerned scientists in state university systems and natural history museums, and other informed persons and organizations to offer assistance in:

(i) Preparing or maintaining lists of the state's threatened and endangered species.

(ii) Determining the geographic occurrence of endangered and threatened species, the nature of their habitat, and that portion of the habitat that is critical to the survival, maintenance, or increase of these species.

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(iii) Discussing the kinds of measures important to preserve their habitat.

(iv) A monitoring program that would obtain advanced warning of actions or conditions that could further endanger these species, thereby enabling NRCS and others to take appropriate protective action.

(v) Assisting recovery teams, as appropriate, in preparing species recovery plans of those endangered and threatened species included in Federal lists.

(4) The state conservationist will also:

(i) Keep NRCS area and field offices informed of species listed as being threatened or endangered, geographic area in which they are found, and information such as their numbers, preferred habitat, and critical factors.

(ii) Review the status of threatened and endangered species each December and send a report of the review to the Administrator.

(5) NRCS district conservationists within the geographic range of threatened and endangered species will examine conservation district programs and NRCS operations to evaluate their effects on these species, and recommend to district officials and the state conservationist any action needed for their protection.

(6) NRCS field employees within the geographic range of threatened and endangered species will be continually alert to conditions, actions, or trends that may adversely affect the welfare of these species and report adverse situations to the state conservationist.

### § 650.23 Natural areas.

(a) *Background.* (1) Natural areas are defined as land or water units where natural conditions are maintained insofar as possible. Natural conditions usually result from allowing ordinary physical and biological processes to operate with a minimum of human intervention. Manipulations may be required on natural areas to maintain or restore features that the areas were established to protect.

(2) Natural areas may be designated areas of Federal, non-Federal government, or privately controlled land. Designation may be formal as provided for under federal regulations for areas

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of federal land to be administered as natural areas or by foundations or conservation organizations specifically created to acquire and maintain natural areas. Designation may be informal in the case of private landowners who designate a specific area as a natural area and manage it accordingly. Several professional societies concerned with renewable natural resources encourage establishment of natural areas withdrawn from economic uses and recognition of natural areas maintained and managed in economic enterprises.

(3) Natural areas are established and maintained for a variety of purposes including:

(i) *Furthering science and education.* Natural areas provide sites for research and outdoor classrooms for study of plant and animal communities in environments with particular ecological conditions.

(ii) *Monitoring the surrounding environment.* Natural areas serve as gauges against which to evaluate changes in land use, vegetation, animal life, air quality, or other environmental values.

(iii) *Providing recreation attractions.* Natural areas are valued by many people for their scenic, wild, and undisturbed character but must be protected, as needed, to prevent disturbance or alteration of the resources.

(iv) *Preserving unique values.* Natural areas may be established to protect scenic, biologic, geologic, or paleontologic features.

(v) *Serving as a genetic base for native plants and animals.* Natural areas may be established to preserve examples of land and water ecosystems with their full range of genetic diversity of native plants and animals including threatened and endangered species.

(b) *Policy.* NRCS will recognize natural areas, if so dedicated, as a land use, and will support the designation of appropriate natural areas.

(c) *Responsibility*—(1) *NRCS national office.* The Administrator will designate a member of the national office staff to act as NRCS representative on the Federal Committee for Ecological Preserves and to provide appropriate liaison with other federal agencies and non-Federal groups concerned with natural areas.

(2) *Technical service center.* The TSC director will designate a TSC plant sciences discipline leader to provide leadership, appropriate liaison, and assistance on natural areas to NRCS state offices.

(3) *NRCS state office.* The state conservationist will designate an appropriate NRCS representative to work with other agencies and groups, and will coordinate assistance on natural areas needed by area and field offices.

(d) *Coordination and implementation.* (1) NRCS technical assistance will be furnished to representatives of administering agencies, foundations, groups, and individuals when requested through conservation districts. Conservation district officers will be encouraged to recognize appropriate natural areas concepts and programs and to participate in them.

(2) NRCS employees will report to state conservationists abuses and potential or actual damages to natural areas that may be found in the course of ordinary business.

(3) NRCS will cooperate with professional societies, groups, and individuals in locating areas suitable for and needed as natural areas.

(4) NRCS employees providing technical assistance to land users must inform them about the impact their decisions may have on adjacent or nearby natural areas. Land users will be encouraged to consult with concerned agencies, societies, and individuals to arrive at mutually satisfactory land use and treatment.

(5) Recommended classification systems for characterizing areas designated as ecological preserves or as natural areas are contained in the following publications:

Soil Taxonomy, a Basic System of Soil Classification for Making and Interpreting Soil Surveys, USDA-NRCS Agricultural Handbook 436.

Forest Cover Types of North America Exclusive of Mexico, Report of the Committee on Forest Cover Types, Society of American Foresters, 1964.

Potential Natural Vegetation of Conterminous United States. A. W. Kuchler, American Geographical Society Special Publication 36, 1964.

Wetlands classification described by the U.S. Fish and Wildlife Service in its Circular 39.

NRCS will, to the extent feasible, use these classification systems when providing technical assistance on public and private natural areas and ecological preserves.

(6) The NRCS published National List of Scientific Plant Names will be used when scientific names or name symbols are needed for automatic data processing.

**§ 650.24 Scenic beauty (visual resource).**

(a) *Background.* Contributions to scenic beauty are a normal product of NRCS work. Strip-cropping, field borders, field windbreaks, and ponds are examples. Emphasis is given to those soil and water conservation measures that contribute to a productive and efficient agriculture and increase the attractiveness of rural America and are in line with goals and objectives of conservation districts. This is best accomplished by considering the landscape visual resource when providing planning assistance to individual landowners, groups, units of government, and watershed and resource conservation development project sponsors. NRCS responsibilities in recreation also offer opportunities to develop the scenic beauty of the rural landscape. Department of Agriculture Secretary's Memorandum 1695, May 28, 1970, "Protecting and Improving The Quality of the Environment," includes scenic beauty as an objective of the Department's programs.

(b) *Policy.* NRCS will: (1) Provide technical assistance with full consideration of alternative management and development systems that preserve scenic beauty or improve the visual resource; (2) emphasize the application of conservation practices having scenic beauty or visual resource values particularly in waste management systems; field borders, field windbreaks, wetland management, access roads, critical area treatment; design and management of ponds, stream margins, odd areas, and farmsteads; siting or positioning of structures and buildings to be in harmony with the landscape while reducing the potential for erosion; using native and other adaptable plants for conservation which enhance scenic beauty and create variety while

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linking beauty with utility; (3) promote personal pride in landowners in the installation, maintenance, and appearance of conservation practices and their properties; (4) select suitable areas for waste products and use of screens to hide “eyesore” areas, and (5) encourage conservation districts to include practices which promote scenic beauty in their annual and long-range programs.

(c) *Responsibility.* The Natural Resources Conservation Service will provide technical assistance through conservation districts to landowners, operators, communities, and state and local governments in developing programs relating to scenic beauty.

(1) *NRCS national office.* The Administrator will:

(i) Assign appropriate NRCS national office leadership to insure that enhancement of scenic beauty is included in national information, policy, guidelines, standards, guides to specifications for conservation practices without impairing basic soil and water conservation functions.

(ii) Emphasize in plant material center management and in plant materials functions that locating and evaluating plants for forage, erosion control, and recreation or wildlife uses be carried out with full attention to visual resource value.

(2) *NRCS state office.* The state conservationist will:

(i) Assign appropriate staff member(s) to provide leadership in carrying out scenic beauty policy and procedure within the state.

(ii) Develop and keep current a landscape management plan to improve and maintain the appearance of all real properties under NRCS control, and provide appropriate assistance to owners and managers of properties leased or rented by NRCS.

(iii) Give emphasis to preserving scenic beauty and contributing to the visual resource in the NRCS information program whenever opportunities exist.

(d) *Coordination and implementation.*

(1) The governing body of each conservation district will be encouraged to revise or update its district program to appropriately provide for beautification of the countryside through ap-

plicable land use changes and effective soil and water conservation treatment.

(2) In providing assistance to watershed and resource conservation and development project sponsors and other resource planning groups for soil, water, and related resources, emphasis will be given to measures that preserve natural beauty or contribute to the quality of the visual resource.

(3) Local organizations and groups interested in scenic beauty will be contacted and consulted for cooperation in and coordination with NRCS and conservation district efforts.

### § 650.25 Flood-plain management.

Through proper planning, flood plains can be managed to reduce the threat to human life, health, and property in ways that are environmentally sensitive. Most flood plains are valuable for maintaining agricultural and forest products for food and fiber, fish and wildlife habitat, temporary flood-water storage, park and recreation areas, and for maintaining and improving environmental values. NRCS technical and financial assistance is provided to land users primarily on non-Federal land through local conservation districts and other State and local agencies. Through its programs, NRCS encourages sound flood-plain management decisions by land users.

(a) *Policy*—(1) *General.* NRCS provides leadership and takes action, where practicable, to conserve, preserve, and restore existing natural and beneficial values in base (100-year) flood plains as part of technical and financial assistance in the programs it administers. In addition, 500-year flood plains are taken into account where there are “critical actions” such as schools, hospitals, nursing homes, utilities, and facilities producing or storing volatile, toxic, or water-reactive materials.

(2) *Technical assistance.* NRCS provides leadership, through consultation and advice to conservation districts and land users, in the wise use, conservation, and preservation of all land, including flood plains. Handbooks, manuals, and internal memoranda set forth specific planning criteria for addressing flood-plain management in NRCS-assisted programs. The general procedures and guidelines in this part



comply with Executive Order (E.O.) 11988, Floodplain Management, dated May 24, 1977, and are consistent with the Water Resources Council's Unified National Program for Floodplain Management.

(3) *Compatible land uses.* The NRCS Administrator has determined that providing technical and financial assistance for the following land uses is compatible with E.O. 11988:

(i) Agricultural flood plains that have been used for producing food, feed, forage, fiber, or oilseed for at least 3 of the 5 years before the request for assistance; and

(ii) Agricultural production in accordance with official State or designated area water-quality plans.

(4) *Nonproject technical and financial assistance programs.* The NRCS Administrator has determined that NRCS may not provide technical and financial assistance to land users if the results of such assisted actions are likely to have significant adverse effects on existing natural and beneficial values in the base flood plain and if NRCS determines that there are practicable alternatives outside the base flood plain. NRCS will make a case-by-case decision on whether to limit assistance whenever a land user proposes converting existing agricultural land to a significantly more intensive agricultural use that could have significant adverse effects on the natural and beneficial values or increase flood risk in the base flood plain. NRCS will carefully evaluate the potential extent of the adverse effects and any increased flood risk.

(5) *Project technical and financial assistance programs.* In planning and installing land and water resource conservation projects, NRCS will avoid to the extent possible the long and short-term adverse effects of the occupancy and modification of base flood plains. In addition, NRCS also will avoid direct or indirect support of development in the base flood plain wherever there is a practicable alternative. As such, the environmental evaluation required for each project action (§ 650.5 of this part) will include alternatives to avoid adverse effects and incompatible development in base flood plains. Public participation in planning is described

in § 650.6 of this part and will comply with section 2(a)(4) of E.O. 11988. Floodplain management requires the integration of these concerns into NRCS's National Environmental Policy Act (NEPA) process for project assistance programs as described in Section 650 of this part.

(6) *Real property and facilities under NRCS ownership or control.* NRCS owns or controls about 30 properties that are used primarily for the evaluation and development of plant materials for erosion control and fish and wildlife habitat plantings (7 CFR Part 613, Plant Materials Centers, 16 U.S.C. 590 a-e, f, and 7 U.S.C. 1010-1011). If NRCS real properties or facilities are located in the base flood plain, NRCS will require an environmental evaluation when new structures and facilities or major modifications are proposed. If it is determined that the only practicable alternative for siting the proposed action may adversely affect the base flood plain, NRCS will design or modify its action to minimize potential harm to or within the flood plain and will prepare and circulate a notice explaining why the action is proposed to be located in the base flood plain. Department of Housing and Urban Development (HUD) flood insurance maps, other available maps, information, or an onsite analysis will be used to determine whether the proposed NRCS action is in the base flood plain. Public participation in the action will be the same as described in § 650.6 of this part.

(b) *Responsibility.* NRCS provides technical and financial assistance to land users primarily through conservation districts, special purpose districts, and other State or local subdivisions of State government. Acceptance of this assistance is voluntary on the part of the land user. NRCS does not have authority to make land use decisions on non-Federal land. NRCS provides the land user with technical flood hazard data and information on flood-plain natural values. NRCS informs the land user how alternative land use decisions may affect the aquatic and terrestrial ecosystems, human safety, property, and public welfare. Alternatives to flood-plain occupancy, modification, and development are discussed onsite with the land user by NRCS.

(1) *NRCS National Office.* (§600.2 of this part). The NRCS Administrator, state conservationist, and district conservationist are the responsible Federal officials in NRCS for implementing the policies expressed in these rules. Any deviation from these rules must be approved by the Administrator. The Deputy Administrator for Programs has authority to oversee the application of policy in NRCS programs. Oversight assistance to state conservationists for flood-plain management will be provided by the NRCS technical service centers (§600.3 of this part).

(2) *NRCS state offices.* (§600.4 of this part). Each state conservationist is the responsible Federal official in all NRCS-assisted programs administered within the State. He or she is also responsible for administering the plant materials centers within the State. The state conservationist will assign a staff person who has basic knowledge of landforms, soils, water, and related plant and animal ecosystems to provide technical oversight to ensure that assistance to land users and project sponsors on the wise use, conservation, and preservation of flood plains is compatible with national policy. For NRCS-assisted project actions, the staff person assigned by the state conservationist will consult with the local jurisdictions, sponsoring local organizations, and land users, on the basis of an environmental evaluation, to determine what constitutes significant adverse effects or incompatible development in the base flood plain. The state conservationist is to prepare and circulate a written notice for NRCS-assisted actions for which the only practicable alternative requires siting in a base flood plain and may result in adverse effects or incompatible development. The NRCS NEPA process will be used to integrate flood-plain management into project planning and consultations on land use decisions by land users and project sponsors.

(3) *NRCS field offices.* The district conservationist (§600.6 of this part) is delegated the responsibility for providing technical assistance and approving financial assistance to land users in nonproject actions, where applicable, and for deciding what constitutes an

adverse effect or incompatible development of a base flood plain. This assistance will be based on official NRCS policy, rules, guidelines, and procedures in NRCS handbooks, manuals, memoranda, etc. For NRCS-assisted nonproject actions, the district conservationist, on the basis of the environmental evaluation, will advise recipients of technical and financial assistance about what constitutes a significant adverse effect or incompatible development in the base flood plain.

(c) *Coordination and implementation.* All planning by NRCS staffs is interdisciplinary and encompasses the six NEPA policy statements, the WRC Principles and Standards, and an equivalent of the eight-step decision-making process in the WRC's February 1978 Floodplain Management Guidelines. NRCS internal handbooks, manuals, and memoranda provide detailed information and guidance for NRCS planning and environmental evaluation.

(1) *Steps for nonproject technical and financial assistance programs.* (i) NRCS assistance programs are voluntary and are carried out through local conservation districts (State entities) primarily on non-Federal, privately owned lands.

(ii) After the land user decides the type, extent, and location of the intended action for which assistance is sought, the district conservationist will determine if the intended action is in the base flood plain by using HUD flood insurance maps, and other available maps and information or by making an onsite determination of the approximate level of the 100-year flood if maps or other usable information are lacking.

(iii) If the district conservationist determines that the land user's proposed location is outside the base flood plain, and would not cause potential harm within the base flood plain, NRCS will continue to provide assistance, as needed.

(iv) If the district conservationist determines that the land user's proposed action is within the base flood plain and would likely result in adverse effects, incompatible development, or an increased flood hazard, it is the responsibility of the district conservationist to determine and point out to the land

user alternative methods of achieving the objective, as well as alternative locations outside the base flood plain. If the alternative locations are determined to be impractical, the district conservationist will decide whether to continue providing assistance. If the decision is to terminate assistance for the proposed action, the land user and the local conservation district, if one exists, will be notified in writing about the decision.

(v) If the district conservationist decides to continue providing technical and financial assistance for a proposed action in the base flood plain, which is the only practicable alternative, NRCS may require that the proposed action be designed or modified so as to minimize potential harm to or within the flood plain. The district conservationist will prepare and circulate locally a written notice explaining why the action is proposed to be located in the base flood plain.

(2) *Steps for project assistance programs.* (i) NRCS project assistance to local sponsoring organizations (conservation districts and other legal entities of State government) and land users is carried out primarily on non-Federal land in response to requests for assistance. NRCS helps the local sponsoring organizations prepare a plan for implementing the needed resource measures.

(ii) NRCS uses an interdisciplinary environmental evaluation (§650.6 of this part) as a basis for providing recommendations and alternatives to project sponsors. Flood-plain management is an integral part of every NRCS environmental evaluation. NRCS delineates the base flood plain by using detailed HUD flood insurance maps and other available data, as appropriate, and provides recommendations to sponsors on alternatives to avoid adverse effects and incompatible development in base flood plains. NRCS will develop, as needed, detailed 100-year and 500-year flood-plain maps where there are none.

(iii) NRCS's NEPA process (part 650 of this chapter) is used to integrate the spirit and intent of E.O. 11988 Sections 2(a) and 2(c) into agency planning and recommendations for land and water

use decisions by local sponsoring organizations and land users.

(iv) NRCS will terminate assistance to a local sponsoring organization in project programs if it becomes apparent that decisions by land users and local jurisdictions concerning flood-plain management would likely result in adverse effects or incompatible development and the environmental evaluation reveals that there are practicable alternatives to the proposed project that would not cause adverse effects on the base flood plain.

(v) In carrying out the planning and installation of land and water resource conservation projects, NRCS will avoid, to the extent possible, the long-term and short-term adverse effects associated with the occupancy and modification of base flood plains. In addition, NRCS will also avoid direct or indirect support of development in the base flood plain wherever there is a practicable alternative. Where appropriate, NRCS will require design modifications to minimize harm to or within the base flood plain. NRCS will provide appropriate public notice and public participation in the continuing planning process in accordance with NRCS NEPA process.

(vi) NRCS may require the local government to adopt and enforce appropriate flood plain regulations as a condition to receiving project financial assistance.

(3) *Actions on property and facilities under NRCS ownership or control.* For real property and facilities owned by or under the control of NRCS, the following actions will be taken:

(i) Locate new structures, facilities, etc., outside the base flood plain if there is a practicable alternate site.

(ii) Require public participation in decisions to construct structures, facilities, etc., in flood plains that might result in adverse effects and incompatible development in such areas if no practicable alternatives exist.

(iii) New construction or rehabilitation will be in accordance with the standards and criteria of the National Flood Insurance Program and will include floodproofing and other flood protection measures as appropriate.

[44 FR 44462, July 30, 1979]

**PART 651 [RESERVED]****PART 652—TECHNICAL SERVICE PROVIDER ASSISTANCE****Subpart A—General Provisions**

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AUTHORITY: 16 U.S.C. 3842.

SOURCE: 69 FR 69472, Nov. 29, 2004, unless otherwise noted.

**Subpart A—General Provisions**

SOURCE: 75 FR 6845, Feb. 12, 2010, unless otherwise noted.

**§ 652.1 Applicability.**

(a) The regulations in this part set forth the policies, procedures, and requirements related to delivery of technical assistance by individuals and entities other than the Department, hereinafter referred to as technical service providers (TSPs). The Food Security

Act of 1985, requires the Secretary to deliver technical assistance to eligible participants for implementation of its Title XII Programs and the conservation activities in the Agricultural Management Assistance Program, 7 U.S.C. 1524, directly, through an agreement with a third party provider, or at the option of the producer through payment to the producer for an approved third party provider. This regulation defines how a participant acquires technical service from a third party TSP, sets forth a certification and decertification process, and establishes a method to make payments for technical services.

(b) TSPs may provide technical services to eligible participants in conservation planning, education and outreach, and assistance with design and implementation of conservation practices applied on private land, Indian land, or where allowed by conservation program rules on public land.

(c) The Chief may implement this part in any of the 50 States, District of Columbia, Commonwealth of Puerto Rico, Guam, Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.

**§ 652.2 Definitions.**

The following definitions apply to this part and all documents issued in accordance with this part, unless specified otherwise:

*Approved list* means the list of individuals, private sector entities, or public agencies certified by the Natural Resources Conservation Service (NRCS) to provide technical services to a participant.

*Certification* means the action taken by NRCS to approve:

(1) An individual as meeting the minimum NRCS criteria for providing technical service for conservation planning or a specific conservation practice or system.

(2) An entity or public agency having an employee or employees that meet the minimum NRCS criteria for providing technical service for conservation planning or a specific conservation practice or system.

*Chief* means the Chief of NRCS or designee.

*Conservation activity plan* means the conservation practices associated with plan development as authorized under the Food, Conservation, and Energy Act of 2008 (2008 Act).

*Conservation plan* means a record of the client's decisions and supporting information for treatment of a land unit or water as a result of the planning process that meets the Field Office Technical Guide quality criteria for each natural resource (soil, water, air, plants, and animals), and takes into account economic and social considerations. The plan describes the schedule of operations and activities needed to solve identified natural resource problems and takes advantage of opportunities at a conservation management system level. The needs of the client, the resources, and Federal, State, and local requirements will be met.

*Conservation practice* means a specified treatment, such as a structural or vegetative practice, or a land management practice that is planned and applied according to NRCS standards and specifications.

*Contribution agreement* means the instrument used to acquire technical services under the authority of 7 U.S.C. 6962a.

*Cooperative agreement* means the same as defined in the Federal Grants and Cooperative Agreement Act, 31 U.S.C. 6301 *et seq.*

*Department* means the NRCS, the Farm Service Agency, or any other agency or instrumentality of the Department of Agriculture (USDA) that is assigned responsibility for all or a part of a conservation program subject to this part.

*Eligible participant* means a producer, landowner, or entity that is participating in, or seeking to participate in, a conservation program covered by this rule in which the producer, landowner, or entity is otherwise eligible to participate.

*Entity* means a corporation, joint stock company, association, cooperative, limited partnership, limited liability partnership, limited liability company, nonprofit organization, a member of a joint venture, or a member of a similar organization.

*Indian land* means all lands held in trust by the United States for individual Indians or tribes, or all lands, titles to which are held by individual Indians or tribes, subject to Federal restrictions against alienation or encumbrance, or all lands which are subject to the rights of use, occupancy, and benefit of certain tribes. The term Indian land also includes land for which the title is held in fee status by Indian tribes and the United States Government-owned land under the Bureau of Indian Affairs jurisdiction.

*Procurement contract* means the same as the term "contract" means under the Federal Grants and Cooperative Agreement Act, 31 U.S.C. 6301 *et seq.*

*Program contract* means the document that specifies the rights and obligations of any individual or entity that has been accepted for participation in a program authorized under Title XII of the Food Security Act of 1985, or the Agricultural Management Assistance Program, authorized under 7 U.S.C. 1524.

*Public agency* means a unit or subdivision of Federal, State, local, or tribal government other than the Department.

*Recommending organization* means a professional organization, association, licensing board, or similar organization with which NRCS has entered into an agreement to recommend qualified individuals for NRCS certification as TSPs for specific technical services.

*Secretary* means the Secretary of the Department of Agriculture.

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

*Technical service* means the technical assistance provided by TSPs, including conservation planning; education and outreach; and the design, installation, and check-out of approved conservation practices.

*Technical service contract* means a document that specifies the rights and obligations of an eligible participant to obtain technical services from a TSP where the eligible participant will not receive financial assistance for the implementation of the practice paid for in the technical service contract through

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participation in a Title XII conservation program or the Agricultural Management Assistance Program, 7 U.S.C. 1524.

*Technical service provider* means an individual, entity, Indian Tribe, or public agency either:

(1) Certified by NRCS and placed on the approved list to provide technical services to participants; or

(2) Selected by the Department to assist the Department in the implementation of conservation programs covered by this part through a procurement contract, contribution agreement, or cooperative agreement with the Department.

*Written agreement* means the document that specifies the rights and obligations of any individual or entity that has been authorized by NRCS to receive conservation planning assistance without having a program contract.

[75 FR 6845, Feb. 12, 2010, as amended at 75 FR 48273, Aug. 10, 2010]

#### § 652.3 Administration.

(a) As provided in this part, the Department will provide technical assistance to participants directly, or at the option of the participant, through a TSP in accordance with the requirements of this part.

(b) The Chief of NRCS will direct and supervise the administration of the regulations in this part.

(c) NRCS will:

(1) Provide overall leadership and management for the development and administration of a TSP process;

(2) Consult with the Farm Service Agency and other appropriate agencies and entities concerning the availability and utilization of TSPs and the implementation of technical service;

(3) Establish policies, procedures, guidance, and criteria for certification, recertification, decertification, certification renewal, and implementation of the use of TSPs;

(4) Provide training to ensure that persons meet the certification criteria for certain technical expertise when there is a lack of training resources or market outside the agency for such technical expertise. However, any training provided by the Department will be limited to training about Department regulations, policies, proce-

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dures, processes, and business and technical tools unique to NRCS; and

(5) Establish a process for verifying information provided to NRCS under this part.

(d) The Department will not make payments under a program contract or written agreement with a participant for technical services provided by a TSP unless the TSP is certified by NRCS for the services provided and is identified on the approved list.

(e) The Department may enter into procurement contracts, contribution agreements, cooperative agreements, or other appropriate instruments to assist the Department in providing technical assistance when implementing conservation programs covered by this part. The Department will ensure that such instruments contain the qualification and performance criteria necessary to ensure quality implementation of the goals and objectives of these conservation programs; therefore, when the Department obtains assistance from a TSP in this manner, the TSP is authorized to provide technical services and receive payment even if such TSP is not certified in accordance with subpart B, nor identified on the approved list.

(f) When a participant acquires technical services from a TSP, the Department is not a party to the agreement between the participant and the TSP. To ensure that quality implementation of the goals and objectives of the conservation programs are met, the TSP must be certified by NRCS in accordance with subpart B of this part and identified on the approved list. Upon request of NRCS, TSPs are required to submit copies of all transcripts, licensing, and certification documentation.

#### § 652.4 Technical service standards.

(a) All technical services provided by TSPs must meet USDA standards and specifications as set forth in Departmental manuals, handbooks, guides, and other references for soils mapping and natural resources information, conservation planning, conservation practice application, and other areas of technical assistance.

(b) The Department will only pay a participant for technical services provided in accordance with established

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NRCS standards, specifications, and requirements. The Department must approve all new technologies and innovative practices, including interim standards and specifications, prior to a TSP initiating technical services for those technologies and practices.

(c) A TSP must assume responsibility in writing for the particular technical services provided. Technical services provided by the TSP must:

(1) Comply with all applicable Federal, State, tribal, and local laws and requirements;

(2) Meet applicable Department standards, specifications, and program requirements;

(3) Be consistent with the particular conservation program goals and objectives for which the program contract was entered into by the Department and the participant; and

(4) Incorporate alternatives that are both cost effective and appropriate to address the resource issues. Conservation alternatives will meet the objectives for the program and participant to whom assistance is provided.

(d) TSPs are responsible for the technical services provided, including any costs, damages, claims, liabilities, and judgments arising from past, present, and future negligent or wrongful acts or omissions of the TSP in connection with the technical service provided.

(e) The Department will not be in breach of any program contract or written agreement if it fails to implement conservation plans or practices or make payment for conservation plans or practices resulting from technical services that do not meet USDA standards and specifications or are not consistent with program requirements.

(f) The participant is responsible for complying with the terms and conditions of the program contract or written agreement, which includes meeting USDA technical standards and specifications for any technical services provided by a TSP.

(g) The TSP will report in the NRCS conservation accomplishment tracking system the appropriate data elements associated with the technical services provided to the Department or participant.

(h) To the extent allowed under State or tribal law, TSPs may utilize the

services of subcontractors to provide specific technical services or expertise needed by the TSP, provided that the subcontractors are certified by NRCS in accordance with this part for the particular technical services to be provided and the technical services are provided in terms of their Certification Agreement. Payments will not be made for any technical services provided by uncertified subcontractors, except when such technical services are provided under the provisions of a procurement contract, cooperative agreement, or contribution agreement with the NRCS.

### § 652.5 Participant acquisition of technical services.

(a) Participants may obtain technical assistance directly from the Department or, when available, from a TSP.

(b) To acquire technical assistance directly from the Department, participants should contact their local USDA Service Center.

(c) To acquire technical services from a TSP, participants must:

(1) Enter into and comply with a program contract or a written agreement prior to acquiring technical services; and

(2) Select a certified TSP from the approved list of TSPs.

(d) The Department may approve written agreements for technical assistance prior to program participation based on available funding and natural resource priorities as identified by the State Conservationist.

(e) The technical assistance indicated in paragraph (d) may include the development of conservation plans or activity plans suitable for subsequent incorporation into a program contract.

(f) The Department may make payment to eligible participants who have a technical service contract and utilize it for technical assistance from a TSP.

(g) The Department will identify in the particular program contract or written agreement the payment provisions for TSPs hired directly by the participant.

(h) To obtain payment for technical services, participants must submit to the Department valid invoices, supporting documentation, and requests for payment. The Department will

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issue payment within 30 days of receiving these items. The Department may pay a participant for some or all of the costs associated with the technical services provided by a TSP hired by the participant, or upon receipt of an assignment of payment from the participant, make payment directly to the TSP.

(i) Participants must authorize in writing to the Department the disclosure of their records on file with the Department that they wish to make available to specific TSPs.

(j) Payments for technical services will be made only one time for the same technical service provided unless, as determined by the Department, the emergence of new technologies or major changes in the participant's farming or ranching operations necessitate the need for additional technical services.

(k) The Department will not make payment for activities or services that are customarily provided at no cost by a TSP to a participant as determined by the State Conservationist.

(l) Payment rates for technical services acquired by participants.

(1) NRCS will calculate TSP payment rates for technical services using national, regional, and locally determined price data.

(2) Establishing TSP payment rates.

(i) NRCS will establish guidelines to analyze the local pricing information using a standardized method.

(ii) The State Conservationist will establish TSP payment rates in each State for the various categories of technical services. The State Conservationist will determine the rates according to local NRCS cost data, procurement data, and market data.

(iii) National Headquarters will review and approve State payment rates to ensure consistency where similar resource conditions and agricultural operations exist. Payment rates may vary to some degree between or within States due to differences in State laws, the cost of doing business, competition, and other variables.

(iv) National Headquarters and State levels will review payment rates annually or more frequently, as needed, and adjust the rates based upon data from existing procurement contracts, Fed-

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eral cost rates, and other appropriate sources.

(v) NRCS may adjust payment rates, as needed, on a case-by-case basis in response to unusual conditions or unforeseen circumstances in delivering technical services such as highly complex technical situations, emergency conditions, serious threats to human health or the environment, or major resource limitations. In these cases, NRCS will set a case-specific TSP payment rate based on the Department's determination of the scope, magnitude, and timeliness of the technical services needed.

### § 652.6 Department delivery of technical services.

(a) The Department may enter into a procurement contract, contribution agreement, cooperative agreement, or other appropriate instrument to assist the Department in providing technical assistance when implementing the conservation programs covered by this part.

(b) The Department may enter into a procurement contract, contribution agreement, cooperative agreement, or other appropriate instrument with TSPs to provide related technical assistance services that accelerate conservation program delivery. Related technical assistance services may include activities or services that facilitate the development, processing, or implementation of a program contract, such as recording conservation planning decisions and specifications.

(c) NRCS may enter into agreements with other agencies or with a non-Federal entity to provide technical services to eligible participants.

(d) The Department will ensure that such legal instruments contain qualification and performance criteria necessary to ensure quality implementation of these conservation programs. When the Department obtains assistance from a TSP through a procurement contract, contribution agreement, cooperative agreement, or other similar instrument, the TSP is authorized to provide technical services and receive payment even if such TSP is not certified in accordance with subpart B of this part nor identified on the approved list.



(e) The Department will implement procurement contracts, contribution agreements, cooperative agreements, and other appropriate instruments in accordance with applicable Federal acquisition or USDA Federal assistance rules and requirements for competency, quality, and selection, as appropriate. Any contract, contribution agreement, cooperative agreement, or other appropriate instrument entered into under this section will be for a minimum of one year, will not exceed 3 years in duration, and may be renewed upon mutual agreement of the parties.

(f) A TSP may not receive payment twice for the same technical service, such as once from a participant through a program contract or written agreement and then again through a separate contract or agreement made directly with the Department.

(g) The Department will, to the extent practicable, ensure that the amounts paid for technical service under this part are consistent across conservation program areas, unless specific conservation program requirements include additional tasks.

**§ 652.7 Quality assurance.**

(a) NRCS will review, in consultation with the Farm Service Agency, as appropriate, the quality of the technical services provided by TSPs. As a requirement of certification, TSPs must develop and maintain documentation in accordance with Departmental manuals, handbooks, and technical guidance for the technical services provided, and provide this documentation to NRCS and the participant when the particular technical service is completed. NRCS may utilize information obtained through its quality assurance process, documentation submitted by the TSP, and other relevant information in determining how to improve the quality of technical service, as well as determining whether to decertify a TSP under subpart C of this part.

(b) Upon discovery of a deficiency in the provision of technical service through its quality assurance process or other means, NRCS will, to the greatest extent practicable, send a notice to the TSP detailing the deficiency and requesting remedial action by the TSP. Failure by the TSP to

promptly remedy the deficiency, or the occurrence of repeated deficiencies in providing technical services, may trigger the decertification process set forth in subpart C of this part. A failure by NRCS to identify a deficiency does not affect any action under the decertification process. TSPs are solely responsible for providing technical services that meet all NRCS standards and specifications.

**Subpart B—Certification**

**§ 652.21 Certification criteria and requirements.**

(a) To qualify for certification an individual must:

(1) Have the required technical training, education, and experience to perform the level of technical assistance for which certification is sought;

(2) Meet any applicable professional or business licensing or similar qualification standards established by State or Tribal law;

(3) Demonstrate, through documentation of training or experience, familiarity with NRCS guidelines, criteria, standards, and specifications as set forth in the applicable NRCS manuals, handbooks, field office technical guides, and supplements thereto for the planning and applying of specific conservation practices and management systems for which certification is sought; and

(4) Not be decertified in any State under subpart C of this part at the time of application for certification.

(b) To qualify for certification an entity or public agency must be authorized to provide such services in the jurisdiction and have a certified individual providing, in accordance with this part, technical services on its behalf.

(c) A technical service provider, as part of the certification by NRCS, must enter into a Certification Agreement with NRCS specifying the terms and conditions of the certification, including adherence to the requirements of this part, and acknowledging that failure to meet these requirements may result in ineligibility to receive payments from the Department, either directly or through the participant, for

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the technical services provided or may result in decertification.

(d) NRCS will certify Technical Service Providers for a time period specified by NRCS in the Certification Agreement, not to exceed 3 years. Decertification and Renewal of Certification is administered in accordance with § 652.26.

(e) NRCS may, pursuant to 31 U.S.C. 9701, establish and collect fees for the certification of technical service providers.

### § 652.22 Certification process for individuals.

(a) In order to be considered for certification as a technical service provider, an individual must:

(1) Submit an Application for Certification to NRCS in accordance with this section;

(2) Request certification through a recommending organization pursuant to § 652.25; or

(3) Request certification through an application submitted by a private-sector entity or public agency pursuant to § 652.23 or § 652.24, as appropriate.

(b) The application must contain the documentation demonstrating that the individual meets all requirements of paragraph (a) of § 652.21.

(c) NRCS will, within 60 days of receipt of an application, make a determination on the application submitted by an individual under paragraph (a)(1) of this section and in accordance with paragraph (a) of § 652.21. If all requirements are met, NRCS will:

(1) Enter into a Certification Agreement and certify the applicant as qualified to provide technical services for a specific practice, category, or categories of technical service;

(2) Place the applicant on the list of approved technical service providers when certified; and

(3) Make available to the public the list of approved technical service providers by practice or category of technical services.

(d) NRCS may decertify an individual in accordance with the decertification process set forth in subpart C of this part.

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### § 652.23 Certification process for private-sector entities.

(a) A private sector entity that applies for certification must identify, and provide supporting documentation, that it has the requisite professional and business licensure within the jurisdiction for which it seek certification, and that it employs at least one individual, authorized to act on its behalf that:

(1) Has received certification on an individual basis in accordance with § 652.22; or

(2) Seeks certification on an individual basis as part of the private-sector entity's certification and ensures that the requirements set forth in § 652.21(a) are contained within the private-sector entity's application to support such certification.

(b) NRCS will determine pursuant to § 652.22 whether the individual(s) identified in the private-sector entity's application meets the certification standards set forth in § 652.21 for the specific services the entity wishes to provide.

(c) NRCS will, within 60 days of receipt of an application, make a determination on the application submitted by an entity. If NRCS determines that all requirements for the private-sector entity and the identified individual(s) are met, NRCS will complete the actions described in paragraphs (c)(1) through (c)(3) of § 652.22.

(d) The Certification Agreement entered into with the private-sector entity shall:

(1) Identify the certified individuals who are authorized to perform technical services on behalf of and under the auspices of the entity's certification;

(2) Require that the entity has, at all times, an individual who is a certified technical service provider authorized to act on the entity's behalf;

(3) Require that the entity promptly provide an amended Certification Agreement to NRCS for approval when the list of certified individuals performing technical services under its auspices changes;

(4) Require that responsibility for any work performed by non-certified individuals be assumed by a certified individual who is authorized to act on the entity's behalf; and

(5) Require that the entity be legally responsible for the work performed by any individual working under the auspices of its certification.

(e) NRCS may, in accordance with the decertification process set forth in this part, decertify the private sector entity, the certified individual(s) acting under the auspices of its certification, or both the private sector entity and the certified individual(s) acting under the auspices of its certification.

**§ 652.24 Certification process for public agencies.**

(a) A public agency that applies for certification must identify, and provide supporting documentation, that it has the authority within the jurisdiction within which it seeks to provide technical services and an individual or individuals authorized to act on its behalf:

(1) Has been certified as an individual in accordance with § 652.22; or

(2) Seeks certification as an individual as part of the public agency's certification and sufficient information as set forth in § 652.21(a) is contained within the public agency's application to support such certification.

(b) NRCS shall determine whether the individual identified in the public agency's application meets the certification standards set forth in § 652.22.

(c) NRCS will, within 60 days of receipt of an application, make a determination on the application submitted by a public agency. If NRCS determines that all requirements for the public agency and the identified individual(s) are met, NRCS will perform the actions described in paragraph (c)(1) through (c)(3) of § 652.22. The Certification Agreement entered into with the public agency shall:

(1) Identify the certified individuals that are authorized to perform technical services on behalf of and under the auspices of the public agency's certification;

(2) Require that the public agency have, at all times, an individual that is a certified technical service provider and is an authorized official of the public agency;

(3) Require that the public agency promptly provide to NRCS for NRCS approval an amended Certification

Agreement when the list of certified individuals performing technical services under its auspices changes;

(4) Require that responsibility for any work performed by non-certified individuals be assumed by a certified individual that is authorized to act on the public agency's behalf; and

(5) Require that the public agency be legally responsible for the work performed by any individual working under the auspices of its certification.

(d) NRCS may, in accordance with the decertification process set forth in subpart C of this part, decertify the public agency, the certified individual(s) acting under its auspices, or both the public agency and the certified individual(s) acting under its auspices.

**§ 652.25 Alternative application process for individual certification.**

(a) NRCS may enter into an agreement, including a memorandum of understanding or other appropriate instrument, with a recommending organization that NRCS determines has an adequate accreditation program in place to train, test, and evaluate candidates for competency in a particular area or areas of technical service delivery and whose accreditation program NRCS determines meets the certification criteria as set forth for the technical services to be provided.

(b) Recommending organizations will, pursuant to an agreement entered into with NRCS:

(1) Train, test, and evaluate candidates for competency in the area of technical service delivery;

(2) Recommend to NRCS individuals who it determines meet the NRCS certification requirements of § 652.21(a) for providing specific practices or categories of technical services;

(3) Inform the recommended individuals that they must meet the requirements of this part, including entering into a Certification Agreement with NRCS, in order to provide technical services under this part;

(4) Reassess individuals that request renewal of their certification pursuant to § 652.26 through the recommendation of the organization; and

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(5) Notify NRCS of any concerns or problems that may affect the organization's recommendation concerning the individual's certification, recertification, certification renewal, or technical service delivery.

(c) Pursuant to an agreement with NRCS, a recommending organization may provide to the appropriate NRCS official a current list of individuals identified by the recommending organization as meeting NRCS criteria as set forth in §652.21(a) for specific practices or categories of technical service and recommend that the NRCS official certify these individuals as technical service providers in accordance with this part.

(d) NRCS will, within 60 days, make a determination on the recommendation for certification issued by the recommending organization. If NRCS determines that all requirements for certification are met by the recommended individual(s), NRCS will perform the actions described in paragraphs (c)(1) through (c)(3) of §652.22.

(e) NRCS may terminate an agreement with a recommending organization if concerns or problems with its accreditation program, its recommendations for certification, or other requirements under the agreement arise.

## § 652.26 Certification renewal.

(a) NRCS certifications are in effect for a time period specified by NRCS in the Certification Agreement, not to exceed 3 years and automatically expire unless they are renewed for an additional time period in accordance with this section.

(b) A technical service provider may request renewal of an NRCS certification by:

(1) Submitting a complete certification renewal application to NRCS or through a private sector entity, a public agency, or a recommending organization to NRCS at least 60 days prior to expiration of the current certification;

(2) Providing verification on the renewal form that the requirements of this part are met; and

(3) Agreeing to abide by the terms and conditions of a Certification Agreement.

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(c) All certification renewals are in effect for a time period specified by NRCS in the Certification Agreement, not to exceed three years and before expiration, may be renewed for subsequent time period in accordance with this section.

## Subpart C—Decertification

### § 652.31 Policy.

In order to protect the public interest, it is the policy of NRCS to maintain certification of those technical service providers who act responsibly in the provision of technical service, including meeting NRCS standards and specifications when providing technical service to participants. This section, which provides for the decertification of technical service providers, is an appropriate means to implement this policy.

### § 652.32 Causes for decertification.

A State Conservationist, in whose State a technical service provider is certified to provide technical service, may decertify the technical service provider, in accordance with these provisions, if the technical service provider, or someone acting on behalf of the technical service provider:

(a) Fails to meet NRCS standards and specifications in the provision of technical services;

(b) Violates the terms of the Certification Agreement, including but not limited to, a demonstrated lack of understanding of, or an unwillingness or inability to implement, NRCS standards and specifications for a particular practice for which the technical service provider is certified, or the provision of technical services for which the technical service provider is not certified;

(c) Engages in a scheme or device to defeat the purposes of this part, including, but not limited to, coercion, fraud, misrepresentation, or providing incorrect or misleading information; or

(d) Commits any other action of a serious or compelling nature as determined by NRCS that demonstrates the technical service provider's inability to fulfill the terms of the Certification Agreement or provide technical services under this part.

**§ 652.33 Notice of proposed decertification.**

The State Conservationist will send by certified mail, return receipt requested, to the technical service provider proposed for decertification a written Notice of Proposed Decertification, which will contain the cause(s) for decertification, as well as any documentation supporting decertification. In cases where a private sector entity or public agency is being notified of a proposed decertification, any certified individuals working under the auspices of such organization who are also being considered for decertification will receive a separate Notice of Decertification and will be afforded separate appeal rights following the process set forth below.

**§ 652.34 Opportunity to contest decertification.**

To contest decertification, the technical service provider must submit in writing to the State Conservationist, within 20 calendar days from the date of receipt of the Notice of Proposed Decertification, the reasons why the State Conservationist should not decertify, including any mitigating factors as well as any supporting documentation.

**§ 652.35 State Conservationist decision.**

Within 40 calendar days from the date of the notice of proposed decertification, the State Conservationist will issue a written determination. If the State Conservationist decides to decertify, the decision will set forth the reasons for decertification, the period of decertification, and the scope of decertification. If the State Conservationist decides not to decertify the technical service provider, the technical service provider will be given written notice of that determination. The decertification determination will be based on an administrative record, which will be comprised of: the Notice of Proposed Decertification and supporting documents, and, if submitted, the technical service provider's written response and supporting documentation. Both a copy of the decision and administrative record will be sent promptly by cer-

tified mail, return receipt requested, to the technical service provider.

**§ 652.36 Appeal of decertification decisions.**

(a) Within 20 calendar days from the date of receipt of the State Conservationist's decertification determination, the technical service provider may appeal, in writing, to the Chief of NRCS. The written appeal must state the reasons for appeal and any arguments in support of those reasons. If the technical service provider fails to appeal, the decision of the State Conservationist is final.

(b) Final decision. Within 30 calendar days of receipt of the technical service provider's written appeal, the Chief or his designee, will make a final determination, in writing, based upon the administrative record and any additional information submitted to the Chief by the technical service provider. The decision of the Chief, or his designee, is final and not subject to further administrative review. The Chief's determination will include the reasons for decertification, the period of decertification, and the scope of decertification.

**§ 652.37 Period of decertification.**

The period of decertification will not exceed three years in duration and will be decided by the decertifying official, either the State Conservationist or Chief, as applicable, based upon their weighing of all relevant facts and the seriousness of the reasons for decertification, mitigating factors, if any, and the following general guidelines:

(a) For failures in the provision of technical service for which there are no mitigating factors, *e.g.*, no remedial action by the technical service provider, a maximum period of three years decertification;

(b) For repeated failures in the provision of technical assistance for which there are mitigating factors, *e.g.*, the technical service provider has taken remedial action to the satisfaction of NRCS, a maximum period of one to two years decertification; and

(c) For a violation of Certification Agreement terms, *e.g.*, failure to possess technical competency for a listed practice, a period of one year or less, if

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the technical service provider can master such competency within a year period.

### § 652.38 Scope of decertification.

(a) When the technical service provider is a private sector entity or public agency, the decertifying official may decertify the entire organization, including all the individuals identified as authorized to provide technical services under the auspices of such organization. The decertifying official may also limit the scope of decertification, for example, to one or more specifically named individuals identified as authorized to provide technical services under the organization's auspices or to an organizational element of such private sector entity or public agency. The scope of decertification will be set forth in the decertification determination and will be based upon the facts of each decertification action, including whether actions of particular individuals can be imputed to the larger organization.

(b) In cases where specific individuals are decertified only, an entity or public agency must file within 10 calendar days an amended Certification Agreement removing the decertified individual(s) from the Certification Agreement. In addition, the entity or public agency must demonstrate that, to the satisfaction of the State Conservationist, the entity or public agency has taken affirmative steps to ensure that the circumstances resulting in decertification have been addressed.

### § 652.39 Mitigating factors.

In considering whether to decertify, the period of decertification, and scope of decertification, the deciding official will take into consideration any mitigating factors. Examples of mitigating factors include, but are not limited to the following:

(a) The technical service provider worked, in a timely manner, to correct any deficiencies in the provision of technical service;

(b) The technical service provider took the initiative to bring any deficiency in the provision of their technical services to the attention of NRCS and sought NRCS advice to remediate the situation; and

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(c) The technical service provider took affirmative steps to prevent any failures in the provision of technical services from occurring in the future.

### § 652.40 Effect of decertification.

(a) The Department will not make payment under a program contract for the technical services of a decertified technical service provider that were provided during the period of decertification. Likewise, NRCS will not procure, or otherwise enter into an agreement for, the services of a decertified technical service provider during the period of decertification.

(b) National decertification list. NRCS shall maintain a current list of decertified technical service providers. NRCS shall remove decertified providers from the list of certified providers. Participants may not hire a decertified technical service provider. It is the participant's responsibility to check the decertified list before hiring a technical service provider. Decertification of a technical service provider in one State decertifies the technical service provider from providing technical services under current programs in all States, the Caribbean Area, and the Pacific Basin Area.

### § 652.41 Effect of filing deadlines.

A technical service provider's failure to meet the filing deadlines under this subpart will result in the forfeiture of appeal rights. All filings must be received by NRCS no later than the close of business (5 p.m.) the last day of the filing period.

### § 652.42 Recertification.

A decertified technical service provider may apply to be re-certified under the certification provisions of this part after the period of decertification has expired. A technical service provider may not utilize the certification renewal process in an attempt to be recertified after being decertified.

## PART 653—TECHNICAL STANDARDS

- Sec.
- 653.1 General.
- 653.2 Technical standards and criteria.
- 653.3 Adaptation of technical standards.
- 653.4 Availability of technical standards.

AUTHORITY: 7 CFR 2.62.

SOURCE: 43 FR 58079, Dec. 12, 1978, unless otherwise noted.

**§ 653.1 General.**

The Natural Resources Conservation Service (NRCS) is responsible for the technical adequacy of conservation practices installed under all NRCS programs, and those practices applied under programs administered by the Agricultural Stabilization and Conservation Service (ASCS) where NRCS has the technical responsibility. NRCS technical or financial assistance will be provided when the practices are applied according to established technical standards.

**§ 653.2 Technical standards and criteria.**

Technical standards and criteria have been established for all conservation practices. They provide the guidance and direction needed to assure that the practices meet the intended purpose and are of the quality needed to assure lasting for the design life. Standards and criteria are developed in consultation with universities, research institutions, and individual industrial and private firms and individuals. Research information and practical experience are used in setting standards. Changes and new technical standards and criteria are prepared in the same manner as set out above.

**§ 653.3 Adaptation of technical standards.**

Technical standards and criteria developed on a national basis may require special adaptation to meet local needs. These adaptations must be approved by the Administrator of the Natural Resources Conservation Service or his designee.

**§ 653.4 Availability of technical standards.**

Information on technical standards used by NRCS is available at field, area, or State offices of NRCS.

**PART 654—OPERATION AND MAINTENANCE**

**Subpart A—General**

Sec.

- 654.1 Purpose and scope.
- 654.2 Definitions.

**Subpart B—Federal Financially-Assisted Projects**

- 654.10 Operation and maintenance agreement.
- 654.11 Sponsor(s)' responsibility.
- 654.12 Financing operations and maintenance.
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- 654.14 Duration of sponsor(s)' responsibility.
- 654.15 Operation and maintenance.
- 654.16 Property management.
- 654.17 Inspection.
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- 654.19 Plan of operation and maintenance.
- 654.20 Violations of operation and maintenance agreement.

**Subpart C—Conservation Operations**

- 654.30 Responsibility for operation and maintenance.
- 654.31 Performing operation and maintenance.

**Subpart D—Emergency Watershed Protection**

- 654.40 Responsibility for operation and maintenance.
- 654.41 Performance of operation and maintenance.

**Subpart E—Great Plains Conservation Program**

- 654.50 Responsibility for operation and maintenance.

AUTHORITY: Pub. L. 83-566, 68 Stat. 666, as amended (16 U.S.C. 1001-1008). Sec. 1, Pub. L. 86-468, 74 Stat. 131, as amended (16 U.S.C. 1006a); sec. 2, Pub. L. 78-534, 58 Stat. 889 (33 U.S.C. 701a-1); sec. 13, Pub. L. 78-534, 58 Stat. 905; sec. 5, Pub. L. 93-251, 88 Stat. 15; Pub. L. 87-703, 76 Stat. 607 (7 U.S.C. 1010-1011); Pub. L. 74-46, 49 Stat. 163 (16 U.S.C. 590a-f, q); Pub. L. 84-1021, 70 Stat. 1115, as amended (16 U.S.C. 590p(b)); sec. 216, Pub. L. 81-516, 64 Stat. 184 (33 U.S.C. 701b-1); 7 CFR 2.62.

SOURCE: 42 FR 58159, Nov. 8, 1977, unless otherwise noted.

### Subpart A—General

#### § 654.1 Purpose and scope.

(a) This part sets forth the operation and maintenance requirements pertaining to measures installed with Natural Resources Conservation Service (NRCS) assistance. This includes measures installed under the following programs:

(1) Federal financially-assisted projects.

(i) Watershed Protection and Flood Prevention (WP&FP). See part 622 of this title.

(ii) Flood Prevention (FP). See part 623 of this title.

(iii) Specifically authorized projects.

(iv) Resource Conservation and Development (RC&D).

(2) Conservation Operations (CO).

(3) Emergency Watershed Protection (EWP). See part 624 of this title.

(4) Great Plains Conservation Program (GP). See part 631 of this title.

(b) These regulations shall apply to all Federal financially-assisted projects as set forth in subpart B for the duration of their respective operation and maintenance agreements. However, this does not relieve the sponsor(s) of any liability which may continue beyond the evaluated life of the measure under Federal, State, and local laws. Operation and maintenance agreements in effect prior to the effective date of these regulations are not affected by these regulations.

#### § 654.2 Definitions.

*Evaluated life.* The time period for which project or measure benefits and costs have been evaluated. The evaluated life starts after the last project measure of the evaluation unit has been completed.

*Landuser.* Those who individually or collectively use land as owner, lessee, occupier, or by other arrangements which give them conservation planning or implementation concern and responsibility for the land involved.

*Maintenance.* The work and actions required to keep works of improvement

in a condition to function for their intended purpose and the replacement of portions of project measures as specified in the O&M agreement.

*Operation.* The administration, management, and performance of services needed to insure the continued proper functioning of completed project measures.

*Operation and maintenance agreement.*

A written agreement between the sponsor(s) and NRCS or other recipient(s) in which responsibilities and actions are established for the operation, maintenance, replacement, and inspection of project measures.

*Plan of operation and maintenance.* A detailed program of action to provide for performing the operation and maintenance of a specific project measure.

*Project measures.* An undertaking for watershed protection; flood prevention; the conservation, development, utilization, and disposal of water; the conservation and proper utilization of land; or a combination thereof. The undertaking may consist of vegetative, structural, or management measures or a combination thereof. Vegetative measures are those measures involving only seedbed preparation and/or the planting of vegetative material.

*Public recreation and/or fish and wildlife facility.* A project measure or part thereof which (a) creates or improves the potential for public recreational use and enjoyment, or (b) materially contributes to the preservation, production, or harvest of fish and wildlife.

*Sponsor.* An agency or organization with authority to provide local responsibility for a Federal financially-assisted local project under a program administered by NRCS.

*State Conservationist.* The NRCS officer responsible for NRCS activities within a particular State, the Commonwealth of Puerto Rico, or the U.S. Virgin Islands.

*Structural measures.* Structural measures are those measures that are excavated or constructed with concrete, earth, masonry, metal, rock, or other materials, and associated vegetation.



### Subpart B—Federal Financially-Assisted Projects

#### § 654.10 Operation and maintenance agreement.

A duly authorized official of the sponsor(s) must execute an O&M agreement with NRCS prior to NRCS furnishing financial assistance.

#### § 654.11 Sponsor(s)' responsibility.

(a) On non-Federal land, sponsor(s) are responsible for financing and performing without cost to the Federal Government, needed operation and maintenance (O&M) of project measures installed with Federal financial assistance.

(b) The Federal agency administering Federal land involving project measures is responsible either for performing or requiring the performance of O&M on land administered by that agency. If project measures benefit both Federal and non-Federal land or interests, the O&M may be performed by the Federal agency, the sponsor(s), or both as mutually agreed by the Federal agency, sponsor(s), and NRCS. If O&M of project measures is performed by mutual agreement, the cost of O&M may be shared by the Federal agency and sponsor(s) as agreed.

(c) The sponsor(s) shall obtain NRCS approval before modifying a project measure of changing land use to fulfill a different purpose.

#### § 654.12 Financing operations and maintenance.

Sources of funds needed to operate and maintain project measures for the duration of the O&M agreement shall be identified in the watershed or RC&D measure plan.

#### § 654.13 Designating responsibility for operation and maintenance.

Those organizations or agencies responsible for the O&M of each project measure shall be identified in the watershed or RC&D measure plan.

#### § 654.14 Duration of sponsor(s)' responsibility.

(a) Sponsor(s)' responsibility for O&M of a completed project measure begins when a part of all of the contract installing such measure is com-

pleted and accepted from the contractor. If the installation of the project measure is performed by force account, division of work, or performance of work methods, the sponsor(s)' O&M responsibilities begin on the date the work or portion thereof is completed as determined by NRCS, except for completed work located on Federal lands which are subject to special-use permits. The O&M agreement shall specify that O&M will continue through: (1) The evaluated life of the project, or (2) the evaluated life of measures that are economically evaluated as a unit, or (3) the useful life of cost-shared measures that are for land conservation or land utilization. The sponsor(s)' duties and liabilities for the measures under other Federal and State laws are not affected by the expiration of the O&M agreement.

(b) For project measures being installed in segments, the sponsor(s) shall be responsible for O&M of completed and accepted segments. However, the NRCS may share in the cost of repairing damages to a completed segment when the damage is attributed to the continuation of work on uncompleted segments of the measure or when due to the fact that the measure was only partially completed.

#### § 654.15 Operation and maintenance.

Sponsor(s) are to operate and maintain completed project measures in:

(a) Compliance with applicable Federal, State, and local laws, regulations, and ordinances.

(b) Compliance with any applicable conditions set forth in the instruments by which the landrights were acquired for installing, operating, and maintaining the project measures.

(c) A manner that will not significantly degrade the environment and will permit project measures to serve the purpose for which they were installed as set forth in the watershed or RC&D measure plan.

(d) Compliance with the time frames and O&M work items established in the plan of O&M and inspection reports.

(e) Accordance with agreements with NRCS on admission charges and user fees for public recreation and/or fish and wildlife facility. Admission or user fees shall be charged only as necessary

## § 654.16

to produce revenues required to amortize the sponsor(s)' share of installation costs and to provide adequate O&M for that portion of the project measures pertaining to public recreation and/or fish and wildlife facility. Sponsor(s)' admission or user fee charges require prior NRCS approval throughout the life of the O&M agreement.

(f) Accordance with the schedule for withdrawal of water in water impounding structures as specified in the watershed or RC&D measure plan or other legal documents.

(g) A manner consistent with the project objectives.

### § 654.16 Property management.

Sponsor(s) are to:

(a) Use real property acquired in whole or in part with Federal funds as long as needed for the purpose for which it was acquired and in accordance with the O&M agreement. If real property acquired in whole or in part with Federal funds is no longer needed for the purpose for which it was acquired, the sponsor(s) shall obtain NRCS approval for future use or disposition.

(b) Use nonexpendable personal property acquired in whole or in part with Federal funds as long as needed for the purpose for which it was acquired in accordance with the rules governing Federal grant property (34 CFR part 256).

(c) Establish, adopt, and comply with a property management system which meets the standards governing Federal grant property.

### § 654.17 Inspection.

(a) Sponsor(s) are to make periodic and special inspections of installed project measures as provided in the plan of O&M. For structural measures, inspections are to be made at least annually and after each major storm or occurrence of any unusual condition that might adversely affect the project measures. At the discretion of the State Conservationist, NRCS may assist sponsor(s) with their inspections. NRCS or land-administering agencies may make independent inspections at any time during the period covered by the O&M agreement.

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(b) Sponsor(s) are to maintain a written record of each inspection and furnish NRCS and land-administering agencies a copy of that record. The record should identify items inspected, O&M work that may be needed, a time frame to do the work, and the date of the inspection. The NRCS and land-administering agencies will provide the sponsor(s) a copy of a similar record of independent inspections.

(c) The sponsor(s) shall perform the O&M work listed as needed in the inspection reports within the time frame established for each item of work. Failure to perform O&M work will be considered a violation of the O&M agreement and will be handled in accordance with § 654.20.

(d) Sponsor(s) are to maintain a written record of work performed which is listed in the inspection report and a record of other significant O&M activity. The record will identify the measure, item of work, cost of performance, and date completed.

(e) Sponsor(s)' records relative to the project shall be made available to NRCS for examination.

### § 654.18 Natural Resources Conservation Service responsibility.

The Natural Resources Conservation Service will assist the sponsor(s) in developing a watershed or RC&D measure plan which includes a description of O&M work and estimated cost, assist in the preparation of O&M agreements and plans of O&M, enter into O&M agreements with the sponsor(s), and notify the sponsor(s) of observed failures to comply with the O&M agreement.

### § 654.19 Plan of operation and maintenance.

(a) The plan for O&M shall be incorporated into and made a part of the O&M agreement. A separate plan of O&M shall be prepared for each project measure that is expected to have a unique O&M need. Two or more measures with similar O&M needs may be included in a single plan for O&M.

(b) The plan of O&M shall include the known and anticipated items of O&M, an explanation of how the O&M activities may be carried out, a general time frame for making O&M inspections and

for completing the needed O&M work, and the records and reports deemed appropriate by the sponsor(s) and NRCS.

**§ 654.20 Violations of operation and maintenance agreement.**

(a) The State Conservationist shall investigate alleged sponsor violations of the O&M agreement. If the State Conservationist determines that a violation has occurred that may prevent the project measure from functioning as intended, create a health or safety hazard, or prevent the accrual of project benefits, he shall provide sponsor(s) written notification.

(b) If the sponsor(s) fail to comply with the O&M agreement or fail to take corrective action, NRCS may notify authorities having appropriate jurisdiction, withhold further assistance to the project, require the sponsor(s) to reimburse the government for the NRCS share of the cost of the project, and/or pursue other action authorized by the O&M agreement or law.

**Subpart C—Conservation Operations**

**§ 654.30 Responsibility for operation and maintenance.**

The land user is responsible for O&M of soil and water conservation measures installed with NRCS assistance provided through soil, water, and other conservation districts.

**§ 654.31 Performing operation and maintenance.**

The method of performing O&M is to be at the option of the land user. The NRCS, working through districts, will furnish information and technical assistance as needed and requested to the extent NRCS resources permit.

**Subpart D—Emergency Watershed Protection**

**§ 654.40 Responsibility for operation and maintenance.**

(a) *Non-Federal lands.* The need for an O&M agreement will be determined by the State Conservationist. Where an O&M agreement is necessary, the sponsor(s) will provide the O&M and adopt standards for Federal grant property (34 CFR part 256). Where no O&M agree-

ment is necessary, other arrangements will be made for complying with Federal property management.

(b) *Federal lands.* The Federal agency administering the Federal land is responsible for operating and maintaining emergency measures installed on Federal land.

**§ 654.41 Performance of operation and maintenance.**

(a) *Arrangement.* O&M is a prerequisite for approval of Federal emergency assistance when:

(1) The emergency measure needs to be operated and maintained in order to serve its intended purpose, or

(2) The emergency measure needs to be operated and maintained to insure that it will not become hazardous.

(b) *Time of operation and maintenance.* The sponsor(s)' obligations for O&M begin when the measure is installed and extend for the duration of the time required for the emergency measure to serve the purpose for which it is installed.

(c) *Performance.* Operation and maintenance is to be performed in a manner that will protect the environment and otherwise comply with NRCS, State, and local requirements. The method of performing O&M is at the option of the sponsor(s).

**Subpart E—Great Plains Conservation Program**

**§ 654.50 Responsibility for operation and maintenance.**

Responsibility for practices under the Great Plains Conservation Program are contained in § 631.10 of this chapter.

**PART 655 [RESERVED]**

**PART 656—PROCEDURES FOR THE PROTECTION OF ARCHEOLOGICAL AND HISTORICAL PROPERTIES ENCOUNTERED IN NRCS-ASSISTED PROGRAMS**

Sec.

656.1 Purpose.

656.2 Archeological and historical laws and Executive orders applicable to NRCS-assisted programs.

656.3 Policy.

## § 656.1

656.4-656.9 [Reserved]

AUTHORITY: Pub. L. 86-523, 74 Stat. 220, as amended (16 U.S.C. 469 *et seq.*); Pub. L. 89-665, 80 Stat. 915, as amended (16 U.S.C. 470 *et seq.*); 7 CFR 2.62.

SOURCE: 42 FR 36804, July 18, 1977, unless otherwise noted.

### § 656.1 Purpose.

This part prescribes Natural Resources Conservation Service (NRCS) policy, procedures, and guidelines for the implementation of archeological and historical laws and appropriate executive orders for administering NRCS programs.

### § 656.2 Archeological and historical laws and Executive orders applicable to NRCS-assisted programs.

(a) *The Act of June 27, 1960*, relating to the preservation of historical and archeological data, Pub. L. 86-523, 74 Stat. 220, as amended May 24, 1974; Pub. L. 93-291, 88 Stat. 174 (16 U.S.C. 469 *et seq.*), provides for the preservation of historical and archeological materials or data, including relics and specimens, that might otherwise be lost or destroyed as a result of any Federal or federally-assisted or licensed project, activity, or program.

(b) *The National Historic Preservation Act*, Pub. L. 89-665, 80 Stat. 915, as amended, (16 U.S.C. 470 *et seq.*), authorizes the Secretary of the Interior to maintain and expand a National Register of Historic Places (NRHP), including historic districts, sites, buildings, structures, and objects that are significant in American history, architecture, archeology, and culture. This law also establishes the Advisory Council on Historic Preservation (ACHP), to be appointed by the President. Section 106 of this Act (16 U.S.C. 470f), requires that prior to the approval of any Federal or federally-assisted or licensed undertaking, the Federal agency shall afford the ACHP a reasonable opportunity to comment, if properties listed in or eligible for listing in NRHP are affected.

(c) *Executive Order 11593 (36 FR 8921, 3 CFR 1971 Comp. P. 154)*, Protection and Enhancement of the Cultural Environment, provides that the Federal government shall furnish leadership in preserving, restoring, and maintaining the historical and cultural environ-

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ment of the nation, and that Federal agencies shall administer the cultural properties under their control in a spirit of stewardship and trusteeship for future generations; initiate measures necessary to direct their policies, plans, and programs in such a way that federally owned sites, structures, and objects of historical, architectural, or archeological significance are preserved, restored, and maintained. Section 1(3) directs that agencies institute procedures to assure that Federal plans and programs contribute to the preservation and enhancement of non-federally owned sites, structures, and objects of historical, architectural, or archeological significance in consultation with the ACHP.

### § 656.3 Policy.

(a) NRCS recognizes that significant historical, archeological, and architectural resources are an important part of our national heritage, the protection of which requires careful consideration in this agency's project planning and implementation process.

(b) NRCS will take reasonable precautions to avoid damaging any significant historic, cultural, or natural aspects of our national heritage and will work with the National Park Service (NPS) and the Advisory Council on Historic Preservation (ACHP) in identifying and seeking to avoid or mitigate adverse effects of NRCS-assisted projects on the Nation's significant cultural resources. The procedures contained in this part have been developed to comply with sections 1(3) and 2(c) of Executive Order 11593.

§§ 656.4-656.9 [Reserved]

## PART 657—PRIME AND UNIQUE FARMLANDS

### Subpart A—Important Farmlands Inventory

Sec.

657.1 Purpose.

657.2 Policy.

657.3 Applicability.

657.4 NRCS responsibilities.

657.5 Identification of important farmlands.

AUTHORITY: 7 U.S.C. 1010a; 16 U.S.C. 590a-590f; 42 U.S.C. 3271-3274.

SOURCE: 43 FR 4031, Jan. 31, 1978, unless otherwise noted.

### Subpart A—Important Farmlands Inventory

#### § 657.1 Purpose.

NRCS is concerned about any action that tends to impair the productive capacity of American agriculture. The Nation needs to know the extent and location of the best land for producing food, feed, fiber forage, and oilseed crops. In addition to prime and unique farmlands, farmlands that are of statewide and local importance for producing these crops also need to be identified.

#### § 657.2 Policy.

It is NRCS policy to make and keep current an inventory of the prime farmland and unique farmland of the Nation. This inventory is to be carried out in cooperation with other interested agencies at the National, State, and local levels of government. The objective of the inventory is to identify the extent and location of important rural lands needed to produce food, feed, fiber, forage, and oilseed crops.

#### § 657.3 Applicability.

Inventories made under this memorandum do not constitute a designation of any land area to a specific land use. Such designations are the responsibility of appropriate local and State officials.

#### § 657.4 NRCS responsibilities.

(a) *State Conservationist.* Each NRCS State Conservationist is to:

(1) Provide leadership for inventories of important farmlands for the State, county, or other subdivision of the State. Each is to work with appropriate agencies of State government and others to establish priorities for making these inventories.

(2) Identify the soil mapping units within the State that qualify as prime. In doing this, State Conservationists, in consultation with the cooperators of the National Cooperative Soil Survey, have the flexibility to make local deviation from the permeability criterion or to be more restrictive for other specific criteria in order to assure the most accurate identification of prime farmlands for a State. Each is to invite

representatives of the Governor's office, agencies of the State government, and others to identify farmlands of statewide importance and unique farmlands that are to be inventoried within the framework of this memorandum.

(3) Prepare a statewide list of:

(i) Soil mapping units that meet the criteria for prime farmland;

(ii) Soil mapping units that are farmlands of statewide importance if the criteria used were based on soil information; and

(iii) Specific high-value food and fiber crops that are grown and, when combined with other favorable factors, qualify lands to meet the criteria for unique farmlands. Copies are to be furnished to NRCS Field Offices and to National Soil Survey Center. (see 7 CFR 600.2(c), 600.6)

(4) Coordinate soil mapping units that qualify as prime farmlands with adjacent States, including Major Land Resource Area Offices (see 7 CFR 600.4, 600.7) responsible for the soil series. Since farmlands of statewide importance and unique farmlands are designated by others at the State level, the soil mapping units and areas identified need not be coordinated among States.

(5) Instruct NRCS District Conservationists to arrange local review of lands identified as prime, unique, and additional farmlands of statewide importance by Conservation Districts and representatives of local agencies. This review is to determine if additional farmland should be identified to meet local decisionmaking needs.

(6) Make and publish each important farmland inventory on a base map of national map accuracy at an intermediate scale of 1:50,000 or 1:100,000. State Conservationists who need base maps of other scales are to submit their requests with justification to the Chief for consideration.

(b) *National Soil Survey Center.* The National Soil Survey Center is to provide requested technical assistance to State Conservationists and Major Land Resource Area Offices in inventorying prime and unique farmlands (see 7 CFR 600.2(c)(1), 600.4, 600.7). This includes reviewing statewide lists of soil mapping units that meet the criteria for prime farmlands and resolving coordination

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problems that may occur among States for specific soil series or soil mapping units.

(c) *National Office.* The Deputy Chief for Soil Survey and Resource Assessment (see 7 CFR 600.2(b)(3)) is to provide national leadership in preparing guidelines for inventorying prime farmlands and for national statistics and reports of prime farmlands.

[43 FR 4031, Jan. 31, 1978, as amended at 65 FR 57538, Sept. 25, 2000]

### § 657.5 Identification of important farmlands.

(a) *Prime farmlands—(1) General.* Prime farmland is land that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops, and is also available for these uses (the land could be cropland, pastureland, rangeland, forest land, or other land, but not urban built-up land or water). It has the soil quality, growing season, and moisture supply needed to economically produce sustained high yields of crops when treated and managed, including water management, according to acceptable farming methods. In general, prime farmlands have an adequate and dependable water supply from precipitation or irrigation, a favorable temperature and growing season, acceptable acidity or alkalinity, acceptable salt and sodium content, and few or no rocks. They are permeable to water and air. Prime farmlands are not excessively erodible or saturated with water for a long period of time, and they either do not flood frequently or are protected from flooding. Examples of soils that qualify as prime farmland are Palouse silt loam, 0 to 7 percent slopes; Brookston silty clay loam, drained; and Tama silty clay loam, 0 to 5 percent slopes.

(2) *Specific criteria.* Prime farmlands meet all the following criteria: Terms used in this section are defined in USDA publications: “Soil Taxonomy, Agriculture Handbook 436”; “Soil Survey Manual, Agriculture Handbook 18”; “Rainfall-erosion Losses From Cropland, Agriculture Handbook 282”; “Wind Erosion Forces in the United States and Their Use in Predicting Soil Loss, Agriculture Handbook 346”; and

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“Saline and Alkali Soils, Agriculture Handbook 60.”

(i) The soils have:

(A) Aquic, udic, ustic, or xeric moisture regimes and sufficient available water capacity within a depth of 40 inches (1 meter), or in the root zone (root zone is the part of the soil that is penetrated or can be penetrated by plant roots) if the root zone is less than 40 inches deep, to produce the commonly grown cultivated crops (cultivated crops include, but are not limited to, grain, forage, fiber, oilseed, sugar beets, sugarcane, vegetables, tobacco, orchard, vineyard, and bush fruit crops) adapted to the region in 7 or more years out of 10; or

(B) Xeric or ustic moisture regimes in which the available water capacity is limited, but the area has a developed irrigation water supply that is dependable (a dependable water supply is one in which enough water is available for irrigation in 8 out of 10 years for the crops commonly grown) and of adequate quality; or,

(C) Aridic or torric moisture regimes and the area has a developed irrigation water supply that is dependable and of adequate quality; and,

(ii) The soils have a temperature regime that is frigid, mesic, thermic, or hyperthermic (pergelic and cryic regimes are excluded). These are soils that, at a depth of 20 inches (50 cm), have a mean annual temperature higher than 32 °F (0 °C). In addition, the mean summer temperature at this depth in soils with an O horizon is higher than 47 °F (8 °C); in soils that have no O horizon, the mean summer temperature is higher than 59 °F (15 °C); and,

(iii) The soils have a pH between 4.5 and 8.4 in all horizons within a depth of 40 inches (1 meter) or in the root zone if the root zone is less than 40 inches deep; and,

(iv) The soils either have no water table or have a water table that is maintained at a sufficient depth during the cropping season to allow cultivated crops common to the area to be grown; and,

(v) The soils can be managed so that, in all horizons within a depth of 40 inches (1 meter) or in the root zone if the root zone is less than 40 inches

deep, during part of each year the conductivity of the saturation extract is less than 4 mmhos/cm and the exchangeable sodium percentage (ESP) is less than 15; and,

(vi) The soils are not flooded frequently during the growing season (less often than once in 2 years); and,

(vii) The product of K (erodibility factor) x percent slope is less than 2.0, and the product of I (soils erodibility) x C (climatic factor) does not exceed 60; and

(viii) The soils have a permeability rate of at least 0.06 inch (0.15 cm) per hour in the upper 20 inches (50 cm) and the mean annual soil temperature at a depth of 20 inches (50 cm) is less than 59 °F (15 °C); the permeability rate is not a limiting factor if the mean annual soil temperature is 59 °F (15 °C) or higher; and,

(ix) Less than 10 percent of the surface layer (upper 6 inches) in these soils consists of rock fragments coarser than 3 inches (7.6 cm).

(b) *Unique farmland*—(1) *General*. Unique farmland is land other than prime farmland that is used for the production of specific high value food and fiber crops. It has the special combination of soil quality, location, growing season, and moisture supply needed to economically produce sustained high quality and/or high yields of a specific crop when treated and managed according to acceptable farming methods. Examples of such crops are citrus, tree nuts, olives, cranberries, fruit, and vegetables.

(2) *Specific characteristics of unique farmland*. (i) Is used for a specific high-value food or fiber crop; (ii) Has a moisture supply that is adequate for the specific crop; the supply is from stored moisture, precipitation, or a developed-irrigation system; (iii) Combines favorable factors of soil quality, growing season, temperature, humidity, air drainage, elevation, aspect, or other conditions, such a nearness to market, that favor the growth of a specific food or fiber crop.

(c) *Additional farmland of statewide importance*. This is land, in addition to prime and unique farmlands, that is of statewide importance for the production of food, feed, fiber, forage, and oil seed crops. Criteria for defining and de-

lineating this land are to be determined by the appropriate State agency or agencies. Generally, additional farmlands of statewide importance include those that are nearly prime farmland and that economically produce high yields of crops when treated and managed according to acceptable farming methods. Some may produce as high a yield as prime farmlands if conditions are favorable. In some States, additional farmlands of statewide importance may include tracts of land that have been designated for agriculture by State law.

(d) *Additional farmland of local importance*. In some local areas there is concern for certain additional farmlands for the production of food, feed, fiber, forage, and oilseed crops, even though these lands are not identified as having national or statewide importance. Where appropriate, these lands are to be identified by the local agency or agencies concerned. In places, additional farmlands of local importance may include tracts of land that have been designated for agriculture by local ordinance.

## PART 658—FARMLAND PROTECTION POLICY ACT

- Sec.
- 658.1 Purpose.
- 658.2 Definitions.
- 658.3 Applicability and exemptions.
- 658.4 Guidelines for use of criteria.
- 658.5 Criteria.
- 658.6 Technical assistance.
- 658.7 USDA assistance with Federal agencies' reviews of policies and procedures.

AUTHORITY: 7 U.S.C. 4201-4209.

SOURCE: 49 FR 27724, July 5, 1984, unless otherwise noted.

### § 658.1 Purpose.

This part sets out the criteria developed by the Secretary of Agriculture, in cooperation with other Federal agencies, pursuant to section 1541(a) of the Farmland Protection Policy Act (FPPA or the Act) 7 U.S.C. 4202(a). As required by section 1541(b) of the Act, 7 U.S.C. 4202(b), Federal agencies are (a) to use the criteria to identify and take into account the adverse effects of their programs on the preservation of farmland, (b) to consider alternative

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actions, as appropriate, that could lessen adverse effects, and (c) to ensure that their programs, to the extent practicable, are compatible with State and units of local government and private programs and policies to protect farmland. Guidelines to assist agencies in using the criteria are included in this part. The Department of Agriculture (hereinafter USDA) may make available to States, units of local government, individuals, organizations, and other units of the Federal Government, information useful in restoring, maintaining, and improving the quantity and quality of farmland.

### § 658.2 Definitions.

(a) *Farmland* means prime or unique farmlands as defined in section 1540(c)(1) of the Act or farmland that is determined by the appropriate state or unit of local government agency or agencies with concurrence of the Secretary to be farmland of statewide or local importance. “Farmland” does not include land already in or committed to urban development or water storage. Farmland “already in” urban development or water storage includes all such land with a density of 30 structures per 40-acre area. Farmland already in urban development also includes lands identified as “urbanized area” (UA) on the Census Bureau Map, or as urban area mapped with a “tint overprint” on the USGS topographical maps, or as “urban-built-up” on the USDA Important Farmland Maps. Areas shown as white on the USDA Important Farmland Maps are not “farmland” and, therefore, are not subject to the Act. Farmland “committed to urban development or water storage” includes all such land that receives a combined score of 160 points or less from the land evaluation and site assessment criteria.

(b) *Federal agency* means a department, agency, independent commission, or other unit of the Federal Government.

(c) *Federal program* means those activities or responsibilities of a Federal agency that involve undertaking, financing, or assisting construction or improvement projects or acquiring, managing, or disposing of Federal lands and facilities.

(1) The term “Federal program” does not include:

(i) Federal permitting, licensing, or rate approval programs for activities on private or non-Federal lands; and

(ii) Construction or improvement projects that were beyond the planning stage and were in either the active design or construction state on August 4, 1984.

(2) For the purposes of this section, a project is considered to be “beyond the planning stage and in either the active design or construction state on August 4, 1984” if, on or before that date, actual construction of the project had commenced or:

(i) Acquisition of land or easements for the project had occurred or all required Federal agency planning documents and steps were completed and accepted, endorsed, or approved by the appropriate agency;

(ii) A final environmental impact statement was filed with the Environmental Protection Agency or an environmental assessment was completed and a finding of no significant impact was executed by the appropriate agency official; and

(iii) The engineering or architectural design had begun or such services had been secured by contract. The phrase “undertaking, financing, or assisting construction or improvement projects” includes providing loan guarantees or loan insurance for such projects and includes the acquisition, management and disposal of land or facilities that a Federal agency obtains as the result of foreclosure or other actions taken under a loan or other financial assistance provided by the agency directly and specifically for that property. For the purposes of this section, the phrase “acquiring, managing, or disposing of Federal lands and facilities” refers to lands and facilities that are acquired, managed, or used by a Federal agency specifically in support of a Federal activity or program, such as national parks, national forests, or military bases, and does not refer to lands and facilities that are acquired by a Federal agency as the incidental result of actions by the agency that give the agency temporary custody or ownership of the lands or facilities, such as



acquisition pursuant to a lien for delinquent taxes, the exercise of conservatorship or receivership authority, or the exercise of civil or criminal law enforcement forfeiture or seizure authority.

(d) *State or local government policies or programs to protect farmland* include: Zoning to protect farmland; agricultural land protection provisions of a comprehensive land use plan which has been adopted or reviewed in its entirety by the unit of local government in whose jurisdiction it is operative within 10 years preceding proposed implementation of the particular Federal program; completed purchase or acquisition of development rights; completed purchase or acquisition of conservation easements; prescribed procedures for assessing agricultural viability of sites proposed for conversion; completed agricultural districting and capital investments to protect farmland.

(e) *Private programs to protect farmland* means programs for the protection of farmland which are pursuant to and consistent with State and local government policies or programs to protect farmland of the affected State and unit of local government, but which are operated by a nonprofit corporation, foundation, association, conservancy, district, or other not-for-profit organization existing under State or Federal laws. Private programs to protect farmland may include: (1) Acquiring and holding development rights in farmland and (2) facilitating the transfer of development rights of farmland.

(f) *Site* means the location(s) that would be converted by the proposed action(s).

(g) *Unit of local government* means the government of a county, municipality, town, township, village, or other unit of general government below the State level, or a combination of units of local government acting through an areawide agency under a State law or an agreement for the formulation of regional development policies and plans.

[49 FR 27724, July 5, 1984, as amended at 59 FR 31117, June 17, 1994]

### § 658.3 Applicability and exemptions.

(a) Section 1540(b) of the Act, 7 U.S.C. 4201(b), states that the purpose of the

Act is to minimize the extent to which Federal programs contribute to the unnecessary and irreversible conversion of farmland to nonagricultural uses. Conversion of farmland to nonagricultural uses does not include the construction of on-farm structures necessary for farm operations. Federal agencies can obtain assistance from USDA in determining whether a proposed location or site meets the Act's definition of farmland. The USDA Natural Resources Conservation Service (NRCS) field office serving the area will provide the assistance. Many State or local government planning offices can also provide this assistance.

(b) Acquisition or use of farmland by a Federal agency for national defense purposes is exempted by section 1547(b) of the Act, 7 U.S.C. 4208(b).

(c) The Act and these regulations do not authorize the Federal Government in any way to regulate the use of private or non-Federal land, or in any way affect the property rights of owners of such land. In cases where either a private party or a non-Federal unit of government applies for Federal assistance to convert farmland to a nonagricultural use, the Federal agency should use the criteria set forth in this part to identify and take into account any adverse effects on farmland of the assistance requested and develop alternative actions that would avoid or mitigate such adverse effects. If, after consideration of the adverse effects and suggested alternatives, the landowners want to proceed with conversion, the Federal agency, on the basis of the analysis set forth in § 658.4 and any agency policies or procedures for implementing the Act, may provide or deny the requested assistance. Only assistance and actions that would convert farmland to nonagricultural uses are subject to this Act. Assistance and actions related to the purchase, maintenance, renovation, or replacement of existing structures and sites converted prior to the time of an application for assistance from a Federal agency, including assistance and actions related to the construction of minor new ancillary structures (such as garages or sheds), are not subject to the Act.

(d) Section 1548 of the Act, as amended, 7 U.S.C. 4209, states that the Act

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shall not be deemed to provide a basis for any action, either legal or equitable, by any person or class of persons challenging a Federal project, program, or other activity that may affect farmland. Neither the Act nor this rule, therefore, shall afford any basis for such an action. However, as further provided in section 1548, the governor of an affected state, where a state policy or program exists to protect farmland, may bring an action in the Federal district court of the district where a Federal program is proposed to enforce the requirements of section 1541 of the Act, 7 U.S.C. 4202, and regulations issued pursuant to that section.

[49 FR 27724, July 5, 1984, as amended at 59 FR 31117, June 17, 1994]

#### § 658.4 Guidelines for use of criteria.

As stated above and as provided in the Act, each Federal agency shall use the criteria provided in § 658.5 to identify and take into account the adverse effects of Federal programs on the protection of farmland. The agencies are to consider alternative actions, as appropriate, that could lessen such adverse effects, and assure that such Federal programs, to the extent practicable, are compatible with State, unit of local government and private programs and policies to protect farmland. The following are guidelines to assist the agencies in these tasks:

(a) An agency may determine whether or not a site is farmland as defined in § 658.2(a) or the agency may request that NRCS make such a determination. If an agency elects not to make its own determination, it should make a request to NRCS on Form AD-1006, the Farmland Conversion Impact Rating Form, available at NRCS offices, for determination of whether the site is farmland subject to the Act. If neither the entire site nor any part of it are subject to the Act, then the Act will not apply and NRCS will so notify the agency. If the site is determined by NRCS to be subject to the Act, then NRCS will measure the relative value of the site as farmland on a scale of 0 to 100 according to the information sources listed in § 658.5(a). NRCS will respond to these requests within 10 working days of their receipt except that in cases where a site visit or land

evaluation system design is needed, NRCS will respond in 30 working days. In the event that NRCS fails to complete its response within the required period, if further delay would interfere with construction activities, the agency should proceed as though the site were not farmland.

(b) The Form AD 1006, returned to the agency by NRCS will also include the following incidental information: The total amount of farmable land (the land in the unit of local government's jurisdiction that is capable of producing the commonly grown crop); the percentage of the jurisdiction that is farmland covered by the Act; the percentage of farmland in the jurisdiction that the project would convert; and the percentage of farmland in the local government's jurisdiction with the same or higher relative value than the land that the project would convert. These statistics will not be part of the criteria scoring process, but are intended simply to furnish additional background information to Federal agencies to aid them in considering the effects of their projects on farmland.

(c) After the agency receives from NRCS the score of a site's relative value as described in § 658.4(a) and then applies the site assessment criteria which are set forth in § 658.5 (b) and (c), the agency will assign to the site a combined score of up to 260 points, composed of up to 100 points for relative value and up to 160 points for the site assessment. With this score the agency will be able to identify the effect of its programs on farmland, and make a determination as to the suitability of the site for protection as farmland. Once this score is computed, USDA recommends:

(1) Sites with the highest combined scores be regarded as most suitable for protection under these criteria and sites with the lowest scores, as least suitable.

(2) Sites receiving a total score of less than 160 need not be given further consideration for protection and no additional sites need to be evaluated.

(3) Sites receiving scores totaling 160 or more be given increasingly higher levels of consideration for protection.

(4) When making decisions on proposed actions for sites receiving scores

totaling 160 or more, agency personnel consider:

(i) Use of land that is not farmland or use of existing structures;

(ii) Alternative sites, locations and designs that would serve the proposed purpose but convert either fewer acres of farmland or other farmland that has a lower relative value;

(iii) Special siting requirements of the proposed project and the extent to which an alternative site fails to satisfy the special siting requirements as well as the originally selected site.

(d) Federal agencies may elect to assign the site assessment criteria relative weightings other than those shown in § 658.5 (b) and (c). If an agency elects to do so, USDA recommends that the agency adopt its alternative weighting system (1) through rule-making in consultation with USDA, and (2) as a system to be used uniformly throughout the agency. USDA recommends that the weightings stated in § 658.5 (b) and (c) be used until an agency issues a final rule to change the weightings.

(e) It is advisable that evaluations and analyses of prospective farmland conversion impacts be made early in the planning process before a site or design is selected, and that, where possible, agencies make the FPPA evaluations part of the National Environmental Policy Act (NEPA) process. Under the agency's own NEPA regulations, some categories of projects may be excluded from NEPA which may still be covered under the FPPA. Section 1540(c)(4) of the Act exempts projects that were beyond the planning stage and were in either the active design or construction state on the effective date of the Act. Section 1547(b) exempts acquisition or use of farmland for national defense purposes. There are no other exemptions of projects by category in the Act.

(f) Numerous States and units of local government are developing and adopting Land Evaluation and Site Assessment (LESA) systems to evaluate the productivity of agricultural land and its suitability for conversion to nonagricultural use. Therefore, States and units of local government may have already performed an evaluation using criteria similar to those con-

tained in this rule applicable to Federal agencies. USDA recommends that where sites are to be evaluated within a jurisdiction having a State or local LESA system that has been approved by the governing body of such jurisdiction and has been placed on the NRCS State conservationist's list as one which meets the purpose of the FPPA in balance with other public policy objectives, Federal agencies use that system to make the evaluation.

(g) To meet reporting requirements of section 1546 of the Act, 7 U.S.C. 4207, and for data collection purposes, after the agency has made a final decision on a project in which one or more of the alternative sites contain farmland subject to the FPPA, the agency is requested to return a copy of the Form AD-1006, which indicates the final decision of the agency, to the NRCS field office.

(h) Once a Federal agency has performed an analysis under the FPPA for the conversion of a site, that agency's, or a second Federal agency's determination with regard to additional assistance or actions on the same site do not require additional redundant FPPA analysis.

[49 FR 27724, July 5, 1984, as amended at 59 FR 31118, June 17, 1994]

#### § 658.5 Criteria.

This section states the criteria required by section 1541(a) of the Act, 7 U.S.C. 4202(a). The criteria were developed by the Secretary of Agriculture in cooperation with other Federal agencies. They are in two parts, (1) the land evaluation criterion, relative value, for which NRCS will provide the rating or score, and (2) the site assessment criteria, for which each Federal agency must develop its own ratings or scores. The criteria are as follows:

(a) *Land Evaluation Criterion—Relative Value.* The land evaluation criterion is based on information from several sources including national cooperative soil surveys or other acceptable soil surveys, NRCS field office technical guides, soil potential ratings or soil productivity ratings, land capability classifications, and important farmland determinations. Based on this information, groups of soils within a local government's jurisdiction will be

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evaluated and assigned a score between 0 to 100, representing the relative value, for agricultural production, of the farmland to be converted by the project compared to other farmland in the same local government jurisdiction, This score will be the Relative Value Rating on Form AD 1006.

(b) *Site Assessment Criteria.* Federal agencies are to use the following criteria to assess the suitability of each proposed site or design alternative for protection as farmland along with the score from the land evaluation criterion described in §658.5(a). Each criterion will be given a score on a scale of 0 to the maximum points shown. Conditions suggesting top, intermediate and bottom scores are indicated for each criterion. The agency would make scoring decisions in the context of each proposed site or alternative action by examining the site, the surrounding area, and the programs and policies of the State or local unit of government in which the site is located. Where one given location has more than one design alternative, each design should be considered as an alternative site. The site assessment criteria are:

(1) How much land is in nonurban use within a radius of 1.0 mile from where the project is intended?

- More than 90 percent—15 points
- 90 to 20 percent—14 to 1 point(s)
- Less than 20 percent—0 points

(2) How much of the perimeter of the site borders on land in nonurban use?

- More than 90 percent—10 points
- 90 to 20 percent—9 to 1 point(s)
- Less than 20 percent—0 points

(3) How much of the site has been farmed (managed for a scheduled harvest or timber activity) more than 5 of the last 10 years?

- More than 90 percent—20 points
- 90 to 20 percent—19 to 1 point(s)
- Less than 20 percent—0 points

(4) Is the site subject to State or unit of local government policies or programs to protect farmland or covered by private programs to protect farmland?

- Site is protected—20 points
- Site is not protected—0 points

(5) How close is the site to an urban built-up area?

- The site is 2 miles or more from an urban built-up area—15 points
- The site is more than 1 mile but less than 2 miles from an urban built-up area—10 points
- The site is less than 1 mile from, but is not adjacent to an urban built-up area—5 points
- The site is adjacent to an urban built-up area—0 points

(6) How close is the site to water lines, sewer lines and/or other local facilities and services whose capacities and design would promote non-agricultural use?

- None of the services exist nearer than 3 miles from the site—15 points
- Some of the services exist more than 1 but less than 3 miles from the site—10 points
- All of the services exist within ½ mile of the site—0 points

(7) Is the farm unit(s) containing the site (before the project) as large as the average-size farming unit in the county? (Average farm sizes in each county are available from the NRCS field offices in each State. Data are from the latest available Census of Agriculture, Acreage of Farm Units in Operation with \$1,000 or more in sales.)

- As large or larger—10 points
- Below average—deduct 1 point for each 5 percent below the average, down to 0 points if 50 percent or more below average—9 to 0 points

(8) If this site is chosen for the project, how much of the remaining land on the farm will become non-farmable because of interference with land patterns?

- Acreage equal to more than 25 percent of acres directly converted by the project—10 points
- Acreage equal to between 25 and 5 percent of the acres directly converted by the project—9 to 1 point(s)
- Acreage equal to less than 5 percent of the acres directly converted by the project—0 points

(9) Does the site have available adequate supply of farm support services and markets, i.e., farm suppliers, equipment dealers, processing and storage facilities and farmer's markets?

- All required services are available—5 points

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Some required services are available—4 to 1 point(s)

No required services are available—0 points

(10) Does the site have substantial and well-maintained on-farm investments such as barns, other storage buildings, fruit trees and vines, field terraces, drainage, irrigation, waterways, or other soil and water conservation measures?

High amount of on-farm investment—20 points

Moderate amount of on-farm investment—19 to 1 point(s)

No on-farm investment—0 points

(11) Would the project at this site, by converting farmland to nonagricultural use, reduce the demand for farm support services so as to jeopardize the continued existence of these support services and thus, the viability of the farms remaining in the area?

Substantial reduction in demand for support services if the site is converted—10 points

Some reduction in demand for support services if the site is converted—9 to 1 point(s)

No significant reduction in demand for support services if the site is converted—0 points

(12) Is the kind and intensity of the proposed use of the site sufficiently incompatible with agriculture that it is likely to contribute to the eventual conversion of surrounding farmland to nonagricultural use?

Proposed project is incompatible with existing agricultural use of surrounding farmland—10 points

Proposed project is tolerable to existing agricultural use of surrounding farmland—9 to 1 point(s)

Proposed project is fully compatible with existing agricultural use of surrounding farmland—0 points

(c) *Corridor-type Site Assessment Criteria.* The following criteria are to be used for projects that have a linear or corridor-type site configuration connecting two distant points, and crossing several different tracts of land. These include utility lines, highways, railroads, stream improvements, and flood control systems. Federal agencies are to assess the suitability of each corridor-type site or design alternative for protection as farmland along with the land evaluation information described in §658.4(a). All criteria for corridor-type sites will be scored as shown

in §658.5(b) for other sites, except as noted below:

(1) Criteria 5 and 6 will not be considered.

(2) Criterion 8 will be scored on a scale of 0 to 25 points, and criterion 11 will be scored on a scale of 0 to 25 points.

### § 658.6 Technical assistance.

(a) Section 1543 of the Act, 7 U.S.C. 4204 states, "The Secretary is encouraged to provide technical assistance to any State or unit of local government, or any nonprofit organization, as determined by the Secretary, that desires to develop programs or policies to limit the conversion of productive farmland to nonagricultural uses." In §2.62, of 7 CFR part 2, subtitle A, NRCS is delegated leadership responsibility within USDA for the activities treated in this part.

(b) In providing assistance to States, local units of government, and nonprofit organizations, USDA will make available maps and other soils information from the national cooperative soil survey through NRCS field offices.

(c) Additional assistance, within available resources, may be obtained from local offices of other USDA agencies. The Agricultural Stabilization and Conservation Service and the Forest Service can provide aerial photographs, crop history data, and related information. A reasonable fee may be charged. In many States, the Cooperative Extension Service can provide help in understanding and identifying farmland protection issues and problems, resolving conflicts, developing alternatives, deciding on appropriate actions, and implementing those decisions.

(d) Officials of State agencies, local units of government, nonprofit organizations, or regional, area, State-level, or field offices of Federal agencies may obtain assistance by contacting the office of the NRCS State conservationist. A list of Natural Resources Conservation Service State office locations appears in appendix A, §661.6 of this title. If further assistance is needed, requests

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should be made to the Assistant Secretary for Natural Resources and Environment, Office of the Secretary, Department of Agriculture, Washington, DC 20250.

### **§ 658.7 USDA assistance with Federal agencies' reviews of policies and procedures.**

(a) Section 1542(a) of the Act, 7 U.S.C. 4203, states, "Each department, agency, independent commission or other unit of the Federal Government, with the assistance of the Department of Agriculture, shall review current provisions of law, administrative rules and regulations, and policies and procedures applicable to it to determine whether any provision thereof will prevent such unit of the Federal Government from taking appropriate action to comply fully with the provisions of this subtitle."

(b) Section 1542(b) of the Act, 7 U.S.C. 4203, requires, as appropriate, each department, agency, independent commission, or other unit of the Federal Government, with the assistance of the Department of Agriculture, to develop proposals for action to bring its programs, authorities, and administrative activities into conformity with the purpose and policy of the Act.

(c) USDA will provide certain assistance to other Federal agencies for the

purposes specified in section 1542 of the Act, 7 U.S.C. 4203. If a Federal agency identifies or suggests changes in laws, administrative rules and regulations, policies, or procedures that may affect the agency's compliance with the Act, USDA can advise the agency of the probable effects of the changes on the protection of farmland. To request this assistance, officials of Federal agencies should correspond with the Chief, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013.

(d) To meet the reporting requirements of section 1546 of the Act, 7 U.S.C. 4207, and for data collection purposes, each Federal agency is requested to report to the Chief of the Natural Resources Conservation Service by November 15th of each year on progress made during the prior fiscal year to implement sections 1542 (a) and (b) of the Act, 7 U.S.C. 4203 (a) and (b). Until an agency fully implements those sections, the agency should continue to make the annual report, but may omit the report upon full implementation. However, an agency is requested to file an annual report for any future year in which the agency has substantially changed its process for compliance with the Act.

[49 FR 27724, July 5, 1984, as amended at 59 FR 31118, June 17, 1994]

## SUBCHAPTER G—MISCELLANEOUS

### PART 660 [RESERVED]

### PART 661—PUBLIC INFORMATION AND RIGHT TO PRIVACY

#### Subpart A—Availability of Records and Materials

- Sec.  
661.1 General.  
661.2 Public access and copying.  
661.3 Requests for records.  
661.4 Appeals.  
661.5 Exempt records.

#### Subpart B—Right to Privacy

- 661.6 General.  
APPENDIX A TO PART 661—AVAILABILITY OF  
INFORMATION

AUTHORITY: 5 U.S.C. 552, 552a; 7 CFR 1.1-1.16, 1.110-1.123.

SOURCE: 43 FR 34756, Aug. 7, 1978, unless otherwise noted.

#### Subpart A—Availability of Records and Materials

##### § 661.1 General.

This part is issued in accordance with the regulations of the Secretary of Agriculture at 7 CFR 1.1 through 1.16 implementing the Freedom of Information Act, 5 U.S.C. 552. The Secretary's regulations, as implemented by the regulations in this part, govern the availability to the public of records of the Natural Resources Conservation Service and the records for which the Natural Resources Conservation Service has custodial responsibility.

##### § 661.2 Public access and copying.

Natural Resources Conservation Service will make available for public inspection and copying those materials covered by 5 U.S.C. 552(a)(2) as set out in the Secretary's regulations.

##### § 661.3 Requests for records.

Requests for records under 5 U.S.C. 552(a)(3) will be made in accordance with 7 CFR 1.3(a). The titles and mailing addresses of the officials in Natural Resources Conservation Service authorized to receive requests for records

are shown in Appendix A of this subpart. Authority is hereby delegated to these officials to make determinations regarding such requests in accordance with 7 CFR 1.4(c).

##### § 661.4 Appeals.

Any person whose request for records above is denied shall have the right to appeal that denial in accordance with 7 CFR 1.3(e). All appeals shall be addressed to: Administrator, Natural Resources Conservation Service, U.S. Department of Agriculture, P.O. Box 2890, Washington, DC 20013.

##### § 661.5 Exempt records.

Records exempt under 5 U.S.C. 552(b) may be withheld in accordance with 7 CFR 1.11.

#### Subpart B—Right to Privacy

##### § 661.6 General.

Natural Resources Conservation Service implementation of the Privacy Act of 1974, 5 U.S.C. 552a is contained in the regulations of the Secretary, 7 CFR 1.110 through 1.123.

#### APPENDIX A TO PART 661—AVAILABILITY OF INFORMATION

The following list pertaining to the availability of information are published in accordance with the requirement and pursuant to the authority of sections 552, 559 of Title 5, United States Code.

##### REQUEST FOR EXAMINATION OR COPY OF RECORDS

###### *General*

Request for examination and copying of a record or for copies of records shall be made to the Deputy Administrator for Administration, Natural Resources Conservation Service, U.S. Department of Agriculture, P.O. Box 2890, Washington, DC 20013, or to the State Conservationist in any of the listed State offices.

##### NATURAL RESOURCES CONSERVATION SERVICE, STATE OFFICE LOCATION

State Conservationist, Wright Building, 138  
South Gay St., P.O. Box 311, Auburn, Ala.  
36830.

- State Conservationist, Suite 129, Professional Bldg., 2221 East Northern Lights Blvd., Anchorage, Alaska 99504.
- State Conservationist, 230 North 1st Ave., Federal Bldg., Phoenix, Ariz. 85025.
- State Conservationist, Federal Bldg., Room 5029, 700 West Capitol St., P.O. Box 2323, Little Rock, Ark. 72203.
- State Conservationist, 2828 Chiles Rd., Davis, Calif. 95616.
- State Conservationist, Mansfield Professional Park, Route 44A, Storrs, Conn. 06268.
- State Conservationist, Treadway Towers, Suite 2-4, 9 East Loockerman St., Dover, Del. 19901.
- State Conservationist, Federal Bldg., P.O. Box 1208, Gainesville, Fla., 32602.
- State Conservationist, Federal Bldg., 355 East Hancock Ave., P.O. Box 832, Athens, Ga. 30603.
- State Conservationist, 300 Moana Blvd., Ala., Room 4316, P.O. Box 50004, Honolulu, Hawaii 96850.
- State Conservationist, Room 313, 2490 West 26th Ave., P.O. Box 17107, Denver, Colo. 80217.
- State Conservationist, Federal Bldg., 200 West Church St., P.O. Box 678, Champaign, Ill. 61820.
- State Conservationist, Atkinson Square-West, Suite 220, 5610 Crawfordsville Rd., Indianapolis, Ind. 46224.
- State Conservationist, 823 Federal Bldg., 210 Walnut St., Des Moines, Iowa 50309.
- State Conservationist, 760 South Broadway, P.O. Box 600, Salina, Kans. 67401.
- State Conservationist, 333 Waller Ave., Lexington, Ky. 40504.
- State Conservationist, 3737 Government St., P.O. Box 1630, Alexandria, La. 71301.
- State Conservationist, USDA Bldg., University of Maine, Orono, Maine 04473.
- State Conservationist, Hartwick Bldg., Room 522, 4321 Hartwick Rd., College Park, Md. 20740.
- State Conservationist, 29 Cottage St., Amherst, Mass. 01002.
- State Conservationist, Room 345, 304 North 8th St., Boise, Idaho 83702.
- State Conservationist, Milner Bldg., Room 590, 210 South Lamar St., P.O. Box 610, Jackson, Miss. 39205.
- State Conservationist, 555 Vandiver Dr., Columbia, Mo. 65201.
- State Conservationist, Federal Bldg., P.O. Box 970, Bozeman, Mont. 59715.
- State Conservationist, Federal Bldg.,-U.S. Courthouse, Room 345, Lincoln, Nebr. 68508.
- State Conservationist, U.S. Post Office Bldg., P.O. Box 4850, Reno, Nev. 89505.
- State Conservationist, Federal Bldg., Durham, N.H. 03824.
- State Conservationist, 1370 Hamilton St., P.O. Box 219, Somerset, N.J. 08873.
- State Conservationist, 517 Gold Ave., SW., P.O. Box 2007, Albuquerque, N. Mex. 87103.
- State Conservationist, U.S. Courthouse and Federal Bldg., 100 South Clinton St., Room 771, Syracuse, N.Y. 13260.
- State Conservationist, 1405 South Harrison Rd., East Lansing, Mich. 48823.
- State Conservationist, 200 Federal Bldg. and U.S. Courthouse, 316 North Robert St., St. Paul, Minn. 55101.
- State Conservationist, 200 North High St., Room 522, Columbus, Ohio 43215.
- State Conservationist, Agriculture Center Bldg., Farm Rd. and Brumley St., Stillwater, Okla. 74074.
- State Conservationist, Federal Bldg., 1220 Southwest 3d Ave., Portland, Oreg. 97204.
- State Conservationist, Federal Bldg., and Courthouse, Box 985 Federal Square Station, Harrisburg, Pa. 17108.
- State Conservationist, Caribbean Area, Room 633 Federal Bldg., Chardon Ave., G.P.O. Box 4868, Hato Rey, P.R. 00936.
- State Conservationist, 222 Quaker Lane, West Warwick, R.I. 02893.
- State Conservationist, 240 Stoneridge Dr., Columbia, S.C. 29210.
- State Conservationist, 200 4th St., SW., P.O. Box 1357, Huron, S. Dak. 57350.
- State Conservationist, Federal Office Bldg., 310 New Bern Ave., Fifth Floor-P.O. Box 27307, Raleigh, N.C. 27611.
- State Conservationist, Federal Bldg., P.O. Box 1458, Bismarck, N. Dak. 58501.
- State Conservationist, Federal Bldg., 101 South Main St., P.O. Box 648, Temple, Tex. 76501.
- State Conservationist, 4012 Federal Bldg., 125 South State St., Salt Lake City, Utah 84138.
- State Conservationist, Burlington Square, Suite 205, Burlington, Vt. 05401.
- State Conservationist, Federal Bldg., Room 9201, 400 North 8th St., P.O. Box 10026, Richmond, Va. 23240.
- State Conservationist, 360 U.S. Courthouse, West 920 Riverside Ave., Spokane, Wash. 99201.
- State Conservationist, 75 High St., P.O. Box 865, Morgantown, W. Va. 26505.
- State Conservationist, 4601 Hammersley Rd., Madison, Wis. 53711.
- State Conservationist, Federal Office Bldg., P.O. Box 2440, Casper, Wyo. 82601.
- State Conservationist, 675 U.S. Courthouse, Nashville, Tenn. 37203.

Only those matters pertaining to the particular State and matters of general application will be available in each State office.

## PART 662—REGIONAL EQUITY

- Sec.
- 662.1 General.
- 662.2 Definitions.
- 662.3 Applicability.
- 662.4 Regional Equity implementation procedure.



## Natural Resources Conservation Service, USDA

## § 662.4

AUTHORITY: 16 U.S.C. 3841(d).

SOURCE: 74 FR 63540, Dec. 4, 2009, unless otherwise noted.

### § 662.1 General.

This part sets forth the procedures that NRCS will use to implement the Regional Equity provision of the Food Security Act of 1985, 16 U.S.C. 3841(d).

### § 662.2 Definitions.

The following definitions are applicable to this part:

*Chief* means the Chief of NRCS or the person delegated authority to act on behalf of the Chief.

*Contribution programs* means Regional Equity programs that contribute funding to Regional Equity States, as determined by the Chief each fiscal year, consistent with the limitations established in 16 U.S.C. 3841(d).

*Drawing account* means the aggregated amount of contribution program funds required to bring all States to the Regional Equity threshold.

*Funding opportunity* means the amount of funding needed to bring a State to the \$15,000,000 Regional Equity threshold for the aggregate of Regional Equity programs.

*Initial allocation* means the amount of conservation program allocation funding provided to all States through a merit-based, natural resource focused process.

*Obligated* means a specific binding agreement, in writing, for the purpose authorized by law and executed while the funding is available.

*Regional Equity programs* mean conservation programs under Subtitle D (excluding the Conservation Reserve Program, Wetlands Reserve Program, and the Conservation Security Program) of the Food Security Act of 1985. These programs include: Conservation Stewardship Program, Farm and Ranch Lands Protection Program, Grassland Reserve Program, Environmental Quality Incentives Program, Conservation Innovation Grants, Agricultural Water Enhancement Program, Conservation of Private Grazing Land, Wildlife Habitat Incentive Program, Grassroots Source Water Protection Program, Great Lakes Basin Program, Chesapeake Bay Watershed Initiative, and the Voluntary Public Access and Habi-

tat Incentive Program. Regional Equity programs will be aggregated to determine whether a State meets the \$15,000,000 Regional Equity threshold. However, not all Regional Equity programs will be considered contribution programs.

*Regional Equity provision* means the statutory requirement to give priority funding before April 1 for approved applications for specific programs within States that have not received a \$15,000,000 aggregate level of funding.

*Regional Equity States* means any State not meeting the Regional Equity threshold of \$15,000,000 through the initial allocation for Regional Equity programs.

*Regional Equity threshold* means the \$15,000,000 minimum aggregate amount of Regional Equity program funds.

*Respective demand* means the mix of contribution program funds that each State Conservationist in a Regional Equity State requests to fill that State's funding opportunity.

*State* means all 50 States, the District of Columbia, Commonwealth of Puerto Rico, Guam, Virgin Islands, American Samoa, Commonwealth of the Northern Mariana Islands, and the Freely Associated States.

*State Conservationist* means the NRCS employee authorized to implement Regional Equity programs and direct and supervise NRCS activities in a State, the Caribbean Area, or the Pacific Islands Area.

### § 662.3 Applicability.

The regulation in this part sets forth the policies and procedures for the Regional Equity provision as administered by the NRCS. This regulation applies to the Regional Equity programs defined in this part. The Chief will implement the Regional Equity provision by identifying programs that contribute to the establishment of program-specific drawing accounts for priority funding in Regional Equity States.

### § 662.4 Regional Equity implementation procedure.

The following procedures will implement the Regional Equity provision:

(a) *Determine initial allocations.* NRCS will determine initial conservation

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program funding levels for each State through a merit-based, natural resource focused allocation process as determined by the Chief.

(b) *Determine the funding opportunity.* The combined initial allocation funding level for Regional Equity programs, by State, will be compared to the Regional Equity threshold to determine each Regional Equity State's funding opportunity.

(c) *Establish contribution program fund levels.* Subject to availability of funds, contribution program fund levels are determined by:

(1) Identifying which programs contribute funds, as determined by the Chief, consistent with the limitations established in 16 U.S.C. 3841(d); and

(2) Each State's respective demand.

(i) State Conservationists in Regional Equity States, in consultation with State Technical Committees, will evaluate and determine their respective program demands based on the following criteria:

(A) Program applications and how they address national program priorities;

(B) Historic trends in program interest; and

(C) State priority natural resource concerns.

(ii) The State Conservationist's identified respective demand will assist the

Chief in determining the composition of contribution program funds within the established drawing account.

(d) *Establish the drawing account.* NRCS will establish a drawing account for each contribution program, as determined in paragraphs (c)(1) and (c)(2) of this section, and will give priority before April 1 of each fiscal year for such funds to be used to fund applications in Regional Equity States sufficient to bring each of the Regional Equity States to the Regional Equity threshold of \$15,000,000.

(e) *Access the drawing account.* State Conservationists in Regional Equity States may request access to that State's assigned portion of the drawing account once that State has obligated at least 90 percent of its initial allocation for that same program. The Chief may waive the 90 percent threshold requirement for a specific program in response to specific program needs.

(f) *Re-allocation of funds.* The program-specific drawing accounts for Regional Equity States will be available until April 1 of each fiscal year, after which date the remaining funds may be re-allocated at the discretion of the Chief.

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