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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).

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 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.

(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 remined 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 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 conservation 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,

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 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).

§ 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

Sec.

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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.