

§ 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, an Indian tribe, 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.

Privately-owned means owned or operated by a person other than a State, a political subdivision of a State, or any agency thereof.

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.

[62 FR 48472, Sept. 16, 1997, as amended at 80 FR 32440, June 9, 2015]

§ 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 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 other than land held in trust for Indian Tribes;

(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.

[62 FR 48472, Sept. 16, 1997, as amended at 80 FR 32440, June 9, 2015]

§ 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.

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(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 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 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