

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

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

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

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

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

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

(1) Payment limitations under 7 CFR part 1400;

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

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

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

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

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

**§ 635.7 Procedures for granting equitable relief.**

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

(1) Agricultural Management Assistance (AMA);

(2) Conservation Security Program (CSP);

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

(4) Environmental Quality Incentives Program (EQIP);

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

(6) Grassland Reserve Program (GRP);

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

(8) Water Bank Program (WBP);

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

(10) Wetlands Reserve Program (WRP);

(11) Wildlife Habitat Incentives Program (WHIP);

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

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

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

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

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

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

with the requirements of the covered conservation program.

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

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

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

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

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

(5) Any other pertinent facts or supporting documentation.

### PART 636—WILDLIFE HABITAT INCENTIVES PROGRAM

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

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

#### § 636.1 Applicability.

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

land, nonindustrial private forest land, and Indian land.

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

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

#### § 636.2 Administration.

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

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

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

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

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