

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Natural Resources Conservation Service

#### 7 CFR Part 635

RIN 0578-AA16

#### NRCS Procedures for Granting Equitable Relief

**AGENCY:** Natural Resources Conservation Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Natural Resources Conservation Service (NRCS), United States Department of Agriculture (USDA) issues its final rule implementing the equitable relief authority and the procedures set forth at Section 1613 of the Farm Security and Rural Investment Act of 2002 (the 2002 Act), relating to relief for participants for covered programs administered by NRCS. The relief applies to cases where the applicant for relief took action to the applicant's detriment based on action or advice from departmental officials. This rule also addresses situations where the participant simply, but in good faith, failed to fully comply with program requirements. The rule implements Section 1613 as it applies to NRCS administered conservation programs.

**DATES:** Effective October 21, 2004.

**ADDRESSES:** This final rule can be accessed via the internet. Users can access the NRCS homepage at: <http://www.nrcs.usda.gov/>.

**FOR FURTHER INFORMATION CONTACT:** Beth A. Schuler, Conservation Planning and Technical Assistance Division, Room 6103A-S, 1400 Independence Ave, SW, 103, Washington, DC 20250. Telephone: (202) 720-8851. e-mail: [beth.schuler@usda.gov](mailto:beth.schuler@usda.gov). Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact

the USDA Target Center at (202) 720-2600 (voice and TDD).

#### SUPPLEMENTARY INFORMATION:

##### Notice and Comment

Section 1601(c) of the 2002 Act requires that the regulations needed to implement Title I of the 2002 Act are to be promulgated without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971 (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking. Accordingly, these regulations are issued as final.

##### Executive Order 12866

This final rule has been determined to be not significant under Executive Order 12866 and has not been reviewed by the Office of Management and Budget (OMB).

##### Federal Assistance Programs

This rule has a potential impact on all programs listed in the Catalog of Federal Domestic Assistance in the Agency Program Index under the Department of Agriculture, Farm Service Agency and Natural Resources Conservation Service. Other assistance programs are also affected.

##### Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule because neither the Secretary of Agriculture nor NRCS are required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for the subject matter of this rule.

##### Environmental Assessment

The environmental impacts of this rule have been considered in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, and NRCS has concluded that promulgation of this rule is categorically excluded from NEPA's requirement from an environmental impact analysis under the Department of Agriculture regulations, 7 CFR 1b.3(a)(1). Actions implemented under this rule fall in the category of policy development, planning and implementation which relates to routine activities and similar administrative functions and no circumstances exist that would require preparation of an environmental

assessment or environmental impact statement.

##### Executive Order 12778

The final rule has been reviewed in accordance with Executive Order 12778. This final rule preempts State laws that are inconsistent with its provisions. Before a judicial action may be brought concerning this rule, all administrative remedies must be exhausted.

##### Unfunded Mandates

The provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) do not apply to this rule because neither the Secretary of Agriculture nor NRCS are required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for the subject matter of this rule. Also, the rule imposes no mandates as defined in UMRA.

##### Small Business Regulatory Enforcement Fairness Act of 1996

Section 1601(c) of the 2002 Act requires that the regulations necessary to implement Title I of the 2002 Act must be issued within 90 days of enactment and that such regulations shall be issued without regard to the notice and comment provisions of 5 U.S.C. 553. Section 1601(c) further requires that the Secretary use the authority in section 808 of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104-121 (SBREFA), which allows an agency to forgo SBREFA's usual 60-day congressional review delay of the effective date of a major regulation if the agency finds that there is a good cause to make the regulation effective in less than 60 days. Since this regulation is neither major nor significant, it is therefore not subject to the SBREFA 60-day requirement. Accordingly, this rule is effective 30 days after publication in the **Federal Register**.

##### Paperwork Reduction Act

Section 2702 of the 2002 Act requires that the implementation of this provision be carried out without regard to the Paperwork Reduction Act, Chapter 35 of title 44, United States Code. Therefore, NRCS is not reporting recordkeeping or estimated paperwork burden associated with this final rule.

## Government Paperwork Elimination Act

NRCS is committed to compliance with the Government Paperwork Elimination Act as well as continued pursuit of providing all services electronically when practicable. This rule requires that a program participant must make a written request for equitable relief for a program administered by NRCS. In part, this rule lends itself to electronic request and submission. To that end, NRCS and the Farm Services Agency (FSA) are jointly pursuing the development an application that will allow program participants to apply for equitable relief online. It will also enable both FSA and NRCS to manage the requests and reporting aspects electronically.

### Discussion of the Rule

#### Part 635—Equitable Relief From Ineligibility

##### *Section 635.1 Definitions and Abbreviations*

This section sets forth the statutory definitions provided in Section 1613(a). Specifically, section 635.2 defines “agricultural commodity” as any agricultural commodity, food, feed, fiber, or livestock that is subject to a “covered program.” The rule defines “participant” as a participant in a “covered program”. A “covered program” is defined as: (1) A program administered by the Secretary of Agriculture (Secretary) under which price or income support, or production or market loss assistance, is provided to producers of “agricultural commodities;” and (2) a conservation program administered by the Secretary. However, this section of the rule also provides, as does the statutory authority, that “covered programs” do not include: (1) An agricultural credit program carried out under the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*); or (2) the crop insurance program carried out under the Federal Crop Insurance Act (7 U.S.C. 1501 *et seq.*).

##### *Section 635.2 Applicability*

Section 1613 of the 2002 Act authorizes relief when a participant in a covered conservation program is determined to be not in compliance with the requirements of the covered program and, therefore, would be ineligible for a loan, payment, or other benefit under the covered program, and it is further determined that the participant acted in good faith and in reliance on the action or advice of an agency employee to the detriment of the participant or failed to fully comply

with the requirements of the covered program but made a good faith effort to comply with the requirements. Section 635.2 sets forth the general applicability of relief to be provided under this regulation.

This section also provides, at 635.2(b), that the provisions of this rule will only be implemented prospectively; that is, it applies only to actions for which relief is sought that occurred after the implementation date of the authorizing statute, May 13, 2003. This is because the statute does not provide for retroactive application.

##### *Section 635.3 Reliance on Incorrect Actions or Information*

The Secretary at 7 CFR 2.61 has delegated her authority to provide equitable relief and to track such relief to the Chief of NRCS. Accordingly, section 635.3 provides that the Chief may provide relief to any participant that is determined to be not in compliance with the requirements of a covered program and therefore ineligible for a loan, payment, or other benefit under the covered program, if the participant acted in good faith and relied on the action or advice of the Secretary, or an authorized representative, to the detriment of the participant.

##### *Section 635.4 Failure To Fully Comply*

This section implements Section 1613(b)(2) of the statute and provides that the Chief may provide relief to any participant that is determined to be not in compliance with the requirements of a covered program, and therefore ineligible for a loan, payment, or other benefit under the covered program, when the participant failed to comply fully with the requirements of the covered program but made a good faith effort to do so.

##### *Section 635.5 Forms of Relief*

This section sets forth the forms of relief that the deciding official (the Chief or the State Conservationist, as appropriate) may grant, including permitting a participant 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) re-enroll all or part of the land covered by the applicable conservation program; and (5) receive such other equitable relief as the Chief determines appropriate. Section 1613(d) of the statute also specifies that the Secretary may condition the approval of relief

under this section on the participant agreeing to remedy their failure to meet the program requirements. Section 635.6(b) implements this statutory provision.

##### *Section 635.6 Equitable Relief by State Conservationists*

In addition, the statute provides authority for FSA State Directors and NRCS State Conservationists to grant equitable relief. In general, section 1613(e) provides that the State Director and the State Conservationist, in the case of programs administered by their respective offices, may grant relief to a participant (subject to certain limitations) if: (1) The amount of loans, payments, and benefits for which relief will be provided to the participant under this authority is less than \$20,000; (2) the total amount of loans, payments, and benefits for which relief has been previously provided to the participant under this authority is not more than \$5,000; and (3) the total amount of loans, payments, and benefits for which relief is provided to similarly situated participants is not more than \$1,000,000, as determined by the Secretary. This rule addresses only programs administered through NRCS and, hence, through State Conservationists. Another rule at 7 CFR Part 718, Subpart D, Equitable Relief from Ineligibility, has been promulgated by FSA which addresses the equitable relief authority provided under Section 1613 for programs administered by FSA.

Further, the rule at section 635.6 provides that State Conservationist grants of relief: (1) Shall not require prior approval by the Chief of the Department of Agriculture’s Natural Resources Conservation Service, or any other officer or employee of the Service; (2) shall be made only after consultation with, and the approval of, the Office of General Counsel of the Department of Agriculture; and (3) are subject to reversal only by the Secretary (who may not delegate the reversal authority). This rule also specifies that the State Conservationist’s authority to grant relief applies only to eligibility under covered conservation programs and does not apply to the administration of: (1) Payment limitations under (i) Sections 1001 through 1001F of the Food Security Act of 1985 (7 U.S.C. 1308 *et seq.*), or (ii) a conservation program administered by the Secretary; or to (2) highly erodible land and wetland conservation requirements under subtitle B or C of title XII of the Food Security Act of 1985 (16 U.S.C. 3811 *et seq.*). A discretionary decision by the Secretary, the State Director, or the State Conservationist under Section

1613 to grant relief is final, and is not subject to judicial review under chapter 7 of title 5, United States Code.

Section 635.6(e) of this regulation implements Section 1613(e)(4) of the statute by providing that the authority set forth in this section is in addition to any other authority provided in that or any other Act.

As previously stated, the statute sets forth certain dollar limits when the State Conservationist is granting equitable relief. The agency has interpreted these dollar limits to be aggregate limits provided NRCS-wide over a fiscal year period per participant. The Section 1613(e)(1) dollar limits are not tied to a particular time period or official. However, given the normal yearly orientation of agricultural commodity and conservation programs (as is reflected in the reporting requirements of the statute), it makes sense to provide yearly limits in the rule upon which such dollar computations may be made. Otherwise, the monetary limitation set forth in the statute would be difficult to compute. Equitable relief granted by NRCS to a particular participant must be included in the computation regarding the specific dollar limitations for any request for equitable relief by such participant in the same fiscal year.

Given the Department's past experience in providing equitable relief, the agency anticipates that the dollar amounts involved in granting relief will be small in most cases, both for individual participants and in aggregate among States.

#### *Section 635.7 Procedures for Granting Equitable Relief*

In this section, NRCS sets forth the procedure by which a participant in a covered conservation program must follow to apply for equitable relief under this part.

#### **List of Subjects in 7 CFR Part 635**

Administrative practice and procedure, Agriculture, Conservation programs, Equitable relief.

■ Accordingly, for the reasons set forth in the preamble, 7 CFR Part 635 is added to read as follows:

### **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.

#### **§ 635.1 Definitions and abbreviations.**

The following terms apply to this part:

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

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

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

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

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

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

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

#### **§ 635.2 Applicability.**

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

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

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

#### **§ 635.3 Reliance on incorrect actions or information.**

(a) The Chief, or designee, may grant relief by extending benefits or payments in accordance with § 635.5 when any participant that has been determined to be not in compliance with the requirements of a covered NRCS program, and therefore ineligible for a loan, payment, or other benefit under

the covered program, if the participant, acting in good faith, relied upon the action or advice of an NRCS employee or representative of the United States Department of Agriculture, to the detriment of the participant.

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

#### **§ 635.4 Failure to fully comply.**

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

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

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

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

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

#### **§ 635.5 Forms of relief.**

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

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

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

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

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

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

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

#### **§ 635.6 Equitable relief by State Conservationists.**

(a) General nature of the authority. Notwithstanding provisions in this part providing supervision and relief authority to other officials, the State Conservationist, without further review by other officials (other than the Secretary), may grant relief as set forth in § 635.5 to a participant under the provisions of § 635.3 and § 635.4 so long as:

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

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

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

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

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

(1) Payment limitations under 7 CFR part 1400;

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

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

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

(d) Secretary's reversal authority. A decision made under this part by the

State Conservationist may be reversed only by the Secretary, who may not delegate that authority.

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

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

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

- (1) Agricultural Management Assistance (AMA);
- (2) Conservation Security Program (CSP);
- (3) Emergency Watershed Protection, Floodplain Easement Component (EWP-FPE);
- (4) Environmental Quality Incentives Program (EQIP);
- (5) Farm and Ranch Lands Protection Program (FRPP);
- (6) Grassland Reserve Program (GRP);
- (7) Resource Conservation and Development Program (RC&D);
- (8) Water Bank Program (WBP);
- (9) Watershed Protection and Flood Prevention Program, (WPFPP) (long-term contracts only);
- (10) Wetlands Reserve Program (WRP);
- (11) Wildlife Habitat Incentives Program (WHIP);
- (12) Any other conservation program administered by NRCS which subsequently incorporates these procedures within the program regulations or policies.

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

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

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

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

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

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

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

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

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

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

(5) Any other pertinent facts or supporting documentation.

Signed in Washington, DC, on August 31, 2004.

**Bruce I. Knight,**

*Chief, Natural Resources Conservation Service, Vice President, Commodity Credit Corporation.*

[FR Doc. 04-20783 Filed 9-20-04; 8:45 am]

BILLING CODE 3410-16-P

## **DEPARTMENT OF TRANSPORTATION**

### **Federal Aviation Administration**

#### **14 CFR Part 23**

[Docket No. CE211, Special Condition 23-150-SC]

#### **Special Conditions; Cessna Aircraft Company; EFIS on the Cessna 206H and T206H; Protection of Systems for High Intensity Radiated Fields (HIRF)**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions; request for comments.

**SUMMARY:** These special conditions are issued for the Cessna Aircraft Company, Model 206H/T206H airplanes. These airplanes, as modified by Cessna Aircraft Company, will have a novel or unusual design feature(s) associated with the installation of a Garmin G1000 electronic flight instrument system (EFIS) and the protection of this system from the effects of high intensity radiated field (HIRF) environments. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** The effective date of these special conditions is September 3, 2004. Comments must be received on or before October 21, 2004.

**ADDRESSES:** Comments may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE-7, Attention: Rules Docket Clerk, Docket No. CE211, Room 506, 901