TO: Upper Colorado River Commissioners et al.
FROM: Paul L. Billhymer, General Counsel
SUBJECT: Department of Agriculture Regulations

We are enclosing a copy of newly proposed regulations developed by the Department of Agriculture. These are proposed in order to comply with Sec. 35, P.L. 95-217 (Clean Water Act of 1977). The proposal seeks to create a method to control "non-point sources of pollution" in agriculture areas. This program will be voluntary as now proposed.
This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

[3410-16]
DEPARTMENT OF AGRICULTURE
Soil Conservation Service
[7 CFR Part 634]
RURAL CLEAN WATER PROGRAM
Proposed Rules Providing Long-Term Technical and Financial Assistance to Owners and Operators
AGENCY: Soil Conservation Service (SCS), U.S. Department of Agriculture (USDA).
ACTION: Proposed rulemaking.
SUMMARY: SCS proposes to publish rules and regulations to carry out the Rural Clean Water Program (RCWP). The program provides long-term technical and financial assistance to owners and operators having control of rural land for the purpose of installing and maintaining measures incorporating best management practices to control nonpoint source pollution for improved water quality. The proposed regulations implement recent legislation.

DATES: Comments must be received on or before August 28, 1978.

ADDRESS: Comments should be sent to: Edward E. Thomas, Assistant Administrator for Land Resources, Soil Conservation Service, P.O. Box 2890, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT:

Section 35 of the Clean Water Act of 1977 (Pub. L. 95-217) amends Section 208 of the Federal Water Pollution Control Act (Pub. L. 92-500) by adding a new subsection (f) titled "Agricultural Cost Sharing." Section 208(f) authorizes the Secretary of Agriculture, with the concurrence of the Administrator, Environmental Protection Agency, to establish and administer a program to enter into contracts of from 5 to 10 years with owners or operators having control of rural lands for the purposes of installing and maintaining measures incorporating best management practices to control agricultural nonpoint source pollution for improved water quality. This program may be initiated in those States or areas for which the appropriate Regional Administrator, Environmental Protection Agency has approved the agricultural portion of a Section 208 water quality management plan.
This program is to be known as the Rural Clean Water Program (RCWP). The Secretary of Agriculture has assigned administrative leadership for RCWP to the Administrator of the Soil Conservation Service through the Assistant Secretary of Agriculture for Research and Education (7 CFR 2.19 (f), (g) and 7 CFR 2.62(a)(11)).
A program environmental impact statement (EIS) will be filed before the program becomes operational. Notice of availability of the draft EIS will be published on or about June 23, 1978.
The Soil Conservation Service with participation from the Environmental Protection Agency will hold ten public meetings to discuss and solicit public comments on the proposed Regulations and draft Environmental Impact Statement. Written or oral presentations will be accepted between 9 a.m. and 5 p.m. on the dates and places as follows: July 5, 1978, Airport Hilton Hotel, 2500 South High School, Indianapolis, Indiana, and J. W. McCormack Federal Bldg., Room 208 Post Office and Court House, Boston, Massachusetts; July 7, 1978, Pennthwaite Motor Inn, Camp Hill bypass and U.S. 11 and 15, Camp Hill, Pennsylvania, and Hyatt House Hotel, 6215 Fleur Drive, Des Moines, Iowa; July 10, 1978, Holiday Inn West, West 4212 Sunset Blvd., Spokane, Washington, and L.B.J. School of Public Affairs (L.B.J. Complex), Conference Room 2.104, 2313 Red River, Austin, Texas; July 13, 1978, Hilton Hotel, 1055 Van Ness Avenue, Fresno, California, and Ramada Inn, 400 Greymont Street, Exit 30 Interstate 55 North, Jackson, Mississippi; July 13, 1978, Admiral Ben Bow Inn, 1419 Virginia Avenue, College Park, Georgia, and Executive Tower Inn, Beethoven Room, 1404 Curtis Street, Denver, Colorado.
The proposed regulations are believed to be in compliance with the March 27, 1978, Executive Order 12044. A draft Regulatory Impact Analysis is available from SCS at the address listed above.

Dated: June 12, 1978.

WILLIAM M. JOHNSON,
Deputy Administrator for Technical Services, Soil Conservation Service.

PREAMBLE
These proposed rules and regulations establish the procedures for implementing the Rural Clean Water Program (RCWP) authorized by Section 208(j) of the Federal Water Pollution Control Act (Pub. L. 93-500), as amended. The objective of RCWP is to improve water quality in rural areas. 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.
The proposed rules and regulations provide for reducing agricultural nonpoint source pollution problems on a project area basis. Such projects must be compatible with the applicable 208 water quality management plan. To be eligible for financial and technical assistance, a proposed RCWP project area must be included in an approved agricultural portion of a 208 water quality management plan and must have documented agricultural nonpoint source water quality problems.
The Governors of the States may submit applications for assistance, in order of priority, to eligible project areas. The Administrator, Soil Conservation Service (SCS), with the concurrence of the Environmental Protection Agency (EPA), will determine which projects will be approved for funding. Only the highest priority RCWP project areas where adequate participation of land owners or operators is assured will receive consideration for funding.
Where practicable, the Administrator, SCS, will enter into agreements with soil conservation districts, State soil and water conservation agencies, or State water quality agencies to administer all or part of the program for a project area. Where this is not practicable, USDA will administer the program for a project area, and the Administrator, SCS, will enter into agreements with the Agricultural Stabilization and Conservation Service (ASCS) to administer part of the program in such project areas.
RCWP is only applicable to privately owned land. Any owner or operator whose land or activities in an approved project area are contributing to the area's agricultural nonpoint source

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water quality problems and who has an approved owner or operator water quality plan is eligible to enter into a long-term (5 to 10 years) RCWP contract with the agency designated to administer the program in that project area. The RCWP contract will include measures incorporating best management practices to control agricultural nonpoint source pollution or improved water quality. The basis for the RCWP contracts is a land owner or operator water-quality plant prepared with technical assistance from SCS and approved by a soil conservation district. Land owner or operator participation in RCWP is on a voluntary basis. The priorities for assistance, procedures for financial management, of rural land through water-quality State Rural Conservation Districts will be determined by the soil conservation district and the county ASC Committee in the project area to assure that the most critical water quality problems are addressed.

Included in these proposed rules and regulations are: (1) The responsibilities of participating USDA agencies, participating State and local agencies, participating land owners or operators, and EPA, (2) requirements and procedures for submitting project applications for approval, (3) criteria for selecting, approving, carrying out, and terminating projects, (4) procedures for for entering into an agreement with the agency which will administer the program in a project area, (5) procedures for individual land owners or operators to enter into and carry out long-term RCWP contracts with financial and technical assistance, (6) procedures for contract termination, (7) procedures for financial management, and (8) procedures for program and project monitoring and evaluation.

The Environmental Protection Agency, along with many local, State, and Federal agencies and other interested groups and individuals, has participated in the preparation of these proposed rules and regulations. The Administrator of EPA must concur by signature in the final rules and regulations prior to their publication.

The public is invited to participate in the development of final rules and regulations by reviewing and commenting on these proposed rules and regulations during the 60-day review and comment period.

PART 634—RURAL CLEAN WATER PROGRAM

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§ 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 rules and regulations to carry out a Rural Clean Water Program (RCWP) under section 35, Pub. L. 95-217; 91 Stat. 1578; 33 U.S.C. 1288.

(b) The Rural Clean Water Program provides cost-share and technical assistance to private land owners or operators (participants) having control of rural land through water-quality plans and long-term contracts (5 to 10 years) to install measures incorporating best management practices (BMP's) in project areas which have critical water-quality problems resulting from agricultural activities, and which have an agricultural portion of a 208 water-quality management plan. Land owner or operator participation in RCWP is on a voluntary basis.

(c) The program is a new USDA program and an extension of existing water-quality management programs of the U.S. Environmental Protection Agency (EPA).

§ 634.2 Objective.

The RCWP is designed to reduce agricultural nonpoint source pollutants so as to meet water quality standards or 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.

(a) At the national level, the Secretary of Agriculture, with the concurrence of the Administrator, EPA, administers RCWP. The Secretary of Agriculture has delegated responsibility for administration of the program (43 FR 8252) to the Soil Conservation Service (SCS). SCS will be assisted by other USDA agencies in accordance with existing authorities.

A National Rural Clean Water Coordinating Committee (NRCWCC), chaired by the Administrator, SCS, is to assist the Administrator, SCS, in carrying out the Rural Clean Water Program.

(b) At the State level, a State Rural Clean Water Coordinating Committee (SRCWCC) is to assist the State conservationist, SCS, administer the program. The State conservationist will chair the SRCWCC.

(c) The Administrator, SCS, where practicable, is to enter into agreements with soil conservation districts, State soil and water conservation agencies, or State water quality agencies to administer all or part of the program in a project area. Where this is not practicable, USDA will administer the program in a project area. In those instances where USDA retains administration of the program in a project area, SCS will enter into agreements for the transfer of funds to the Agricultural Stabilization and Conservation Service (ASCS) for the administration of part of the program.

§ 634.4 Responsibilities.

(a) EPA will:

(1) Approve 208 water quality management plans;

(2) Participate in the National and State Rural Clean Water Coordinating Committees;

(3) Review and concur in project applications approved for funding in accordance with § 634.15(c);

(4) Advise the Secretary of Agriculture as to the services which would tend to defeat the purposes of the contracts with rural land owners or operators in accordance with Section 208(b) in the Act.

(b) USDA will:

(1) With the concurrence of EPA, administer a program to enter into contracts to install and maintain measures incorporating best management practices to control agricultural nonpoint source pollution for improved water quality.

(2) Act through SCS and such other agencies of USDA as the Secretary may designate.

(3) Provide technical assistance and share the cost of carrying out those
measures incorporating best management practices that are set forth in the cost-share levels, and
(4) Where practicable, enter into agreements with soil conservation districts, State soil and water conservation agencies, or State water quality agencies to administer all or part of the program for a project area.
(5) Administer the program where it is not practicable for soil conservation districts, State soil and water conservation agencies, or State water quality agencies to administer all or part of the program for a project area.
(6) Together with local soil conservation districts, determine the priorities for assistance to individual participants to assure that the most critical water quality problems are addressed.
(7) Assist in evaluating the overall effectiveness of the program in improving water quality, and
(8) Within the framework of the 308 planning process, make additional investigations or plans, where necessary, to supplement the agricultural portion of approved soil and water quality management plans to determine project areas to be funded.
(c) SCS will:
(1) Retain major technical responsibility for RCWP.
(2) Manage budgeting, accounting, and reporting, and provide technical standards and specifications for use by all administering agencies.
(3) Chair NRCWCC.
(4) For the Secretary of Agriculture, with the concurrence of the Administrator, EPA, approve RCWP projects for funding.
(5) For the Secretary of Agriculture, select and enter into agreements with either soil conservation districts, State soil and water conservation agencies, or State water quality agencies, where practicable, to administer all or part of the program.
(6) Enter into fund transfer agreements to transfer funds to ASCS in those instances where the administration of contracts is retained by USDA.
(7) Enter into agreements with other USDA agencies as appropriate for support which they are to provide.
(8) Provide technical and individual leadership for States, evaluate program operations, and approve agreements.
(9) Chair SRCWCC.
(10) For the Secretary of Agriculture, in coordination with the NRCWCC, determine the cost-share levels for installing measures incorporating best management practices under contract.
(11) Provide technical assistance through soil conservation districts for planning, installing, and maintaining measures incorporating best management practices on privately owned rural land.
(12) Provide technical assistance to soil conservation districts and County ASC Committees to assist them in determining priorities of assistance among individual participants.
(13) Develop appropriate technical and administrative training programs.
(14) Chair the local coordinating committees which are established.
(15) Provide leadership for USDA for co-operative joint USDA-EPA water quality monitoring, evaluation, and analysis in selected project areas.
(16) Provide leadership for USDA in evaluating the effectiveness of the program in improving water quality, and
(17) Carry out the function of soil conservation districts for approving water quality plans where no soil conservation district exists.
(d) The Agricultural Stabilization and Conservation Service will:
(1) Provide guidance to State and County ASC Committees and coordinate Agricultural Conservation Program (ACP) and the Forestry Incentives Program (FIP) with RCWP.
(2) Where the administration of contracts is retained by USDA, enter into agreements with States for the transfer of funds to be allocated to County ASC Committees.
(3) Consolidate reports of the annual cost-share disbursements made by the State ASC Committee, and report these disbursements to SCS.
(4) Furnish data on land use, crop history, and cost-shared conservation measures for the project area.
(5) Review plans and contracts to assure coordination with other farm programs, and
(6) Participate on the National, State, and local coordinating committees.
(e) The Forest Service (FS) will:
(1) Retain technical responsibility for forestry.
(2) Provide technical assistance through the State forestry agency for the purposes of planning, installing, and maintaining forestry measures incorporating best management practices.
(3) Participate on the National, and as appropriate, State, and local coordinating committees.
(f) The Science and Education Administration (SEA) will:
(1) Develop, implement, and coordinate educational programs for agricultural nonpoint source water pollution control, and
(2) Participate on the National, and as appropriate, State, and local coordinating committees.
(g) The Economics, Statistics and Cooperatives Service (ESCS) will:
(1) Participate on the National coordinating committee for the appropriate, participate in State, and local coordinating committees.
(2) Assist in the economic evaluation of measures incorporating best management practices and RCWP project plans.
(3) Make data available from existing and planned ESCS surveys relating to conservation measures, water quality, and related matters.
(4) Assist in RCWP evaluation by making available the ESCS land and water resource economic modeling systems, and
(5) Conduct socioeconomic research, within ESCS authorities and funds, on relevant policy and program issues pertinent to RCWP.
(h) The Farmers Home Administration (FmHA) will:
(1) Participate on the National, and as appropriate, State and local coordinating committees, and
(2) Provide assistance and coordinate their farm loan and grant programs with RCWP.
(i) The NRCS is chaired by the Administrator, NRCS. Other members of the National Committee are the Administrators of ASCS, Farm Service Agency, and NRCS; and Chief of FS, the Director of SEA; and the Assistant Administrator for Water and Hazardous Materials.
(9) Provide leadership for USDA and coordinate activities of approved nonfederal agencies such as soil conservation districts, State soil and water conservation agencies, State water quality agencies, and other organizations to attend as observers. The duties of the Committee are:
(1) Coordinate individual agency programs with the Rural Clean Water Program.
(2) Recommend to the Administrator, NRCS, the project areas to be funded for cost sharing.
(3) Advise the Administrator, NRCS, on variances exceeding the 50 percent cost-share level.
(4) Assist the Administrator, NRCS, in determining program administration, technical assistance, and cost sharing.
(5) Assist the Administrator, NRCS, in mediating agency differences at the State level.
(6) Periodically advise the Secretary and Assistant Secretary for Conservation, Research and Education of program and policy issues, and
(7) Recommend project areas and criteria, for comprehensive joint USDA/EPA water quality monitoring, evaluation, and analyses.
(j) The SNC is chaired by the State conservationist, NRCS. Other members of the State Committee are the State 308 water quality agency, a member of the coordinating committee of the areawide agencies, the State soil and water conservation agency, a designated representative of soil and water conservation districts, other State agencies as the Governor deems appropriate, and representatives of the State agency members of the NRCWCC.
The duties of the Committee are to ensure that a process exists:
(1) To consult with the Governor or his designee on the Governor’s determination of priority project areas,

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(2) To prepare the RCWP applications for the Governor to submit to the Secretary of Agriculture, SCS, as part of the Rural Clean Water Program in a project area, and to assist USDAs and EPA in their comprehensive, joint evaluation and analysis of selected project areas in accordance with § 634.49.

(3) To develop procedures for coordination between conservation districts and County ASC Committees and between RCWP and other water quality programs at the local level.

(4) To assist the State conservation officer, SCS, to mediate agency differences at the local level, and

(5) To prepare and submit applications for rural clean water projects for a project area.

(6) Administer all or part of the Rural Clean Water Program for a project area.

(7) To carry out the responsibilities of soil and water conservation districts for determining the priority for assistance among individual participants where the Governor or his designee and the Secretary of Agriculture or his designee deem it appropriate.

(8) To prepare and submit applications for rural clean water projects for a project area.

The soil conservation district will:

(1) Assist in preparing and submitting applications for rural clean water projects.

(2) Administer all or part of the Rural Clean Water Program for a project area.

(3) Participate on the State and local coordinating committees.

(a) The County ASC Committee will:

(1) Together with the local coordinating committees, determine the priority for assistance among individual participants where USDA retains administration of the program.

(2) Receive applications for assistance from individual participants where USDA retains administration of the program.

(3) Make cost-share payments to participants where USDA retains administration of the program, and

(b) As appropriate, participate on the local coordinating committees.

(c) Participate in the State conservation officer, SCS, to mediate agency differences at the local level, and

(d) As appropriate, assist in the preparation and submission of applications for rural clean water projects.

(e) As appropriate, administer all or part of the Rural Clean Water Program in a project area.

(f) As appropriate, participate on the local coordinating committees.

(g) Approve participants’ water quality plans, and

(h) Together with the County ASC Committee, determine the priority for assistance among individual participants to assure that the most critical water quality problems are addressed.

(9) The County ASC Committee will:

(1) Together with the soil conservation district, determine the priority for assistance among individual participants to assure that the most critical water quality problems are addressed.

(2) Coordinate the development of RCWP contracts in accordance with § 634.50.

(3) Make cost-share payments to participants where USDA retains administration of the program, and

(4) As appropriate, participate on the local coordinating committees.

(10) Other State and local agencies may participate in carrying out RCWP as appropriate.

(11) The administering agency may be a soil conservation district, State soil and water conservation agency, or State water quality agency; or ASCS, when USDA retains contract administration. The administering agency will:

(a) As appropriate, enter into a grant agreement or fund transfer agreement with the Soil Conservation Service for:

(b) Receiving funds from the Soil Conservation Service for administrative costs and cost sharing associated with carrying out the project.

(c) Establishing detailed work schedules in accordance with the approved project application.

(d) Establishing the maximum amount of overhead costs chargeable to the grant.

(e) Establishing an adequate financial management system.

(f) Preparing a cost allocation plan.

(g) Monitoring and reporting performance.

(h) Reviewing applications for assistance received from land owners or operators.

(i) Certifying availability of funds.

(j) Complying with OMB Circular A-192 and other appropriate regulations.

(k) Enter into contracts with individual landowners or operators for the installation of measures incorporating BMPs based on water quality plans developed by the landowner or operator.

(l) Make cost-share payments to participants upon receipt of certification by SCS.

(m) Approve modifications to participant RCWP contracts in accordance with § 634.36.

(n) Develop average cost rates for each practice applicable in the project area.

(o) Sample and inspect materials used in the installation of measures incorporating BMPs.

(p) Establish a contract violations and appeals process.

(1) Hold public meetings to permit public participation in the implementation of RCWP in a project area, and maintain a mailing list of interested individuals and organizations for informing the public about the activities contemplated and carried out in the project area.

(2) Provide necessary facilities, personnel, and legal counsel for arranging for and carrying out these responsibilities.

(3) Allow the State of each State of his designee will, in order to qualify for assistance under RCWP:

(a) Establish priorities for RCWP project areas in the State.

(b) Coordinate the development of RCWP project applications with the SRCWCC and local agencies.

(c) Submit, in order of priority, RCWP project applications to the Administrator, SCS, through the State conservationist, SCS.

(d) Where appropriate, with the State conservationist, SCS, set forth the activities of the SRCWCC in a written agreement.

(e) Provide assistance to membership on the SRCWCC, as appropriate.

(f) Comply with the State conservationist, SCS, in the selection of administering agencies.

§ 634.4 Definitions.

Acreage accounting. A system of accounting in which revenues are recognized when earned and when expenses are incurred, regardless of when cash is received or disbursed.

Adequate level of participation. An adequate level of participation is one in which 75 percent of the total grant or lesser percentage of the area or source of the pollutant problem will be under contract, except for those areas where the approved agricultural portion of the 208 plan provides data and analyses indicating that a greater or lesser percentage of the area or source of the pollutant must be treated to attain water quality standards or water quality goals.

Administrating agency. A soil and water conservation district, State soil and water conservation agency, or State water quality agency that enters into an agreement with the State conservationist, SCS, to administer assigned responsibilities for RCWP projects; or ASCS, when USDA retains contract administration.

Administrative cost. Grant and fund transfer administration costs, including allowable costs incurred by administering agency in administering contracts and making cost-share payments. These costs include charges for personnel, travel, materials, and supplies. The costs are limited to a maximum of 5 percent of the total grant or fund transfer.

Agreement. A legal instrument reflecting the relationship between SCS

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Cost-share level. The percentage of the total cost of installing measures incorporating BMP’s that is provided to land owners or operators (participants) of agricultural land upon the successful implementation of such measures contained in an approved participant water quality plan and agreed-to RCWP contract. The cost-share level(s) for a project area are established when the project application is approved.

Critical areas or sources. Those finite areas or sources of agricultural nonpoint source pollutants which have the most significant impact on the quality of the receiving waters. The pollutants may include sediment, animal waste, pesticides, nutrients, or irrigation return flows.

Direct costs. Costs that are specifically incurred by the administering agency in the performance of responsibilities under the RCWP, and that are reimbursable.

Federal Management Circular FMC 74-4. Cost principles applicable to grants and contracts with local governments.

Financial burden. The participant’s contribution to the total cost of installing measures incorporating BMP’s that would be in excess of his or her ability to contribute or would be inequitable in the extent that it would prevent him or her from participating in the RCWP.

Fund management. Administration of a fund which includes the budget process and the procedures and techniques necessary to ensure efficient and effective use of fund control or amounts of funds available.

Grantor agency. Soil conservation and water quality agencies, or State water quality agencies. The agencies that the SCS enters into grant agreements with to administer all or part of the program established by the Secretary of Agriculture.

Grantor agency, SCS, the Federal agency provided with the funds (appropriated) by Congress to administer the grant program.

Identifiable unit. A component of a measure incorporating BMP’s that can be clearly identified as an accomplishment in carrying out the measure, or a component of a water quality plan that can be clearly identified as an accomplishment in carrying out the measures incorporating BMP’s in that plan.

Letter of Credit—Treasury Regional Disbursing Office System. The system whereby the letters of credit are maintained and serviced by Treasury disbursing centers and Treasury regional disbursing offices.

Management agency. That Federal, State, interstate, regional, or local agency having the authorities set out in 40 CFR 131.116(a) and designated by

the Governor to carry out the provisions of the agricultural portion of the water-quality management plan.

Measures incorporating BMP’s. A practice that is a BMP or a system of practices that includes BMP’s and such other practices as are necessary for achieving the objectives of the BMP’s.

Net outlays. Total outlays, less income or refunds.

OMB Circular A-102. Office of Management and Budget Uniform Administrative Requirements for Grants-In-Aid to State and local governments.

Offsite benefits. Those favorable effects from the installation of measures incorporating BMP’s that occur away from the land of the participant receiving RCWP assistance and accrue to the public as a result of improved water quality.

Participant. A land owner or operator who applies for and receives assistance under RCWP.

Plan. An RCWP water quality plan submitted by the participant which serves as the basis of the RCWP contract.

Privately owned rural land. Those lands not held by Federal, State, or local governments which include cropland, pasturage, forest land, range land, and other associated lands.

RCWP project area. A hydrologically related unit of land area (exceptions can be made for ease of administration, i.e., entire farm unit) with critical water quality problems that result from agricultural activities. To be designated as an RCWP project area eligible for financial and technical assistance, the area’s water quality problems must be related to agricultural activities that source pollutants such as sediment, animal waste, or irrigation return flows. The project area must include critical areas or sources of agricultural nonpoint source pollutants that have a direct adverse impact upon water quality. Generally the project areas will be less than 300,000 acres.

RCWP projects. The total system of BMP’s institutional arrangements, and technical, cost-sharing, and administrative assistance activities that are authorized in a RCWP project area.

Specified maximum cost. The maximum amount of money that will be cost shared for an identifiable unit or measure incorporating BMP’s.

Standards and specifications. Requirements that establish the minimum acceptable quality level for planning, designing, installing, and maintaining a measure incorporating BMP’s so that it achieves its intended purpose. SCS standards and specifications are contained in the SCS Field Office Technical Guides for the States.

State. Any of the several States of the United States, the District of Co-
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§ 634.10 Applicability.
(a) RCWP is applicable in project areas that meet the criteria for eligibili
bility contained in § 634.13 and are authori
zed for funding by the Adminis
trator, SCS.
(b) RCWP is applicable only for the installation of measures incorporating
BMP’s to control agricultural non-point source pollution for improved
water quality.
(c) The size of the project area de
pends on the type of agricultural ac
tivities and pollutants involved. An
RCWP project area must be of man
ageable size to permit completion of
contracting with participants in 5
years or less. Generally, the areas will
be less than 200,000 acres.

§ 634.11 Availability of funds.
(a) The provisions of the program are subject to the appropriation of
funds by Congress to the Department
of Agriculture.
(b) The allocation of funds to the administeri
ng agencies is to be made on the basis of the total funds needed
to carry out the project.
(c) The obligation of Federal funds for land owner or operator RCWP con
tracts is to be made on the basis of the total contract costs.

§ 634.12 Funding priorities.
(a) Initially, only the highest priority
RCWP projects are to receive con
sideration for funding. Recommenda
tions of the projects to receive the
highest priority are to be made by the
NRCWCC on the basis of its review of
the States’ applications, representing
the highest priorities of those States
whose Governors have submitted ap
plications. NRCWCC is to recommend
the highest priority projects to the Adminis
trator, SCS, who, with the concurrence of EPA, will determine
which projects will be approved for funding.
(b) New projects will be funded to the extent that funds are available.
New projects funded shall be the high
est priority projects based on the ap
plications on hand at the time. NRCWCC is to recommend the high
est priority projects to the Adminis
trator, SCS, who, with the concurrence of EPA, will determine which new
projects will be approved for funding.
(c) States or local governments with
their own cost-share programs to im
plement measures incorporating
BMP’s for water-quality improvement
may receive greater consideration for
the funding of additional RCWP pro
jects.

§ 634.13 Eligible project areas.
(a) Only those States and areas which have an appropriate agricultural portion
of a 208 water-quality management plan are eligible for financial and tech
nical assistance under RCWP. To be eligible, a proposed RCWP project area must be covered
by an approved agricultural portion of a 208 water-quality management plan and have documented agricultural
non-point source water quality problems.
(b) The management agency designa
nated by the Governor under section 208(c)(1) of the Act to implement the
approved agricultural management plan under the 208 plan must assure in writing in the project application that there will be an ade
quate level of participation by land owners or operators in a project area.
(c) A project area is a hydro
logically related unit (exceptions can be made for ease of administra
tion; i.e., an entire farm unit) with critical water quality problems that result from agricultural activities.
(d) To be designated as an RCWP project area eligible for financial and technical
assistance, the area’s water quality problems must be related to agricul
tural nonpoint source pollutants such as sediment, animal waste, irrigation
return flows, which result in high nitro
gen and phosphorus levels, toxics
(pesticides), high total dissolved solids
(TDS) readings, high biological oxygen demand (BOD), and/or high coliform levels. The project area must
include critical areas or sources of agricul
tural pollution that have a significant adverse effect upon water-quality. Only those critical areas or sources of pollutants signifi
antly contributing to the water-quality problems are eligible for cost-shar ing assistance.

§ 634.14 Project applications.
(a) The SRCWCC is to assure that a process exists to prepare the RCWP project applications for submission by the Governor to the Administra
tor, SCS, through the State conservation
ist, SCS. Applications will be submitt
ed in conformance with the OMB Cir
cular A-95 review process.
(b) The preparation and submission of applications are to be based on the
priorities in the approved agricultural portion of the State 208 water-quality
plan and established by the Governor
or his designee.
(c) Applications shall contain the com
ponents outlined below. Additional material may be added when, in the
judgment of the applicant, it is needed to fully support the application and/or
or would enhance the probability of project authori
zation. The size of the project area.
This component is to clearly set out the boundaries of the proposed project
area. It should describe the economic, social, and environmental setting of
the area and existing conditions that impact upon the proposed project and the institutional relations
hips that will affect the successful completion of proposed actions. The discussion of the setting is to include information concerning the number of
acres in the project, the number of land owners or operators, and the types of farming operations. The application is to include a map which
clearly depicts the physical setting.
(d) Severity of the water quality problem. The component is to contain a discussion of the water-quality problem to be solved by project action
based on the assessment carried out in connection with the development of the approved agricultural portion of the State 208 water-quality
management plan. The discussion should include the scope and complexity of the prob
lem, including an estimate of the impact of pollutants on receiving waters, and the critical areas or sources of the agricultural nonpoint
source pollutants.
(e) Planned action. This component of the application is to identify those activities and practices that will be carried out to solve the water quality problems caused by agricultural activity and the costs associated with the implementation of
the activities. The application is to include a discussion of the number of participants involved. The proposed activities identified are to be bas
ed on the level of participation projected for the project as a whole. The application is to include a schedule showing the planned sequence of activities that will result in project completion. The minimum amount of time for the project is to be estimated in terms of the number of participants and the number of acres involved.
(f) Schedule for carrying out the
plan. This component is to include a schedule showing the planned sequence of activities that will result in project completion. As a minimum,
this component must show the number of participant RCWP con
tracts to be executed each fiscal year.
(g) Estimated cost. This component is to identify and show the basis for the estimated costs associated with completing the project. It is to show, by fiscal years, the costs for administration, technical assistance, and cost sharing. The estimated costs are to be based on the proposed cost-sharing level. This component must identify and provide justification for any proposed deviation from the 50 percent cost-sharing level authorized in the Act. The justification must clearly document that the use of the 50-percent level would place an undue burden on the participant and that the benefits from the installation of measures incorporating BMP’s accrue primarily offsite.

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6. Estimated effects. This component of the application is to describe the anticipated benefits which would result from completion of the project. The benefits are to be described in terms of expected effects on the receiving waters. Specifically, the effects of the proposed project should be stated in terms of the achievement of the water-quality goals set forth in the Federal Water Pollution Control Act and the water-quality goals of the State.

7. Arrangements for administration. This component is to set out the agreement's plans for carrying out any program in the project area. It should identify the agency to be responsible for administering the program. It is essential that this section document the capability of the administering agency to carry out the responsibilities described in § 634.4(q). In addition, information should be included to describe the administering agency's involvement with the selected State or local agency, and the experience of the agency in administering comparable grant programs. This component should, where appropriate, describe the specific arrangements that have been made, or that are anticipated, for local, State, and Federal agency participation.

8. Attachments. The following attachments are the minimum required with each application:

(i) A letter from the water-quality management agency designated by the Governor or his designee as the 'appropriated state's' or source of the agricultural portion of the 208 water quality management plan for the area or source certifying that the BMP's incorporated in the measures to be cost shared are consistent with the BMP's in the approved 208 plan.

(ii) A letter from the designated management agency which assures that a 75 percent level of participation of the receiving or source body of water with respect to the pollutant problem will be under contract. However, where the approved agricultural portion of the 208 plan provides data and analyses indicating that treatment of a concern's percentage of the area or source will attain water-quality standards or water-quality goals, the letter may propose and justify a greater or lesser percentage. A schedule for attaining the adequate level of participation in 5 years or less must be included.

(iii) As appropriate, the preapplication for Federal assistance (OMB Circular A-102) from the identified administering agency, and

(iv) A listing of the prevailing cost share levels of other programs in the project area.

§ 634.15 Review and approval of project applications.

(a) The NRCWCC is to review applications in accordance with the following criteria and recommend to the Administrator, SCS, those project areas to approve for funding:

(i) Severity of the water quality problem caused by agricultural and silvicultural related pollutants, including:

- Use being made of the water impacted,
- Kinds and effects of pollutants, and
- Miles of stream or acres of water bodies affected,

(ii) Demonstration of public benefits from the project, including:

- Population benefited by improved water quality,
- Effects on the natural environment, and
- Additional, beneficial uses of the waters that result from improvement of the water quality.

(iii) Cost effectiveness, including complementary impacts on land resources,

(iv) Size of the area and extent of measures incorporating BMP's needed, and

(v) Cost per participant and cost per acre for solution of problem.

(b) The project area's contribution to meeting the national water quality goals set forth in the Federal Water Pollution Control Act, as amended.

(c) The BMP's, with EPA concurrence, is to make the determination of which projects will be approved for funding and notify the appropriate State conservationist.

(d) The State conservationist, SCS, will notify the State Executive Director, SCS, if EPA does not act within 45 days following receipt of the project application. EPA review of project applications will occur concurrently with review by other agencies.

(e) The Administrator, SCS, with EPA concurrence, is to make the determination of which projects will be approved for funding and notify the appropriate State conservationist.

(f) The State conservationist, SCS, will consult with the other involved Federal, State, and local agencies of the approval.

§ 634.16 Agreements.

The State conservationist, SCS, upon receiving notice of an approved project, is to enter into a grant agreement with the selected State or local administering agency, except in those cases where USDA is to administer the program. When USDA retains administration, the State conservationist, SCS, is to enter into a fund transfer agreement with the State Executive Director, ASCS.

(a) Grant agreements. Grant agreements detail the working arrangements and applicable operating regulations between SCS (the grantor) and the administering agency (the grantee). A written grant agreement identifying the parties involved, their responsibilities for carrying out the program, and the amount of program funds to be encumbered by SCS is to be executed by the parties. This agreement is the fund obligating document. It also sets out the necessary working arrangements between parties for determining and allocating the administering agency's overhead costs for administering RCWP. All grants made to designated State or local administering agencies are to be made in accordance with the applicable provisions of OMB Circular No. A-102, Department of the Treasury Circular 414, and Federal Management Circular No. 74-4. State or local administering agency grants will be funded un under Letter-of-Credit serviced by the U.S. Treasury Regional Disbursing Office. Subject to the terms and conditions of the grant agreement.

(b) Applicable major portions of OMB Circular No. A-102 that are incorporated in the agreement, as well as SCS Regulations, are: Attachment C, Retention and Custodial Requirements for Records; Attachment G, Standards for Grant Financial Management Systems; Attachment H, Financial Reporting Requirements; Attachment I, Monitoring and Reporting Program Performance; Attachment J, Grant Payment Requirements; Attachment K, Budget Revision Procedures; Attachment L, Grant Closeout Procedures; Attachment M, Standard Forms for Applying for Federal Assistance; Attachment N, Property Management Standards; and all agreements between parties for administering agency procurements only, Attachment O, Procurement Standards.

(c) The grant agreement also provides for the reimbursement of grant administration costs not to exceed an established limit of five (5) percent of the total grant. Payment of allowable indirect costs for grantees administrative overhead must be made according to the administrating agency's approved cost allocation plan as specified by the grant terms and Federal Management Circular 74-4. The negotiation of costs and the cost allocation plan will be subject to cognizant agency review and approval as provided by 4 AR 414. Cost principles that must be considered in the cost allocation plan are defined by Federal Management Circular No. 74-4 and are incorporated in these regulations by reference. The grantee's cost allocation...
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plan must be submitted to and approved by the cognizant agency, the designated Federal agency, and the grantor prior to the release of grant funds.

(2) The administering agency is to monitor the performance of activities supported by RCWP grant funds to assure that time schedules and participant performance requirements are being met. Performance goals are to be measured against the terms of the grant agreement and program directives. Performance reports beyond those specified in Subpart D, Financial Management, will normally not be required. However, when SCS determines that onsite technical inspections, certified completion data, and financial status reports do not provide adequate grant evaluation data, the following information may be requested:

(i) A comparison of the actual accomplishments to the objectives established for the plan,

(ii) Reasons why established objectives were not met, and

(iii) Objectives established for the next reporting period.

(4) Grant agreements may be amended by mutual agreement of the parties to the agreement. SCS may unilaterally amend agreements when the sole consideration is a decrease in the cost and the Administrator, SCS, based on RRCWCC recommendations, determines that such an adjustment is necessary to carry out the program efficiently and effectively.

(b) Fund transfer agreements. When it is impractical for SCS to enter into agreements with local soil conservation districts, State soil and water conservation agencies, or State water quality agencies to administer the program in the project area, USDA will retain program administration. In this case, the State Executive Director, ASCS, and the State conservationist, SCS, are to enter into an agreement for the transfer of funds to ASCS for RCWP administration. ASCS is to administer such RCWP projects through County ASCS Committees. The following general working arrangements are to apply:

(1) Fund transfers between SCS and ASCS are to be made at the national level as detailed in the National Memorandum of Understanding and are to be based on the fund transfer agreement.

(2) Contract administration and program reporting are to be provided by ASCS and the administering agency.

(3) SCS, with the appropriate Federal or State agency support, will provide technical assistance to assist participants in preparing their water-quality plans and RCWP contracts and to assist participants in carrying out their water-quality plans.

(4) SCS is to obtain the required signatures of the land owner or operator and the soil conservation district, and signs the RCWP contract for technical adequacy. ASCS will certify fund availability and sign the contract to this effect.

(5) If it becomes necessary to revise the terms or conditions of the SCS-ASCs National Memorandum of Understanding, mutual agreement by both parties is required.

§ 634.17 Suspension of grants.

(a) Suspension orders. Work on a project or on a portion or phase of a project for which a grant has been made will cease upon the issuance of a suspension order by the State conservationist, SCS. Suspension does not affect RCWP contracts existing at the time the suspension order is issued.

(b) Use of suspension orders. Suspension may be required for good cause such as default by the administering agency, failure to comply with the terms and conditions of the grant, realignment of projects, or advancement in the state of the art. Generally, use of a suspension order will be limited to those situations where it is necessary to suspend work on the project or phase of the project and an amended agreement providing for such suspension is not feasible. Although a suspension order will be used pending a decision to terminate by mutual agreement or for other cause, it will not be used in lieu of the issuance of a termination notice after a decision to terminate has been made.

(1) Contents of suspension order. Prior to issuance, suspension orders will be discussed with the administering agency and may be appropriately modified, in the light of such discussions. Suspension orders are to include:

(i) A clear description of the work to be suspended,

(ii) Instructions as to the issuance of further orders by the administering agency for materials or services,

(iii) Instructions as to the administering agency entering into new RCWP contracts in the project area,

(iv) Instructions as to the administering agency servicing existing RCWP contracts in the project area, and

(v) Other instructions to the administering agency for minimizing Federal costs.

(d) Issuance of suspension order. Suspension orders are issued by the State conservationist, SCS, by letter to the administering agency (certified mail, return receipt requested). A suspension order may be issued to require the administering agency to suspend all or any part of the project work for a period of time not to exceed forty-five (45) calendar days. The order becomes effective when it is delivered to the administering agency. Orders for more than 45 calendar days may be issued when both parties agree. All suspension orders are to be specifically identified as suspension orders issued pursuant to this section.

(2) Effect of suspension order. (1) Upon receipt of a suspension order, the administering agency shall forthwith comply with its terms and take all reasonable steps to minimize the incidence of costs allocable to the work covered by the order during the period of work suspension. During the suspension period, SCS shall either:

(i) Cancel the suspension order, in full or in part, and authorize resumption of work, or

(ii) Take action to terminate the work covered by such order as provided by § 634.18.

(2) If a suspension order is cancelled or the period of the order expired, the administering agency shall promptly resume the suspended work. An equitable adjustment shall be made in the grant period, the project period, or grant amount, or all of them, and the grant agreement shall be amended accordingly if:

(i) The suspension order results in an increase in the time required for, or an increase in the administering agency's cost properly allocable to, the performance of any part of the project; and

(ii) The administering agency asserts a written claim for such adjustment within thirty (30) days after the end of the period of work suspension. If no written claim is made, SCS may unilaterally make such adjustments.

(3) If a suspension order is not cancelled and the grant-related project work covered by such order is within the scope of a subsequently issued termination order, the reasonable costs resulting from the suspension order shall be allowed in arriving at the termination settlement.

(4) Costs incurred by the administering agency after a suspension order is delivered that are not authorized by this section or specifically authorized in writing by the State conservationist, SCS, shall not be allowable costs.

(1) Appeals provision. (1) The administering agency may appeal the decision(s) of the State conservationist, SCS, to the Administrator, SCS. The Administrator, SCS, will review the appeal with the RRCWCC and receive any appropriate comments before taking final action on the appeal. Such appeals must be made in writing within fifteen (15) days of the date that the State conservationist's (SCS) decision(s) are delivered to the administering agency. The Administrator, SCS, shall take final action on the appeal within thirty (30) days of the date when the appeal is delivered to the Administrator. The Administrator's decisions shall be final.

(2) This appeal may not be continued after a notice of intent to terminate has been issued.

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§ 634.18 Termination of grants.

(a) Termination of grants. A grant may be terminated in whole or in part as provided by this section, by the State conservationist, SCS, with the concurrence of the Administrator, SCS, and EPA.

(b) Termination agreement. The State conservationist, SCS, after receiving concurrence, and the administering agency may enter into an agreement to terminate the grant pursuant to terms which are consistent with this section. The agreement shall establish the effective date of termination, the amount and date of payment of any sums due either party. The State conservationist will prepare the termination agreement and send a certified copy to the administering agency.

(c) Project termination. The administering agency may not unilaterally terminate the project work for which a grant has been awarded, except for good cause. The administering agency must promptly give written notice to the State conservationist, SCS, of any complete or partial termination of work by the administering agency. If the State conservationist determines, with the concurrence of the Administrator, SCS, and EPA, that there is good cause for the termination of all or any portion of a project for which the grant has been awarded, the State conservationist may enter into a termination agreement or unilaterally terminate the grant pursuant to § 634.18(d), effective on the date of cessation of the project work by the administering agency. If the State conservationist with the concurrence of the Administrator, SCS, and EPA, determines that an administering agency has ceased work on the project without good cause, the State conservationist may unilaterally terminate the grant pursuant to § 634.18(d).

(1) Caused by SCS—(1) Notice of intent to terminate. After concurrence in the issuance of a termination notice has been obtained from the Administrator, SCS, and EPA, the State conservationist, SCS, shall give not less than ten (10) days' written notice to the administering agency (certified mail, return receipt requested) of intent to terminate a grant in whole or in part.

(2) Termination action. The administrating agency must be afforded an opportunity for consultation prior to any termination. After the administering agency, SCS, and EPA have been informed of any expressed views of the administrating agency and concurred in the proposed termination, the State conservationist, SCS, may, in writing (certified mail, return receipt requested), terminate the grant in whole or in part.

(2) Basis for termination. A grant may be terminated by SCS for good cause subject to negotiation and payment of appropriate termination settlement costs. Cause for termination by SCS includes:

(i) Failure by the administering agency to make satisfactory progress toward achieving an adequate level of participation of land owners or operators in RCWP contracts (50 percent of the required level in 3 years and 100 percent of the required level in 5 years), or other evidence satisfactory to the NRCWCC, EPA, and the Administrator, SCS, that the administering agency has failed or is unable to perform in accordance with the provisions of the grant agreement;

(ii) Termination action. The administering agency may appeal a grant termination taken pursuant to this section to the Assistant Secretary for Conservation, Research and Education. Such appeals must be made in writing within thirty (30) days of the date that the termination notice is delivered to the administering agency.

The Assistant Secretary shall review the appeal with EPA and take final action within thirty (30) days of the date that the appeal is delivered to the Assistant Secretary. The Assistant Secretary's decision shall be final.

§ 634.19 Project completion and closeout.

(a) A project shall be completed in ten (10) years or less from the time the allowable contracting period ends. The allowable contracting period, the period of time permitted for the administering agency to enter into RCWP contracts with land owners or operators, shall be five (5) years. The total life of a project shall be fifteen (15) years or less.

(b) The allowable contracting period will be reduced if it is determined by the Administrator, SCS, that the planned actions approved in the project application cannot be achieved. The allowable contracting period may be increased to offset any time lost by suspension or termination of grants. When the contracting period is reduced or increased, the life of the project shall be reduced or increased accordingly.

(c) The grant or fund transfer agreement with an administering agency shall expire when the administering agency has fulfilled all of its obligations in the long-term RCWP contracts with land owners or operators.
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§ 634.20 Eligible land.

RCWP is only applicable to privately owned land. Land owned by corporations whose ownership is public (i.e., their stock is publicly traded over the market) is eligible for financial assistance only if the corporation can document that the installation of measures incorporating BMP's places an inappropriate financial burden on the corporation.

§ 634.21 Eligible land users.

(a) Any land owner or operator whose land or activities in a project area is contributing to the area’s agricultural nonpoint source water quality problems and who has an approved water quality plan is eligible to enter into an RCWP contract.

(b) This program will be conducted in compliance with all requirements respecting nondiscrimination as contained in the Civil Rights Act of 1964 and amendments thereto and the Regulations of the Secretary of Agriculture (7 CFR 15.1-15.12) which provide that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any activity receiving Federal financial assistance.

§ 634.22 Application for assistance.

(a) Land owners or operators must apply for RCWP assistance through the office of the administering agency or the State agencies and private sources.

(b) Applications are reviewed by the administering agency in consultation with the local soil conservation district and the County ASC Committee, to verify eligibility and obtain the priority of assistance within the project area.

(c) The priority for assistance among individual land owners and operators (participants) is to be determined jointly, through an agreed-to process, by the County ASC Committee and the soil conservation district, with technical assistance from SCS.

(d) Applications that are ineligible or technically infeasible are to be returned to the applicant with a letter stating the reasons for disapproval. Applications that are of a low priority will be retained and the applicant will be sent a notice that the application is being held for future consideration.

§ 634.23 Water quality plan.

(a) The participant water quality plan is to include appropriate measures incorporating BMP's identified in the approved agricultural portion of the 206 water quality management plan. Measures incorporating BMP's to be cost-shared are to have a positive effect on water quality by reducing the amount of agricultural nonpoint source pollutants that enter a stream or lake. Such measures reduce the amount of pollutants that enter a stream or lake by:

1. Direct methods, such as reducing the application rates or changing the application methods of potential pollutants,

2. Indirect methods, such as practices or combinations of practices which prevent potential pollutants from leaving source areas or reduce the amount of potential pollutants that reach a stream or lake after leaving a source area.

(b) Participants’ water-quality plans may include BMP’s which are required but not cost-shared or provided by the State. Participants’ water-quality plans may include BMP’s, such as practices that are essential for the performance and maintenance of the measures incorporating BMP’s which are cost-shared or practices that are essential for compliance with other Federal regulations governing the treatment, storage, and disposal of hazardous wastes, but must be included in the water quality plans and shall be required when a condition of the RCWP contract.

(c) It is recognized that the participants’ water-quality plans upon which the RCWP contracts are to be based may include conservation measures other than those related to water quality improvement. These measures are not eligible for cost sharing under this program. The installation of such conservation measures will not be required as a condition of the RCWP contract.

(d) Time schedules for implementing measures incorporating BMP’s are to be provided in the participant’s water quality plan. The time schedule is to establish the length of the contract within the 5 to 10 year period established by law. All contract items are to be accomplished prior to contract expiration. The agreed-to items of work may be accomplished any time prior to the year shown in the plan time schedule, and must be accomplished within 1 year following the year shown in the plan time schedule.

(e) SCS will provide technical assistance to assist participants in developing water-quality plans. Such assistance will be provided according to priorities jointly established by the soil conservation district and the County ASC Committee. Participants are to be encouraged to use supplemental assistance available from other Federal and State agencies and private sources.

§ 634.24 Cost sharing.

(a) The portion of such cost (including labor) to be shared shall be that part which the Secretary or his designee determines is necessary and appropriate to effectuate the installation of the measures incorporating BMP’s for which the Secretary or his designee determines the cost sharing is appropriate and in the public interest. The cost-sharing level is not to exceed 50 percent of the total cost of such measures including labor.

(b) Cost-sharing assistance is to be made available for:

1. Measures having drainage for increasing crop production as the primary purpose (subsurface drainage for irrigation water management may be eligible),

2. Measures having flood protection (reservoirs or channelization) as the main purpose,

3. Measures installed primarily for bringing additional land into crop production,

4. Measures installed primarily for increasing crop production on existing land,

5. Structural measures authorized for installation under the terms of Public Law 83-566.

(c) The cost-share level is not to be reduced by the percentage of the total cost furnished by a State, or subdivision thereof, for the RCWP on which costs are shared. Total cost sharing is to be based on and may not exceed the participant’s out of pocket costs.

§ 634.25 Contracting.

(a) In order to participate in RCWP, a land owner or operator must enter into a contract in which he or she agrees to accomplish such land owner or operator’s water-quality plan. Any
person who controls, or shares control, of the farm, ranch, or other land for the proposed contract period (5 to 10 years) must sign the contract. Cost-sharing payments cannot be provided for any measure that is initiated before the contract is approved by the contracting officer of the administering agency.

(b) The participant must furnish satisfactory evidence of his or her control of the farm, ranch, or other land. The contracting officer is to determine the acceptability of the evidence and maintain the current ownership evidence in the contract file.

(c) RCWP contracts are to contain the basic contract document, special provisions as needed, the participant’s water-quality plan, schedule of operations, and any other data necessary.

(d) Participants shall install measures incorporating best management practices according to the specifications applicable at the time measures are installed.

(e) SCS will provide technical assistance to participants for installing measures incorporating BMP’s. The State conservationists, SCS, may enter into contracts with qualified soil conservation districts or others to provide technical assistance.

(f) The RCWP contract is to require measures incorporating BMP’s to be operated and maintained by the participant at no cost to the administering agency.

(g) The contract period is to be not less than 5 and not more than 10 years. A contract is to extend for at least 5 years after the application of the last cost-shared measure incorporating BMP’s.

(h) A land owner or operator may enter into a contract jointly with other land owners or operators to solve mutual water quality problems. Each participant must enter into an RCWP contract to treat water quality problems not covered by the joint arrangement.

(i) Participants may use all available sources of assistance to accomplish their water-quality objectives. They are responsible for:

1. Accomplishing the water-quality plan;
2. Keeping the contracting officer informed of his or her current mailing address;
3. Obtaining, having in hand, and maintaining any required permits and landrights necessary to perform the planned work;
4. Applying or arranging for the application of measures incorporating BMP’s, as scheduled in the plan, according to approved standards and specifications;
5. The operation and maintenance of measures incorporating BMP’s installed during the contract period; and
6. Obtaining the authorities, rights, easements, or other approvals necessary to maintain measures incorporating BMP’s conforming with applicable laws and regulations.

(j) Unless otherwise approved by the Administrator, SCS, and EPA, the administering agency shall not enter into a contract for any (5) years of elapsed time from the date when RCWP funds are first made available to begin the project.

(k) The administering agency may establish a final date for entering into contracts within a given year.

(l) The first year of the contract will begin on the date the contract is approved and end on December 31.

Each subsequent year of the contract period shall be on a calendar year basis.

(m) At the beginning of each year, the administering agency will remind the participant of the measures incorporating BMP’s to be carried out in the contract schedule. The appropriate documents for receiving technical and cost-share payment for measures incorporating BMP’s to be carried out shall be furnished to the participant at that time.

§ 634.26 Contract modifications.

(a) SCS may agree to the modification of contracts previously entered into as the Administrator, SCS, determines to be desirable to carry out the purposes of the program. Costs of cost-share payment for measures incorporating BMP’s to be carried out shall be furnished to the participant at that time.

(b) Requirements of active contracts may be waived or modified by the administering agency only if such waiver or modification is specifically provided for in the regulations. SCS concurrence in modifications is necessary when modifications involve a technical aspect of the participant water-quality plans. A contract may be modified only if it is determined that such modifications are desirable to carry out the program purposes or to facilitate the program’s practical administration.

(c) Contracts may be modified to add, delete, substitute, or reinstall measures incorporating best management practices when:

1. The installed measure failed to achieve the desired results through no fault of the participant,
2. The installed measure deteriorated because of conditions beyond the control of the participant, or
3. Another measure incorporating BMP’s is substituted that will achieve the desired results.

(d) If, during the contract period, all or part of the rights and interest in the land is transferred by sale or other transfer action, the contract is terminated on the land unit that was transferred and the participant having control over the land unit, and

1. Forfeits all right to any future cost-share payments on the transferred land unit, and
2. Must refund all cost-share payments with interest that have been made on the transferred land unit unless the new land owner or operator becomes a party to the contract as provided in paragraph (e) of this section, except that where it is determined by the administering agency, with the approval of the State conservationist, SCS, that the established measures incorporating BMP’s will provide water quality benefits for a reasonable period of time, the payment may be retained.

(e) If the new land owner or operator becomes a party to the contract:

1. Payment which has been earned, but not made, can be made.
2. Such land owner or operator is to assume all obligations of the previous participant on the transferred land unit.
3. The contract with the new participant is to remain in effect with the original terms and conditions, and
4. The contract entered in writing to show the changes caused by the transfer. If the modification is not acceptable to the administering agency, the provisions of paragraphs (d) and (e) of this section apply.

(f) The transfer of all or part of a land unit by a participant does not affect the rights and obligations of other participants who have signed the contract.

§ 634.27 Cost-share payment.

(a) Federal cost-share payments are to be made by the administering agency upon certification by the district conservationists, SCS, that the specified measure incorporating BMP’s or an identifiable unit thereof, has been properly carried out and meets the appropriate standards and specifications.

(b) The maximum Federal cost-share payment to a participant shall be limited to 50 percent of the cost thereof that the limit may be made by the Administrator, SCS, where he determines that the main benefits to be derived are essential for meeting the water-quality objectives in the project area.

(C)(1) Cost-share payment is to be made by the administering agency at the cost-share rate as specified in the contract according to one of three methods:

1. Average cost,
2. Actual cost not to exceed average cost, or
3. Specified maximum cost.

(2) If the average cost of the specified maximum cost at the time of starting the installation of a measure incorporating BMP’s or identifiable unit is less than the costs specified in the (1) and (2) of the contract payment is to be at the lower rate. If the costs at the start of installation are higher, payment may be made at the higher rate. A modification will be necessary if the higher
costs result in a significant increase in the total cost-share obligation. Cost-share payment is not to be made until the modification reflecting the increased cost-share payment is approved. Average units are to be developed by the administering agency for each RCWP area. Average costs should be reviewed by the State coordinate committee for consistency with average cost-share rates in other USDA programs. The average cost list is to be approved annually by the State conservationist, SCS.

d) Cost-share payments are to be made by the administering agency to the participant after he or she has carried out an identifiable unit of the water-quality plan. Payment shall be based on the cost-share document prescribed by the Administrator, SCS, and such cost receipts required by the administering agency. Payments are to be made as soon as practicable after performance has been established and verified to meet the prescribed standards. It is the responsibility of the participant to establish claim for payment. Cost-share payments for identifiable units carried out under RCWP are to be made only upon application submitted to the administering agency. Application is to be filed by September 30 of the year following the calendar year in which the identifiable unit was carried out. However, if any application is filed after that date, the contracting officer may authorize cost-share payments to be made if, in his judgment, such action is warranted by the circumstances of the particular case. Applications for cost-share payments are to specify the proportion of each participant's contribution to the accomplishment of each identifiable unit. Payments are to be made for the identifiable units carried out in the year as shown on the time schedule, unless otherwise provided for by modification of the application.

e) The cost share attributable to the use of materials or services shall be credited to the participant to whom an authorization for purchase of materials or services is furnished. The remainder of the cost share shall be credited to the participant who carried out the rest of the identifiable unit for which the cost share is earned. If more than one participant contributed to carrying out an identifiable unit, the cost-share payment shall be divided among the participants in proportion to the amount which they contributed to the identifiable unit as set forth in the approved application for cost-share payments. The furnishing of land or the right to use water will not be considered as a contribution for carrying out any identifiable unit.

(f) Any cost-share payment, or portion thereof, due any participants hereunder shall be determined and allowed without deduction of claims for advances (except as provided in §634.25(p) and except for indebtedness to the United States subject to setoff); and without regard to any claim or lien against any crop, or property of the owner of the operating unit or any other creditor.

g) Participants are to obtain or contract for services as needed. The contract between the participant and the administering agency (State, local, or Federal) may provide that part or all of the Federal cost share for an eligible measure incorporating BMP's or identifiable unit be made directly to suppliers of materials or services. The materials or services are to be delivered or performed before they are eligible for payment. Cost-share payments for materials or services may be made when they are needed. The cost share attributable to the materials or service used, or

(h) Not in excess of the cost share attributable to the materials or service used, or

(i) Not in excess of the cost share attributable to the materials or service used, or

(j) The participant who purchases materials or services to carry out contracts is responsible for them until the administrator determines that the material or service was used for the purpose intended. If a material or service is used for a purpose other than to carry out the contract, the participant is to inform the administering agency for the monetary amount of the misused material or service. This indebtedness is to be repaid to the administering agency as a refund, or such amount will be withheld from the cost-share payments otherwise due the participant under the contract. The administrating agency is to determine that any other identifiable units on which the amount of the cost share was applied toward the cost of the material or service have been carried out in accordance with applicable program provisions.

(k)(1) As a condition to making payments under authorizations, opportunity must be given to the administering agency or its representative to inspect materials or services for defects and to take necessary samples for analysis provided that:

(i) The administering agency may consider State inspection and analysis controls, as exercised by State regulatory authorities, sufficient protection as to the quality standards of any material or service which authority is exercised, and

(ii) Inspection and sampling by the administering agency are not to deprive SCS of the opportunity of taking additional samples, nor deprive SCS of the opportunity of making separate inspections of materials where such further action is necessary to protect adequately the interest of the Federal Government.

(l) Materials or services furnished to a participant to be cost shared shall be considered to be defective if they do not meet the quality standards specified in the authorizations. The materials or services will satisfactorily serve the purposes for which they were procured, and a deduction is made from the cost-share payment to the difference between the price of the materials or services of the quality specified and the value of the materials or services furnished.

(m) Not in excess of the cost share attributable to the materials or service used, or

(n) Any authorized administering agency or SCS employees or agents, shall have the right of access to land under 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 planning or technical assistance and to inspect work performed under the contract.

(o) No participant is to file a claim for a cost-share payment which such participant has not carried out, or for measures incorporating BMP's not carried out, or for measures incorporating BMP's carried out in such a way that they do not meet the requirements of the program. The provisions of the RCWP. This includes claim for a cost-share payment for measures incorporating BMP's not carried out, or for measures incorporating BMP's carried out in such a way that they do not meet the requirements of the program.
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manner that they do not meet the required specifications. The filing of any such claim constitutes a violation of the contract.

(o) The administering agency may terminate any contract with a land owner or operator by mutual agreement with the owner or operator if SCS determines that such termination would be in the public interest.

§ 684.28 Appeals and violations.

(a) (1) Prior to execution of the contract, a participant may request the administering agency to reconsider any determination made by such agency, except that SCS may terminate a participant's contract if the participant refuses to appear at a hearing or at a place set for the hearing. Prior to termination, the participant may appear at a hearing and present evidence in support of the participant's position.

(b) (2) Requests for reconsideration are to be made in writing to the administering agency within 10 days after the participant is notified in writing of the determination. Assistance, as needed, is to be provided by the district conservationist, SCS, to effect the decision of the administering agency shall be final.

(b) (3) After execution of the contract, any dispute concerning a question of fact, a contract violation, or a contract violation which is not disposed of by the administering agency by written agreement shall be referred to the appeals board for a decision within such reasonable time period as the board may determine. The following procedures apply in handling a dispute:

(1) The administering agency shall notify the participant in writing that the matter will be considered by the appeals board on a date specified in the notice, which shall be not less than 30 days after receipt of the notice. The participant will be afforded the opportunity to appear, orally present the views and relevant evidence in support of his or her position if he or she files a request in the 30-day period. If the participant does not request an opportunity to appear, the administering agency appeal board shall promptly consider the matter on the basis of available information, including statements or briefs of the administering agency and the participants in the soil conservation districts and SCS. The administering agency shall notify all parties to the contract of the appeals board's decision in writing by mailing such notice to all parties at the time the decision is made. There shall be no further administrative appeal from this decision.

(2) After an adverse decision through the administrative appeals process, the participant has recourse for grantee administered contracts through the appropriate State or local courts. Defense of any legal action taken by the participant may be provided by the administering agency. When USDA retains administration of RCWP, recourse by the participant is through the appropriate Federal court.

(c) Whenever the regulations in this section require the filing of a document, it is considered filed when received in the office of the person or agency concerned.

(d) The following actions constitute a violation of the contract by a participant:

(1) A participant has received notice of the determination if a letter, form, or other document which discloses such determination has been mailed or delivered to the participant. The administering agency is to notify the participant within 30 days after the written request is filed for reconsideration. Assistance, as needed, is to be provided by the district conservationist, SCS, to effect the decision of the administering agency shall be final.

(e) After execution of the contract, any dispute concerning a question of fact, a contract violation, or a contract violation which is not disposed of by the administering agency by written agreement shall be referred to the appeals board for a decision within such reasonable time period as the board may determine. The following procedures apply in handling a dispute:

(1) The administrator, SCS, reserves the right upon notice to modify, amend, revise, or terminate any of the provisions of this section at any time. Provided, That such action shall not adversely affect any participant if a determination has been made, and the participant has been officially notified thereof before such action is taken. No cost-share payment shall be made pending the decision as to whether a contract violation has occurred.

(h) If it is determined that violation has occurred and the participant agrees in writing to accept forfeiture, refund, payment adjustment, or termination, no further proceeding shall be undertaken. The administering agency shall approve the agreement and specify its effect on the contract.

(i) If the administering agency believes that a violation of a contract has occurred that would call for a forfeiture, refund, payment adjustment, or termination, written notice therefore shall be given to each participant.

(i) Notice to a participant may be shown by:

(1) A written statement by an authorized representative of the administering agency that the notice was personally delivered to the participant, or

(ii) A written statement by a participant acknowledging receipt of the notice.

(iii) A post office return receipt showing that the notice was delivered at the last address of the participant or showing that the notice could not be delivered to the participant at his last address and that the participant refused to accept delivery at his or her last address, or there is no such address.

(j) A participant under this section will be considered to have received the notice at the time of personal receipt, at the time of the delivery of a registered or certified letter, or at the time of the return of a delivery-refused registered or certified letter.

(3) The notice shall set forth the nature of the alleged violation. It shall inform the participant that an opportunity will be given for the participant to appear at a hearing before an appeals board designated by the administering agency to conduct a hearing, if a written request for such hearing is filed not later than 30 days after the time the notice is received. The participant shall be notified in writing by the appeals board designated by the administering agency of the time, date, a place set for the hearing. When the hearing is held, the hearing will be conducted by the administrator of the country where the farm, ranch, or other land is located.
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(4) If the participant does not file a request for a hearing, or does not appear at the appointed time, or is not represented at a hearing so requested or permitted by the administering agency, the participant will have no further right to a hearing before the appeals board. However, at the discretion of the appeals board, the participant shall be provided an opportunity for a hearing. A request filed by a participant with the administering agency shall be considered to be the request of all participants signing the contract.

(1) A hearing before the designated appeals board to obtain the facts about the alleged violation is to be conducted at the time, place, and date set forth in the notice. The appeals board shall have full authority to confine the presentation of facts and evidence to pertinent matters and to exclude irrelevant, immaterial, or unduly repetitious evidence, information, or question. In so doing, the appeals board shall not be bound by the strict rules of evidence as required in courts of law, but procedures are to be guided by any applicable State or local statutes. When USDA retains administration of the program, Federal hearing procedures may be used as guidance by the administering agency. Witnesses may be sworn at the discretion of the appeals board.

(2) The participants or their representatives at the hearing shall be given an opportunity to present facts and information relevant to the alleged violation and to present oral or documentary evidence. Statements and evidence may be submitted at the hearing by representatives of the administering agency, if necessary or appropriate. Individuals not otherwise represented at the hearing may, in the discretion of the appeals board, be requested or permitted to give information or evidence. The appeals board may exercise discretion in calling individuals as witnesses and permitting cross-examination.

(3) The appeals board shall provide for making an official record of the hearing. A summary of the testimony received at the hearing will be provided to the participant if requested. If the administering agency feels that the nature of the case is such as to make a transcript desirable, and if the participant requests such a transcript within 14 calendar days prior to the time that the hearing begins, a transcript of the hearing shall be made. If a transcript is desired by both the administering agency and the participant, the participant must provide for its preparation and for the payment of its expense. If a transcript is desired by only one of the parties, the participant must provide for its preparation and the payment of its expense. If a transcript is desired by both the administering agency and the participant, the participant will be required to pay only the expense of the second copy of the transcript. The remainder of the expense will be paid by the administering agency.

(4) If the participant is absent from the scheduled hearing and no appearance is made on behalf of the participant, the appeals board shall, after a reasonable hearing, continue the hearing by accepting information and evidence submitted by others present.

(5) The appeals board shall furnish the administering agency and SCS with a written report setting forth its findings, conclusions, and recommendations. The report shall include the summary of testimony or transcript made of any hearing before the appeals board, and all other information that would aid the administering agency in reaching a determination.

The determination of the administering agency shall make a determination, with assistance as required by the State conservationist, SCS, on the basis of the appeals board's report, on recommendation of the soil conservation district, if any, and on any other information available to it, as to whether a violation of the contract has occurred, and in accordance with the provisions of the section of the charter of the forfeit, refund, or payment adjustment. The determination of the administering agency shall specifically state whether the violation is of such a nature as to warrant termination of the contract, or that the violation does not warrant termination of the contract. Each participant who signed the contract shall be notified in writing of the determination reached by the administering agency. The administering agency may authorize or require the reopening of any hearing before the appeals board, for any reason and at any time prior to release of a determination or decision from which there can be no further administrative appeal.

(6) If the determination or decision is that the violation is of such a nature as to warrant termination of the contract, the determination or decision shall state that the contract is terminated and that the participant's rights to further cost-share payments under the contract are forfeited and that all cost-share payments received under the contract shall be refunded with interest.

(7) The determination or decision will state the amount of the refund and how payment may be accomplished.

(8) If the determination or decision is that the violation is of such a nature as to not warrant termination of the contract, the participant may be required to make a refund of cost-share payments, with interest, or to accept payment adjustments. The determination or decision shall state the extent of refund or the payment adjustments in arriving at the amount of the refund and the payment adjustments under this subpart there will be considered:

(1) The extent of the violation,
(2) Whether the violation was deliberate, the result of negligence, or was due to circumstances beyond the control of the participant,
(3) The effect of the program if no refund or payment adjustment is required,
(4) The extent to which the participant benefited by the violation,
(5) The effect of the violation on the contract as a whole,

(6) Other pertinent considerations.

Subpart D—Financial Management

§634.30 Financial Management.


(2) The Rural Clean Water Program will be financed with funds appropriated by the Congress of the United States.

(3) Participating USDA agencies will be funded by fund allocation processed through the Office of Budget, Planning, and Evaluation of the U.S. Department of Agriculture.

(4) Administering agency RCWP grants will be funded under Letter-of-Credit serviced by the U.S. Treasury Regional Disbursing Office (RDO), subject to the terms and conditions of the grant agreement. The State or local agency shall have an acceptable financial management system which will provide accurate, current, and control of the financial results of the RCWP grant in accordance with prescribed reporting requirements.

(5) EPA will be funded by fund transfer agreement for their participa-
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§ 634.31 [Reserved]

Subpart E—Monitoring and Evaluation

§ 634.40 Program and project monitoring and evaluation.

(a) Comprehensive USDA/EPA joint water monitoring, evaluation, and analysis. (1) Selected RCWP project areas will be used to make comprehensive evaluations to determine water-quality improvement. Water-quality monitoring, evaluation, and analysis will be conducted to evaluate the overall cost and effectiveness of projects and measures incorporating BMP's, to provide information on the impact of the projects on improved water quality and for general RCWP program management.

(2) Monitoring, evaluation, and analysis is a joint USDA/EPA responsibility. The Administrator, SCS, and EPA are jointly to select the project areas to be monitored and evaluated based on a list of project areas recommended by the NRCWCC. The NRCWCC will develop criteria for selecting the program areas and a recommended list of RCWP project areas for comprehensive USDA/EPA joint water-quality monitoring, evaluation, and analysis.

(3) The Administrator, SCS, and EPA are jointly to determine the criteria to be used for comprehensive water-quality monitoring, evaluation, and analysis of the selected project areas. A monitoring and evaluation plan is to be developed and agreed to by SCS and EPA prior to initiating a project selected for monitoring and evaluation. The State water-quality agency will be involved in the development of the plan for water-quality evaluation. The involvement of concerned agencies in implementing the plan will be determined at the time the plan is prepared. EPA and SCS will carry out the monitoring, evaluation, and analysis with the assistance of State water-agency and other Federal, State, and local agencies, as appropriate.

(4) The project areas selected for detailed analysis are to be representative of agricultural and silvicultural nonpoint source pollution problems, categories of agriculture and silvicultural nonpoint source pollutants, agricultural enterprises, and measures incorporating BMP's used in the RCWP.

(5) Preference in the selection of project areas for comprehensive evaluation is to be given to those project areas for which long-term baseline information exists on land use, hydrologic data, and water quality.

(6) Monitoring and evaluation of selected project areas is to begin sufficiently in advance of the installation of BMP's to document, in a statistically satisfactory manner, existing land-use practices and baseline water-quality problems.

(7) Monitoring and evaluation plans will vary from region to region; however, each monitoring and evaluation plan is to incorporate the collection of sufficient basic information to meet the objectives of the plan. Water-quality problems from agricultural and silvicultural production result from the relationship of land-use practices and the pollutants and the impact of the hydrologic cycle on pollutant transport. In the development of monitoring and evaluation plans consideration is to be given to the need for:

(i) A chemical water-quality monitoring program to include factors such as sediment, nutrient, and pesticide yield and transport in the drainage network of the project area including appropriate sampling and analysis of suspended solids, turbidity, nutrients, temperature and dissolved oxygen, total organic carbon, pH, metals including Ca, Mg, Na, K, Mn, Cu, alkalinities, hardness, conductivity, pesticides, and fecal coliforms.

(ii) A stream network biological sampling program to recognize any changes in the stream community composition that may result from the implementation of measures incorporating BMP's including appropriate studies of stream morphology and habitat, fish populations and species, benthic invertebrates, and periphyton.

(iii) Climatic data to define the hydrologic cycle including precipitation and snow melt runoff, daily stream flows (interfaced with stream chemical sampling stations), and residence time of precipitation runoff to determine the location of sampling stations.

(iv) Soils properties and characteristics, topographic information, and land use inventories to determine runoff potentials, and

(v) A farm management practices inventory to identify conditions before and after the installation of measures incorporating BMP's including an appropriate inventory of acres in production, crop type, production practices and yield, measures incorporating BMP's installed, chemical application rates, timing, and pounds per acre, the capital expenditures, and operation and maintenance costs associated with the installation of measures incorporating BMP's. For irrigated crop production areas, additional data considerations include the water management scheme (amount applied; how applied; amount returned—surface or subsurface—and condition of water conveyance system), appropriate salinity testing, detailed soil testing, and impact of water withdrawals on stream water quality.

(b) Program and project evaluation.

(1) There will be a continuing evaluation of the RCWP Program and each project for which cost-sharing funds are provided. This will include collecting and reporting information at the time technical and financial assistance is rendered. It is to support evaluation analyses to determine the incremental and total costs and benefits of applying BMP's. An evaluation of alternative measures incorporating BMP's in terms of their costs and effectiveness is to be included.

(2) Program and project evaluations will be conducted under the direction of the Assistant Secretary for Conservation, Research and Education, USDA, the Director of Economics Policy Analysis, and Budget, USDA; the Assistant Administrator for Water and Hazardous Materials, EPA; and the Assistant Administrator for Agriculture and the Secretary of Agriculture, EPA.

§ 634.41 [Reserved]

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