

(ii) The Highly Erodible Land and Wetland Conservation requirements set forth under Title XII of the Food Security Act of 1985, as amended (16 U.S.C. 3801, 3811-3824).[1]

509.2 Types of Equitable Relief

Attachment 5 to KS300-13-28
dated 12/18/2012

A. Types of Situations

¹Equitable relief for the HELC/WC may be available under 7 CFR 12.11 and 7 CFR 718, Subpart D, for USDA employee misaction/misinformation. A participant who believes that he or she has been denied USDA benefits under this provision must apply to the local FSA county office.

Relief may be authorized according to this part for participants who are determined to be out of compliance with the requirements of covered conservation programs and thereby ineligible for a payment or other benefit under a covered program if either of the following applies:

(I) The participant acted in good faith and relied on the action or advice of an authorized NRCS representative to the detriment of the participant. This constitutes misaction/misinformation.

(II) The participant failed to comply fully with the requirements of the covered program, but made a good faith effort to comply with the requirements. This constitutes failure to fully comply.

B. Forms of Equitable Relief

USDA program participants seeking equitable relief from covered program requirements include the following in the case of a covered NRCS conservation program. These include the ability to?

- (i) Continue to receive or retain the applicable program payments.
- (ii) Continue to participate in the covered conservation program, either in whole or in part.
- (iii) Re-enroll all or part of their land in a covered conservation program.
- (iv) Seek any other form of relief that the Secretary has determined to be appropriate.

C. Remedial Actions Required

(1) In return for granting a USDA conservation program participant's request for equitable relief, NRCS may require that the conservation program participant take remedial actions to correct the failure to comply fully with the conservation program provisions.

(2) This may include, but is not limited to the following:

- (i) Repair or replacement of the damaged conservation practice, conservation system, or operation and maintenance requirements.
- (ii) Purchase of additional equipment, materials, or other items that will enable the covered conservation program participant to fully comply with the program provisions.
- (iii) Revision of the conservation plan or conservation system to be implemented.
- (iv) Revision of the operation and maintenance plan.

(3) Remediation of the violation or item found in non-compliance shall be commensurate with the overall covered conservation program provisions, purposes, and functions.

D. Relief Requests

Requests for equitable relief may be initiated by the NRCS program participant because of a determination of non-compliance with a covered conservation program or because of findings during a request for reconsideration or an appeal.

509.3 Misaction/Misinformation or Failure to Fully Comply not Applicable

A. Situations Not Subject to Misaction/Misinformation Relief

The following situations are not subject to relief under the provisions of this Part:

(I) Programs not directly administered by NRCS.

(II) Cases where the participant had sufficient reason to know that the action or information upon which he or she relied was improper or erroneous or where the participant acted in reliance on his or her own misunderstanding or misinterpretation of program provisions, notices, or information.

B. Situations not Subject to Failure to Fully Comply Relief

The following situations are not subject to relief under the provisions of this part:

(I) Areas where relief provisions are already provided under the specific program regulation or program manual provisions.

(II) Conservation Program application deadlines.

509.4 Relief Based on Misaction/Misinformation – Acting in Good Faith

A. Applicability of the Misaction/Misinformation Provisions

Misaction/misinformation refers to provisions that allow NRCS to grant relief to a participant that has violated a program provision or has been determined ineligible to participate in the program, if all of the following criteria apply (four-part test):

(i) The participant acted, or failed to act, according to program requirements because of detrimental reliance on erroneous actions or advice by an NRCS representative.

(II) The participant's detrimental reliance on the NRCS employee's erroneous action or advice resulted in ineligibility for program benefits that the participant would have been eligible.

(III) The participant did not have sufficient reason to know that the action or advice that he or she relied was improper or erroneous.

(iv) The participant did not act in reliance on their own misunderstanding or misinterpretation of the conservation program provisions, notices, or information.

B. Source of Misaction/Misinformation

Relief under the misaction/misinformation provisions generally applies only to incorrect action or information by an authorized NRCS representative.

C. Exception

Where another agency's employee has provided erroneous information or actions for an NRCS administered program, equitable relief would be available according to this part if all other conditions have been met, (e.g., GRP and HFRP).

D. Extent of Relief

STC's may grant equitable relief according to this part to any program participant that meets the requirements in paragraphs A through C above.

E. Qualifying as Misaction/Misinformation

Erroneous acts or information made by NRCS does not automatically justify relief under the misaction/misinformation provisions. As provided in Section 509.4A, relief under the misaction/misinformation provision requires that the participant acted, or failed to act, because of detrimental reliance on erroneous action or information from an NRCS representative. If all of the requirements of Section 509.4A are not met, NRCS cannot grant relief under the misaction/misinformation provisions.

509.5 Relief Based on Failure to Fully Comply – Good Faith Effort

A. Applicability of the Failure to Comply with Provisions

The reviewing authority shall consider the following guidelines when determining whether the participant made a good faith effort to comply fully with the requirements of an NRCS conservation program. Failure to fully comply refers to provisions that allow granting of relief if

all of the following apply (three-part test):

(I) A participant made a good faith effort to fully comply with the terms and conditions of a covered conservation program.

- Did the participant provide erroneous information to NRCS, even if this was unintentional?
- Did the participant have sufficient knowledge or reason to know the action or inaction was improper or erroneous?
- What information was available to the participant?
- Did the participant act in reliance on his or her own misunderstanding or misinterpretation of program provisions, notices, or information?
- Did the participant gain a benefit when not fully complying with the requirements of the program?
- Did the failure to fully comply occur because of carelessness by the participant?
- Did the participant control, or could the participant have controlled, the factors contributing to the failure to fully comply?

(II) The participant rendered substantial performance.

(III) The participant will take the necessary action to remedy the failure to fully comply situation if required by the reviewing authority as a condition of receiving relief.

Note: The fact that a participant has previously always been in full compliance is not, in itself, a basis for determining that the participant made a good faith effort to fully comply.

B. Extent of Relief

Equitable relief may be granted according to this Part to participants who failed to fully comply (made a good faith effort to comply) with the terms and conditions of a covered NRCS conservation program. In most cases, it would not be equitable to grant full relief to a participant who failed to fully comply with the terms and conditions of a covered program.

C. Relation to Other Programs

Relief under Failure to Fully Comply cannot be used to override other sources of relief in program provisions.