

§ 636.3 Definitions.

The following definitions will apply to this part and all documents issued in accordance with this part, unless specified otherwise:

Agricultural lands means cropland, grassland, rangeland, pasture, and other land determined by NRCS to be suitable for fish and wildlife habitat development on which agricultural and forest-related products or livestock are produced or have the potential to be produced. Agricultural lands may include cropped woodland, marshes, incidental areas included in the agricultural operation, and other types of land used for or have the potential to be used for production.

Applicant means a person, legal entity or joint operation that has an interest in an agricultural operation, as defined in 7 CFR part 1400, who has requested in writing to participate in WHIP.

At-risk species means any plant or animal species as determined by the State Conservationist, with advice from the State Technical Committee, to need direct intervention to halt its population decline.

Beginning farmer or rancher means an individual or entity who:

(1) Has not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 consecutive years. This requirement applies to all members of an entity, and will materially and substantially participate in the operation of the farm or ranch.

(2) In the case of a cost-share agreement with an individual, individually or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch, consistent with the practices in the county or State where the farm is located.

(3) In the case of a cost-share agreement with an entity or joint operation, all members must materially and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that each of the members provide some amount of the management, or labor and management necessary for day-to-day activities, such that if each of the members did not provide these inputs,

operation of the farm or ranch would be seriously impaired.

Chief means the Chief of NRCS, United States Department of Agriculture (USDA), or a designee.

Conservation district means any district or unit of State, Tribal, or local government formed under State, Tribal, or territorial law for the express purpose of developing and carrying out a local soil and water conservation program. Such district or unit of government may be referred to as a "conservation district," "soil conservation district," "soil and water conservation district," "resource conservation district," "natural resource district," "land conservation committee," or similar name.

Conservation practice means one or more conservation improvements and activities, including structural practices, land management practices, vegetative practices, forest management, and other improvements that benefit the eligible land and achieve program purposes.

Cost-share agreement means a legal document that specifies the rights and obligations of any participant accepted into the program. A WHIP cost-share agreement is a binding agreement for the transfer of assistance from USDA to the participant to share in the costs of applying conservation.

Cost-share payment means the payments under the WHIP cost-share agreement to develop fish and wildlife habitat or accomplish other goals consistent with the program provided for in this part.

Designated conservationist means an NRCS employee whom the State Conservationist has designated as responsible for WHIP administration in a specific area.

Field office technical guide (FOTG) means the official local NRCS source of resource information and interpretations of guidelines, criteria, and requirements for planning and applying conservation practices and conservation management systems. It contains detailed information on the conservation of soil, water, air, plant, and animal resources applicable to the local area for which it is prepared.

Habitat development means the conservation practices implemented to establish, improve, protect, enhance, or restore the conditions of the land for the specific purpose of improving conditions for fish and wildlife.

Historically underserved producer means an eligible person, joint operation, or legal entity that is a beginning farmer or rancher, socially disadvantaged farmer or rancher, or limited resource farmer or rancher.

Indian land means:

(1) Land held in trust by the United States for individual Indians or Indian tribes, or

(2) Land, the title to which is held by individual Indians or Indian tribes subject to Federal restrictions against alienation or encumbrance, or

(3) Land which is subject to rights of use, occupancy and/or benefit of certain Indian tribes, or

(4) Land held in fee title by an Indian, Indian family or Indian tribe.

Indian tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) that is eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Joint operation means, as defined in 7 CFR part 1400, a general partnership, joint venture, or other similar business organization in which the members are jointly or severally liable for the obligations of the organization.

Legal entity means, as defined in 7 CFR 1400, an entity created under Federal or State law that:

(1) Owns land or an agricultural commodity, product, or livestock; or

(2) Produces an agricultural commodity, product, or livestock.

Lifespan means the period of time during which a conservation practice is to be operated and maintained for the intended purpose.

Limited resource farmer or rancher means:

(1) A person with direct or indirect gross farm sales not more than \$155,200 in each of the previous two years (adjusted for inflation using Prices Paid

by Farmer Index as compiled by National Agricultural Statistical Service), and

(2) Has a total household income at or below the national poverty level for a family of four, or less than 50 percent of county median household income in each of the previous two years (to be determined annually using Commerce Department Data).

Liquidated damages means a sum of money stipulated in the WHIP cost-share agreement that the participant agrees to pay NRCS if the participant fails to adequately complete the terms of the cost-share agreement. The sum represents an estimate of the technical assistance expenses incurred to service the agreement, and reflects the difficulties of proof of loss and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy.

Livestock means all animals produced on farms and ranches, as determined by the Chief.

Natural Resources Conservation Service (NRCS) is an agency of the USDA, which has the responsibility for administering WHIP using the funds, facilities, and authorities of the CCC.

Nonindustrial private forestland means rural land, as determined by the Secretary, that has existing tree cover or is suitable for growing trees; and is owned by any nonindustrial private individual, group, association, corporation, Indian tribe, or other private legal entity that has definitive decision-making authority over the land.

Operation and maintenance means work performed by the participant to keep the applied conservation practice functioning for the intended purpose during the conservation practice lifespan. Operation includes the administration, management, and performance of non-maintenance actions needed to keep the completed practice functioning as intended. Maintenance includes work to prevent deterioration of the practice, repairing damage, or replacement of the practice to its original condition if one or more components fail.

Operation and maintenance (O&M) agreement means the document that, in conjunction with the WHIP plan of operations, specifies the operation and maintenance responsibilities of the

participants for conservation practices installed with WHIP assistance.

Participant means a person, legal entity, or joint operation, or tribe that is receiving payment or is responsible for implementing the terms and conditions of a WHIP cost-share agreement.

Person means, as defined in 7 CFR part 1400, an individual, natural person and does not include a legal entity.

Producer means, as defined in 7 CFR part 1400, a person, legal entity, or joint operation who has an interest in the agricultural operation or who is engaged in agricultural production or forestry management.

Resource concern means a specific natural resource problem that represents a significant concern in a State or region and is likely to be addressed successfully through the implementation of the conservation practices by producers.

Secretary means the Secretary of the USDA.

Socially disadvantaged farmer or rancher means a farmer or rancher who has been subjected to racial or ethnic prejudices because of their identity as a member of a group without regard to their individual qualities.

State Conservationist means the NRCS employee authorized to implement WHIP and direct and supervise NRCS activities in a State, the Caribbean Area, or the Pacific Islands Area.

State Technical Committee means a committee established by the Secretary of the United States Department of Agriculture in a State pursuant to 16 U.S.C. 3861.

Technical assistance means technical expertise, information, and tools necessary for the conservation of natural resources on land active in agricultural, forestry, or related uses. The term includes the following:

(1) Technical services provided directly to farmers, ranchers, and other eligible entities, such as conservation planning, technical consultation, and assistance with design and implementation of conservation practices; and

(2) Technical infrastructure, including activities, processes, tools, and agency functions needed to support delivery of technical services, such as technical standards, resource inven-

tories, training, data, technology, monitoring, and effects analyses.

Technical Service Provider (TSP) means an individual, private-sector entity, or public agency certified by NRCS to provide technical services to program participants in lieu of or on behalf of NRCS.

WHIP plan of operations (WPO) means the document that identifies the location and timing of conservation practices that the participant agrees to implement on eligible land in order to develop fish and wildlife habitat and provide environmental benefits. The WPO is a part of the WHIP cost-share agreement.

Wildlife means non-domesticated birds, fishes, reptiles, amphibians, invertebrates, and mammals.

Wildlife habitat means the aquatic and terrestrial environments required for fish and wildlife to complete their life cycles, providing air, food, cover, water, and spatial requirements.

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§ 636.4 Program requirements.

(a) To participate in WHIP, an applicant must:

(1) Be in compliance with the highly erodible and wetland conservation provisions found in 7 CFR part 12;

(2) Be in compliance with the terms of all other USDA-administered conservation program contracts to which the participant is a party;

(3) Develop and agree to comply with a WPO and O&M agreement, as described in § 636.8;

(4) Enter into a cost-share agreement for the development of fish and wildlife habitat as described in § 636.9;

(5) Provide NRCS with written evidence of ownership or legal control for the term of the proposed cost-share agreement, including the O&M agreement. An exception may be made by the Chief in the case of land allotted by the Bureau of Indian Affairs or Indian land where there is sufficient assurance of control.

(6) Agree to provide all information to NRCS determined to be necessary to assess the merits of a proposed project and to monitor cost-share agreement compliance;