

## § 636.8

## 7 CFR Ch. VI (1–1–10 Edition)

meet the objectives of the program, or that the failure of the original project was due to reasons beyond the control of the participant.

(f) Payments made or attributed to a person or legal entity, directly or indirectly, may not exceed in the aggregate, \$50,000 per year.

(g) Eligibility for payment in accordance with 7 CFR part 1400, subpart G, average adjusted gross income limitation, will be determined prior to cost-share agreement approval.

(h) Subject to fund availability, the payment rates for conservation practices scheduled after the year of contract obligation may be adjusted to reflect increased costs.

(i) A participant will not be eligible for payments for conservation practices on eligible land if the participant receives payments or other benefits for the same practice on the same land under any other conservation program administered by USDA.

(j) Before NRCS will approve and issue final payment, the participant must certify that the conservation practice has been completed in accordance with the cost-share agreement, and NRCS or an approved TSP must certify that the practice has been carried out in accordance with the applicable NRCS field office technical guide.

(k) NRCS, for a fiscal year, may use up to 25 percent of WHIP funds to carry out cost-share agreements described in § 636.9(c).

[74 FR 2794, Jan. 16, 2009, as amended at 74 FR 10674, Mar. 12, 2009]

### § 636.8 The WHIP plan of operations (WPO).

(a) The participant develops a WPO with the assistance of NRCS or other public or private natural resource professionals, who are approved by NRCS. A WPO encompasses the parcel of land where habitat will be established, improved, protected, enhanced, or restored. The WPO shall be approved by NRCS and address at least one of the following:

(1) Fish and wildlife habitat conditions that are of concern to the participant;

(2) Fish and wildlife habitat concerns identified in State, regional, and national conservation initiatives; or

(3) Fish and wildlife habitat concerns identified in an approved area-wide plan that addresses the wildlife resource habitat concern.

(b) The WPO forms the basis for the WHIP cost-share agreement and shall be attached and included as part of the cost-share agreement, along with the O&M agreement. The WPO includes a schedule for installation and maintenance of the conservation practices, as determined by NRCS.

(c) The WPO may be modified in accordance with § 636.10.

(d) All conservation practices in the WPO must be approved by NRCS and developed and carried out in accordance with the applicable NRCS FOTG.

(e) The participant is responsible for the implementation of the WPO.

### § 636.9 Cost-share agreements.

(a) To apply for WHIP cost-share assistance, a person or legal entity must submit an application for participation at a USDA service center to an NRCS representative.

(b) A WHIP cost-share agreement shall:

(1) Incorporate the WPO;

(2) Be for a time period agreed to by the participant and NRCS, with a minimum duration of one year after the completion of conservation practices identified in the WPO and a maximum of 10 years, except for agreements entered into under paragraph (c) of this section;

(3) Include all provisions as required by law or statute;

(4) Include any participant reporting and recordkeeping requirements to determine compliance with the cost-share agreement and program;

(5) Be signed by the participant;

(6) Specify payment limits described in § 636.7(f) including any additional payment limitation associated with determinations made under § 636.7(g);

(7) Include an O&M agreement that describes operation and maintenance for each conservation practice and the Agency expectation that WHIP-funded conservation practices will be operated and maintained for their expected lifespan; and

(8) Include any other provision determined necessary or appropriate by the NRCS representative.