

## § 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 terminations 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.

(c) Notwithstanding any limitation of this part, NRCS may enter into a long-term cost-share agreement that:

- (1) Is for a term of at least 15 years;
- (2) Protects and restores critical plant or animal habitat, as determined by NRCS; and
- (3) Provides cost-share payments of no more than 90 percent of the cost of establishing conservation practices to develop fish and wildlife habitat.

**§ 636.10 Modifications.**

(a) The participant and NRCS may modify a cost-share agreement if both parties agree to the modification, the WPO is revised in accordance with NRCS requirements, and the agreement is approved by the designated conservationist.

(b) Any modifications made under this section must meet WHIP program objectives and must be in compliance with this part.

(c) In the event a conservation practice fails through no fault of the participant, the State Conservationist may issue payments to re-establish the practice, at the rates established in accordance with §636.7, provided such payments do not exceed the payment limitation requirements as set forth in §636.7.

**§ 636.11 Transfer of interest in a cost-share agreement.**

(a) A participant is responsible for notifying NRCS when he/she anticipates the voluntary or involuntary loss of control of the land covered by a WHIP cost-share agreement.

(b) The participant and NRCS may agree to transfer a cost-share agreement to another producer. The transferee must be determined by NRCS to be eligible to participate in WHIP and must assume full responsibility under the cost-share agreement.

(c) With respect to any and all payments owed to participants who wish to transfer ownership or control of land subject to a cost-share agreement, the division of payment shall be determined by the original party and that party's successor. In the event of a dispute or claim on the distribution of cost-share payments, NRCS may withhold payments without the accrual of

interest pending a settlement or adjudication on the rights to the funds.

(d) If such new participants are not willing or not eligible to assume the responsibilities of an existing WHIP cost-share agreement including the O&M agreement, NRCS shall terminate the cost-share agreement and may require that all cost-share payments may be forfeited, refunded, or both.

(e) The participants to the cost-share agreement shall be jointly and severally responsible for refunding the cost-share payments with applicable interest pursuant to paragraph (d) of this section.

**§ 636.12 Termination of cost-share agreements.**

(a) The State Conservationist may, independently or by mutual agreement with the parties to the cost-share agreement, terminate the cost-share agreement where:

(1) The parties to the cost-share agreement are unable to comply with the terms of the cost-share agreement as the result of conditions beyond their control;

(2) Termination of the cost-share agreement would, as determined by the State Conservationist, be in the public interest; or

(3) A participant fails to correct a violation of a cost-share agreement within the period provided by NRCS in accordance with §636.13.

(b) If NRCS terminates a cost-share agreement, the participant will forfeit all rights to future payments under the agreement, shall pay liquidated damages, in an amount determined by the State Conservationist in accordance with the terms of the agreement, and shall refund all or part of the payments received, plus interest. Participants violating WHIP cost-share agreements may be determined ineligible for future NRCS-administered conservation program funding.

(1) NRCS may require a participant to provide only a partial refund of the payments received if a previously installed conservation practice can function independently, and is not adversely affected by the violation or the absence of other conservation practices that would have been installed under the cost-share agreement.