

## § 636.17

(b) In accordance with the provisions of the Department of Agriculture Reorganization Act of 1994, Public Law 103-354 (7 U.S.C. 6901), the following decisions are not appealable:

(1) Payment rates, payment limits, and cost-share percentages;

(2) The designation of approved fish and wildlife priority areas, habitats, or activities;

(3) NRCS program funding decisions;

(4) Eligible conservation activities; and

(5) Other matters of general applicability.

(c) Before a participant may seek judicial review of any action taken under this part, the participant must exhaust all administrative appeal procedures set forth in paragraph (a) of this section.

## § 636.17 Compliance with regulatory measures.

(a) Participants who implement the WHIP plan of operations will be responsible for obtaining the authorities, rights, easements, permits, or other approvals necessary for the implementation, operation, and maintenance of the conservation activities in keeping with applicable laws and regulations. The requirement for the participant to obtain necessary permits is included in the terms and conditions of the contract appendix.

(b) Participants will be responsible for compliance with all laws and for all effects or actions resulting from the participants' performance under the cost-share agreement.

## § 636.18 Technical services provided by qualified personnel not affiliated with USDA.

(a) NRCS may use the services of qualified TSPs in performing its responsibilities for technical assistance.

(b) Participants may use technical services from qualified personnel of other Federal, State, and local agencies, Indian tribes, or individuals who are certified as TSPs by NRCS.

(c) Technical services provided by qualified personnel not affiliated with USDA may include, but are not limited to, conservation planning; conservation practice survey, layout, design, installation, and certification; and re-

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lated technical services as defined in 7 CFR part 652.

(d) NRCS retains approval authority over certification of work done by non-NRCS personnel for the purpose of approving WHIP payments.

## § 636.19 Access to operating unit.

As a condition of program participation, any authorized NRCS representative will have the right to enter an agricultural operation or tract for the purposes of determining eligibility and for ascertaining the accuracy of any representations related to cost-share agreements and performance. Access will include the right to provide technical assistance; determine eligibility; inspect any work undertaken under the cost-share agreements, including the WHIP plan of operations and O&M agreement; and collect information necessary to evaluate the habitat development performance specified in the cost-share agreements. The NRCS representative will make a reasonable effort to contact the participant prior to the exercising of this provision.

## § 636.20 Equitable relief.

(a) If a participant relied upon the advice or action of any authorized NRCS representative and did not know, or have reason to know, that the advice or action was improper or erroneous, NRCS may grant relief in accordance with 7 CFR part 635. Where a participant believes that detrimental reliance on the advice or action of a NRCS representative resulted in an ineligibility or program violation, the participant may request equitable relief under 7 CFR 635.3. The financial or technical liability for any action by a participant that was taken based on the advice of a NRCS certified non-USDA TSP is the responsibility of the certified TSP and will not be assumed by NRCS when NRCS authorizes payment.

(b) If during the term of a WHIP cost-share agreement a participant has been found in violation of a provision of the cost-share agreement, the O&M agreement, or any document incorporated by reference through failure to fully comply with that provision, the participant may be eligible for equitable relief under 7 CFR 635.4.