

during the previous year for calculation of overall payment limitations. The tribal entity must also produce, at the request of NRCS, proof of payments made to the person or legal entity that incurred costs related to conservation activity implementation;

(10) Supply information, as required by NRCS, to determine eligibility for the program including, but not limited to, information to verify the applicant's status as a limited resource farmer or rancher or beginning farmer or rancher and payment eligibility as established by 7 CFR part 1400, Adjusted Gross Income (AGI);

(11) With regard to any participant that utilizes a unique identification number as an alternative to a tax identification number, the participant will utilize only that identifier for any and all other WHIP cost-share agreements to which the participant is a party. Violators will be considered to have provided fraudulent representation and are subject to § 636.13; and

(12) Comply with applicable registration and reporting requirements of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109-282, as amended) and 2 CFR parts 25 and 170.

(b) Eligible land includes:

- (1) Private agricultural land;
- (2) NIPF;
- (3) Indian land; and

(4) Trust land owned in fee title by a State, including an agency or subdivision of a State, when such trust land is held under a long-term lease by a person or nongovernmental entity and when the Chief determines that (i) by the nature of the lease, such land is tantamount to private agricultural land; (ii) the duration of the lease is at least the length of any WHIP agreement; and (iii) no funds under the WHIP program are paid to a governmental entity.

(c) *Ineligible land.* NRCS will not provide cost-share assistance with respect to land:

(1) Enrolled in a program where fish and wildlife habitat objectives have been sufficiently achieved, as determined by NRCS;

(2) With onsite or offsite conditions which NRCS determines would under-

mine the benefits of the habitat development or otherwise reduce its value;

(3) On which habitat for threatened or endangered species, as defined in section 3 of the ESA, 16 U.S.C. 1532, would be adversely affected; or

(4) That is owned in fee title by an agency of the United States, other than:

(i) Land held in trust for Indian tribes, and

(ii) Lands owned in fee title by a State, including an agency or subdivision of a State or a unit of government except as provided in § 636.4(b)(4).

**§ 636.5 National priorities.**

(a) The following national priorities will be used in WHIP implementation:

(1) Promote the restoration of declining or important native fish and wildlife habitats;

(2) Protect, restore, develop, or enhance fish and wildlife habitat to benefit at-risk species;

(3) Reduce the impacts of invasive species on fish and wildlife habitats;

(4) Protect, restore, develop, or enhance declining or important aquatic wildlife species' habitats; and

(5) Protect, restore, develop, or enhance important migration and other movement corridors for wildlife.

(b) NRCS, with advice of other Federal agencies, will undertake periodic reviews of the national priorities and the effects of program delivery at the State, tribal, and local levels to adapt the program to address emerging resource issues. NRCS will:

(1) Use the national priorities to guide the allocation of WHIP funds to the State offices;

(2) Use the national priorities in conjunction with State, tribal, and local priorities to assist with prioritization and selection of WHIP applications; and

(3) Periodically review and update the national priorities utilizing input from the public, Indian tribes, and affected stakeholders to ensure that the program continues to address priority resource concerns.

**§ 636.6 Establishing priority for enrollment in WHIP.**

(a) NRCS, in consultation with Federal and State agencies, tribal, and

conservation partners, may identify priorities for enrollment in WHIP that will complement the goals and objectives of relevant fish and wildlife conservation initiatives at the State, regional, tribal land, or national levels. In response to national, tribal, regional, or State fish and wildlife habitat concerns, the Chief may focus program implementation in any given year to specific geographic areas or to address specific habitat development needs.

(b) The State Conservationist, with recommendations from the State Technical Committee and Tribal Conservation Advisory Council (for tribal land), may give priority to WHIP projects that will address unique habitats or special geographic areas identified in the State. Subsequent cost-share agreement offers that would complement previous cost-share agreements due to geographic proximity of the lands involved or other relationships may receive priority consideration for participation.

(c) NRCS will evaluate the applications and make enrollment decisions based on the fish and wildlife habitat need using some or all of the following criteria:

- (1) Contribution to resolving an identified habitat concern of national, tribal, regional, or State importance including at-risk species;
- (2) Relationship to any established wildlife or conservation priority areas;
- (3) Duration of benefits to be obtained from the habitat development practices;
- (4) Self-sustaining nature of the habitat development practices;
- (5) Availability of other partnership matching funds or reduced funding request by the person applying for participation;
- (6) Estimated costs of fish and wildlife habitat development activities;
- (7) Other factors determined appropriate by NRCS to meet the objectives of the program; and
- (8) Willingness of the applicant to complete all conservation improvements during the first 2 years of the WHIP cost-share agreement.

**§ 636.7 Cost-share payments.**

(a) NRCS may share the cost with a participant for implementing the conservation activities as provided in the WHIP plan of operations that is a component of the WHIP cost-share agreement:

(1) Except as provided in paragraph (a)(2) of this section and in § 636.9(c), NRCS will offer to pay no more than 75 percent of the costs to develop fish and wildlife habitat. The cost-share payment to a participant will be reduced proportionately below 75 percent to the extent that direct Federal financial assistance is provided to the participant from sources other than NRCS, except for certain cases that merit additional cost-share assistance to achieve the intended goals of the program, as determined by the State Conservationist.

(2) Historically underserved producers, as defined in § 636.3, and Indian tribes may receive the applicable payment rate and an additional rate that is not less than 25 percent above the applicable rate, provided that this increase does not exceed 90 percent of the estimated costs associated with WHIP plan of operations implementation.

(b) Cost-share payments may be made only upon a determination by NRCS that a conservation activity or an identifiable component of a conservation activity has been established in compliance with appropriate standards and specifications.

(c) Payments will not be made for a conservation activity that was:

- (1) Applied prior to application for the program; or
- (2) Initiated or implemented prior to cost-share agreement approval, unless a waiver was granted by the State Conservationist or designated conservationist prior to implementation.

(d) NRCS, in consultation with the State Technical Committee, will identify and provide public notice of the conservation activities eligible for payment under the program.

(e) Cost-share payments may be made for the establishment and installation of additional eligible conservation activities, or the maintenance or replacement of an eligible conservation activity, but only if NRCS determines the conservation activity is needed to meet the objectives of the program, or that