

the failure of the original project was due to reasons beyond the control of the participant.

(f) Payments made or attributed to a participant, 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 AGI limitation, will be determined prior to cost-share agreement approval.

(h) Subject to fund availability, the payment rates identified in a WHIP contract may be adjusted by NRCS to reflect increased costs.

(i) A participant will not be eligible for payments for conservation activities on eligible land if the participant receives payments or other benefits for the same activity 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 activity has been completed in accordance with the cost-share agreement, and NRCS or an approved Technical Service Provider (TSP) must certify that the activity has been carried out in accordance with the applicable FOTG.

(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).

§ 636.8 WHIP plan of operations.

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

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

(2) Fish and wildlife habitat concerns identified in State, regional, tribal land, or national conservation initiatives, as referenced in § 636.6(a); or

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

(b) The WHIP plan of operations forms the basis for the WHIP cost-share agreement and will be attached and included as part of the cost-share agreement, along with the O&M agreement. The WHIP plan of operations includes a schedule for implementation and maintenance of the conservation activities, as determined by NRCS.

(c) The WHIP plan of operations may be modified in accordance with § 636.10.

(d) All conservation activities in the WHIP plan of operations must be approved by NRCS and developed and carried out in accordance with the applicable FOTG.

(e) The participant is responsible for the implementation of the WHIP plan of operations.

§ 636.9 Cost-share agreements.

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

(b) A WHIP cost-share agreement will:

(1) Incorporate the WHIP plan of operations;

(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 activities identified in the WHIP plan of operations 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 the O&M for each conservation activity and the agency expectation that WHIP-funded conservation activities will be operated and maintained for their expected lifespan; and

§ 636.10

(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 essential plant or animal habitat, as determined by NRCS; and

(3) Provides cost-share payments of no more than 90 percent of the cost of implementing the WHIP plan of operations 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 WHIP plan of operations 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 implementation of a conservation activity fails through no fault of the participant, the State Conservationist may modify the cost-share agreement in order to issue payments to re-implement the activity, 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.

(d) Where circumstances beyond the participant's control or when it is in the public interest, such as matters of health or safety, the State Conservationist may independently or by mutual agreement with the parties modify or terminate the cost-share agreement as provided for in § 636.12.

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

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

(b) The participant and NRCS may agree to transfer a cost-share agreement to another potential participant. The transferee must be determined by

7 CFR Ch. VI (1-1-16 Edition)

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 will 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 new participants are not willing or not eligible to assume the responsibilities of an existing WHIP cost-share agreement, including the O&M agreement, and the participant fails to implement the cost-share agreement, then NRCS will terminate the agreement and may require that all cost-share payments be forfeited, refunded, or both, with applicable interest in accordance with § 636.12. Participants may be subject to liquidated damages in accordance with § 636.12.

§ 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, in accordance with the provisions of paragraphs (a)(1) and (a)(2) of this section the State Conservationist may allow the participant to retain a portion of any payments received appropriate to the effort the participant has made to comply with the contract.

(1) NRCS may require a participant to provide only a partial refund of the