

with the requirements of the covered conservation program.

(e) Requests for equitable relief shall include the following information:

(1) The reason why the participant was unable to comply with the requirements of the conservation program;

(2) Details regarding how much of the required action had been completed;

(3) Why the participant did not have sufficient reason to know that the action or information relied upon was improper or erroneous;

(4) Whether the participant did not act in reliance on their own misunderstanding or misinterpretation of the conservation program provisions, notices, or information; and

(5) Any other pertinent facts or supporting documentation.

PART 636—WILDLIFE HABITAT INCENTIVES PROGRAM

Sec.

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§ 636.1 Applicability.

(a) The purpose of the Wildlife Habitat Incentives Program (WHIP) is to help participants develop fish and wildlife habitat on private agricultural

land, nonindustrial private forest land, and Indian land.

(b) The regulations in this part set forth the requirements for the WHIP.

(c) The Chief, Natural Resources Conservation Service (NRCS) may implement WHIP in any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, and the Commonwealth of the Northern Mariana Islands.

§ 636.2 Administration.

(a) The regulations in this part will be administered under the general supervision and direction of the Chief, NRCS. The funds, facilities, and authorities of the Commodity Credit Corporation (CCC) are available to NRCS to carry out WHIP. Accordingly, where NRCS is mentioned in this part, it also refers to the CCC's funds, facilities, and authorities, where applicable.

(b) The State Conservationist will consult with the State Technical Committee in the implementation of the program and in establishing program direction for WHIP in the applicable State. The State Conservationist has the authority to accept or reject the State Technical Committee recommendation; however, the State Conservationist will give strong consideration to the State Technical Committee's recommendation.

(c) NRCS may enter into agreements with Federal and State agencies, Indian tribes, conservation districts, local units of government, public and private organizations, and individuals to assist with program implementation, including the provision of technical assistance. NRCS may make payments pursuant to said agreements for program implementation and for other goals consistent with the program provided for in this part.

(d) NRCS will provide the public with notice of opportunities to apply for participation in the program.

(e) No delegation in this part to lower organizational levels shall preclude the Chief of NRCS, or a designee, from determining any issues arising under this part or from reversing or modifying any determination made under this part.

§ 636.3 Definitions.

The following definitions will apply to this part and all documents issued in accordance with this part, unless specified otherwise:

Agricultural lands means cropland, grassland, rangeland, pasture, and other land determined by NRCS to be suitable for fish and wildlife habitat development on which agricultural and forest-related products or livestock are produced or have the potential to be produced. Agricultural lands may include cropped woodland, marshes, incidental areas included in the agricultural operation, and other types of land used for or have the potential to be used for production.

Applicant means a person, legal entity or joint operation that has an interest in an agricultural operation, as defined in 7 CFR part 1400, who has requested in writing to participate in WHIP.

At-risk species means any plant or animal species as determined by the State Conservationist, with advice from the State Technical Committee, to need direct intervention to halt its population decline.

Beginning farmer or rancher means an individual or entity who:

(1) Has not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 consecutive years. This requirement applies to all members of an entity, and will materially and substantially participate in the operation of the farm or ranch.

(2) In the case of a cost-share agreement with an individual, individually or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch, consistent with the practices in the county or State where the farm is located.

(3) In the case of a cost-share agreement with an entity or joint operation, all members must materially and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that each of the members provide some amount of the management, or labor and management necessary for day-to-day activities, such that if each of the members did not provide these inputs,

operation of the farm or ranch would be seriously impaired.

Chief means the Chief of NRCS, United States Department of Agriculture (USDA), or a designee.

Conservation district means any district or unit of State, Tribal, or local government formed under State, Tribal, or territorial law for the express purpose of developing and carrying out a local soil and water conservation program. Such district or unit of government may be referred to as a "conservation district," "soil conservation district," "soil and water conservation district," "resource conservation district," "natural resource district," "land conservation committee," or similar name.

Conservation practice means one or more conservation improvements and activities, including structural practices, land management practices, vegetative practices, forest management, and other improvements that benefit the eligible land and achieve program purposes.

Cost-share agreement means a legal document that specifies the rights and obligations of any participant accepted into the program. A WHIP cost-share agreement is a binding agreement for the transfer of assistance from USDA to the participant to share in the costs of applying conservation.

Cost-share payment means the payments under the WHIP cost-share agreement to develop fish and wildlife habitat or accomplish other goals consistent with the program provided for in this part.

Designated conservationist means an NRCS employee whom the State Conservationist has designated as responsible for WHIP administration in a specific area.

Field office technical guide (FOTG) means the official local NRCS source of resource information and interpretations of guidelines, criteria, and requirements for planning and applying conservation practices and conservation management systems. It contains detailed information on the conservation of soil, water, air, plant, and animal resources applicable to the local area for which it is prepared.

Habitat development means the conservation practices implemented to establish, improve, protect, enhance, or restore the conditions of the land for the specific purpose of improving conditions for fish and wildlife.

Historically underserved producer means an eligible person, joint operation, or legal entity that is a beginning farmer or rancher, socially disadvantaged farmer or rancher, or limited resource farmer or rancher.

Indian land means:

(1) Land held in trust by the United States for individual Indians or Indian tribes, or

(2) Land, the title to which is held by individual Indians or Indian tribes subject to Federal restrictions against alienation or encumbrance, or

(3) Land which is subject to rights of use, occupancy and/or benefit of certain Indian tribes, or

(4) Land held in fee title by an Indian, Indian family or Indian tribe.

Indian tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) that is eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Joint operation means, as defined in 7 CFR part 1400, a general partnership, joint venture, or other similar business organization in which the members are jointly or severally liable for the obligations of the organization.

Legal entity means, as defined in 7 CFR 1400, an entity created under Federal or State law that:

(1) Owns land or an agricultural commodity, product, or livestock; or

(2) Produces an agricultural commodity, product, or livestock.

Lifespan means the period of time during which a conservation practice is to be operated and maintained for the intended purpose.

Limited resource farmer or rancher means:

(1) A person with direct or indirect gross farm sales not more than \$155,200 in each of the previous two years (adjusted for inflation using Prices Paid

by Farmer Index as compiled by National Agricultural Statistical Service), and

(2) Has a total household income at or below the national poverty level for a family of four, or less than 50 percent of county median household income in each of the previous two years (to be determined annually using Commerce Department Data).

Liquidated damages means a sum of money stipulated in the WHIP cost-share agreement that the participant agrees to pay NRCS if the participant fails to adequately complete the terms of the cost-share agreement. The sum represents an estimate of the technical assistance expenses incurred to service the agreement, and reflects the difficulties of proof of loss and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy.

Livestock means all animals produced on farms and ranches, as determined by the Chief.

Natural Resources Conservation Service (NRCS) is an agency of the USDA, which has the responsibility for administering WHIP using the funds, facilities, and authorities of the CCC.

Nonindustrial private forestland means rural land, as determined by the Secretary, that has existing tree cover or is suitable for growing trees; and is owned by any nonindustrial private individual, group, association, corporation, Indian tribe, or other private legal entity that has definitive decision-making authority over the land.

Operation and maintenance means work performed by the participant to keep the applied conservation practice functioning for the intended purpose during the conservation practice lifespan. Operation includes the administration, management, and performance of non-maintenance actions needed to keep the completed practice functioning as intended. Maintenance includes work to prevent deterioration of the practice, repairing damage, or replacement of the practice to its original condition if one or more components fail.

Operation and maintenance (O&M) agreement means the document that, in conjunction with the WHIP plan of operations, specifies the operation and maintenance responsibilities of the

participants for conservation practices installed with WHIP assistance.

Participant means a person, legal entity, or joint operation, or tribe that is receiving payment or is responsible for implementing the terms and conditions of a WHIP cost-share agreement.

Person means, as defined in 7 CFR part 1400, an individual, natural person and does not include a legal entity.

Producer means, as defined in 7 CFR part 1400, a person, legal entity, or joint operation who has an interest in the agricultural operation or who is engaged in agricultural production or forestry management.

Resource concern means a specific natural resource problem that represents a significant concern in a State or region and is likely to be addressed successfully through the implementation of the conservation practices by producers.

Secretary means the Secretary of the USDA.

Socially disadvantaged farmer or rancher means a farmer or rancher who has been subjected to racial or ethnic prejudices because of their identity as a member of a group without regard to their individual qualities.

State Conservationist means the NRCS employee authorized to implement WHIP and direct and supervise NRCS activities in a State, the Caribbean Area, or the Pacific Islands Area.

State Technical Committee means a committee established by the Secretary of the United States Department of Agriculture in a State pursuant to 16 U.S.C. 3861.

Technical assistance means technical expertise, information, and tools necessary for the conservation of natural resources on land active in agricultural, forestry, or related uses. The term includes the following:

(1) Technical services provided directly to farmers, ranchers, and other eligible entities, such as conservation planning, technical consultation, and assistance with design and implementation of conservation practices; and

(2) Technical infrastructure, including activities, processes, tools, and agency functions needed to support delivery of technical services, such as technical standards, resource inven-

tories, training, data, technology, monitoring, and effects analyses.

Technical Service Provider (TSP) means an individual, private-sector entity, or public agency certified by NRCS to provide technical services to program participants in lieu of or on behalf of NRCS.

WHIP plan of operations (WPO) means the document that identifies the location and timing of conservation practices that the participant agrees to implement on eligible land in order to develop fish and wildlife habitat and provide environmental benefits. The WPO is a part of the WHIP cost-share agreement.

Wildlife means non-domesticated birds, fishes, reptiles, amphibians, invertebrates, and mammals.

Wildlife habitat means the aquatic and terrestrial environments required for fish and wildlife to complete their life cycles, providing air, food, cover, water, and spatial requirements.

[74 FR 2794, Jan. 16, 2009, as amended at 74 FR 34211, July 15, 2009]

§ 636.4 Program requirements.

(a) To participate in WHIP, an applicant must:

(1) Be in compliance with the highly erodible and wetland conservation provisions found in 7 CFR part 12;

(2) Be in compliance with the terms of all other USDA-administered conservation program contracts to which the participant is a party;

(3) Develop and agree to comply with a WPO and O&M agreement, as described in § 636.8;

(4) Enter into a cost-share agreement for the development of fish and wildlife habitat as described in § 636.9;

(5) Provide NRCS with written evidence of ownership or legal control for the term of the proposed cost-share agreement, including the O&M agreement. An exception may be made by the Chief in the case of land allotted by the Bureau of Indian Affairs or Indian land where there is sufficient assurance of control.

(6) Agree to provide all information to NRCS determined to be necessary to assess the merits of a proposed project and to monitor cost-share agreement compliance;

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(7) Agree to grant to NRCS or its representatives access to the land for purposes related to application, assessment, monitoring, enforcement, verification of certifications, or other actions required to implement this Part;

(8) Provide a list of all members of the legal entity and embedded entities along with members' tax identification numbers and percentage interest in the entity. Where applicable, American Indians, Alaska Natives, and Pacific Islanders may use another unique identification number for each individual eligible for payment;

(9) With regard to cost-share agreements with individual Indians or Indians represented by BIA, payments exceeding the payment limitation may be made to the Tribal participant if a BIA or Tribal official certifies in writing that no one individual, directly or indirectly, will receive more than the payment limitation. The Tribal entity must also provide, annually, a listing of individuals and payments made, by tax identification number or other unique identification number, 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 or sacrificed income related to conservation practice 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; and

(11) With regard to any person or legal entity that utilizes a unique identification number as an alternative to a tax identification number, the person or legal entity will utilize only that identifier for any and all other WHIP cost-share agreements to which the person or legal entity is party. Violators will be considered to have provided fraudulent representation and be subject to the full penalties of § 638.13 of this part.

(b) Eligible land includes:

(1) Private agricultural land;
(2) Nonindustrial private forest land; and

(3) Indian land.

(c) Ineligible land. NRCS shall not provide cost-share assistance with respect to conservation practices on land:

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

(2) With on-site or off-site conditions which NRCS determines would undermine 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 Endangered Species Act (ESA), 16 U.S.C. 1532, would be adversely affected;

(4) That is public land.

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

§ 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; and

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

(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 and local level 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 NRCS offices,

(2) Use the national priorities in conjunction with State 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 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 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, and national levels. In response to national, regional, and state fish and wildlife habitat concerns, the Chief may limit program implementation in any given year to specific geographic areas or to address specific habitat development needs.

(b) The State Conservationist, in consultation with the State Technical Committee, 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, regional, or state importance;
- (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 two 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 practices as provided in the WPO that is a component of the WHIP cost-share agreement:

(1) Except as provided in paragraph (a)(2) of this section and § 636.9(c), NRCS shall offer to pay no more than 75 percent of the costs of establishing conservation practices to develop fish and wildlife habitat. The cost-share payment to a participant shall 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 incurred costs associated with the conservation practice.

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

(c) Payments will not be made for a conservation practice 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 practice implementation.

(d) NRCS will identify and provide public notice of the conservation practices eligible for payment under the program.

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

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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.

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(2) The State Conservationist will have the option to waive all or part of the liquidated damages assessed, depending upon the circumstances of the case.

(c) When making termination decisions, the NRCS may reduce the amount of money owed by the participant by a proportion that reflects:

(1) The good faith effort of the participant to comply with the cost-share agreement, or

(2) The existence of hardships beyond the participant's control that have prevented compliance. If a participant claims hardship, that claim must be documented and cannot have existed when the applicant applied for participation in the program.

§ 636.13 Violations and remedies.

(a) If NRCS determines that a participant is in violation of a cost-share agreement, NRCS shall give the parties to the cost-share agreement notice of the violation and a minimum of 60 days to correct the violation and comply with the terms of the cost-share agreement and attachments thereto.

(b) If the participant fails to correct the violation of a cost-share agreement within the period provided by NRCS under paragraph (a) of this section, NRCS may terminate the agreement and require the participant to refund all or part of any of the funds issued under that cost-share agreement, plus interest, and assess liquidated damages, as well as require the participant to forfeit all rights to any future payment under the agreement.

§ 636.14 Misrepresentation and scheme or device.

(a) A participant who is determined to have erroneously represented any fact affecting a program determination made in accordance with this Part shall not be entitled to cost-share agreement payments and must refund to NRCS all payments and pay liquidated damages, plus interest as determined by NRCS.

(b) A participant shall refund to NRCS all payments, plus interest as determined by NRCS, with respect to all NRCS cost-share agreements to which they are a party if they are determined to have knowingly:

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(1) Adopted any scheme or device that tends to defeat the purpose of the program;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a program determination.

(c) Other NRCS cost-share agreements, where this person is a participant, may be terminated.

§ 636.15 Offsets and assignments.

(a) Except as provided in paragraph (b) of this section, any payment or portion thereof to any person or legal entity shall be made without regard to questions of title under State law and without regard to any claim or lien against the land, or proceeds thereof, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholdings found at 7 CFR part 1403 of this title shall be applicable to cost-share agreement payments.

(b) WHIP participants may assign any payments in accordance with 7 CFR part 1404.

§ 636.16 Appeals.

(a) Any participant may obtain reconsideration and review of determinations affecting participation in this program in accordance with 7 CFR parts 11 and 614, except as provided in paragraph (b) of this section.

(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 practices;

(3) NRCS program funding decisions;

(4) Eligible conservation practices; 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.

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§ 636.17 Compliance with regulatory measures.

(a) Participants who carry out conservation practices shall be responsible for obtaining the authorities, rights, easements, permits, or other approvals necessary for the implementation, operation, and maintenance of the conservation practices in keeping with applicable laws and regulations.

(b) Participants shall be responsible for compliance with all laws and for all effects or actions resulting from the participant's 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 is not limited to: Conservation planning; conservation practice survey, layout, design, installation, and certification; and information; education; and training for producers.

(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 shall 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 shall include the right to provide technical assistance; determine eligibility; inspect any work undertaken under the cost-share agreements, including the WPO and O&M agreement; and collect information necessary to evaluate the conservation practice performance specified in the cost-share agreements. The NRCS representative shall make a reasonable effort to contact the partic-

ipant 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 accept the advice or action as meeting program requirements and grant relief because of the good-faith reliance on the part of the participant. 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. 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.

(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.

§ 636.21 Environmental services credits for conservation improvements.

USDA recognizes that environmental benefits will be achieved by implementing conservation practices funded through WHIP, and that environmental credits may be gained as a result of implementing activities compatible with the purposes of a WHIP cost-share agreement. NRCS asserts no direct or indirect interest on any such credits. However, NRCS retains the authority to ensure that the requirements for WHIP funded improvements are met and maintained consistent with §§ 636.8 and 636.9. Where activities required under an environmental credit agreement may affect land covered under a WHIP cost-share agreement, participants are highly encouraged to request a compatibility assessment from NRCS prior to entering into such agreements.