

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