

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Natural Resources Conservation Service

#### 7 CFR Part 636

RIN 0578-AA21

#### Wildlife Habitat Incentives Program

**AGENCY:** Natural Resources Conservation Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Farm Security and Rural Investment Act of 2002 amended the authority of the Secretary of Agriculture for the Wildlife Habitat Incentives Program (WHIP) to provide additional cost-share assistance to landowners who enter into an agreement to protect and restore plant and animal habitat for a term of at least 15 years. The current regulations for WHIP require cost-share agreements to be for a term of 5 to 10 years. This change will amend the program regulation to conform to the statutory language.

**EFFECTIVE DATE:** July 24, 2002.

**FOR FURTHER INFORMATION CONTACT:** Roger L. Bensey at (202) 720-3534.

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

The Office of Management and Budget has determined that this final rule does not meet the criteria for a significant regulatory action as specified in Executive Order 12866.

##### Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule because the Natural Resources Conservation Service is not required by 5 U.S.C. 553, or any other provision of law, to publish a notice of proposed rule making with respect to the subject matter of this rule.

##### Paperwork Reduction Act

No recordkeeping or reporting burden is associated with this rule.

##### Executive Order 12988

This final rule has been reviewed in accordance with Executive Order 12988. The provisions of this final rule are not retroactive. Furthermore, the provisions of this final rule preempt State and local laws to the extent such laws are inconsistent with this final rule. Before an action may be brought in a Federal court of competent jurisdiction, the administrative appeal rights afforded persons at 7 CFR part 614 must be exhausted.

##### Unfunded Mandates Reform Act of 1995

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, Public Law 104-4, NRCS assessed the affects of this rulemaking action on State, local, and Tribal governments, and the public. This action does not compel the expenditure of \$100 million or more by any State, local, or Tribal governments, or anyone in the private sector, and therefore, a statement under section 202 of the Unfunded Mandates Reform Act of 1995 is not required.

##### Discussion

The Wildlife Habitat Incentives Program (WHIP) was originally authorized under section 387 of the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act), 16 U.S.C. 3836a. WHIP provides cost-share assistance to landowners to develop wildlife habitat on upland, wetland, riparian, aquatic, and other areas. Section 387 did not specify the cost-share rate or the agreement length.

NRCS published its final rule to implement WHIP, 7 CFR part 636, on September 19, 1997 (62 FR 49358). Section 636.6 of the WHIP final rule specified that NRCS would offer to pay no more than 75 percent of the cost of establishing wildlife habitat development practices. Section 636.8 of the WHIP final rule specified that a WHIP cost-share agreement would be for a period of 5 to 10 years, unless a shorter period was recommended to address situations where wildlife habitat was threatened as a result of a disaster.

Section 2502 of the Farm Security and Rural Investment Act of 2002 (the 2002

Act), Public Law 107-171, repealed the original WHIP statute and amended Title XII of the Food Security Act of 1985 to add a new section 1240N as the authority for WHIP. As amended, the Food Security Act authorizes NRCS to provide additional cost-share payments to protect and restore plant and animal habitat under an agreement or contract that has a term of at least 15 years.

This final rule reflects the new authority to provide additional cost-share assistance under agreements or contracts that have a term of at least 15 years. This change will conform the WHIP regulation with statutory authorization. No public comments are being solicited.

#### List of Subjects in 7 CFR Part 636

Administrative practice and procedure, Agriculture, Soil conservation, Wildlife.

Accordingly, 7 CFR part 636 is amended as follows:

#### PART 636—WILDLIFE HABITAT INCENTIVES PROGRAM

1. The authority citation for part 636 is revised to read as follows:

**Authority:** 16 U.S.C. 3839bb-1.

2. Section 636.8 is amended by adding a new paragraph (d) to read as follows:

##### § 636.8 Cost-share agreements.

\* \* \* \* \*

(d) Notwithstanding any limitation of this part, NRCS may enter into a cost-share agreement or contract that:

- (1) Is for a term of at least 15 years;
- (2) Protects and restores plant and animal habitat; and
- (3) Provides cost-share payments in addition to amounts provided under § 636.6 of this part.

Signed in Washington, DC, on July 12, 2002.

**Bruce I. Knight,**

*Chief, Natural Resources Conservation Service.*

[FR Doc. 02-18657 Filed 7-23-02; 8:45 am]

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