

§ 636.7

7 CFR Ch. VI (1-1-03 Edition)

cost-share assistance to achieve the intended goals of the program, as determined by the State Conservationist.

(b) Cost-share payments may be made only upon a determination by the NRCS that an eligible practice or an identifiable unit of the practice has been established in compliance with appropriate standards and specifications. Identified practices may be implemented by the participant or other designee.

(c) Cost-share payments may be made for the establishment and installation of additional eligible practices, or the maintenance or replacement of an eligible practice, but only if NRCS determines the practice is needed to meet the objectives of the program, or that the failure of the original practice was due to reasons beyond the control of the participant.

§ 636.7 The Wildlife Habitat Development Plan (WHDP).

(a) The participant develops a WHDP with the assistance of NRCS or other public or private natural resource professionals, and the WHDP is approved by the participant, NRCS, and the local conservation district. A WHDP encompasses the parcel of land that has the wildlife habitat conditions that are of concern to the participant.

(b) The WHDP forms the basis for the agreement and is incorporated therein. The WHDP includes a schedule for installation of the wildlife habitat development practices, maintenance, and related requirements to maintain the habitat for the life of the cost-share agreement.

(c) The WHDP may be modified in accordance with § 636.9.

§ 636.8 Cost-share agreements.

(a) To apply for WHIP cost-share assistance, a person must submit an application for participation in the WHIP at a USDA office or to an NRCS representative.

(b) A WHIP cost-share agreement shall:

(1) Incorporate all portions of a WHDP;

(2) Be for a period of 5 to 10 years, unless provisions of paragraph (c) of this section apply;

(3) Include all provisions as required by law or statute;

(4) Specify the requirements for operation and maintenance of applied wildlife habitat development practices;

(5) Include any participant reporting and recordkeeping requirements to determine compliance with the cost-share agreement and program;

(6) Be signed by the participant. When the participant is not the owner, concurrence from the owner is required; and,

(7) Include any other provision determined necessary or appropriate by the NRCS representative.

(c) The Chief may allow a cost-share agreement period for less than five years in situations where wildlife habitat is threatened as a result of a disaster and emergency measures are necessary to address the potential for dramatic declines in one or more wildlife populations.

(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.

[62 FR 49365, Sept. 19, 1997, as amended at 67 FR 48353, July 24, 2002]

§ 636.9 Modifications.

(a) NRCS, with the concurrence of the conservation district, may approve modifications to a WHDP where such modifications are acceptable to the parties.

(b) NRCS may approve modifications to the cost-share agreement where such modifications are acceptable to the parties.

(c) Any modifications made under this section must meet WHIP program objectives, and must be in compliance with this part.

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

(a) (1) If the ownership or operation of the land changes during the term of the cost-share agreement, NRCS shall modify the cost-share agreement to reflect the new interested persons and new divisions of payments. NRCS shall

make eligible cost-share payments upon presentation of an assignment of rights or other evidence that title had passed.

(2) 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.

(b) (1) If such new owners or operators are not willing to assume the responsibilities posed in an existing WHIP cost-share agreement, NRCS shall terminate the cost-share agreement and may require that all cost-share payments may be forfeited, refunded, or both.

(2) The signatories to the cost-share agreement shall be jointly and severally responsible for refunding the cost-share payments pursuant to paragraph (b)(1) of this section.

§ 636.11 Termination of cost-share agreements.

(a) The State Conservationist may, by mutual agreement with the parties to the cost-share agreement, consent to the termination of the contract 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) Compliance with the terms of the cost-share agreement would work a severe hardship on the parties to the contract; or,

(3) Termination of the cost-share agreement would, as determined by the State Conservationist, be in the public interest.

(b) If a cost-share agreement is terminated in accordance with the provisions of this section, the State Conservationist may allow the participants to retain any cost-share payments received under the cost-share agreement in a proportion appropriate to the effort the participant has made to comply with the cost-share agree-

ment, or, in cases of hardship, where forces beyond the participant's control prevented compliance with the cost-share agreement.

§ 636.12 Violations and remedies.

(a) (1) If NRCS determines that a participant is in violation of a cost-share agreement or documents incorporated by reference into the cost-share agreement, NRCS may give the parties to the cost-share agreement reasonable notice and an opportunity to voluntarily correct the violation within 30 days of the date of the notice, or such additional time as NRCS may allow.

(2) If the participant fails to cure the violation of a cost-share agreement within the period provided under paragraph (a)(1) of this section, NRCS may terminate the agreement and require the participant to refund all or part of any assistance earned under that cost-share agreement, plus interest, as well as require the participant to forfeit all rights for future payment under the agreement.

(b) [Reserved]

§ 636.13 Misrepresentation and scheme or device.

(a) A person who is determined by NRCS 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 all payments, plus interest as determined by NRCS.

(b) A person who is determined to have knowingly:

(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 shall refund to NRCS all payments, plus interest as determined by NRCS, with respect to all NRCS cost-share agreements. The person's interest in all NRCS cost-share agreements may be terminated.

§ 636.14 Offsets and assignments.

(a) Except as provided in paragraph (b) of this section, any payment or portion thereof to any person shall be made without regard to questions of