

(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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AUTHORITY: 16 U.S.C. 3839bb-1.

SOURCE: 62 FR 49365, Sept. 19, 1997, unless otherwise noted.

#### § 636.1 Applicability.

(a) The purpose of the WHIP is to help participants develop habitat for upland wildlife, wetland wildlife, threatened and endangered species, fish, and other types of wildlife.

(b) The regulations in this part set forth the requirements for the Wildlife Habitat Incentives Program (WHIP).

(c) The Chief, 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.

(b) The State Conservationist will consult with the State Technical Committee in the implementation of the program and in establishing program direction for the NRCS 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 cooperative agreements with Federal agencies, State and local agencies, conservation districts, local watershed groups, and private entities to assist with program implementation, including cost-share agreement execution, assistance, planning, and monitoring responsibilities.

(d) NRCS may make payments pursuant to agreements with other Federal, State, or local agencies, conservation districts, local watershed groups, or private entities for program implementation, coordination of enrollment of cost-share agreements, or for other goals consistent with the program provided for in this part.

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

(f) Nothing in this part shall preclude the Chief of NRCS, or a designee, from determining any question arising under this part or from reversing or modifying any determination made under this part.

#### § 636.3 Definitions.

*Chief* means the Chief of the Natural Resources Conservation Service or the person delegated authority to act for the Chief.

*Conservation district* means a political subdivision of a State, Native American Tribe, or territory, organized pursuant to the State or territorial soil conservation district law, or Tribal law. The subdivision may be a conservation district, soil conservation

district, soil and water conservation district, resource conservation district, natural resource district, land conservation committee, or similar legally constituted body.

*Conservation plan* means a record of a participant's decisions, and supporting information, for treatment of a unit of land or water, and includes a schedule of operations, activities, and estimated expenditures needed to solve identified natural resource problems.

*Cost-share agreement* means the document that specifies the obligations and the rights of any person who has been accepted for participation in the program.

*Cost-share payment* means the payments under this part to develop wildlife habitat.

*Habitat development* means the physical actions or practices undertaken to establish, improve, protect, enhance, or restore the present conditions of the land for the specific purpose of improving conditions for wildlife.

*Participant* means an applicant who is a party to a WHIP cost-share agreement.

*Person* means an individual, partnership, association, corporation, cooperative, estate, trust, joint venture, joint operation, or other business enterprise or other legal entity and, whenever applicable, a State, a political subdivision of a State, or any agency thereof.

*Practice* means a specified treatment, such as a structural or land management measure, which is planned and applied according to NRCS standards and specifications.

*Recurring practices* means practices repeated on the same area over the life of a cost-share agreement to achieve specific habitat attributes.

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

*Wildlife* means birds, fishes, reptiles, amphibians, invertebrates, and mammals, along with all other animals.

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

**§ 636.4 Program requirements.**

(a) To participate in WHIP, a person must:

(1) Develop and agree to comply with a WHDP, as described in § 636.7;

(2) Enter into a cost-share agreement for the development of wildlife as described in § 636.8;

(3) Provide NRCS with written evidence of ownership or legal control for the life of the proposed cost-share agreement period; however, an exception may be made by the Chief:

(i) In the case of land allotted by the Bureau of Indian Affairs, tribal land, or

(ii) Other instances in which NRCS determines there is sufficient assurance of control;

(4) Agree to provide all information to NRCS as determined to be necessary to assess the merits of a proposed project and to monitor the compliance of a participant with a cost-share agreement; and (5) Agree to grant to NRCS or its representatives access to the land for purposes related to application, assessment, monitoring, enforcement, or other actions required to implement this part.

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

(1) Enrolled in a program where wildlife habitat objectives have been sufficiently achieved through other forms of assistance or without assistance, 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) Where NRCS determines that the wildlife habitat development benefits attainable are of lesser value than would occur on other lands; or

(4) Owned by the United States, except where there is a direct Tribal, State, or private benefit; or

(5) On which habitat for threatened or endangered species would be adversely affected.