

(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.