

§ 636.10

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

(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 essential plant or animal habitat, as determined by NRCS; and
- (3) Provides cost-share payments of no more than 90 percent of the cost of implementing the WHIP plan of operations 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 WHIP plan of operations 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 implementation of a conservation activity fails through no fault of the participant, the State Conservationist may modify the cost-share agreement in order to issue payments to re-implement the activity, 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.

(d) Where circumstances beyond the participant's control or when it is in the public interest, such as matters of health or safety, the State Conservationist may independently or by mutual agreement with the parties modify or terminate the cost-share agreement as provided for in § 636.12.

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

(a) A participant is responsible for notifying NRCS when he or she anticipates the voluntary or involuntary loss of control of the land covered by a WHIP cost-share agreement during the term of the agreement.

(b) The participant and NRCS may agree to transfer a cost-share agreement to another potential participant. 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 will 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 new participants are not willing or not eligible to assume the responsibilities of an existing WHIP cost-share agreement, including the O&M agreement, and the participant fails to implement the cost-share agreement, then NRCS will terminate the agreement and may require that all cost-share payments be forfeited, refunded, or both, with applicable interest in accordance with § 636.12. Participants may be subject to liquidated damages in accordance with § 636.12.

§ 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, in accordance with the provisions of paragraphs (a)(1) and (a)(2) of this section the State Conservationist may allow the participant to retain a portion of any payments received appropriate to the effort the participant has made to comply with the contract.

(1) NRCS may require a participant to provide only a partial refund of the