

(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.

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(2) The State Conservationist will have the option to waive all or part of the liquidated damages assessed, depending upon the circumstances of the case.

(c) When making termination decisions, the NRCS may reduce the amount of money owed by the participant by a proportion that reflects:

(1) The good faith effort of the participant to comply with the cost-share agreement, or

(2) The existence of hardships beyond the participant's control that have prevented compliance. If a participant claims hardship, that claim must be documented and cannot have existed when the applicant applied for participation in the program.

§ 636.13 Violations and remedies.

(a) If NRCS determines that a participant is in violation of a cost-share agreement, NRCS shall give the parties to the cost-share agreement notice of the violation and a minimum of 60 days to correct the violation and comply with the terms of the cost-share agreement and attachments thereto.

(b) If the participant fails to correct the violation of a cost-share agreement within the period provided by NRCS under paragraph (a) of this section, NRCS may terminate the agreement and require the participant to refund all or part of any of the funds issued under that cost-share agreement, plus interest, and assess liquidated damages, as well as require the participant to forfeit all rights to any future payment under the agreement.

§ 636.14 Misrepresentation and scheme or device.

(a) A participant who is determined 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 to NRCS all payments and pay liquidated damages, plus interest as determined by NRCS.

(b) A participant shall refund to NRCS all payments, plus interest as determined by NRCS, with respect to all NRCS cost-share agreements to which they are a party if they are determined to have knowingly:

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(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.

(c) Other NRCS cost-share agreements, where this person is a participant, may be terminated.

§ 636.15 Offsets and assignments.

(a) Except as provided in paragraph (b) of this section, any payment or portion thereof to any person or legal entity shall be made without regard to questions of title under State law and without regard to any claim or lien against the land, or proceeds thereof, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholdings found at 7 CFR part 1403 of this title shall be applicable to cost-share agreement payments.

(b) WHIP participants may assign any payments in accordance with 7 CFR part 1404.

§ 636.16 Appeals.

(a) Any participant may obtain reconsideration and review of determinations affecting participation in this program in accordance with 7 CFR parts 11 and 614, except as provided in paragraph (b) of this section.

(b) In accordance with the provisions of the Department of Agriculture Reorganization Act of 1994, Public Law 103-354 (7 U.S.C. 6901), the following decisions are not appealable:

(1) Payment rates, payment limits, and cost-share percentages;

(2) The designation of approved fish and wildlife priority areas, habitats, or practices;

(3) NRCS program funding decisions;

(4) Eligible conservation practices; and

(5) Other matters of general applicability.

(c) Before a participant may seek judicial review of any action taken under this part, the participant must exhaust all administrative appeal procedures set forth in paragraph (a) of this section.