

§ 636.13

(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.