

## § 636.14

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 may assess liquidated damages as indicated in the cost-share agreement appendix, as well as require the participant to forfeit all rights to any future payment under the agreement.

(c) If NRCS terminates a cost-share agreement due to breach of contract, the participant will forfeit all rights to future payments under the agreement, may be required to pay liquidated damages in an amount determined by the State Conservationist in accordance with the terms of the agreement, and will 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.

### § 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, will 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 will 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:

(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 will be made without regard to

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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 United States Government. The regulations governing offsets and withholdings found at 7 CFR part 1403 of this title will 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 activities;

(3) NRCS program funding decisions;

(4) Eligible conservation activities; 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.

### § 636.17 Compliance with regulatory measures.

(a) Participants who implement the WHIP plan of operations will be responsible for obtaining the authorities, rights, easements, permits, or other approvals necessary for the implementation, operation, and maintenance of the conservation activities in keeping with applicable laws and regulations. The requirement for the participant to obtain necessary permits is included in the terms and conditions of the contract appendix.

(b) Participants will be responsible for compliance with all laws and for all