

§ 1415.17

7 CFR Ch. XIV (1-1-10 Edition)

payment in such a manner as USDA determines is fair and reasonable in light of all the circumstances.

§ 1415.17 Cooperative agreements.

(a) NRCS may enter into cooperative agreements which establish terms and conditions under which an eligible entity shall use funds provided by NRCS to own, write, and enforce a grassland protection easement.

(b) To be eligible to receive GRP funding, an eligible entity must demonstrate:

(1) A commitment to long-term conservation of agricultural lands, rangeland, or grassland for grazing and conservation purposes;

(2) A capability to acquire, manage, and enforce easements;

(3) Sufficient number of staff dedicated to monitoring and easement stewardship;

(4) The availability of funds; and

(5) For non-governmental organizations, the existence of a dedicated account for the purposes of easement management, monitoring, and enforcement of each easement held by the eligible entity.

(c) NRCS enters into a cooperative agreement with those eligible entities selected for funding. Once a proposal is selected by the State Conservationist, the eligible entity must work with the appropriate State Conservationist to finalize and sign the cooperative agreement, incorporating all necessary GRP requirements. The cooperative agreement addresses:

(1) The interests in land to be acquired, including the form of the easement deeds to be used and terms and conditions.

(2) The management and enforcement of the interests acquired.

(3) The responsibilities of NRCS.

(4) The responsibilities of the eligible entity on lands acquired with the assistance of GRP.

(5) An attachment listing the parcels accepted by the State Conservationist, landowners' names, addresses, location map(s), and other relevant information.

(6) The allowance of parcel substitution upon mutual agreement of the parties.

(7) The manner in which violations are addressed.

(8) The right of the Secretary to conduct periodic inspections to verify the eligible entity's enforcement of the easements.

(9) The manner in which the eligible entity will evaluate and report the use of funds to the Secretary.

(10) The eligible entity's agreement to assume the costs incurred in administering and enforcing the easement, including the costs of restoration and rehabilitation of the land as specified by the owner and eligible entity. The entity will also assume the responsibility for enforcing the grazing management plan, or conservation plan, as applicable. The eligible entity must incorporate any required plan into the conservation easement deed by reference or otherwise.

(11) If applicable, the ability of an eligible entity to include a charitable donation or qualified conservation contribution (as defined by Section 170(h) of the Internal Revenue Code of 1986) from the landowner as part of the entity's share of the cost to purchase the easement.

(12) The schedule of payments to an eligible entity, as agreed to by NRCS and the eligible entity.

(13) That GRP funds may not be used for expenditures such as appraisals, surveys, title insurance, legal fees, costs of easement monitoring, and other related administrative and transaction costs incurred by the entity.

(14) That NRCS may provide a share of the purchase price of an easement under the program, and that the eligible entity shall be required to provide a share of the purchase price at least equivalent to that provided by NRCS. The Federal share will be no more than 50 percent of the purchase price, as defined in §1415.3.

(15) The eligible entity's succession plan that describes its successors or assigns to hold, manage, and enforce the interests in land acquired in the event that the eligible entity is no longer able to fulfill its obligations under the cooperative agreement entered into with NRCS.

(16) Other requirements deemed necessary by NRCS to protect the interests of the United States.

(d) Under the cooperative agreement option, a landowner grants an easement to an eligible entity with which NRCS has entered into a GRP cooperative agreement. The easement shall require that the easement area be maintained in accordance with GRP goals and objectives for the term of the easement. Easements are acquired in perpetuity, except where State law prohibits a permanent easement.

(e) The entity may use its own terms and conditions in the conservation easement deed, but a conservation easement deed template used by the eligible entity shall be submitted to the Chief within 30 days of the signing of the cooperative agreement. The conservation easement deed templates shall be reviewed and approved by the Chief. NRCS reserves the right to require additional specific language or to remove language in the conservation easement deed to protect the interests of the United States.

(1) In order to protect the public investment, the conveyance document must contain a "right of enforcement." NRCS shall specify the terms for the "right of enforcement" clause to read as set forth in the GRP cooperative agreement. This right is a vested property right and cannot be condemned or terminated by State or local government.

(2) The eligible entity shall acquire, hold, manage and enforce the easement. The eligible entity may have the option to enter into an agreement with governmental or private organizations to carry out easement stewardship responsibilities if approved by NRCS.

(3) Prior to closing, NRCS must sign an acceptance of the conservation easement, concurring with the terms of the conservation easement and accepting its interest in the conservation easement deed.

(4) All conservation easement deeds acquired with GRP funds must be recorded in the appropriate land records. Proof of recordation shall be provided to NRCS by the eligible entity.

(5) The conservation easement deed must include an indemnification clause requiring the participant (grantor) to indemnify and hold harmless the United States from any liability arising

from or related to the property enrolled in GRP.

[74 FR 3870, Jan. 21, 2009, as amended at 74 FR 42174, Aug. 21, 2009]

§ 1415.18 Easement transfer to eligible entities.

(a) NRCS may transfer title of ownership to an easement to an eligible entity to hold and enforce an easement if:

(1) The Chief determines that transfer will promote protection of grassland, land that contains forbs, or shrubland;

(2) The owner authorizes the eligible entity to hold and enforce the easement; and

(3) The eligible entity agrees to assume the costs incurred in administering and enforcing the easement, including the costs of restoration or rehabilitation of the land as specified by the owner and the eligible entity, and the entity assumes responsibility for enforcing the grazing management plan, or conservation plan as applicable, as approved by NRCS.

(b) NRCS has the right to conduct periodic inspections and enforce the easement, which includes the terms and requirements set forth in the grazing management plan, and any associated restoration or conservation plan, for any easements transferred pursuant to this section.

(c) An eligible entity that seeks to hold and enforce an easement shall apply to the NRCS State Conservationist for approval.

(d) The Chief may approve an application if the eligible entity:

(1) Has relevant experience necessary, as appropriate for the application, to administer an easement on grassland, land that contains forbs, or shrublands;

(2) Has a charter that describes the commitment of the eligible entity to conserving ranchland, agricultural land, or grassland for grazing and conservation purposes;

(3) Possesses the human and financial resources necessary, as determined by the Chief, NRCS, to effectuate the purposes of the charter;

(4) Has sufficient financial resources to carry out easement administrative and enforcement activities;