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as determined by the Chief of NRCS and when in the best interest of the Government, land exchanges may be authorized pursuant to (7 U.S.C. 428a) and other applicable authorities.

(d) *Enforcement.* (1) In the event of a violation of an easement, the violator will be given reasonable notice and an opportunity to correct the violation within 30 days of the date of the notice, or such additional time as NRCS may allow.

(2) NRCS reserves the right to enter upon the easement area at any time to remedy deficiencies or easement violations. Such entry may be made at the discretion of NRCS when such actions are deemed necessary to protect important floodplain functions and values or other rights of the United States under the easement. The landowner will be liable for any costs incurred by the United States as a result of the landowner's negligence or failure to comply with easement or agreement obligations.

(3) In addition to any and all legal and equitable remedies as may be available to the United States under applicable law, NRCS may withhold any easement and cost-share payments owing to landowners at any time there is a material breach of the easement covenants or any associated agreements. Such withheld funds may be used to offset costs incurred by the United States, in any remedial actions, or retained as damages pursuant to court order or settlement agreement.

(4) NRCS will be entitled to recover any and all administrative and legal costs, including attorney's fees or expenses, associated with any enforcement or remedial action.

(5) On the violation of the terms or conditions of the easement or related agreement, the easement shall remain in force, and NRCS may require the landowner to refund all or part of any payments received by the landowner under this Part, together with interest thereon as determined appropriate by NRCS.

(6) All the general penal statutes relating to crimes and offenses against the United States shall apply in the administration of floodplain easements acquired under this part.

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§ 624.11 Waivers.

To the extent allowed by law, the NRCS Deputy Chief for Programs may waive any provision of these regulations when the agency makes a written determination that such waiver is in the best interest of the Federal government.

PART 625—HEALTHY FORESTS RESERVE PROGRAM

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§ 625.1 Purpose and scope.

(a) The purpose of the Health Forests Reserve Program (HFRP) is to assist landowners, on a voluntary basis, in restoring, enhancing, and protecting forestland resources on private lands through easements and 10-year cost-share agreements.

(b) The objectives of HFRP are to:

(1) Promote the recovery of endangered and threatened species under the ESA;

(2) Improve plant and animal biodiversity; and

(3) Enhance carbon sequestration.

(c) The regulations in this part set forth the policies, procedures, and requirements for the HFRP as administered by the Natural Resources Conservation Service (NRCS) for program

implementation and processing applications for enrollment.

(d) The Chief of NRCS may implement HFRP in any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, and the Commonwealth of the Northern Mariana Islands.

§ 625.2 Definitions.

The following definitions shall be applicable to this part:

Activity means an action other than a conservation practice that is included as a part of a restoration agreement; such as a measure, incremental movement on a conservation index or scale, or a pilot or assessment.

Biological diversity (biodiversity) means the variety and variability among living organisms and the ecological complexes in which they live.

Carbon sequestration means the long term storage of carbon in soil (as soil organic matter) or in plant material (such as in trees).

Chief means the Chief of the Natural Resources Conservation Service or the person delegated authority to act on behalf of the Chief.

Conservation treatment means any and all conservation practices, measures, activities, and works of improvement that have the purpose of alleviating resource concerns, solving or reducing the severity of natural resource use problems, or taking advantage of resource opportunities, including the restoration, enhancement, maintenance, or management of habitat conditions for HFRP purposes.

Consultation or "consult with" means to talk things over for the purpose of providing information; to offer an opinion for consideration; and/or to meet for discussion or to confer, while reserving final decision-making authority with NRCS.

Contract means the document that specifies the obligations and rights of any individual or entity who has been accepted for participation in the program.

Coordination means to obtain input and involvement from others while reserving final decision-making authority with NRCS.

Cost-share payment means the payment made by NRCS to a program participant or vendor to achieve the restoration, enhancement, and protection goals of enrolled land in accordance with the HFRP restoration plan.

Easement means a conservation easement, which is an interest in land defined and delineated in a deed whereby the landowner conveys certain rights, title, and interests in a property to the United States for the purpose of protecting the forestland and the conservation values of the property.

Easement area means the land encumbered by an easement.

Easement payment means the consideration paid to a landowner for an easement conveyed to the United States under the HFRP.

Fish and Wildlife Service (FWS) is an agency of the United States Department of the Interior.

Forest Service is an agency of the United States Department of Agriculture.

HFRP means the Healthy Forests Reserve Program authorized by Title V of the Healthy Forests Restoration Act of 2003.

HFRP restoration plan means the Health Forests Reserve Program restoration plan that identifies the conservation treatments that are scheduled for application to land enrolled in HFRP in accordance with NRCS standards and specifications.

Indian trust lands means real property in which:

- (1) The United States holds title as trustee for an Indian or Tribal beneficiary; or
- (2) An Indian or Tribal beneficiary holds title and the United States maintains a trust relationship.

Landowner means an individual or entity having legal ownership of land, including those who may be buying land under a purchase agreement or who have legal control of the land for the term of the HFRP enrollment period for which enrollment is sought. Landowner may include all forms of collective ownership including joint tenants, tenants in common, and life tenants and remaindermen in a property.

Landowner Protections means protections and assurances made available to

HFRP participants whose voluntary conservation activities result in a net conservation benefit for listed, candidate, or other species. Landowner Protections made available by the Secretary of Agriculture to HFRP participants may be provided under section 7(b)(4) or section 10(a)(1) of the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1536(b)(4), 1539(a)(1)). These Landowner Protections may be provided by NRCS in conjunction with meeting its responsibilities under section 7 of the ESA, and/or by FWS or NFMS through section 10 of the ESA. These Landowner Protections include a permit providing coverage for incidental take of species listed under the ESA. Landowner Protections also include assurances related to potential modifications of HFRP restoration plans and assurances related to the potential (unlikely) termination of Landowner Protections and any 10-year cost share agreement.

Liquidated damages means a sum of money stipulated in a restoration agreement which the participant agrees to pay NRCS if the participant fails to adequately complete the restoration agreement. The sum represents an estimate of the anticipated or actual harm caused by the failure, and reflects the difficulties of proof of loss and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy.

Maintenance means work performed to keep the applied conservation practice functioning for the intended purpose during its life span. Maintenance includes work to prevent deterioration of the practice, repairing damage, or replacement of the practice to its original condition if one or more components fail.

Measure means one or more specific actions that is not a conservation practice, but has the effect of alleviating problems or improving the treatment of the resources.

National Marine Fisheries Service (NMFS) is an agency of the United States Department of Commerce.

Natural Resources Conservation Service (NRCS) is an agency of the United States Department of Agriculture.

Participant means an applicant who is a party to a 10-year cost share agree-

ment or an option agreement to purchase.

Practice means a specified treatment, such as a structural or land management practice, that is planned and applied according to NRCS standards and specifications.

Private land means land that is not owned by a governmental entity, and includes land that is considered Indian trust lands.

Restoration means implementing any conservation practice (vegetative, management, or structural) or measure that improves the values and functions of forestland (native and natural plant communities).

Restoration agreement means a cost-share agreement between the program participant and NRCS to restore, enhance, and protect the functions and values of forestland for the purposes of HFRP under either an easement or a 10-year cost-share agreement enrollment option.

Safe Harbor Agreement means a voluntary arrangement between FWS or NMFS, and cooperating non-federal landowners under the authority of Section 10(a)(1) of the Endangered Species Act of 1973, 16 U.S.C. 1536(b)(4), 1539(a)(1). Under the Safe Harbor Agreement and an associated enhancement of survival permit, the non-federal property owner implements actions that will result in a net conservation benefit for species listed under the Act without the risk of further restrictions pursuant to section 9 of the Act, which prohibits take of listed species. The property owner also receives assurances related to modifications of the SHA or termination of the permit. (See “Landowner Protections,” above.)

Sign-up notice means the public notification document that NRCS provides to describe the particular requirements for a specific HFRP sign-up.

State Conservationist means the NRCS employee authorized to direct and supervise NRCS activities within a specified State, the Pacific Basin, or the Caribbean Area.

Technical service provider means an individual, private-sector entity, or public agency certified or approved by NRCS to provide technical services through NRCS or directly to program

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participants, as defined in 7 CFR part 652.

§ 625.3 Administration.

(a) The regulations in this part will be administered under the general supervision and direction of the Chief.

(b) The Chief may modify or waive a provision of this part if the Chief determines that the application of such provision to a particular limited situation is inappropriate and inconsistent with the goals of the program.

(c) No delegation in this part to lower organizational levels shall preclude the Chief from determining any issue arising under this part or from reversing or modifying any determination arising from this part.

(d) The State Conservationist will develop the rates of compensation for an easement, a priority ranking process, and any related technical matters.

(e) The NRCS shall coordinate with FWS and NMFS in the implementation of the program and in establishing program policies. In carrying out this program, NRCS may consult with non-industrial private forest landowners, the Forest Service and other Federal agencies, State fish and wildlife agencies, State forestry agencies, State environmental quality agencies, other State conservation agencies; and non-profit conservation organizations. No determination by FWS, NMFS, the Forest Service, any Federal or State agency, conservation district, or other organization shall compel the NRCS to take any action which the NRCS determines will not serve the purposes of the program established by this part.

§ 625.4 Program requirements.

(a) *General.* Under the HFRP, NRCS will purchase conservation easements from, or enter into 10-year cost-share agreements with, eligible landowners who voluntarily cooperate in the restoration and protection of forestlands and associated lands. To participate in HFRP, a landowner will agree to the implementation of a HFRP restoration plan, the effect of which is to restore, protect, enhance, maintain, and manage the habitat conditions necessary to increase the likelihood of recovery of listed species under the Endangered Species Act (ESA), or measurably im-

prove the well-being of species that are not listed as endangered or threatened under the ESA but are candidates for such listing, State-listed species, or species identified by the Chief for special consideration for funding. NRCS may provide cost-share assistance for the activities that promote the restoration, protection, enhancement, maintenance, and management of forestland functions and values. Specific restoration, protection, enhancement, maintenance, and management activities may be undertaken by the landowner or other NRCS designee.

(b) *Landowner eligibility.* To be eligible to enroll an easement in the HFRP, a person must:

(1) Be the landowner of eligible land for which enrollment is sought; and

(2) Agree to provide such information to NRCS as the agency deems necessary or desirable to assist in its determination of eligibility for program benefits and for other program implementation purposes.

(c) *Eligible land.* (1) The NRCS, in coordination with FWS or NMFS, shall determine whether land is eligible for enrollment and whether, once found eligible, the lands may be included in the program based on the likelihood of successful restoration, enhancement, and protection of forest ecosystem functions and values when considering the cost of acquiring the easement and the restoration, protection, enhancement, maintenance, and management costs.

(2) Land shall be considered eligible for enrollment in the HFRP only if the NRCS determines that:

(i) Such private land is capable of supporting habitat for a selected species listed under Section 4 of the ESA; and

(ii) Such private land is capable of supporting habitat for a selected species not listed under Section 4 of the ESA but is candidate for such listing, or the selected species is State-listed species, or is a species identified by the Chief for special consideration for funding.

(3) NRCS may also enroll land adjacent to the restored forestland if the enrollment of such adjacent land would contribute significantly to the practical administration of the easement

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area, but not more than it determines is necessary for such contribution.

(4) To be enrolled in the program, eligible land must be configured in a size and with boundaries that allow for the efficient management of the area for easement purposes and otherwise promote and enhance program objectives.

(d) *Ineligible land.* The following land is not eligible for enrollment in the HFRP:

(1) Lands owned by a governmental entity;

(2) Land subject to an easement or deed restriction that already provides for the protection of wildlife habitat or which would interfere with HFRP purposes, as determined by NRCS; and

(3) Lands where implementation of restoration practices would be futile due to on-site or off-site conditions.

§ 625.5 Application procedures.

(a) *Sign-up process.* NRCS will publish an HFRP sign-up notice with sufficient time for individuals and entities to consider the benefits of participation prior to the opening of the sign-up period. In the public sign-up notice, the Chief will announce and explain the rationale for decisions for the following information:

(1) The geographic scope of the sign-up;

(2) Any additional program eligibility criteria that are not specifically listed in this part;

(3) Any additional requirements that participants must include in their HFRP applications and program agreements that are not specifically identified in this part;

(4) Information on the priority order of enrollment for funding;

(5) An estimate of the total funds NRCS expects to obligate under new program agreements during a given sign-up; and

(6) The schedule for the sign-up process, including the deadline(s) for applying.

(b) *Application for participation.* To apply for enrollment through an easement or 10-year cost-share agreement, a landowner must submit an application for participation in the HFRP during an announced period for such sign-up.

(c) *Preliminary agency actions.* By filing an application for participation, the applicant consents to an NRCS representative entering upon the land for purposes of determining land eligibility, and for other activities that are necessary or desirable for the NRCS to make offers of enrollment. The applicant is entitled to accompany an NRCS representative on any site visits.

(d) *Voluntary reduction in compensation.* In order to enhance the probability of enrollment in HFRP, an applicant may voluntarily offer to accept a lesser payment than is being offered by NRCS.

§ 625.6 Establishing priority for enrollment in HFRP.

(a) *Ranking considerations.* Based on the specific criteria set forth in a sign-up announcement and the applications for participation, NRCS, in coordination FWS and NMFS, may consider the following factors to rank properties:

(1) Estimated conservation benefit to habitat required by threatened or endangered species listed under Section 4 of the ESA;

(2) Estimated conservation benefit to habitat required by species not listed as endangered or threatened under Section 4 of the ESA but that are candidates for such listing, State-listed species, or species identified by the Chief for special consideration for funding;

(3) Estimated improvement of biological diversity, if enrolled;

(4) Potential for increased capability of carbon sequestration, if enrolled;

(5) Availability of contribution of non-federal funds;

(6) Significance of forest ecosystem functions and values;

(7) Estimated cost-effectiveness of the particular restoration cost-share agreement or easement, and associated HFRP restoration plan; and

(8) Other factors identified in an HFRP sign-up notice.

(b) The NRCS may place higher priority on certain forest ecosystems based regions of the State or multi-State area where restoration of forestland may better achieve NRCS programmatic and sign-up goals and objectives.

(c) Notwithstanding any limitation of this part, NRCS may enroll eligible lands at any time in order to encompass project areas subject to multiple land ownership or otherwise to achieve program objectives. Similarly, NRCS may, at any time, exclude otherwise eligible lands if the participation of the adjacent landowners is essential to the successful restoration of the forest ecosystem and those adjacent landowners are unwilling to participate.

(d) If available funds are insufficient to accept the highest ranked application, and the applicant is not interested in reducing the acres offered to match available funding, USDA may select a lower ranked application that can be fully funded. Applicants may choose to change the duration of the easement or agreement or reduce acreage amount offered if the application ranking score is not reduced below that of the score of the next available application on the ranking list.

§ 625.7 Enrollment of easements.

(a) *Offers of enrollment.* Based on the priority ranking, NRCS will notify an affected landowner of tentative acceptance into the program for which the landowner has 15 calendar days to sign a letter of intent to continue.

(b) *Effect of letter of intent to continue (enrollment).* An offer of tentative acceptance into the program does not bind NRCS or the United States to acquire an easement, nor does it bind the landowner to convey an easement or agree to HFRP restoration plan activities. However, receipt of an executed letter of intent to continue will authorize NRCS to proceed with easement acquisition activities and the land will be considered enrolled into HFRP.

(c) *Acceptance of offer of enrollment.* An option agreement to purchase will be presented by NRCS to the landowner, which will describe the easement area; the easement terms and conditions; and other terms and conditions for participation that may be required by NRCS.

(d) *Effect of the acceptance of the offer.* After the option agreement to purchase is executed by NRCS and the landowner, NRCS will proceed with the remaining activities necessary for NRCS

to purchase an easement, which may include conducting a survey of the easement area, securing necessary subordination agreements, procuring title insurance, and conducting other activities necessary to record the easement or implement the HFRP restoration plan. If the landowner breaches an option agreement to purchase, NRCS is entitled to recover any costs, including administrative or technical costs, expended in reliance of the option agreement to purchase.

(e) *Withdrawal of offers.* Prior to execution and recordation by the United States and the landowner of the easement, NRCS may withdraw its offer anytime due to availability of funds, inability to clear title, or other reasons. The offer to the landowner shall be void if not executed by the landowner within the time specified.

§ 625.8 Compensation for easements.

(a) *Establishment of rates.* (1) The State Conservationist may determine the maximum easement payment rates to be applied to specific geographic areas within the State or to individual easement areas.

(2) In order to provide for better uniformity among States, the Regional Assistant Chief and Chief may review and adjust, as appropriate, State or other geographically based easement payment rates.

(b) *Determination of easement payment rates.* (1) NRCS shall offer to pay not less than 75 percent nor more than 100 percent of the fair market value of the enrolled land during the period the land is subject to the easement less the fair market value of the land encumbered by the easement for easement payments for easements of not more than 99 years.

(2) NRCS shall offer to pay not more than 75 percent of the fair market value of the enrolled land less the fair market value of the land encumbered by the easement for 30-year easements.

(c) NRCS may accept and use contributions of non-federal funds to make payments under this section.

(d) *Acceptance of offered easement compensation.* (1) NRCS will not acquire any easement unless the landowner accepts the amount of the easement payment which is offered by NRCS. The

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easement payment may or may not equal the fair market value of the interests and rights to be conveyed by the landowner under the easement. By voluntarily participating in the program, a landowner waives any claim to additional compensation based on fair market value.

(2) Annual easement payments may be made in no more than 10 annual payments of equal or unequal size, as agreed to between NRCS and the landowner.

(e) *Reimbursement of a landowner's expenses.* For completed easement conveyances, NRCS will reimburse landowners for their fair and reasonable expenses, if any, incurred for surveying and related costs, as determined by NRCS. The State Conservationist may establish maximum payments to reimburse landowners for reasonable expenses.

(f) *Tax implications of easement conveyances.* Subject to applicable regulations of the Internal Revenue Service, a landowner may be eligible for a bargain sale tax deduction which is the difference between the fair market value of the easement conveyed to the United States and the easement payment made to the landowner. NRCS disclaims any representations concerning the tax implications of any easement or cost-share transaction.

(g) *Per acre payments.* If easement payments are calculated on a per acre basis, adjustment to stated easement payment will be made based on final determination of acreage.

§ 625.9 10-year restoration cost-share agreements.

(a) The restoration plan developed under § 625.12 forms the basis for the 10-year cost-share agreement and is incorporated therein.

(b) A 10-year cost-share agreement will:

- (1) Incorporate all portions of a restoration plan;
- (2) Be for a period of 10 years;
- (3) Include all provisions as required by law or statute;
- (4) Specify the requirements for operation and maintenance of applied practices;
- (5) Include any participant reporting and recordkeeping requirements to de-

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termine compliance with the agreement and HFRP;

(6) Be signed by the participant. When the participant is not the fee title owner, concurrence from the fee title owner is required;

(7) Identify the amount and extent of cost-share assistance that NRCS will provide for the adoption or implementation of the approved conservation treatment identified in the restoration plan; and

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

(c) Once the participant and NRCS have signed a 10-year cost-share agreement, the land shall be considered enrolled in HFRP.

(d) The State Conservationist may, by mutual agreement with the parties to the 10-year cost-share agreement, consent to the termination of the restoration agreement where:

(1) The parties to the 10-year cost-share agreement are unable to comply with the terms of the restoration agreement as the result of conditions beyond their control;

(2) Compliance with the terms of the 10-year cost-share agreement would work a severe hardship on the parties to the agreement;

(3) Termination of the 10-year cost-share agreement would, as determined by the State Conservationist, be in the public interest.

(e) If a 10-year cost-share agreement is terminated in accordance with the provisions of this section, the State Conservationist may allow the participants to retain any cost-share payments received under the 10-year cost-share agreement in a proportion appropriate to the effort the participant has made to comply with the restoration agreement, or, in cases of hardship, where forces beyond the participant's control prevented compliance with the agreement.

§ 625.10 Cost-share payments.

(a) NRCS may share the cost with landowners of restoring land enrolled in HFRP as provided in the HFRP restoration plan. The HFRP restoration plan may include periodic manipulation to maximize wildlife habitat and preserve forest ecosystem functions

and values over time and measures that are needed to provide the Landowner Protections under section 7(b)(4) or section 10(a)(1) of the ESA, including the cost of any permit.

(b) Landowner Protections may be made available to landowners enrolled in the HFRP who agree, for a specified period, to restore, protect, enhance, maintain, and manage the habitat conditions on their land in a manner that is reasonably expected to result in a net conservation benefit that contributes to the recovery of listed species under the Endangered Species Act (ESA). These protections operate with lands enrolled in the HFRP and are valid for as long as the landowner is in compliance with the terms and conditions of such assurances, any associated permit, the easement, and the restoration agreement.

(c) If the Landowner Protections, or any associated permit, require the adoption of a practice or measure in addition to the practices and measures identified in the applicable HFRP restoration plan, NRCS and the landowner will incorporate the practice or measure into the HFRP restoration plan as an item eligible for cost-share assistance.

(d) Failure to perform planned management activities can result in violation of the easement, 10-year cost-share agreement, or the agreement under which Landowner Protections have been provided. NRCS will work with landowners to plan appropriate management activities.

(e) The amount and terms and conditions of the cost-share assistance shall be subject to the following restrictions on the costs of establishing or installing practices or implementing measures specified in the HFRP restoration plan:

(1) On enrolled land subject to an easement of not more than 99 years, NRCS shall offer to pay not less than 75 percent nor more than 100 percent of the average cost;

(2) On enrolled land subject to a 30-year easement, NRCS shall offer to pay not more than 75 percent of the average cost; and

(f) On enrolled land subject to a 10-year cost-share agreement without an associated easement, NRCS shall offer

to pay not more than 50 percent of the average costs.

(g) Cost-share payments may be made only upon a determination by the NRCS that an eligible practice or measure, or an identifiable component of the practice has been established in compliance with appropriate standards and specifications. Identified practices and measures may be implemented by the landowner or other designee.

(h) Cost-share payments may be made for the establishment and installation of additional eligible practices and measures, or the maintenance or replacement of an eligible practice or measure, but only if NRCS determines the practice or measure is needed to meet the objectives of HFRP, and the failure of the original practices or measures was due to reasons beyond the control of the landowner.

(i) A landowner may seek additional cost-share assistance from other public or private organizations as long as the activities funded are in compliance with this part. In no event shall the landowner receive an amount which exceeds 100 percent of the total actual cost of the restoration.

§ 625.11 Easement participation requirements.

(a) To enroll land in HFRP through the 99-year or 30-year enrollment option, a landowner shall grant an easement to the United States. The easement shall require that the easement area be maintained in accordance with HFRP goals and objectives for the duration of the term of the easement, including the restoration, protection, enhancement, maintenance, and management of habitat for listed species within a forest ecosystem's functions and values.

(b) For the duration of its term, the easement shall require, at a minimum, that the landowner, and the landowner's heirs, successors and assigns, shall cooperate in the restoration, protection, enhancement, maintenance, and management of the land in accordance with the easement and with the terms of the HFRP restoration plan. In addition, the easement shall grant to the United States, through the NRCS:

(1) A right of access to the easement area;

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(2) The right to permit compatible uses of the easement area, which may include such activities as hunting and fishing, managed timber harvest, or periodic haying or grazing, if such use is consistent with the long-term protection and enhancement of the purposes for which the easement was established;

(3) The right to determine compatible uses on the easement area and specify the amount, method, timing, intensity and duration of the compatible use;

(4) The rights, title and interest to the easement area as specified in the conservation easement deed; and

(5) The right to perform restoration, protection, enhancement, maintenance, and management activities on the easement area.

(c) The landowner shall convey title to the easement which is acceptable to the NRCS. The landowner shall warrant that the easement granted to the United States is superior to the rights of all others, except for exceptions to the title which are deemed acceptable by the NRCS.

(d) The landowner shall:

(1) Comply with the terms of the easement;

(2) Comply with all terms and conditions of any associated agreement or contract;

(3) Agree to the long-term restoration, protection, enhancement, maintenance, and management of the easement in accordance with the terms of the easement and related agreements;

(4) Have the option to enter into an agreement with governmental or private organizations to assist in carrying out any landowner responsibilities on the easement area; and

(5) Agree that each person who is subject to the easement shall be jointly and severally responsible for compliance with the easement and the provisions of this part and for any refunds or payment adjustment which may be required for violation of any terms or conditions of the easement or the provisions of this part.

§ 625.12 The HFRP restoration plan development.

(a) The development of the HFRP restoration plan shall be made through

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an NRCS representative, in consultation with the program participant and with coordination of input from the FWS and NMFS, where applicable.

(b) The HFRP restoration plan shall specify the manner in which the enrolled land under easement or 10-year cost-share agreement shall be restored, protected, enhanced, maintained, and managed to accomplish the goals of the program.

(c) Eligible restoration practices and measures may include land management, vegetative, and structural practices and measures that will restore and enhance habitat conditions for listed species, candidate, State-listed, and other species identified by the Chief for special funding consideration. To the extent practicable, eligible practices and measures will improve biodiversity and increase the sequestration of carbon. NRCS, in coordination with FWS, will determine the conservation practices and measures. NRCS will determine payment rates and cost-share percentages within statutory limits that will be available for restoration. A list of eligible practices will be available to the public.

§ 625.13 Modification of the HFRP restoration plan.

Consistent with the easement and applicable law, the State Conservationist may approve modifications to the HFRP restoration plan that do not modify or void provisions of the easement, restoration agreement, or Landowner Protections. NRCS may obtain and receive input from the landowner and coordination from FWS and NMFS to determine whether a modification is justified. Any HFRP restoration plan modification must meet HFRP program objectives, and must result in equal or greater wildlife benefits and ecological and economic values to the United States. Modifications to the HFRP restoration plan which are substantial and affect provisions of the easement, restoration cost-share agreement, or Landowner Protections will require agreement from the landowner, FWS or NMFS, as appropriate, and may require execution of an amended easement and restoration cost-share

agreement and modification to the protections afforded by the safe harbor assurances.

§ 625.14 Transfer of land.

(a) *Offers voided.* Any transfer of the property prior to the applicant's acceptance into the program shall void the offer of enrollment. At the option of the State Conservationist, an offer can be extended to the new landowner if the new landowner agrees to the same or more restrictive easement and contract terms and conditions.

(b) *Payments to landowners.* (1) For easements with multiple annual payments, any remaining easement payments will be made to the original landowner unless NRCS receives an assignment of proceeds.

(2) The new landowner shall be held responsible for assuring completion of all measures and practices required by the contract. Eligible cost-share payments shall be made to the new landowner upon presentation of an assignment of rights or other evidence that title had passed.

(c) *Claims to payments.* With respect to any and all payments owed to a person, the United States shall bear no responsibility for any full payments or partial distributions of funds between the original landowner and the landowner'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 an agreement or adjudication on the rights to the funds.

§ 625.15 Violations and remedies.

(a) *Easement Violations.* (1) In the event of a violation of the easement or any associated agreement involving a landowner, the landowner shall be given reasonable notice and an opportunity to voluntarily correct the violation within 30 days of the date of the notice, or such additional time as the State Conservationist may allow.

(2) Notwithstanding paragraph (a)(1) of this section, the NRCS reserves the right to enter upon the easement area at any time to remedy deficiencies or easement violations. Such entry may be made at the discretion of the NRCS when such actions are deemed necessary to protect important listed spe-

cies and forest ecosystem functions and values or other rights of the United States under the easement. The landowner shall be liable for any costs incurred by the United States as a result of the landowner's negligence or failure to comply with easement or contractual obligations.

(3) In addition to any and all legal and equitable remedies as may be available to the United States under applicable law, NRCS may withhold any easement and cost-share payments owing to landowners at any time there is a material breach of the easement covenants, associated restoration agreement, or any associated contract. Such withheld funds may be used to offset costs incurred by the United States in any remedial actions or retained as damages pursuant to court order or settlement agreement.

(4) The United States shall be entitled to recover any and all administrative and legal costs, including attorney's fees or expenses, associated with any enforcement or remedial action.

(b) *10-year cost-share agreement violations.* (1) If the NRCS determines that a participant is in violation of the terms of a 10-year cost-share agreement, or documents incorporated by reference into the 10-year cost-share agreement, NRCS will give the participant a reasonable time, as determined by the State Conservationist, to correct the violation and comply with the terms of the cost-share agreement and attachments thereto. If the violation continues, the State Conservationist may terminate the 10-year cost-share agreement.

(2) Notwithstanding the provisions of paragraph (b)(1) of this section, an agreement termination is effective immediately upon a determination by the State Conservationist that the participant has: Submitted false information; filed a false claim; engaged in any act for which a finding of ineligibility for payments is permitted under this part; or taken actions NRCS deems to be sufficiently purposeful or negligent to warrant a termination without delay.

(3) If NRCS terminates a cost-share agreement due to breach of contract, the participant will forfeit all rights for future payments under the cost-share agreement, and must refund all

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or part of the payments received, plus interest, and liquidated damages. The State Conservationist may require only partial refund of the payments received if a previously installed practice or measure can function independently, is not affected by the violation or other practices or measures that would have been installed under the cost-share agreement, and the participant agrees to operate and maintain the installed practice or measure for the life span of the practice or measure.

(4) If NRCS terminates a 10-year cost-share agreement due to breach of contract, or the participant voluntarily terminates the 10-year cost-share agreement before any cost-share payments have been made, the participant will forfeit all rights for further payments under the 10-year cost-share agreement, and must pay such liquidated damages as are prescribed in the restoration agreement. The State Conservationist has the option to waive the liquidated damages, depending upon the circumstances of the case.

(5) When making any 10-year cost-share agreement termination decisions, the State Conservationist may reduce the amount of money owed by the participant by a proportion which reflects the good faith effort of the participant to comply with the cost-share agreement, or the hardships beyond the participant's control that have prevented compliance with the contract including natural disasters or events.

(6) The participant may voluntarily terminate a 10-year cost-share agreement, without penalty or repayment, if the State Conservationist determines that the cost-share agreement terms and conditions have been fully complied with before termination of the cost-share agreement.

§ 625.16 Payments not subject to claims.

Any cost-share or easement payment or portion thereof due any person under this part shall be allowed without regard to any claim or lien in favor of any creditor, except agencies of the United States Government.

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§ 625.17 Assignments.

Any person entitled to any cash payment under this program may assign the right to receive such cash payments, in whole or in part.

§ 625.18 Appeals.

(a) A person participating in the HFRP may obtain a review of any administrative determination concerning eligibility for participation utilizing the administrative appeal regulations provided in 7 CFR part 614.

(b) Before a person may seek judicial review of any action taken under this part, the person must exhaust all administrative appeal procedures set forth in paragraph (a) of this section, and for purposes of judicial review, no decision shall be a final agency action except a decision of the Chief under these procedures.

(c) Any appraisals, market analysis, or supporting documentation that may be used by NRCS in determining property value are considered confidential information, and shall only be disclosed as determined at the sole discretion of NRCS in accordance with applicable law.

§ 625.19 Scheme and device.

(a) If it is determined by NRCS that a person has employed a scheme or device to defeat the purposes of this part, any part of any program payment otherwise due or paid such person during the applicable period may be withheld or be required to be refunded with interest thereon, as determined appropriate by NRCS.

(b) A scheme or device includes, but is not limited to, coercion, fraud, misrepresentation, depriving any other person of payments for cost-share practices or easements for the purpose of obtaining a payment to which a person would otherwise not be entitled.

(c) A person who succeeds to the responsibilities under this part shall report in writing to NRCS any interest of any kind in enrolled land that is held by a predecessor or any lender. A failure of full disclosure will be considered a scheme or device under this section.