

§ 625.12

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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

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