

Commodity Credit Corporation, USDA

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agreement. This right is a vested property right and cannot be condemned by State or local government.

(e) As a condition for participation, a conservation plan will be developed by NRCS in consultation with the landowner and implemented according to the FOTG. NRCS may work through the local conservation district in the development of the conservation plan. The conservation plan will be developed and managed in accordance with the 1985 Act, 7 CFR part 12 or subsequent regulations, and other requirements as determined by the State Conservationist. To ensure compliance with this conservation plan, the easement will grant to the United States, through NRCS, its successors or assigns, a right of access to the easement area.

(f) The eligible entity will 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.

(g) NRCS will sign an acceptance of the conservation easement, concurring with the terms of the conservation easement and accepting its interest in the conservation easement deed.

(h) All conservation easement deeds acquired with FRPP funds must be recorded. Proof of recordation will be provided to NRCS by the eligible entity.

(i) Impervious surfaces will not exceed 2 percent of the FRPP easement area, excluding NRCS-approved conservation practices. The State Conservationist may waive the 2 percent impervious surface limitation on a parcel-by-parcel basis, provided that no more than 10 percent of the easement area is covered by impervious surfaces. Before waiving the 2 percent limitation, the State Conservationist must consider, at a minimum, population density, the ratio of open prime other important farmland versus impervious surfaces on the easement area, the impact to water quality concerns in the area, the type of agricultural operation, and parcel size. Eligible entities may submit an impervious surface limitation waiver process to the State Conservationist for review and consid-

eration. The eligible entities must apply approved impervious surface limitation waiver processes on a parcel-by-parcel basis. State Conservationists will not approve blanket waivers of the impervious surface limitation for all parcels administered by the eligible entity without regard for the characteristics of individual parcels. All FRPP easements must include language limiting the amount of impervious surfaces within the easement area.

(j) The conservation easement deed must include an indemnification clause requiring the landowner to indemnify and hold harmless the United States from any liability arising from or related to the property enrolled in FRPP.

(k) The conservation easement deed must include an amendment clause requiring that any changes to the easement deed after its recordation must be consistent with the purposes of the conservation easement and this part. The conservation easement deed must require that NRCS approve any substantive amendment.

Subpart C—General Administration

§ 1491.30 Violations and remedies.

(a) In the event of a violation of the easement terms, the eligible entity will notify the landowner. The landowner may be given reasonable notice and, where appropriate, an opportunity to voluntarily correct the violation in accordance with the terms of the conservation easement.

(b) In the event that the eligible entity fails to enforce any of the terms of the conservation easement as determined by the Chief, the Chief or his or her successors or assigns may exercise the United States' rights to enforce the terms of the conservation easement through any and all authorities available under Federal or State law.

(c) Notwithstanding paragraph (a) of this section, NRCS, upon notification to the landowner, reserves the right to enter upon the easement area at any time to monitor conservation plan implementation or remedy deficiencies or easement violations as it relates to the conservation plan. The entry may be made at the discretion of NRCS when the actions are deemed necessary to

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protect highly erodible soils and wetland resources. The landowner will be liable for any costs incurred by NRCS as a result of the landowner's negligence or failure to comply with the easement requirements as it relates to conservation plan violations.

(d) The United States will be entitled to recover any and all administrative and legal costs from the participating eligible entity, including attorney's fees or expenses, associated with any enforcement or remedial action as it relates to the enforcement of the FRPP easement.

(e) In instances where an easement is terminated or extinguished, NRCS will collect CCC's share of the conservation easement based on the appraised fair market value of the conservation easement at the time the easement is extinguished or terminated. The CCC's share will be in proportion to its percentage of original investment.

(f) In the event NRCS determines it must exercise its rights identified under a conservation easement or other interest in land, NRCS will provide written notice by certified mail, return receipt requested, to the eligible entity at the eligible entity's last known address. The notice will set forth the nature of the noncompliance by the eligible entity and a 60-day period to cure. If the eligible entity fails to cure within the 60-day period, NRCS will take the action specified under the notice. NRCS reserves the right to decline to provide a period to cure if NRCS determines that imminent harm may result to the conservation values or other interest in land it seeks to protect.

§ 1491.31 Appeals.

(a) A person or eligible entity which has submitted an FRPP proposal and is therefore participating in FRPP, 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 or eligible entity may seek judicial review of any administrative action taken under this part, the person or eligible entity must exhaust all administrative appeal procedures set forth in paragraph (a) of this

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section, and for the purposes of judicial review, no decision will be a final agency action except a decision of the Chief under these provisions.

(c) Enforcement action undertaken by NRCS in furtherance of its vested property rights are under the jurisdiction of the Federal District Court and not subject to review under administrative appeal regulations.

§ 1491.32 Scheme or device.

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

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

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