

Commodity Credit Corporation, USDA

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(b) The term of cooperative agreements shall be a minimum of five years for certified entities and three years for other eligible entities.

(c) The cooperative agreement shall also include an attachment listing the parcels accepted by the State Conservationist. This list shall include landowners' names and addresses, acreage, the estimated fair market value, the estimated Federal contribution, and other relevant information. An example of a cooperative agreement shall be made available by the State Conservationist.

§ 1491.21 Funding.

(a) Subject to the statutory limits, the State Conservationist, in coordination with the cooperating entity, shall determine the NRCS share of the cost of purchasing a conservation easement or other interest in the land.

(b) NRCS may provide up to 50 percent of the appraised fair market value of the conservation easement, as determined in §1491.4(g). An entity shall share in the cost of purchasing a conservation easement in accordance with the limitations of this part.

(c) A landowner may make donations toward the acquisition of the conservation easement.

(d) The entity must provide a minimum of 25 percent of the purchase price of the conservation easement.

(e) FRPP 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.

(f) If the State Conservationist determines that the purchase of two or more conservation easements are comparable in achieving FRPP goals, the State Conservationist shall not assign a higher priority to any one of these conservation easements solely on the basis of lesser cost to FRPP.

(g) Environmental Services Credits.

(1) NRCS asserts no direct or indirect interest in environmental credits that may result from or be associated with an FRPP easement.

(2) NRCS retains the authority to ensure that the requirements for FRPP-funded easements are met and maintained consistent with this part.

(3) If activities required under an environmental credit agreement may affect land covered under a FRPP easement, landowners are encouraged to request a compatibility assessment from the eligible entity prior to entering into such agreements.

§ 1491.22 Conservation easement deeds.

(a) Under FRPP, a landowner grants an easement to an eligible entity with which NRCS has entered into an FRPP cooperative agreement. The easement shall require that the easement area be maintained in accordance with FRPP goals and objectives for the term of the easement.

(b) Pending offers by an eligible entity must be for acquiring an easement in perpetuity, except where State law prohibits a permanent easement. In such cases where State law limits the term of a conservation easement, the easement term shall be for the maximum allowed under state law.

(c) 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 NRCS National Headquarters within 30 days of the signing of the cooperative agreement. The conservation easement deed templates must be reviewed and approved by the NRCS National Headquarters in advance of use. 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. The Chief may exercise the option to promulgate standard minimum conservation deed requirements as a condition for receiving FRPP funds.

(d) The conveyance document must include a "right of enforcement" clause. NRCS shall specify the terms for the "right of enforcement" clause to read as set forth in the FRPP cooperative 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 shall be developed by NRCS in consultation with the landowner and implemented according to the NRCS Field Office Technical Guide.

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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 Food Security Act of 1985, as amended, 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 shall grant to the United States, through NRCS, its successors or assigns, a right of access to the easement area.

(f) The cooperating entity shall acquire, hold, manage and enforce the easement. The cooperating entity may have the option to enter into an agreement with governmental or private organizations to carry out easement stewardship responsibilities.

(g) Prior to easement 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.

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

(i) Impervious surfaces shall not exceed two percent of the FRPP easement area, excluding NRCS-approved conservation practices. The NRCS State Conservationist may waive the two percent impervious surface limitation on a parcel by parcel basis, provided that no more than ten percent of the easement area is covered by impervious surfaces. Before waiving the two 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. 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 (grantor) to indemnify and hold harmless the United States from any liability arising

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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.

[74 FR 2818, Jan. 16, 2009, as amended at 74 FR 31581, July 2, 2009]

Subpart C—General Administration

§ 1491.30 Violations and remedies.

(a) In the event of a violation of the terms of the easement, the eligible entity shall 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 entity fails to enforce any of the terms of the conservation easement, as determined in the sole discretion of the Chief, the Chief and 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 protect highly erodible soils and wetland resources. The landowner will be liable for any costs incurred by the 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 shall be entitled to recover any and all administrative and legal costs from the participating entity, including attorney's fees or expenses, associated with any enforcement or remedial action as it relates to the enforcement of the FRPP easement.