

§ 625.13

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

(c) The landowner will:

(1) Comply with the terms of the contract;

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

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

(d) A 30-year contract will:

(1) Be signed by the participant;

(2) 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

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

(e) Once the landowner and NRCS have signed a 30-year contract, the land will be considered enrolled in HFRP.

§ 625.13 The HFRP restoration plan development and Landowner Protections.

(a) The development of the HFRP restoration plan will be made through an NRCS representative, who will confer with the program participant and with the FWS and NMFS, as appropriate.

(b) The HFRP restoration plan will specify the manner in which the enrolled land under easement, 30-year contract, or 10-year cost-share agreement will 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 optimize the sequestration of car-

bon through management that maintains diverse and high quality native forests to accomplish the goals of the restoration plan. NRCS, in coordination with FWS and NMFS, will determine the conservation practices and measures. The State Conservationist will develop and make available to the public a list of eligible practices, and will determine payment rates and cost-share percentages within statutory limits.

(d) *Landowner protections.* An HFRP participant who enrolls land in HFRP and whose conservation treatment results in a net conservation benefit for listed, candidate, or other species, may request such Landowner Protections as follows:

(1) *Incidental take authorization.* (i) NRCS will extend to participants the incidental take authorization received by NRCS from FWS or NMFS through biological opinions issued as part of the interagency cooperation process under section 7(a)(2) of the ESA;

(ii) NRCS will provide assurances, as a provision of the restoration plan, that when a participant is provided authorization for incidental take of a listed species, NRCS will not require management activities related to that species to be undertaken in addition to or different from those specified in the restoration plan without the participant's consent;

(iii) The program participant will be covered by the authorization to NRCS for incidental take associated with restoration actions or management activities. The incidental take may include a return to baseline conditions at the end of the applicable period, if the landowner so desires.

(iv) Provided the landowner has acted in good faith and without intent to violate the terms of the HFRP restoration plan, NRCS will pursue all appropriate options with the participant to avoid termination in the event of the need to terminate an HFRP restoration plan that is being properly implemented; and

(v) If the 30-year contract or 10-year restoration cost-share agreement is terminated, any requested assurances, including an incidental take authorization under this section, provided by

NRCS will be voided. As such, the landowner will be responsible to FWS or NMFS for any violations of the ESA.

(2) *SHA or CCAA.* (i) NRCS will provide technical assistance to help participants design and use their HFRP restoration plan for the dual purposes of qualifying for HFRP financial assistance and as a basis for entering into a SHA or CCAA with FWS or NMFS and receiving an associated permit under section 10(a)(1)(a) of the ESA.

(ii) In exchange for a commitment to undertake conservation measures, the landowner may receive a permit under section 10 of the ESA from FWS or NMFS authorizing incidental take of species covered by the SHA or CCAA that may occur as a result of restoration actions, management activities, and for a listed species covered by a SHA, a return to baseline conditions at the end of the applicable period.

(iii) All SHAs and associated permits issued by FWS or NMFS are subject to the Safe Harbor Policy jointly adopted by FWS and NMFS according to the regulations at 64 FR 32717 or applicable subsequently adopted policy, and SHAs with FWS also are subject to regulations at 50 CFR 17.22(c) for endangered species or 50 CFR 17.32(c) for threatened species, or applicable subsequent regulations.

(iv) All CCAAs and associated permits issued by FWS or NMFS are subject to the CCAAs policy jointly adopted by FWS and NMFS according to the regulations at 64 FR 32706 or applicable subsequently adopted policy, and CCAAs with FWS also are subject to regulations at 50 CFR 17.22(d) for endangered species or 50 CFR 17.32(d) for threatened species, or applicable subsequent regulations.

(v) If the 30-year contract or 10-year restoration cost-share agreement is terminated, the landowner will be responsible to notify and coordinate with FWS and NMFS or any other relevant party to the specific SHA or CCAA, as appropriate, for any modifications related to the SHA or CCAA.

§ 625.14 Modification of the HFRP restoration plan.

The State Conservationist may approve modifications to the HFRP restoration plan that do not modify or

void provisions of the easement, contract, restoration agreement, or Landowner Protections, and are consistent with applicable law. NRCS may obtain and receive input from the landowner and coordinate with FWS and NMFS to determine whether a modification to the restoration plan 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 contract, restoration cost-share agreement, or Landowner Protections will require agreement from the landowner, any relevant party to a specific SHA or CCAA, FWS, or NMFS, as appropriate, and may require execution of an amended contract or 10-year restoration cost-share agreement and modification to the Landowner Protection provisions.

§ 625.15 Transfer of land.

(a) *Offers voided prior to enrollment.* Any transfer of the property prior to the applicant's acceptance into the program will 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, agreement, and contract terms and conditions.

(b) *Actions following transfer of land.* (1) For easements or 30-year contracts with multiple annual payments, any remaining payments will be made to the original landowner unless NRCS receives an assignment of proceeds.

(2) Eligible cost-share payments will be made to the new landowner upon presentation of an assignment of rights or other evidence that title has passed.

(3) Landowner protections will be available to the new landowner, and the new landowner will be held responsible for assuring completion of all measures and conservation practices required by the contract, deed, and incidental take permit.

(4) If a SHA or CCAA is involved, the previous and new landowner may coordinate with FWS or NMFS, as appropriate, to transfer the agreement and associated permits and assurances.