

Commodity Credit Corporation, USDA

§ 1415.17

accordance with the terms of the rental contract;

(2) A participant who is determined to have erroneously represented any fact affecting a program determination made in accordance with this part may not be entitled to rental contract payments and must refund to CCC all payments, plus interest, in accordance with part 1403 of this title; and

(3) In the event of a violation of a rental contract, the participant will be given notice and an opportunity to voluntarily correct the violation within 30 days of the date of the notice, or such additional time as CCC may allow. Failure to correct the violation may result in termination of the rental contract.

(b) The following provisions apply to violations of easement deeds:

(1) Easement violations are handled under the terms of the easement deed;

(2) Upon notification of the participant, NRCS has the right to enter upon the easement area at any time to monitor compliance with the terms of the GRP conservation easement deed or remedy deficiencies or violations;

(3) When NRCS believes there may be a violation of the terms of the GRP conservation easement deed, NRCS may enter the property without prior notice; and

(4) The participant will be liable for any costs incurred by the United States as a result of the participant's negligence or failure to comply with the easement terms and conditions.

(c) USDA may require the participant to refund all or part of any payments received by the participant under the program contract or agreement.

(d) In addition to any and all legal and equitable remedies available to the United States under applicable law, USDA may withhold any easement payment, rental payment, or cost-share payments owing to the participant at any time there is a material breach of the easement covenants, rental contract, or any 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.

(e) Under a GRP conservation easement, the United States 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.

§ 1415.15 Payments not subject to claims.

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

§ 1415.16 Assignments.

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

(b) If a participant that is entitled to a payment dies, is declared legally incompetent, or is otherwise unable to receive the payment, or is succeeded by another person who renders or completes the required performance, such a participant may be eligible to receive payment in such a manner as USDA determines is fair and reasonable in light of all the circumstances.

§ 1415.17 Cooperative agreements.

(a) NRCS may enter into cooperative agreements which establish terms and conditions under which an eligible entity will use funds provided by NRCS to own, write, and enforce a grassland protection easement.

(b) To be eligible to receive GRP funding, an eligible entity must demonstrate:

(1) A commitment to long-term conservation of agricultural lands, ranch land, or grassland for grazing and conservation purposes;

(2) A capability to acquire, manage, and enforce easements;

(3) Sufficient number of staff dedicated to monitoring and easement stewardship;

(4) The availability of funds; and

(5) For nongovernmental organizations, the existence of a dedicated account and funds for the purposes of easement management, monitoring, and enforcement of each easement held by the eligible entity.

(c) NRCS enters into a cooperative agreement with those eligible entities selected for funding. Once a proposal is selected by the State Conservationist, the eligible entity must work with the appropriate State Conservationist to finalize and sign the cooperative agreement, incorporating all necessary GRP requirements. The cooperative agreement addresses:

- (1) The interests in land to be acquired, including the form of the easement deeds to be used and terms and conditions;
- (2) The management and enforcement of the interests acquired;
- (3) The responsibilities of NRCS;
- (4) The responsibilities of the eligible entity on lands acquired with the assistance of GRP;
- (5) The parcels accepted by the State Conservationist, landowners' names, addresses, location map(s), and other relevant information in an attachment to the cooperative agreement;
- (6) The allowance of parcel substitution upon mutual agreement of the parties;
- (7) The manner in which violations are addressed;
- (8) The right of the Secretary to conduct periodic inspections to verify the eligible entity's enforcement of the easements;
- (9) The manner in which the eligible entity will evaluate and report the use of funds to the Secretary;
- (10) The eligible entity's agreement to assume the costs incurred in administering and enforcing the easement, including the costs of restoration and rehabilitation of the land as specified by the owner and eligible entity. The entity will also assume the responsibility for enforcing the GRP management plan or conservation plan, as applicable. The eligible entity must incorporate any required plan into the conservation easement deed by reference or otherwise;
- (11) The source of funding. The eligible entity may include a charitable donation or qualified conservation contribution (as defined by section 170(h) of the Internal Revenue Code of 1986) from the landowner as part of the entity's share of the purchase price;

(12) The schedule of payments to an eligible entity, as agreed to by NRCS and the eligible entity;

(13) GRP 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;

(14) NRCS may provide a share of the purchase price of an easement under the program. The eligible entity will be required to provide a share of the purchase price at least equivalent to that provided by NRCS. The Federal share will be no more than 50 percent of the purchase price, as defined in §1415.3;

(15) The eligible entity's succession plan, which describes how its successors or assigns will hold, manage, and enforce the interests in land acquired in the event that the eligible entity is no longer able to fulfill its obligations under the cooperative agreement entered into with NRCS; and

(16) Other requirements deemed necessary by NRCS to protect the interests of the United States.

(d) Easements funded under the cooperative agreement option will be in perpetuity, except where State law prohibits a permanent easement, and will require that the easement area be maintained in accordance with GRP goals and objectives for the term of the easement.

(e) 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 will be submitted to the Chief within 30 days of the signing of the cooperative agreement. The conservation easement deed templates will be reviewed and approved by the Chief. 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.

(1) In order to protect the public investment, the conveyance document must contain a right of enforcement. NRCS will specify the terms for the right of enforcement clause to read as set forth in the GRP cooperative agreement. This right is a vested property right and cannot be condemned or terminated by State or local government;

(2) 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 if approved by NRCS;

(3) Prior to 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;

(4) All conservation easement deeds acquired with GRP funds must be recorded in the appropriate land records. Proof of recordation will be provided to NRCS by the eligible entity; and

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

§ 1415.18 Easement transfer to eligible entities.

(a) NRCS may transfer title of ownership to an easement to an eligible entity to hold and enforce an easement if:

(1) The Chief determines that transfer will promote protection of grassland, land that contains forbs, or shrubland;

(2) The owner authorizes the eligible entity to hold and enforce the easement; and

(3) The eligible entity agrees to assume the costs incurred in administering and enforcing the easement, including the costs of restoration or rehabilitation of the land as specified by the owner and the eligible entity, and the entity assumes responsibility for enforcing the GRP management plan or conservation plan, as applicable, as approved by NRCS.

(b) NRCS has the right to conduct periodic inspections to verify the eligible entities enforcement of the easement, which includes the terms and requirements set forth in the GRP management plan and any associated restoration or conservation plan for any easements transferred pursuant to this section.

(c) An eligible entity that seeks to hold and enforce an easement will

apply to the NRCS State Conservationist for approval.

(d) The Chief may approve an application if the eligible entity:

(1) Has relevant experience necessary, as appropriate for the application, to administer an easement on grassland, land that contains forbs, or shrublands;

(2) Has a charter that describes the commitment of the eligible entity to conserving ranch land, agricultural land, or grassland for grazing and conservation purposes;

(3) Possesses the human and financial resources necessary, as determined by the Chief, to effectuate the purposes of the charter;

(4) Has sufficient financial resources to carry out easement administrative and enforcement activities;

(5) Presents proof of a dedicated fund for enforcement as described in § 1415.17(b)(5), if the entity is a non-governmental organization; and

(6) Presents documentation that the landowner has concurred in the transfer.

(e) The Chief or his or her successors and assigns, will retain a right of enforcement in any transferred GRP funded easement, which provides the Secretary the right to inspect the easement for violations and enforce the terms of this easement through any and all authorities available under Federal or State law, in the event that the eligible entity fails to enforce the terms of the easement, as determined by NRCS.

(f) Should an easement be transferred pursuant to this section, all warranties and indemnifications provided for in the deed will continue to apply to the United States. Upon transfer of the easement, the easement holder will be responsible for enforcement of the GRP management plan, as approved by NRCS, and implementation of any associated conservation or restoration plans and costs of such restoration as agreed to by the landowner and entity.

(g) Due to the Federal interest in the GRP easement, GRP-funded easements cannot be condemned.

§ 1415.19 Appeals.

(a) Applicants or participants may obtain a review of any administrative