

§ 1415.12

7 CFR Ch. XIV (1-1-05 Edition)

USDA at the State level prior to installation of the practice.

§ 1415.12 Modifications to easements and rental agreements.

(a) After an easement has been recorded, no modification will be made to the easement except by mutual agreement with Chief, NRCS, and the landowner.

(b) Easement modifications may only be made by the Chief, NRCS, after consulting with the Office of General Counsel. Minor modifications may be made by the NRCS State Conservationist in consultation with Office of General Counsel. Minor modifications are those that do not affect the substance of the conservation easement deed. Such modifications include, typographical errors, minor changes in legal descriptions as a result of survey or mapping errors, and address changes.

(c) Approved modifications will be made only in an amendment to an easement which is duly prepared and recorded in conformity with standard real estate practices, including requirements for title approval, subordination of liens, and recordation.

(d) The Chief, NRCS, may approve modifications on easements to facilitate the practical administration and management of the enrolled area so long as the modification will not adversely affect the grassland functions and values for which the land was acquired or other terms of the easement.

(e) NRCS State Conservationists may approve modifications for restoration agreements and conservation plans as long as the modifications do not affect the provisions of the easement or rental agreement and meets GRP program objectives.

(f) USDA may approve modifications on rental agreements to facilitate the practical administration and management of the enrolled area so long as the modification will not adversely affect the grassland functions and values for which the land was enrolled.

§ 1415.13 Transfer of land.

(a) Any transfer of the property prior to the participant's acceptance into the program shall void the offer of enrollment, unless at the option of the

NRCS State Conservationist, in consultation with the FSA State Executive Director, an offer is extended to the new participant and the new participant agrees to the same easement or rental agreement terms and conditions.

(b) After acreage is accepted in the program, for easements with multiple payments, any remaining easement payments will be made to the original landowner unless USDA receives an assignment of proceeds.

(c) Future annual rental payments will be made to the successor participant.

(d) The new landowner or contract successor shall be held responsible for complying with the terms of the recorded easement or rental agreement and for assuring completion of all measures and practices required by the associated restoration agreement. Eligible cost-share payments shall be made to the new participant upon presentation that the successor assumed the costs of establishing the practices.

(e) With respect to any and all payments owed to landowners, 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, USDA may withhold payments without the accrual of interest pending an agreement or adjudication on the rights to the funds.

(f) The rights granted to the United States in an easement shall apply to any of its agents, successors, or assigns. All obligations of the landowner under an easement deed shall also bind the landowner's heirs, successors, agents, assigns, lessees, and any other person claiming under them.

(g) Rental agreements may be transferred to another landowner, operator or tenant that acquires an interest in the land enrolled in GRP. The transferee must be determined by USDA to be eligible to participate in GRP and must assume full responsibility under the agreement. USDA may require a participant to refund all or a portion of any financial assistance awarded under GRP if the participant sells or loses control of the land under a GRP rental

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agreement and the new owner or controller is not eligible to participate in the program or refuses to assume responsibility under the agreement.

§ 1415.14 Misrepresentation and violations.

(a) Contract violations:

(1) Contract violations, determinations, and appeals will be handled in accordance with the terms of the program contract or agreement and attachments thereto.

(2) A participant who is determined to have erroneously represented any fact affecting a program determination made in accordance with this part shall not be entitled to contract payments and must refund to USDA all payments, plus interest in accordance with 7 CFR part 1403.

(3) In the event of a violation of a rental agreement or any contract directly involving the participant, the participant shall 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.

(b) Easement violations: Easement violations are handled under the terms of the easement. Upon notification of the participant, the USDA reserves the right to enter upon the easement area at any time to remedy deficiencies or violations. Such entry may be made when USDA deems such action necessary to protect important grassland and shrubland functions and values or other rights of the United States under the easement. The participant shall be liable for any costs incurred by the United States as a result of the participant's negligence or failure to comply with easement, rental agreement, or contractual obligations.

(c) USDA may require the participant to refund all or part of any payments received by the participant or pay liquidated damages as may be required 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, and cost-share payments owing to the participant at any time there is a material breach of the ease-

ment covenants, rental agreement, 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 an easement, 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.

§ 1415.15 Payments not subject to claims.

Any cost-share, rental payment, or easement payment or portion thereof due any person under this part shall 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, becomes incompetent, or is otherwise unable to receive the payment, or is succeeded by another person who renders or completes the required performance, others 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 Delegation to third parties.

(a) USDA may permit an approved private conservation or land trust organization, State or other Federal agency to administer an easement with the consent or written request of the landowner. Rental agreements will not be delegated to private organizations, State, or other Federal agencies.

(b) USDA will have the right to conduct periodic inspections and enforce the easement and associated restoration agreement for any easements administered pursuant to this section.

(c) The private organization, State, or other Federal agency shall assume the costs incurred in administering and enforcing the easement, including the costs of restoration or rehabilitation of