

§ 1491.23 Easement modifications.

(a) After an easement has been recorded, no amendments to the easement will be made without prior approval by NRCS State Conservationist and the USDA Office of General Counsel.

(b) Easement modifications will be approved only when easement is duly prepared and recorded in conformity with standard real estate practices, including requirements for title approval, subordination of liens, and recordation, and when the amendment is consistent with the purposes of the conservation easement.

Subpart C—General Administration

§ 1491.30 Violations and remedies.

(a) In the event of a violation of the terms of the easement, the cooperating 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 grantee/partner fails to enforce any of the terms of the conservation easement, as determined in the sole discretion of the Secretary of the United States Department of Agriculture, the Secretary 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. In the event that the grantee/partner attempts to terminate, transfer, or otherwise divest itself of any rights, title, or interests in the conservation easement without the prior consent of the Secretary and, if applicable, payment of consideration to the United States, then, at the option of the Secretary, all right, title, and interest in the conservation easement shall become vested solely in the United States of America.

(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 United States 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, including attorney's fees or expenses, associated with any enforcement or remedial action as it relates to the enforcement of the FRPP easement.

(e) 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 from or related to the property enrolled in FRPP.

(f) 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. CCC's share shall be in proportion to its percentage of original investment.

(g) In the event NRCS determines it must exercise the United States' right to enforce the terms of or take title to the conservation easement, NRCS will provide written notice by certified mail to the grantee at the grantee's last known address. The notice will set forth the nature of the noncompliance by the grantee and a 60-day period to cure. If the grantee fails to cure within the 60-day period, the United States will take the action specified under the notice. The United States reserves the right to decline to provide a period to cure if NRCS determines that imminent harm may result to the conservation easement deed or the conservation values it seeks to protect.

[68 FR 26474, May 16, 2003, as amended at 71 FR 42572, July 27, 2006]

§ 1491.31 Appeals.

(a) A person or cooperating entity which has submitted an FRPP proposal and is therefore participating in FRPP

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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 may seek judicial review of any action taken under this part, the person must exhaust all administrative appeal procedures set forth in paragraph (a) of this section, and for the purposes of judicial review, no decision shall be a final agency action except a decision of the U. S. Department of Agriculture under these provisions.

§ 1491.32 Scheme or device.

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

(b) A scheme or device includes, but is not limited to, coercion, fraud, misrepresentation, 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.

PART 1492 [RESERVED]

PART 1493—CCC EXPORT CREDIT GUARANTEE PROGRAMS

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AUTHORITY: 7 U.S.C. 5602, 5622, 5661, 5662, 5663, 5664, 5676; 15 U.S.C. 714b(d), 714c(f).

SOURCE: 59 FR 52876, Oct. 19, 1994, unless otherwise noted.