

because the United States is buying an interest in the property, any modification or amendment shall be approved by NRCS and the Office of General Counsel. One respondent requested that NRCS interpret Section 1491.23 to give a cooperating entity the discretion to distinguish between a major and minor amendment. If appropriate, NRCS, with advice from the Office of General Counsel, will review and delegate authority for amendment review on a case-by-case basis as it relates to minor amendments.

Subpart C—General Administration

Section 1491.30 Violations and Remedies

Fifty-five respondents commented on this portion of the proposed rule. Fifty-two respondents recommended that section 1491.30(c) be reworded to allow for landowner notification prior to NRCS' entry on the property as it relates to conservation plan violations, while one respondent questioned the need to include this provision in the rule, but rather state it in the conservation easement deed. NRCS accepts the first set of recommendations and has modified the final rule provision to allow for landowner notification prior to NRCS entry. NRCS also addresses and inserts right of access provisions in all FRPP conservation easement deeds.

One respondent suggested that NRCS should contact the landowner, but it should not be prevented from exercising its imminent violation rights by rules outside of the easement or in the case of an emergency; therefore, they suggest that the wording be changed to NRCS notifies or reasonably attempts to notify. As a condition of program eligibility, landowners agree to allow NRCS to enter the land when they sign the AD-1026, Highly Erodible Land Conservation and Wetland Conservation Certification form; however, NRCS' policy is to make all reasonable advance notification to the landowner prior to any visit on the property.

One respondent has objected to NRCS accessing the easement area stating that it conflicts with the rights of the Grantee. The respondent notes that since neither NRCS nor CCC are Grantees of the recorded conservation easements, neither NRCS nor CCC have responsibilities under law to monitor, enforce or prosecute violators of FRPP easements. Therefore, NRCS should not impose rules and regulations covering these enforcement authorities already governed by State legislation. NRCS's monitoring responsibility relates only to the conservation plan, which is required by FRPP's authorizing legislation.

Violations related to the conservation plan and any other such violations that NRCS may encounter while on the farm or ranch will be reported to the cooperating entity. NRCS does not assume the role of any monitoring beyond the conservation plan compliance provision of the Food Security Act of 1985, as amended.

One respondent requested that if enforcement language is required in the deed, the rule should contain such language. The final rule contains the general guidelines related to conservation plan compliance, while the cooperative agreement between NRCS and the cooperating entity will articulate any specific enforcement language as it relates to the conservation plan. One respondent asked whether lands that do not contain highly erodible soils or wetland resources need to be monitored by NRCS. Lands that do not contain highly erodible soils or wetland resources do not need to be monitored by NRCS, unless the State Conservationist and cooperating entity have entered into a cooperative agreement whereby they have agreed to assist the cooperating entity monitor non-highly erodible lands enrolled under FRPP. One respondent requested that NRCS articulate whether all easements prior to the publication of the final rule will be monitored. NRCS will monitor easements that were recorded prior to the publication of this final rule in accordance with the terms and conditions set forth in individual conservation easement deeds.

One respondent requested that the NRCS clarify that the landowner be liable for any costs incurred by the United States as it relates specifically to the conservation plan.

NRCS agrees with this respondents request for clarification and has reworded the last sentence of 1491.30(c) to read as follows: "The landowner shall 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."

Two respondents requested that NRCS clarify section 1491.30(d) by adding "related to the FRPP easement." NRCS agrees with this recommendation and has redrafted this section to read as follows: "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 related to the FRPP easement."

Two respondents requested that NRCS soften the indemnification language. One entity requested that the

section be amended for cross indemnification, while another entity requested that the indemnification language read as follows: "(e) The conservation easement shall include an indemnification clause requiring landowners to indemnify, defend, and hold harmless the United States from any liability resulting from the negligent acts of the landowner." NRCS has chosen to retain the proposed rule's language as it relates to indemnification, which is similar to the second respondent's suggestion. In response to the first respondent's request for cross indemnification, NRCS does not have the authority to waive the Federal government's sovereign immunity.

Section 1491.31 Appeals

One respondent has objected to NRCS affording appeals to landowners and cooperating entities, asserting that it conflicts with the rights of the Grantee. The respondent notes that since neither NRCS nor CCC are Grantees of the recorded conservation easements with individual landowners, NRCS has no responsibilities under law to monitor, enforce or prosecute violators of easements. Therefore, NRCS should not impose rules and regulations covering these enforcement authorities already legislated by State legislation under which they are governed.

The Department of Agriculture Reform Act (Pub. L. 103-354; 7 U.S.C. 6991 et seq.), requires that USDA agencies covered by this Act develop and implement an informal and formal appeals policy. The USDA has developed regulations articulating how the appeal process works when making decisions over a disputed agency decision or determination. Accordingly, NRCS provides an appeal and mediation process to agency program participants where decisions and determinations made by the agency are disputed by the program participant. Under these provisions, program participant can mean the cooperating entity or the landowner, depending on the circumstance. Appealable items include, but are not limited to:

- The determination that the land is eligible;
- The determination that the conservation plan submitted by the landowner to the entity and further submitted to NRCS is not sufficient; and
- The determination by NRCS that the person farming the land under FRPP easement has violated the HELC or WC provisions.

Section 1491.32 Scheme and Device

One respondent has objected to the NRCS scheme and device provisions,