

**§ 624.10 Floodplain easements.**

(a) *General.* Notwithstanding any limitations found in this part, NRCS may purchase floodplain easements as an emergency measure. NRCS will only purchase easements from landowners on a voluntary basis.

(b) *Floodplain easements.* (1) Floodplain easements established under this part shall be:

(i) Held by the United States, through the Secretary of Agriculture;

(ii) Administered by NRCS or its designee; and

(iii) Perpetual in duration;

(2) *Eligible land.* NRCS may determine that land is eligible under this section if:

(i) The floodplain lands were damaged by flooding within the last 12 months or have been subject to flood damage at least twice within the previous 10 years; or

(ii) Other lands within the floodplain that would contribute to the restoration of the flood storage and flow, erosion control, or that would improve the practical management of the easement; or

(iii) Lands that would be inundated or adversely impacted as a result of a dam breach.

(3) *Ineligible land.* NRCS may determine that land is ineligible under this section if:

(i) Implementation of restoration practices would be futile due to on-site or off-site conditions;

(ii) The land is subject to an existing easement or deed restriction that provides sufficient protection or restoration of the floodplain's functions and values; or

(iii) The purchase of an easement would not meet the purposes of this part.

(4) *Compensation for easements.* A landowner will receive the lesser of the three following values as an easement payment:

(i) A geographic rate established by the NRCS State conservationist, if one has been established;

(ii) A value based on a market appraisal analysis for agricultural uses or assessment for agricultural land; or

(iii) The landowner's offer, if one has been made.

(5) NRCS will not acquire any easement unless the landowner accepts the amount of the easement payment that is offered by NRCS. The easement payment may or may not equal the fair market value of the interests and rights to be conveyed by the landowner under the easement. By voluntarily participation in the program, a landowner waives any claim to additional compensation under EWP based on fair market value.

(6) NRCS may provide up to 100 percent of the restoration and enhancement costs of the easement. NRCS may enter into an agreement to ensure that identified practices are implemented. NRCS, the landowner, or other designee may implement identified practices. Restoration and enhancement efforts may include both structural and non-structural practices. An easement acquired under this part shall provide NRCS with the full authority to restore, protect, manage, maintain, and enhance the functions and values of the floodplain.

(7) The landowner shall:

(i) Comply with the terms of the easement;

(ii) Comply with all terms and conditions of any associated agreement; and,

(iii) Convey title to the easement that is acceptable to NRCS and warrant that the easement is superior to the rights of all others, except for exceptions to the title that are deemed acceptable by NRCS.

(8) Structures, including buildings, within the floodplain easement may be demolished and removed, or relocated outside the 100-year floodplain.

(c) *Easement modifications.* (1) After an easement has been recorded, no modification will be made in the easement except by mutual agreement with the Chief and the landowner.

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

(3) The Chief may approve modifications to facilitate the practical administration and management of the easement area or the program so long as the modification will not adversely affect the functions and values for which the easement was acquired.

(4) Modifications must result in equal or greater environmental and economic values to the United States.

(d) *Enforcement.* (1) In the event of a violation of an easement, the violator shall be given reasonable notice and an opportunity to correct the violation within 30 days of the date of the notice, or such additional time as NRCS may allow.

(2) Notwithstanding paragraph (c)(1) of this section, NRCS reserves the right to enter upon the easement area at any time to remedy deficiencies or easement violations. Such entry may be made at the discretion of NRCS when such actions are deemed necessary to protect important floodplain functions and values or other rights of the United

States under the easement. 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 easement or agreement obligations.

(3) In addition to any and all legal and equitable remedies as may be available to the United States under applicable law, NRCS may withhold any easement and cost-share payments owing to landowners at any time there is a material breach of the easement covenants or any associated agreements. 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.

(4) NRCS 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.

(5) On the violation of the terms or conditions of the easement or related agreement, the easement shall remain in force, and NRCS may require the landowner to refund all or part of any payments received by the landowner under this Part, together with interest thereon as determined appropriate by NRCS.

(6) All the general penal statutes relating to crimes and offenses against the United States shall apply in the administration of floodplain easements acquired under this part.

**§ 624.11 Waivers.**

To the extent allowed by law, the NRCS Deputy Chief for Programs may waive any provision of these regulations.

Signed in Washington, DC on October 29, 2003.

**Bruce I. Knight,**

*Chief, Natural Resources Conservation Service.*

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**DEPARTMENT OF AGRICULTURE****Grain Inspection, Packers and Stockyards Administration****7 CFR Part 800**

**RIN 0580-AA80**

**Fees for Official Inspection and Official Weighing Services**

**AGENCY:** Grain Inspection, Packers and Stockyards Administration, USDA.

**ACTION:** Proposed rule.