

- (i) Exigency situations;
- (ii) Sites where there is a serious, but not immediate threat to human life;
- (iii) Sites where buildings, utilities, or other important infrastructure components are threatened;
- (iv) When reviewing paragraphs (c)(3)(i) through (iii) of this section, NRCS will take into account the following resources as they may affect the priority, including, but not limited to:
 - (A) Sites inhabited by federally listed threatened and endangered species or containing federally designated critical habitat where the species or the critical habitat could be jeopardized, destroyed, or adversely modified without the EWP practice;
 - (B) Sites that contain or are in the proximity to cultural sites listed on the National Register of Historic Places where the listed resource would be jeopardized if the EWP practice were not installed;
 - (C) Sites where prime farmland supporting high value crops is threatened;
 - (D) Sites containing wetlands that would be damaged or destroyed without the EWP practice;
 - (E) Sites that have a major effect on water quality; and
 - (F) Sites containing unique habitat, including but not limited to, areas inhabited by State-listed threatened and endangered species, fish and wildlife management areas, or State-identified sensitive habitats; and
 - (v) Other funding priorities established by the Chief of NRCS.

§ 624.9 Time limits.

Funds must be obligated by the State Conservationist and construction completed within 220 calendar days after the date funds are committed to the State Conservationist, except for exigency situations in which case the construction must be completed within 10 days after the date the funds are committed.

§ 624.10 Floodplain easements.

(a) *General.* 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 will 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 land is eligible under this section if:
- (i) The floodplain lands were damaged by flooding at least once within the previous calendar year or have been subject to flood damage at least twice within the previous 10 years; or
 - (ii) Other lands within the floodplain 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 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, as determined by the Chief of NRCS, 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.* NRCS will determine easement compensation in accordance with applicable regulation and other law.

(5) NRCS will not acquire any easement unless the landowner accepts the amount of the easement payment that is offered by NRCS. NRCS reserves the right not to purchase an easement if the easement compensation for a particular easement would be too expensive, as determined by NRCS.

(6) NRCS may provide up to 100 percent of the restoration and enhancement costs of the easement. NRCS may enter into an agreement with the landowner or another third party to ensure that identified practices are implemented. NRCS, the landowner, or other designee may implement identified

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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 must:

(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 or dam breach inundation area.

(c) The Chief of NRCS may modify or terminate an easement if, pursuant to 16 U.S.C. 2203(b), the Chief determines the modification or termination is in the public interest and will address a compelling public need for which there is no practicable alternative.

(d) *Enforcement.* (1) In the event of a violation of an easement, the violator will 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) 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 will 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 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.

(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.

[70 FR 16926, Apr. 4, 2005, as amended at 80 FR 19009, Apr. 9, 2015]

§ 624.11 Waivers.

To the extent allowed by law, the NRCS Deputy Chief for Programs may waive any provision of these regulations when the agency makes a written determination that such waiver is in the best interest of the Federal government.

PART 625—HEALTHY FORESTS RESERVE PROGRAM

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