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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1

Appearance of USDA Employees as Witnesses in Judicial or Administrative Proceedings; Amendment

AGENCY: Office of the Secretary, USDA.
ACTION: Final rule.

SUMMARY: This document amends the regulations governing the appearance of USDA employees as witnesses in order to testify or produce official documents in judicial or administrative proceedings.

EFFECTIVE DATE: November 29, 1993.

FOR FURTHER INFORMATION CONTACT: Robert L. Siegler, Deputy Assistant General Counsel, Research and Operations Division, Office of the General Counsel, United States Department of Agriculture, Washington, DC 20250-1400, (202) 720-6035.

SUPPLEMENTARY INFORMATION: The regulations governing the appearance of USDA employees as witnesses to testify or produce official documents in judicial or administrative proceedings are amended to provide specific authority for heads of USDA agencies to delegate their responsibilities under the regulations to subordinate officials in their agencies.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the Federal Register. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order Nos. 12778 and 12866. Finally, this action is not a rule as defined by the Regulatory Flexibility Act, Pub. L. No.

96-354, and, thus, is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 1

Administrative practice and procedures; Witnesses.

PART 1—ADMINISTRATIVE REGULATIONS

Accordingly, part 1, title 7, Code of Federal Regulations is amended as follows:

1. The authority citation for part 1 continues to read as follows:

Authority: 5 U.S.C. 301, unless otherwise noted.

2. A new § 1.219 is added to subpart K to read as follows:

Subpart K—Appearance of USDA Employees as Witnesses in Judicial or Administrative Proceedings

* * * * *

§ 1.219 Delegations.

(a) Except as provided in paragraphs (b), (c), or (d) of this section, the head of a USDA agency may delegate his or her responsibilities under this subpart, including the retirement to be notified of the receipt of a subpoena as provided in §§ 1.214(a) and 1.216(a) of this part, to employees of his or her agency as follows:

- (1) In the National office of the agency, to a level no lower than two levels below the agency head;
- (2) In a field component of an agency, to a level no lower than the official who heads a state office.

(b) Notwithstanding paragraph (a) of this section, the Chief of the Forest Service may delegate his responsibilities under this subpart as follows:

- (1) In the National office of the Forest Service, to a level no lower than a Deputy Chief of the Forest Service;
- (2) In a field component of the Forest Service, to a level no lower than a Regional Forester or Station Director.

(c) Notwithstanding paragraph (a) of this section, the General Counsel may delegate his responsibilities under this subpart as follows:

- (1) In the National office of the Office of the General Counsel, to a level no lower than an Assistant General Counsel;
- (2) In the field component of the Office of the General Counsel, to Regional Attorneys who may redelegate

their responsibilities to Associate Regional Attorneys and Assistant Regional Attorneys who report to them.

(d) The responsibilities assigned to heads of agencies and to Assistant and Under Secretaries in § 1.214(b)(2) of this part may not be redelegated.

Done this 17th day of November, 1993, at Washington, DC.

Mike Espy,
Secretary.

[FR Doc. 93-29133 Filed 11-26-93; 8:45 am]
BILLING CODE 3410-01-M

Soil Conservation Service

7 CFR Part 623

Emergency Wetlands Reserve Program

AGENCY: Soil Conservation Service, USDA.

ACTION: Interim rule.

SUMMARY: The Emergency Supplemental Appropriations for Relief From the Major, Widespread Flooding in the Midwest Act of 1993 authorizes the use of funds appropriated under the Act, which are otherwise available for waterway and watershed repair under the Emergency Watershed Protection Program of the Soil Conservation Service (SCS), to restore cropland, which was inundated by the 1993 Midwest floods, to wetlands for the purposes of the Wetlands Reserve Program (WRP) authorized by title XII of the Food Security Act of 1985, as amended. This rule sets forth the policies, procedures, and requirements of the Emergency Wetlands Reserve Program (EWRP) that have been established to implement the 1993 emergency wetland restoration and conservation provisions. The EWRP will be available only in the following States: Illinois, Iowa, Kansas, Minnesota, Missouri, Nebraska, South Dakota, and Wisconsin. This rule does not affect the policies, procedures, or requirements of the Wetlands Reserve Program regulations issued by the Agricultural Stabilization and Conservation Services.

DATES: November 26, 1993.

COMMENT DEADLINE: In order to be considered, comments must be submitted in writing by December 27, 1993.

ADDRESSES: Send written comments to Edward G. Riekert, Director, Watershed

Projects Division, SCS, USDA, P.O. Box 2890, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Edward G. Riekert, telephone (202) 720-3527.

SUPPLEMENTARY INFORMATION: The WRP was established under the authority of sections 1237-1237f of the Food Security Act of 1985, as amended, 16 U.S.C. 3837-3837f, and is administered by the Agricultural Stabilization and Conservation Service (ASCS) pursuant to regulations found at 7 CFR part 703. Under the WRP, persons who own croplands and other related lands that have wetland characteristics or the potential for restoration of such characteristics and who agree to the restoration and long-term maintenance of those lands as wetlands may be eligible to enroll the lands in the WRP and receive a payment for the long-term maintenance easement and some cost-sharing assistance for the restoration costs.

The Emergency Supplemental Appropriations for Relief From Major, Widespread Flooding in the Midwest Act of 1993, Public Law 103-75, 107 Stat. 739, provides appropriations for the repair of "damages to the waterways and watersheds resulting from the Midwest floods and other disasters of 1993" under the Emergency Watershed Protection Program of the SCS. See 107 Stat. 742. That section of the emergency appropriations legislation further provides that if the Secretary of Agriculture "determines that the cost of land and levee restoration exceeds the fair market value of an affected cropland, the Secretary may use sufficient funds provided (under this section) to accept bids from willing sellers to enroll such cropland inundated by the Midwest floods of 1993 in any of the affected States in the Wetlands Reserve Program as authorized by subchapter C of chapter 1 of subtitle D of title XII of the Food Security Act of 1985."

Pursuant to the delegations of authority of the Department of Agriculture contained in 7 CFR part 2, the EWRP will be administered by the SCS as an adjunct to the WRP administered by the ASCS. The policies, procedures, and requirements provided in this rule are separate from and do not affect the policies, procedures, and requirements related to the WRP that are contained in 7 CFR part 703 and administered by ASCS.

Under the EWRP, SCS will purchase wetland conservation easements from persons owning cropland that was damaged by the 1993 Midwest floods if those lands have the potential for

restoration to wetland conditions with hydrologic conditions of inundation or saturation of the soil and hydrophytic vegetation, and if the owner voluntarily agrees to restore and maintain those conditions. The functions and values of the wetlands for wildlife habitat, water quality improvement, flood water retention, floodway enhancement, ground water recharge, open space, aesthetic values, and environmental education. Furthermore, the wetland conservation easements will permanently prohibit use of the affected land as cropland. Additionally, the easement shall require permanent maintenance of the wetland conditions, except in the case of natural disaster.

Eligible land for purchase will include farmed wetlands or prior converted wetlands (converted prior to December 23, 1985), together with adjacent lands on which the wetlands are functionally dependent so long as the likelihood of successful restoration of such land and the potential wetland values merit inclusion in the program with reasonable costs. Farmed wetlands are lands that were drained, leveled, or otherwise manipulated prior to December 23, 1985 (the effective date of the Food Security Act of 1985) to the extent that agricultural crop production was made possible, but which continue to exhibit wetland characteristics. SCS will also consider for enrollment in the program:

(1) Farmed wetlands and adjoining lands with substantial wetland functions that are enrolled in the Conservation Reserve Program (CRP) administered under 7 CFR Part 1410 and were severely damaged by the 1993 Midwest floods;

(2) Other lands that would not otherwise be eligible if it is determined that inclusion in the program would promote the wetland values of the land.

The SCS State Conservationist will determine (1) the estimated costs of restoring the affected cropland to productive capacity and the estimated costs of repairing any associated levee, dike or other floodwater control systems; and (2) the fair market value (FMV) of the affected cropland based on an "as if restored" basis. If the estimated costs of the restoration and repair exceed the FMV of the affected cropland, the land will be eligible to be considered for enrollment in the EWRP. If the land is determined to be suitable for enrollment, the SCS State Conservationist will determine the FMV of the permanent easement offer that will be made. In determining the costs of cropland restoration, flood control system repair, the FMV of the affected cropland, and the FMV of the

permanent easement, the SCS State Conservationist may use reasonably available information from appropriate sources to make the determinations.

Owners of lands determined to be eligible for enrollment in the EWRP and for which SCS makes an offer of enrollment may submit a bid of acceptance to the local SCS office.

To assure maximum benefits to the Federal Government, the SCS State Conservationist, in consultation with the U.S. Fish and Wildlife Service and input from a technical committee established by the State Conservationist, will establish a ranking process to determine the priority of the parcels offered for enrollment into the EWRP. The ranking process will consider floodway enhancement and environmental benefits per dollar of government expenditure for restoration and easement purchase. The State Conservationist will use the following criteria to establish a priority ranking for which enrollment in the EWRP will be offered and bids of acceptance accepted:

(1) Protection and enhancement of habitat for migratory birds and wildlife, including the contribution the restoration may make to the recovery of threatened and endangered species,

(2) Floodway expansion,

(3) Proximity to other protected wetlands,

(4) Level of wetland hydrologic conditions that could potentially be restored under the EWRP,

(5) Wetland functions and values,

(6) Likelihood of successful restoration of wetland values,

(7) Cost of restoration and easement purchases, and

(8) Other factors determined appropriate by SCS. Land behind a levee would have a lower priority than land where a levee does not exist or will be repaired.

The emergency watershed repair and wetland reserve provisions of Public Law 103-75 were passed in response to the devastating cropland losses caused by the Midwest floods of 1993. This disaster requires an immediate response to relieve flood damages. Complying with the normal comment procedures set forth in the Administrative Procedures Act would delay efforts to assist those harmed by the flood, further aggravating their losses, and would, therefore, be contrary to the public interest. Because of the urgency, SCS has determined that good cause exists to make this rule effective immediately. However, this interim rule affords the public a 30-day period following the effective date to submit written comments. SCS will consider all comments submitted in a timely manner

and will amend the rule if justified by the comments. Comments should be submitted, in writing, to the individual listed above as the information contact.

This interim/final rule is issued in conformance with Executive Order 12866. Based on information compiled by the Department, it has been determined this interim rule:

(1) Would have an annual effect on the economy of less than \$100 million;

(2) Would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities;

(3) Would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(4) Would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and

(5) Would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

The purpose of the EWRP is similar to that of the WRP, that is to restore certain cropland to wetlands and maintain them in wetland condition. An environmental assessment was prepared for WRP and it was determined that the program activities would not have a significant impact on the quality of the human environment. Therefore, an environmental impact statement was not needed for the WRP and, likewise, is not needed for this program. Copies of the environmental assessment for the WRP are available upon request.

This program is not subject to the provisions of Executive Order 12372 because it involves direct payments to individuals and not to State and local entities. See notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

The information collection requirements of the interim rule at 7 CFR part 623 have been submitted to OMB for approval under provisions of 44 U.S.C. chapter 33 in accordance with OMB emergency procedures set forth at 5 CFR 1320.18. An OMB control number will be assigned in accordance with these procedures. The public reporting burden for the information collections that would be required for compliance with these regulations is estimated to average 22 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

List of Subjects in 7 CFR Part 623

Administrative practices and procedures, Compliance procedures, Easements, Natural resources, Technical assistance, Wetlands Reserve Plan of Operations.

Interim Rule

Accordingly, Title VII of the Code of Federal Regulations is amended by adding a new part 623 to read as follows:

PART 623—EMERGENCY WETLANDS RESERVE PROGRAM

Sec.

- 623.1 Purpose and scope.
- 623.2 Definitions.
- 623.3 Eligible person.
- 623.4 Eligible land.
- 623.5 Ineligible land.
- 623.6 Transfer of lands from the CRP to the EWRP.
- 623.7 Terms of the easement.
- 623.8 Easement value.
- 623.9 Easement priority.
- 623.10 Application to participate.
- 623.11 Obligations of the landowner.
- 623.12 Payments to landowners by SCS.
- 623.13 Wetland Reserve Plan of Operations.
- 623.14 Easement modifications.
- 623.15 Transfer of land.
- 623.16 Monitoring and enforcement of easement terms and conditions.
- 623.17 Violations and Remedies.
- 623.18 Access to land.
- 623.19 Assignments.
- 623.20 Appeals.
- 623.21 Scheme and device.
- 623.22 Filing of false claims.

Authority: 16 U.S.C. 3837–3837f; Pub. L. 103–75, Chapter 1, 107 Stat. 739, 742.

§ 623.1 Purpose and scope.

(a) The regulations in this part set forth the policies, procedures, and requirements for the Emergency Wetlands Reserve Program (EWRP). Under the EWRP, SCS will make offers to purchase wetland conservation easements from persons owning croplands that were damaged by the 1993 Midwest floods if those lands have the potential for restoration to wetland conditions and if the owner voluntarily agrees to restore and maintain those conditions. The easements are to be purchased to promote the restoration and maintenance of wetland characteristics, such as hydrologic conditions of inundation or saturation of the soil and hydrophytic vegetation. The functions and values of the wetlands for wildlife habitat, water quality improvement, flood water retention, floodway enhancement, ground water recharge, open space, aesthetic values, and environmental education will thus be promoted. The wetland conservation easements will

permanently prohibit use of the affected land as cropland. Additionally, the easement shall require permanent maintenance of the wetland conditions, except in the case of natural disaster.

(b) The EWRP is available only in the following States: Illinois, Iowa, Kansas, Minnesota, Missouri, Nebraska, South Dakota, and Wisconsin. Certain cropland areas within these States have been determined to have been inundated by the Midwest floods of 1993. As more fully defined and described in this part, eligible land may include farmed wetlands or prior converted wetlands (wetlands converted prior to December 23, 1985), together with adjacent lands on which the wetlands are functionally dependent so long as the likelihood of successful restoration of such land and the potential wetland values merit inclusion in the program with reasonable costs.

§ 623.2 Definitions.

The following definitions shall be applicable for the purposes of this part:

(a) *Agricultural commodity*—means any crop planted and produced by annual tilling of the soil, or on an annual basis by one trip planters, or alfalfa and other multiyear grasses and legumes in rotation as approved by the Secretary. For purposes of determining crop history, as relevant to eligibility to enroll land in the program, land shall be "considered planted to an agricultural commodity" during a crop year if, as determined by ASCS, as action of the Secretary prevented land from being planted to the commodity during the crop year.

(b) *Applicant*—means a person who submits to SCS an application to participate in the EWRP.

(c) *Commodity Credit Corporation*—a wholly owned government corporation within the U.S. Department of Agriculture.

(d) *Conservation District (CD)*—means a subdivision of a State or local government organized pursuant to applicable State law to promote soil and water conservation practices.

(e) *Conservation Reserve Program*—means the program under which long-term payments and cost-share assistance is provided to individuals to establish permanent vegetative cover on cropland that is highly erodible or environmentally sensitive.

(f) *Prior converted wetland*—means wetland that has been drained, dredged, filled, leveled, or otherwise manipulated (including any activity that results in impairing or reducing the flow, circulation, or reach of water) prior to December 23, 1985, for the purpose, or that has the effect, of

making the production of agricultural commodities possible if such production would not have been possible but for such action.

(g) *Cost-share payment*—means the payment made by SCS to assist program participants in establishing the practices required in a WRPO.

(h) *Chief*—means the Chief of the Soil Conservation Service, or the Chief's designee.

(i) *Easement*—means the real property interest acquired by SCS under this part for wetland restoration and maintenance and which is properly filed with the appropriate local or State government official.

(j) *Easement area*—means the land to which the approved wetland restoration practices and wetland conservation restrictions are to be applied.

(k) *Fair market value (FMV)*—means the price that a willing seller would accept and a willing buyer would pay in an open, informed transaction.

(l) *Farmed wetland*—means wetland that was drained, dredged, filled, or otherwise manipulated prior to December 23, 1985 to the extent that the production of agricultural commodities was made possible, but which continues to meet wetland criteria [refer to 7 CFR 12.32(a)(3) for descriptions of farmed wetlands].

(m) *Floodwater control systems*—means dikes, levees, or other similar structural measures for the protection of cropland from flooding.

(n) *FWS*—means the Fish and Wildlife Service of the United States Department of the Interior.

(o) *Local SCS office*—means the office of the Soil Conservation Service serving the county or combination of counties in which the landowner's farm or ranch is located.

(p) *Participant*—means a person(s) owning land subject to a perfected easement purchased by the Soil Conservation Service under this part.

(q) *Offer*—means the total payment SCS will make to a landowner to purchase an easement.

(r) *Permanent easement*—means an easement in perpetuity.

(s) *Substantially altered lands*—means lands which have not been and are not now wetlands but could likely develop wetland characteristics in the future, as a result of the Midwest floods of 1993.

(t) *Practice*—means the wetland and easement area development restoration measures agreed to in the WRPO to accomplish the desired program objectives.

(u) *Technical assistance*—means the assistance provided to land owners to facilitate implementation of the WRPO.

(v) *Wetland*—means land that (1) has a predominance of hydric soils; (2) is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and (3) does support a prevalence of such vegetation under normal circumstances.

§ 623.3 Eligible person.

To be eligible to participate in the EWRP, a person must be the owner of eligible land for which enrollment is sought and must have been the owner of such land for at least the preceding 12 months prior to the time the enrollment offer is declared by SCS, as provided in this part. The person shall provide to SCS adequate proof of ownership of the land. SCS may waive the 12 month ownership requirement if:

(a) The land was acquired by will or succession as a result of the death of the previous owner; or

(b) Adequate assurances have been presented that the new owner of such land did not acquire such land for the purpose of placing it in the EWRP.

§ 623.4 Eligible land.

(a) Except as otherwise provided in this section, land is eligible for enrollment in the EWRP only if SCS determines that the land:

(1) Was inundated by the Midwest floods of 1993;

(2) If restored to productive condition, would have a fair market value that is less than the estimated costs of restoring the land to productive condition and repairing related floodwater control systems;

(3) Is likely to have its wetland value restored with minimal costs; and

(4) Is wetland farmed under natural conditions, a farmed wetland or prior converted wetland, or substantially altered lands which are cropland; or

(5) Is wetland that has been restored on the land under a CRP contract, or under a Federal or State wetland restoration program with an easement for a period of less than 30 years.

(b) To be eligible for enrollment in the EWRP, land must also:

(1) Be determined by ASCS to have been annually planted or considered planted to an agricultural commodity in at least 1 of the 5 previous crop years; or

(2) Be land under a CRP contract, in which case, the land need only to have been planted to an agricultural commodity during 2 of the 1981 through 1985 crop years.

(c) Other lands may be considered eligible if the inclusion of such lands in

the EWRP easement would significantly add to the functions and values of the wetlands to be restored under this part, as determined by SCS.

(d) The criteria and procedures contained in 7 CFR part 12 will be used to identify wetlands, converted wetlands, and farmed wetlands.

§ 623.5 Ineligible land.

Notwithstanding any other provisions of this part, the following land is not eligible for enrollment in the EWRP:

(a) Land that contains either timber stands or trees established in connection with a CRP contract;

(b) Lands owned or acquired by an agency of the Federal Government;

(c) Land already subject to a deed restriction prohibiting the production of agricultural commodities or the alternation of existing wetland hydrologic conditions;

(d) Land located between the pre-flood mainstem levees and the river; or

(e) Land that was restored to wetland conditions, as required under Part 12 of this title, to mitigate the conversion of wetland to cropland use.

§ 623.6 Transfer of lands from the CRP to the EWRP.

Land that is subject to an existing CRP contract administered under 7 CFR parts 704 and 1410 may be transferred into the EWRP only if:

(a) The land and landowner(s) meet the requirements of this part; and

(b) The application for transfer into the EWRP is approved by Commodity Credit Corporation (CCC), if found to be in the interest of the program. If such transfer is requested by the owner and approved by CCC, the CRP contract for the property will be terminated or otherwise modified subject to such terms and conditions as are mutually agreed by the landowner, CCC, and SCS.

§ 623.7 Terms of the easement.

Landowners will grant to SCS an easement which shall run with the land and be in favor of SCS and its assigns or delegates. The easement shall require the land to be monitored as specified by the WRPO to promote the purposes of this part, including but not limited to maintenance of the restored wetland for entire length of the easement. Such easement shall: (a) be a permanent reserve interest easement; (b) require that the maintenance of the land be in accordance with the terms of the easement and with the terms of the WRPO and shall be the responsibility of the owners of the property and their successors of any kind, including, but not limited to, the owners' heirs and assigns; (c) grant to SCS a right of access

in favor of SCS and its delegates, assigns and successors of any kind, to the portion of the property which is subject to the provisions of the easement.

Maintenance of such access shall be the responsibility of the owner and their successors of any kind; (d) reserve to SCS the right to permit such compatible uses of the easement area as may be identified in the WRPO; (e) reserve to the landowner those compatible uses identified in the WRPO that are permitted to be pursued by the landowner; (f) be signed by each person with an interest of any kind in the land covered by the easement; (g) permanently prohibit use of the easement area for cropland, except to harvest an agricultural commodity planted before the easement is perfected; and (h) require permanent maintenance of the wetland conditions, except in the case of natural disaster.

§ 623.8 Easement value.

SCS offers for easements will be based on the fair market value, as determined by the SCS State Conservationist, of the land covered by the easements. Fair market value will be based on post-flood conditions as if reclaimed. Land easement values will be determined by the State Conservationist in consultation with a technical committee. A technical committee shall include representatives of: ASCS, Extension Service, and FWS. Additionally, the State Conservationist may collect information from other sources as he deems necessary. Coordination between States will be provided by the Chief, SCS.

§ 623.9 Easement priority.

The State Conservationist, in consultation with the FWS and with input from a technical committee and other interested Federal agencies, will establish a ranking process to establish the priority of parcels offered into the EWRP. This process will rank the floodway enhancement and environmental benefits per dollar of government expenditure on restoration and easement purchase. The factors for determining the priority for selection will consider the following:

- (a) Protection and enhancement of habitat for migratory birds and wildlife, including the contribution the restoration may make to the recovery of threatened and endangered species,
- (b) Floodway expansion,
- (c) Proximity to other protected wetlands,
- (d) Level of hydrology restored,
- (e) Wetland function or values,
- (f) Likelihood of successful restoration of wetland values,

(g) Cost of restoration and easement purchase, and

(h) Other factors as determined appropriate by SCS.

§ 623.10 Application to participate.

(a) A person seeking to enroll land in the EWRP must apply for enrollment on an approved SCS form. The application to participate must be filed with the local SCS field office during an announced period for such submissions.

(b) A person submitting an application to participate shall not be obligated to accept an SCS offer to purchase an easement if one is forthcoming.

(c) An application to participate must be signed by all owners of the property or their duly authorized representative(s).

§ 623.11 Obligations of the landowner.

(a) All owners of land who accept an EWRP offer from SCS shall:

- (1) Comply with the terms of the easement.
- (2) Comply with all terms and conditions of the WRPO for the full life of the easement.
- (3) Ensure that the easement granted to SCS is superior to the interest of all other parties who may have an interest in the easement area, except as authorized by SCS. Such action shall include, but not be limited to, obtaining a written statement of consent to such a superior easement from those holding a security interest or any other encumbrance or the land covered by the easement. Additionally, the landowner shall perfect the easement with superior SCS interest in accordance with State law.

(4) Agree to the permanent retirement of the aggregate total of crop acreage bases, and allotment and mandatory quota on the farm or ranch in order to maintain the base allotment on quota acres at or below the number of acres of cropland after the easement has been perfected.

(5) Not allow grazing or commercial use of the land covered by an easement except as provided for in the WRPO, or harvesting of any agricultural commodity produced on the land subject to the EWRP easement.

(6) Comply with Federal or State noxious weed laws in the manner specified in the WRPO.

(7) Control other identified weed and pest species, in the manner specified in the WRPO.

(8) Be responsible for repairs, improvements, and inspections of the WRPO practices as necessary to maintain existing public drainage systems when the land is restored to the

condition required by the terms of the easement, the contract, and the easement.

(9) Be permitted to control public access, in accordance with the WRPO, on the land enrolled in the program.

(10) Implement any additional provisions that are required by SCS in consultation with FWS in the contract, WRPO, or easement; in order to, as determined by SCS, facilitate the administration of the EWRP.

(11) Not alter the vegetation, except to harvest already planted crops or forage, or hydrology on such acres subsequent to perfection of the easement by the landowner, except as provided for in the easement or WRPO.

(12) Be responsible for the long-term management of the easement in accordance with the terms of the easement and related agreements including the WRPO. Owners may enter into agreements with Federal or State agencies or private organizations to assist in the management of the easement area. No SCS funds will be provided to these agencies or organizations for management expenses. Responsibility for management of the easement shall in all cases remain with the owner and the owner's successors of any kind regardless of whether arrangements are made for third-party management.

(13) Agree that each person with an interest in the land covered by an easement under EWRP shall be jointly and severally responsible for compliance with the WRPO, the easement, the provisions of this part, and for any refunds or payment adjustment which may be required for violation of any terms or conditions of the WRPO, the easement, or provisions of this part.

(14) Refrain from taking any action on the easement area unless specifically authorized in the reserve interest easement or the WRPO; and

(15) Secure any necessary local, State and Federal permits prior to commencing restoration of the designated area.

(b) In addition, program participants and their successors of any kind may:

(1) Not alter wildlife habitat and other natural land features of the enrolled land unless authorized by the WRPO.

(2) Apply pesticides or fertilizers on enrolled land or mow such land, only as provided for in the WRPO.

(3) Not engage in any activities on other land on the farm on which the easement exists that will, as determined by SCS; (i) alter the flow of surface or subsurface water into or out of the easement area except as specified in the

WRPO; or (ii) be otherwise inconsistent with the terms of the easement.

(c) The activities of any person on the property shall be considered for purposes of this section to be the actions of the program participant. However, if the SCS determines that the activities of the person were beyond the control of the program participants, SCS may adjust the remedies provided for in this part to the extent determined consistent with program goals. Obligations created by the easement shall run with the land and shall bind all persons having an interest in the property at any time whether such interest is created by death of the owner, sale, assignment, or otherwise.

§ 623.12 Payments to landowners by SCS.

(a) SCS will share the cost with landowners of rehabilitating the enrolled land in the EWRP as provided in the WRPO. The amount of the cost-share assistance shall be specified in the contract. Eligible costs for such cost-share assistance by SCS shall only include those costs which SCS determines are appropriate and shall be subject to the following restrictions:

(1) The State Conservationist will establish cost-share rates of between 75 to 100 percent of the historical cost of establishing or installing the practices specified in the WRPO; or pay the average cost of establishing the practices specified in the WRPO, based on the historical cost of establishing the practices in the State;

(2) Cost-share payments may be made only upon a determination that an approved practice or an identifiable unit of the practice has been completed in compliance with SCS approved standards and specifications; and

(3) Cost-share payments may not be made for the maintenance of the practice except as specifically permitted in writing by the State Conservationist.

(b) Notwithstanding paragraph (a)(3) of this section, cost share payments may be authorized for the replacement or restoration of practices for which cost share assistance has been previously allowed under the EWRP, but only if:

(1) Replacement or restoration of the practice is needed to meet the objectives for which the easement was established; and

(2) The failure of the original practice was due to reasons beyond the control of the participant.

(c)(1) SCS shall pay the amount agreed upon by SCS and the landowner for the purchase of the easement in a lump-sum amount after the easement is perfected in compliance with State law, except in the case of paragraph (c)(2) of this section.

(2) For all easements, SCS shall pay no more than 75 percent of the total easement price pending completion of the practices to restore the wetlands as provided under the WRPO. The remaining amount shall be paid when SCS determines the restoration is complete.

(d) After an easement is perfected, SCS will reimburse landowners for fair and reasonable expenses incurred for title searches, filing expenses, and related costs, as determined by SCS.

§ 623.13 Wetlands reserve plan of operations.

(a) After SCS has accepted the applicant for enrollment in the program, a WRPO will be developed by the landowner and SCS, in consultation with FWS.

(b) The WRPO shall:

(1) Include an aerial photo displaying the land offered for enrollment;

(2) Specify the manner in which the eligible land shall be restored, operated, and maintained to accomplish the goal of the program, including, but not limited to: (i) measures to control noxious weeds and insect pests in order to comply with applicable Federal, or State noxious weed and pest control laws; and (ii) measures to control other specified species of weeds, insects or pests;

(3) Specify compatible land uses for personal enjoyment for which the landowner may be compensated. These compatible land uses shall be reserved to the landowner in the easement. Such uses may include, among others: (1) recreational use, hunting and fishing; (ii) manage timber production including harvesting; and (iii) managed haying or grazing consistent with the goals of the program;

(4) Set out cost estimates of the practices required by the WRPO, the offer for the easement, and other reimbursement costs;

(5) Identify access routes to be maintained for wetland restoration activities and future management and easement monitoring in connection with the land to be enrolled;

(6) Make provisions deemed necessary for maintaining public drainage systems if present on lands subject to the WRPO;

(7) Contain scheduled implementation dates for restoration practices;

(8) Contain other provisions or limitations as SCS, in consultation with the FWS, determines to be necessary.

(c) SCS in consultation with FWS will collect from State or Federal agencies whatever additional information is deemed necessary for the development of the WRPO with the landowner.

(d) The WRPO must be signed by SCS, FWS, Conservation District (CD), and the landowner(s). However, if agreement between SCS and FWS, or CD at the local level is not reached within 20 calendar days, the WRPO shall be developed by the State Conservationist of SCS in consultation with FWS or CD.

(e) The WRPO may require that a temporary vegetative or water cover be established on the property if immediate establishment of a permanent cover is not practicable or otherwise desirable.

(f) The terms of an approved WRPO shall not relieve the program participant of any obligation or term imposed or provided for in the contract, the easement, or this part.

(g) WRPO, where appropriate, will provide for the development of a tree planting plan with the assistance of the FS or State forestry agency.

(h) The WRPO, where appropriate, will provide for the development by SCS of detailed plans for weed control, structural measures and their operation, vegetation establishment and management, and other measures as needed.

(i) Revisions of the WRPO to enhance or protect the value for which the easement was established may be made at any time at the request of either SCS, FWS, the owner and upon the concurrence of all three parties.

§ 623.14 Easement modifications.

After the easement has been perfected, no change will be made in the easement without a written request by the participant and the written consent of the Chief. Approval may be granted to achieve the goals of EWRP or facilitate the practical administration and management of the easement area or the program and the approval will not adversely affect the functions and values for which the easement was established. A modified easement shall be perfected in accordance with State law and SCS superior interest shall be reserved by the landowner in accordance with §§ 623.7 and 623.11(a)(3).

§ 623.15 Transfer of land.

(a) If a new owner purchases or obtains the right and interest in, or right to occupancy of, the land subject to a EWRP easement, such new owner shall be subject to the terms and conditions of the easement. The participant who is the signatory to the easement shall be entitled to receive all remaining payments, if any, for the purchase of the easement. Eligible cost-share payments shall be made to the participants with respect to costs actually incurred.

(b) Upon the transfer of the property subject to an EWRP easement, any remaining cost-share payments shall be paid to the new owner or purchaser only if the new owner or purchaser becomes a party to the WRPO within 60 days of the perfection of the deed transferring title to the new owner. Such payments shall be paid in the manner agreed to by the participant and the buyer. The new owner or purchaser shall be responsible for assuring completion of all measures and practices required by the contract and the WRPO.

(c) Any transfer of the property prior to the perfection of the easement shall void any SCS offer or WRPO unless the new owner agrees to accept the offer within 60 days of the perfection of the deed transferring the land to the new owner.

§ 623.16 Monitoring and enforcement of easement terms and conditions.

(a) SCS or its representative shall be permitted to inspect each easement area at any and all times determined necessary by SCS to ensure that:

(1) Structural and vegetative restoration work are properly maintained;

(2) The wetlands and adjacent upland habitat of the easement area is being managed as required in the WRPO and the terms of the easement; and

(3) Uses of the area are consistent with the terms and conditions of the easement and the WRPO.

(b) If an owner or other interested party is unwilling to voluntarily correct, in a timely manner, deficiencies in compliance with the terms of the WRPO, the EWRP easement, or any related agreements, SCS may at the expense of any person who is subject to the EWRP easement correct such deficiency. Such SCS action shall be in addition to other remedies available to SCS.

(c) Monitoring and enforcement responsibilities may be delegated by SCS at any time to other Federal or State agencies. Landowners may transfer management responsibilities only to Federal, State, or local agencies or private organizations that have been approved by SCS in advance as having the appropriate authority, expertise, and resources necessary to carry out such delegated responsibilities.

§ 623.17 Violations and remedies.

(a) If a violation of the terms and conditions of the contract, the WRPO, or the recorded EWRP easement occurs, the easement shall remain in force and SCS may:

(1) Require the owner to fully restore the easement area to fulfill the terms

and conditions of the easement and WRPO; and

(2) Require the owner, who received payments from SCS for any purpose under this part, to refund all or part of such payments received together with interest, as determined appropriate by SCS.

(b) If an owner fails to carry out the terms and conditions of an easement, appropriate legal action may be initiated. The owner of the property shall reimburse SCS for all costs incurred including, but not limited to, legal fees.

§ 623.18 Access to land.

In order to determine eligibility and compliance with respect to this part, representatives of the Department, or designee thereof, shall have the right of access to:

(a) Land which is the subject of an application made in accordance with this part,

(b) Land which is subject to an easement made in accordance with this part, and

(c) Records of the participant showing status of all ownership interest in lands subject to this part.

§ 623.19 Assignments.

Any participant entitled to any cash payment under this program may assign the right to receive such cash payments, in whole or in part.

§ 623.20 Appeals.

(a) A participant in the EWRP may obtain a review of any administrative determination concerning land eligibility, development of a WRPO, or any adverse determination under this part in accordance with the administrative appeal regulations provided in part 614 of this title.

(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 purposes of judicial review, no decision shall be a final agency action except a decision of the Chief of SCS under these procedures. No adverse action will be taken against a participant under this part until the administrative appeals have been exhausted.

§ 623.21 Scheme and device.

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

appropriate by SCS, and the contract with the landowner may be terminated. In such a case, SCS may also continue to hold the easement interest acquired under this part.

(b) A scheme or device includes, but is not limited to, coercion, fraud, misrepresentation, depriving any other person of payments for cost-share practices or easements for the purpose of obtaining a payment to which a person would otherwise not be entitled.

(c) An owner of land subject to this part who succeeds to the responsibilities under this part shall report in writing to SCS any interest of any kind in the land subject to this part that is retained by a previous participant. Such interest includes a present, future or conditional interest, reversionary interest or any option, future or present, with respect to such land and any interest of any lender in such land where the lender has, will, or can obtain, a right of occupancy to such land or an interest in the equity in such land other than an interest in the appreciation in the value of such land occurring after the loan was made. A failure of full disclosure will be considered a scheme or device under this section.

§ 623.22 Filing of false claims.

If it is determined by SCS that any participant has knowingly supplied false information or has knowingly filed a false claim, such participant shall be ineligible for any payment under this part. False information or false claims include claims for payment for practices which do not meet the specifications of the applicable WRPO. Any amounts paid under these circumstances shall be refunded, together with interest as determined by SCS, and any amounts otherwise due such participant shall be withheld.

Signed this 19th day of November, 1993, in Washington, DC.

James R. Lyons,

Assistant Secretary for Natural Resources and Environment.

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Agricultural Marketing Service

7 CFR Part 1160

[DA-92-29-B]

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Fluid Milk Promotion Program; Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.