

May 17, 2023

Expedited Requests for Easement Boundary Line Amendments to Incorporate IRS Safe Harbor Provisions into Deed Terms

USDA's Natural Resources Conservation Service (NRCS) is announcing a streamlined opportunity for landowners and entities who hold agricultural land easements to request amendment to existing deed terms related to boundary line adjustments, when consistent with recent Internal Revenue Service (IRS) guidance and NRCS' Easement Administration Action (EAA) authorities.

This opportunity is applicable to easements enrolled in the following programs:

- Farm and Ranch Lands Protection Program (FRPP)
- Farm Protection Program (FPP)
- Agricultural Conservation Easement Program – Agricultural Land Easements (ACEP-ALE)
- Regional Conservation Partnership Program – Agricultural Land Easements (RCPP-ALE)

Under requirements of the Consolidated Appropriations Act of 2023, Pub. L. 117-328 (Dec. 2022), the IRS recently published Notice 2023-30, which provides safe harbor language for extinguishment and termination provisions as well as for boundary line adjustments for existing conservation easements. The safe harbor language may prevent certain landowners from accruing tax liabilities when specific real estate or management activities occur, and the landowner has accrued Federal tax benefits as part of the easement enrollment transaction. The notice set a deadline of July 24, 2023, for landowners and entities to execute and record any amendments to existing easement deeds.

Per IRS guidance, the termination and extinguishment safe harbor is not relevant to NRCS funded easements; however, NRCS has determined that NRCS may allow easement amendments to replace boundary line adjustment language when requested by a landowner and recommended by the entity pursuant to NRCS' EAA authorities using a streamlined process.

In an effort to streamline the approval process, avoid unnecessary delays, and due to the limited nature of these amendments which does not implicate state workload or management, a decision has been made to allow entities to submit requests directly to the NRCS Easement Programs Division (EPD) Director. NRCS will also allow entities to self-certify a number of items for this action that would generally require additional documentation to be provided by the landowner and entity for NRCS approval.

To use NRCS' expedited process, landowners and entities must agree to accept a safe harbor clause that includes an additional term not contained in the IRS template language. This additional term is necessary to address statutory provisions which require NRCS to approve deed amendments when the easement includes rights held by the United States.

NRCS boundary line adjustment safe harbor clause for the streamlined process is as follows:

Pursuant to IRS Notice 2023-30, Grantor and Grantee agree that boundary line adjustments to the real property subject to the Easement may be made only pursuant to a judicial proceeding to resolve a bona fide dispute regarding a boundary line's location. Any such boundary line adjustment must also be approved by the United States as an amendment to the Easement in accordance with Section ___.

To avail themselves of the streamlined process, landowners and entities are limited to using the clause verbatim and replacing any and all other boundary line adjustment language found in the existing deed.

A checklist of all requirements and necessary documentation for a complete request package is available [HERE](#).

Requests to the EPD Director for streamlined review and approval must be emailed to the NRCS Program Agreements inbox (NRCS.ProgramAgreements@usda.gov) by 5:00pm on June 30, 2023, and must include the subject line header "**Boundary line expedited modification request.**"

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