

## Commodity Credit Corporation, USDA

## § 1467.2

the land under an EQIP contract, participants are highly encouraged to request an O&M compatibility determination from NRCS prior to entering into any credit agreements.

### PART 1467—WETLANDS RESERVE PROGRAM

- Sec.
- 1467.1 Applicability.
  - 1467.2 Administration.
  - 1467.3 Definitions.
  - 1467.4 Program requirements.
  - 1467.5 Application procedures.
  - 1467.6 Establishing priority for enrollment of properties in WRP.
  - 1467.7 Enrollment process.
  - 1467.8 Compensation for easements and 30-year contracts.
  - 1467.9 Wetlands Reserve Enhancement Program.
  - 1467.10 Cost-share payments.
  - 1467.11 Easement participation requirements.
  - 1467.12 The WRPO development.
  - 1467.13 Modifications.
  - 1467.14 Transfer of land.
  - 1467.15 Violations and remedies.
  - 1467.16 Payments not subject to claims.
  - 1467.17 Assignments.
  - 1467.18 Appeals.
  - 1467.19 Scheme and device.
  - 1467.20 Market-based conservation initiatives.

AUTHORITY: 16 U.S.C. 3837 *et seq.*

SOURCE: 74 FR 2328, Jan. 15, 2009, unless otherwise noted.

#### § 1467.1 Applicability.

(a) The regulations in this part set forth the policies, procedures, and requirements for the Wetlands Reserve Program (WRP) as administered by the Natural Resources Conservation Service (NRCS) for program implementation.

(b) The Chief, NRCS, may implement WRP in any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, and the Commonwealth of the Northern Mariana Islands.

#### § 1467.2 Administration.

(a) The regulations in this part will be administered under the general supervision and direction of the Chief.

(b) The Chief is authorized to modify or waive a provision of this part if the

Chief deems the application of that provision to a particular limited situation to be inappropriate and inconsistent with the environmental and cost-efficiency goals of the WRP. This authority cannot be further delegated. The Chief may not modify or waive any provision of this part that is required by applicable law.

(c) The State Conservationist will seek advice from the State Technical Committee on the development of the geographic area rate caps of compensation for an easement, a priority ranking process, and related policy matters.

(d) NRCS may delegate at any time easement management, monitoring, and enforcement responsibilities to other Federal or State agencies that have the appropriate authority, expertise, and technical and financial resources, as determined by NRCS to carry out such delegated responsibilities.

(e) NRCS may enter into cooperative agreements with Federal or State agencies, conservation districts, and private conservation organizations to assist NRCS with program implementation, including the provision of technical assistance.

(f) NRCS shall consult with the U.S. Department of the Interior's Fish and Wildlife Service (FWS) at the local level in determinations of land eligibility and as appropriate throughout the program implementation process. NRCS may consult Federal or State agencies, conservation districts, or other organizations in program administration. No determination by these agencies or organizations shall compel NRCS to take any action which NRCS determines will not serve the purposes of the program established by this part.

(g) The Chief may allocate funds for purposes related to: Encouraging enrollment by historically underserved producers as authorized by 16 U.S.C. 3844; special pilot programs for wetland management and monitoring; acquisition of wetland easements with emergency funding; cooperative agreements with other Federal or State agencies for program implementation; coordination of easement enrollment across State boundaries; coordination of the development of conservation plans; or,

### § 1467.3

### 7 CFR Ch. XIV (1-1-10 Edition)

for other goals of the WRP found in this part. NRCS may designate areas as conservation priority areas where environmental concerns are especially pronounced and to assist landowners in meeting nonpoint source pollution requirements and other conservation needs.

#### § 1467.3 Definitions.

The following definitions are applicable to this part:

*30-year Contract* means a contract that is for a duration of 30 years and is limited to acreage owned by Indian Tribes.

*Acreage Owned by Indian Tribes* means lands held in private ownership by an Indian Tribe or individual Tribal member and lands held in trust by a native corporation, Tribe or the Bureau of Indian Affairs (BIA).

*Activity* means an action other than a conservation practice that is included in the WRPO or restoration cost-share agreement, as applicable, and that has the effect of alleviating problems or improving treatment of the resources, including ensuring proper management or maintenance of the wetland functions and values restored, protected, or enhanced through an easement, contract, or restoration cost-share agreement.

*Agreement* means the document that specifies the obligations and rights of NRCS and any person or legal entity who is participating in the program.

*Agricultural commodity* means any agricultural commodity planted and produced in a State by annual tilling of the soil, including tilling by one-trip planters; or sugarcane planted and produced in a State.

*Beginning Farmer or Rancher* means an individual or legal entity who has not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 consecutive years. This requirement applies to all members of a legal entity, and who will materially and substantially participate in the operation of the farm or ranch. In the case of an individual, individually or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch, consistent with the

practices in the county or State where the farm is located. In the case of a legal entity or joint operation, material and substantial participation requires that each of the members provide some amount of the management, or labor and management necessary for day-to-day activities, such that if each of the members did not provide these inputs, operation of the farm or ranch would be seriously impaired.

*Chief* means the Chief of the Natural Resources Conservation Service or the person delegated authority to act for the Chief.

*Commenced conversion wetland* means a wetland or converted wetland for which the Farm Service Agency has determined that the wetland manipulation was contracted for, started, or for which financial obligation was incurred before December 23, 1985.

*Conservation district* means any district or unit of State or local government formed under State or territorial law for the express purpose of developing and carrying out a local soil and water conservation program. Such district or unit of government may be referred to as a "conservation district," "soil conservation district," "soil and water conservation district," "resource conservation district," "natural resource district," "land conservation committee," or a similar name.

*Conservation practice* means a specified treatment, such as a vegetative, structural, or land management practice, that is planned and applied according to NRCS standards and specifications.

*Conservation Reserve Program (CRP)* means the program administered by the Commodity Credit Corporation pursuant to 16 U.S.C. 3831-3836.

*Contract* means the legal document that specifies the obligations and rights of NRCS and any person or legal entity accepted to participate in the program. A WRP contract is an agreement for the transfer of assistance from NRCS to the participant for conducting the prescribed program implementation actions.

*Converted wetland* means a 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) for the purpose, or to have the effect of, making the production of an agricultural commodity possible if such production would not have been possible but for such action; and before such action such land was wetland; and such land was neither highly erodible land nor highly erodible cropland.

*Cost-share payment* means the payment made by NRCS to a participant to carry out conservation practices and to achieve the protection of wetland functions and values, including necessary activities, as set forth in the Wetlands Reserve Plan of Operations (WRPO).

*Easement* means a reserved interest easement, which is an interest in land defined and delineated in a deed whereby the landowner conveys all rights, title, and interests in a property to the grantee, but the landowner retains those rights, title, and interests in the property which are specifically reserved to the landowner in the easement deed.

*Easement area* means the land encumbered by an easement.

*Easement payment* means the consideration paid to a landowner for an easement conveyed to the United States under the WRP, or the consideration paid to an Indian Tribe or tribal members for entering into 30-year contracts.

*Easement Restoration Agreement* means the agreement used to implement the Wetland Restoration Plan of Operations for projects enrolled through the permanent easement, 30-year easement, or 30-year contract enrollment options.

*Farm Service Agency (FSA)* is an agency of the United States Department of Agriculture.

*Fish and Wildlife Service (FWS)* is an agency of the United States Department of the Interior.

*Historically Underserved Producer* means a beginning, limited resource, or socially disadvantaged farmer or rancher.

*Indian Tribe* means any Indian tribe, band, nation, or other organized group or community, including any Alaska

Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688, 43 U.S.C. 1601 *et seq.*), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

*Landowner* means a person or legal entity having legal ownership of eligible land. Landowner may include all forms of collective ownership including joint tenants, tenants in common, and life tenants. The term landowner includes trust holders of acreage owned by Indian Tribes.

*Lands substantially altered by flooding* means areas where flooding has created wetland hydrologic conditions which, with a high degree of certainty, will develop wetland soil and vegetation characteristics over time.

*Legal entity* means an entity that is created under Federal or State law and that owns land or an agricultural commodity; or produces an agricultural commodity.

*Limited Resource Farmer or Rancher* means a person with direct or indirect gross farm sales not more than \$100,000 in each of the previous two years (to be increased to adjust for inflation using Prices Paid by Farmer Index as compiled by National Agricultural Statistical Service (NASS)), and who has a total household income at or below the national poverty level for a family of four, or less than 50 percent of county median household income in each of the previous two years (to be determined annually using U.S. Department of Commerce data).

*Maintenance* means work performed to keep the enrolled area functioning for program purposes for the duration of the enrollment period. Maintenance includes actions and work to manage, prevent deterioration, repair damage, or replace conservation practices on enrolled lands, as approved by NRCS.

*Natural Resources Conservation Service (NRCS)* is an agency of the United States Department of Agriculture, including when NRCS carries out program implementation using the funds, facilities, or authorities of the Commodity Credit Corporation (CCC).

*Option agreement to purchase* means the legal document that is the equivalent of a real estate option contract for purchasing land. The landowner signs the option agreement to purchase, which is authorization for NRCS to proceed with the easement acquisition process, and to incur costs for surveys, where applicable, title clearance and closing procedures on the easement. The option becomes a contract for sale and obligates CCC funding after it is executed by NRCS and transmitted to the landowner.

*Participant* means a person or legal entity who has been accepted into the program and who is receiving payment or who is responsible for implementing the terms and conditions of an option to purchase agreement, 30-year contract, or restoration cost-share agreement, and the associated WRPO.

*Permanent easement* means an easement that lasts in perpetuity.

*Person* means a natural person, a legal entity, or an Indian Tribe, but does not include governments or their political subdivisions.

*Prairie Pothole Region* means the counties designated as part of the Prairie Pothole National Priority Area for the Conservation Reserve Program (CRP) as of June 18, 2008.

*Private land* means land that is not owned by a governmental entity, and includes acreage owned by Indian Tribes, as defined in this Part.

*Restoration Cost-Share Agreement* means the legal document that describes the rights and obligations of participants who have been accepted to participate in WRP restoration cost-share enrollment option that is used to implement conservation practices and activities to protect, restore, or enhance wetlands values and functions to achieve the purposes of the program. The restoration cost-share agreement is an agreement between NRCS and the participant to share in the costs of implementing the Wetland Restoration Plan of Operations.

*Riparian areas* means areas of land that occur along streams, channels, rivers, and other water bodies. These areas are normally distinctly different from the surrounding lands because of unique soil and vegetation characteristics, may be identified by distinctive

vegetative communities that are reflective of soil conditions normally wetter than adjacent soils, and generally provide a corridor for the movement of wildlife.

*Socially disadvantaged farmer or rancher* means a farmer or rancher who has been subjected to racial or ethnic prejudices because of their identity as a member of a group without regard to their individual qualities.

*State Technical Committee* means a committee established by the Secretary of the United States Department of Agriculture (USDA) in a State pursuant to 16 U.S.C. 3861.

*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) Supports a prevalence of such vegetation under normal circumstances.

*Wetland functions and values* means the hydrological and biological characteristics of wetlands and the socioeconomic value placed upon these characteristics, including:

(1) Habitat for migratory birds and other wildlife, in particular at risk species;

(2) Protection and improvement of water quality;

(3) Attenuation of water flows due to flood;

(4) The recharge of ground water;

(5) Protection and enhancement of open space and aesthetic quality;

(6) Protection of flora and fauna which contributes to the Nation's natural heritage; and

(7) Contribution to educational and scientific scholarship.

*Wetland restoration* means the rehabilitation of degraded or lost habitat in a manner such that:

(1) The original vegetation community and hydrology are, to the extent practical, re-established; or

(2) A community different from what likely existed prior to degradation of the site is established. The hydrology and native self-sustaining vegetation