

(iv) Ensuring the title to the easement is superior to the rights of all others, except for exceptions to the title that are deemed acceptable by NRCS.

(3) The terms of the easement identified in paragraph (d)(2)(i) of this section includes the landowner's agreement to the implementation of a WRPO identified in paragraph (d)(2)(ii) of this section. In particular, the easement deed identifies that NRCS has the right to enter the easement area to undertake, on a cost-share basis with the landowner or other entity, any activities to restore, protect, manage, maintain, enhance, and monitor the wetland and other natural values of the easement area.

(4) At the time NRCS enters into an agreement to purchase, NRCS agrees, subject to paragraph (e) of this section, to acquire and provide for restoration of the land enrolled into the program.

(e) *Withdrawal of offer of enrollment* Prior to execution of the easement deed by the United States and the landowner, NRCS may withdraw the land from enrollment at any time due to lack of availability of funds, inability to clear title, sale of the land, risk of hazardous substance contamination, or other reasons. The offer of enrollment to the landowner shall be void if not executed by the landowner within the time specified.

[74 FR 2328, Jan. 15, 2009, as amended at 74 FR 26284, June 2, 2009]

#### § 1467.8 Compensation for easements and 30-year contracts.

(a) *Determination of easement payment rates.* (1) Compensation for an easement under this part shall be made in cash in such amount as is agreed to and specified in the option agreement to purchase or 30-year contract.

(2) Payments for non-permanent easements or 30-year contracts shall be not more than 75 percent of that which would have been paid for a permanent easement as determined by the methods listed in paragraph (a)(3) of this section.

(3) NRCS shall pay as compensation the lowest of the following:

(i) The fair market value of the land using the Uniform Standards for Professional Appraisal Practices, or based

on an area-wide market analysis or survey;

(ii) The geographic area rate cap determined under paragraph (a)(4) of this section; or

(iii) The landowner offer.

(4) The State Conservationist, in consultation with the State Technical Committee, shall establish one or more geographic area rate caps within a state. The State Conservationist shall submit geographic area rate caps and supporting documentation to the Chief for approval. Each State Conservationist will determine the geographic area rate cap using the best information which is readily available in that State. Such information may include: Soil types, type(s) of crops capable of being grown, production history, location, real estate market values, and tax rates and assessments.

(b) *Acceptance of offered easement compensation.* (1) NRCS will not acquire any easement unless the landowner accepts the amount of the easement payment 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 participating in the program, a landowner waives any claim to additional compensation based on fair market value.

(2)(i) For easements or 30-year contracts valued at \$500,000 or less, NRCS will provide compensation in up to 30 annual payments, as requested by the participant, as specified in the option agreement to purchase or 30-year contract between NRCS and the participant.

(ii) For easements or 30-year contracts valued at more than \$500,000, the Secretary may provide compensation in at least 5, but not more than 30 annual payments. NRCS may provide compensation in a single payment for such easements or 30-year contracts when, as determined by the Chief, it would further the purposes of the program. The applicable payment schedule will be specified in the option agreement to purchase, warranty easement deed, or 30-year contract between NRCS and the participant.