

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 the NRCS under these procedures.

(c) Any appraisals, market analysis, or supporting documentation that may be used by the NRCS in determining property value are considered confidential information, and shall only be disclosed as determined at the sole discretion of the NRCS in accordance with applicable law.

(d) Enforcement actions undertaken by the NRCS in furtherance of its federally held property rights are under the jurisdiction of the federal courts and not subject to review under administrative appeal regulations.

#### § 1467.19 Scheme and device.

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

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

(c) A participant who succeeds to the responsibilities under this part shall report in writing to the NRCS any interest of any kind in enrolled land that is held by a predecessor or any lender. A failure of full disclosure will be considered a scheme or device under this section.

#### § 1467.20 Market-based conservation initiatives.

(a) *Acceptance and use of contributions.* Section 1241(e) of the Food Security Act of 1985, as amended, (16 U.S.C. 3841(e)), allows the Chief to accept and use contributions of non-Federal funds to support the purposes of the program. These funds shall be available without

further appropriation and until expended, to carry out the program.

(b) *Ecosystem Services Credits for Conservation Improvements.* (1) USDA recognizes that environmental benefits will be achieved by implementing conservation practices and activities funded through WRP, and that environmental credits may be gained as a result of implementing activities compatible with the purposes of a WRP easement, 30-year contract, or restoration cost-share agreement. NRCS asserts no direct or indirect interest in these credits. However, NRCS retains the authority to ensure that the requirements of the WRPO, contract, and easement deed are met. Where activities required under an environmental credit agreement may affect land covered under a WRP easement, 30-year contract, or restoration cost-share agreement, participants are highly encouraged to request a compatibility assessment from NRCS prior to entering into such agreements.

(2) Section 1222(f)(2) of the Food Security Act of 1985 as amended, does not allow wetlands restored with Federal funds to be utilized for Food Security Act wetland mitigation purposes.

### PART 1468—AGRICULTURAL CONSERVATION EASEMENT PROGRAM

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AUTHORITY: 15 U.S.C. 714b and 714c; 16 U.S.C. 3865–3865d.

SOURCE: 85 FR 571, Jan. 6, 2020, unless otherwise noted.

## Subpart A—General Provisions

### § 1468.1 Applicability.

(a) The regulations in this part set forth requirements, policies, and procedures for implementation of the Agricultural Conservation Easement Program (ACEP) administered by the Natural Resources Conservation Service (NRCS). ACEP purposes include:

(1) Combining the purposes and coordinating the functions of the Wetlands Reserve Program established under section 1237, the Grassland Reserve Program established under section 1238N, and the Farmland Protection Program established under section 1238I, as such sections were in effect on the day before the date of enactment of the Agricultural Act of 2014;

(2) Restoring, protecting, and enhancing wetlands on eligible land;

(3) Protecting the agricultural use and future viability, and related conservation values, of eligible land by limiting nonagricultural uses of that land that negatively affect the agricultural uses and conservation values; and

(4) Protecting grazing uses and related conservation values by restoring or conserving eligible land.

(b) The NRCS Chief may implement ACEP in any of the 50 States, the District of Columbia, Commonwealth of Puerto Rico, Guam, the Virgin Islands

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of the United States, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(c) Subpart B of this part sets forth additional requirements, policies, and procedures for implementation of the Agricultural Land Easements (ALE) component of ACEP.

(d) Subpart C of this part sets forth additional requirements, policies, and procedures for the Wetland Reserve Easement (WRE) component of ACEP.

(e) Easement lands previously enrolled under the predecessor programs Farm and Ranch Lands Protection Program (7 CFR part 1491), the Grassland Reserve Program (7 CFR part 1415), and the Wetlands Reserve Program (7 CFR part 1467) are considered enrolled in ACEP. Existing easements and agreements remain valid and enforceable, and subject to the legal framework in place at the time of enrollment, except that the long-term stewardship and management of these easements, and any ACEP funding made available for implementation, will be in accordance with this part.

### § 1468.2 Administration.

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

(b) NRCS may seek advice from the State technical committee on considerations relating to implementation and technical aspects of the program, such as identification of lands of statewide importance or special significance, review of State-level geographic area rate caps, development of ranking criteria, wetland restoration objectives, management considerations, including compatible use criteria, or related technical matters.

(c) NRCS may obtain input from Federal or State agencies, conservation districts, or other organizations in program administration. No determination by these agencies or organizations will compel NRCS to take any action which NRCS determines does not serve the purposes of the program established by this part.

(d) Applications may be submitted on a continuous basis or in response to specific program solicitations. NRCS may announce one or more application

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cut-off dates for funding consideration within a given fiscal year.

(e) The Chief may allocate funds for purposes related to: Encouraging enrollment by beginning farmers or ranchers, socially disadvantaged farmers or ranchers, limited resource farmers or ranchers, Indian Tribes, and veteran farmers or ranchers as authorized by 16 U.S.C. 3844; implementing landscape and related initiatives, special pilot programs for easement management and monitoring; agreements with other agencies and organizations to assist with program implementation; coordination of easement enrollment across State boundaries; coordination of the development of easement plans for ACEP-WRE or conservation plans for ACEP-ALE; or for other goals of the ACEP found in this part.

(f) NRCS may delegate at any time its ACEP-WRE monitoring or management responsibilities to conservation organizations that have appropriate authority, expertise and technical and financial resources, as determined by NRCS, to carry out such delegated responsibilities.

(g) NRCS may delegate at any time its ACEP-WRE monitoring, management, or 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.

(h) For ACEP-ALEs, the easement holder is responsible to ensure the easement is monitored on an annual basis and to provide annually to NRCS a monitoring report. For ACEP-WREs, NRCS or its delegate, is responsible to monitor the easement on an annual basis and comply with applicable reporting requirements.

(i) No delegation in the administration of this part to lower organizational levels will preclude the Chief from making any determinations under this part, redelegating to other organizational levels, or from reversing or modifying any determination made under this part.

(j) The Chief may modify or waive nonstatutory, discretionary provisions of this part if the Chief determines the waiver of such discretionary provision

is necessary to further the purposes of ACEP as part of an ACEP-ALE buy-protect-sell transaction or under the ACEP-WRE wetland reserve enhancement partnership option. The waiver must further ACEP purposes and be consistent with the specific ACEP-WRE or ACEP-ALE conservation purposes and objectives. No waiver will result in reducing the quality of wetland functions and values restored under ACEP-WRE, or the protection of agricultural viability under ACEP-ALE.

(k) To assist in ACEP implementation the Chief may also waive the applicability of the adjusted gross income limitation as authorized by section 1001D(b)(3) of the Food Security Act of 1985 for participating landowners if the Chief determines that environmentally sensitive land of special significance would be protected as a result of such waiver.

**§ 1468.3 Definitions.**

The definitions in this section apply to this part, and all documents issued in accordance with this part, unless specified otherwise:

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

*Access* means legal and physical ingress and egress to the entire easement area over adjacent or contiguous lands for the exercise of any of the rights or interests under the easement for the duration of its term for the purposes of the program. Access for easement enrollments must be described in the easement deed.

*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. This land may be also be referred to as "Tribal land."

*Agreement* means the document that specifies the rights, requirements, and responsibilities of NRCS and any persons, legal entities, or eligible entities participating in the program or any document that authorizes the transfer of assistance between NRCS and a third party for provision of authorized goods and services associated with program implementation. Agreements

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may include but are not limited to an agreement to purchase, an ALE-agreement, a buy-protect-sell arrangement, a wetland reserve easement restoration agreement, a cooperative agreement, a grant agreement, a partnership agreement, or an interagency agreement.

*Agreement to purchase* means the legal document that is the equivalent of a real estate purchase and sale contract. The landowner signs the agreement to purchase, which is the authorization for NRCS to proceed with the ACEP-WRE acquisition process.

*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.

*Agricultural land easement* means an easement or other interest in eligible land that is conveyed for the purposes of protecting natural resources and the agricultural nature of the land, and of promoting agricultural viability for future generations, and permits the landowner the right to continue agricultural production and related uses.

*Agricultural land easement plan* means a document developed by the eligible entity that describes the activities which promote the long-term viability of the land to meet the purposes for which the easement was acquired. An agricultural land easement plan includes a description of the farm or ranch management system and the natural resource concerns on the land, describes the conservation measures and practices that may be implemented to address applicable resource concerns for which the easement was enrolled, and incorporates by reference any component plans such as a grasslands management plan, forest management plan, or conservation plan as defined in this part.

*Agricultural uses* means those activities defined by a State's farm or ranch land protection program or where no program exists, by the State agricultural use tax assessment program. However, if NRCS determines that a State definition of agricultural use is so broad that an included use would constitute a violation of Federal law, limit future agricultural viability, degrade soils or the agricultural nature

of the land or the related natural resources, NRCS reserves the right to impose greater deed restrictions on the property to be subject to an agricultural land easement. These deed restrictions would narrow the State definition of agricultural use in order to meet Federal law, or to protect soils, the agricultural nature of the land, or related natural resources.

*ALE-agreement* means the document that outlines the rights, requirements, roles, and responsibilities of NRCS and eligible entities participating in the program under subpart B, including cost-share payment provisions.

*At-risk species* means any plant or animal species listed as threatened or endangered; proposed or candidate for listing under the Endangered Species Act; a species listed as threatened or endangered under State law or Tribal law on Tribal land; State or Tribal land species of conservation concern; or other plant or animal species or community, as determined by the State conservationist, with advice from the State technical committee or Tribal Conservation Advisory Council, that has undergone, or is likely to undergo, population decline and may become imperiled without direct intervention.

*Beginning farmer or rancher* means a person, Indian Tribe, Tribal corporation, or legal entity who:

(1) Has not operated a farm, ranch, or non-industrialized private forest land (NIPF), or who has operated a farm, ranch, or NIPF for not more than 10 consecutive years. This requirement applies to all members of an entity who will materially and substantially participate in the operation of the farm, ranch, or NIPF.

(2) 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, ranch, or NIPF consistent with the practices in the county or State where the farm is located.

(3) In the case of a legal entity or joint operation, all members must materially and substantially participate in the operation of the farm, ranch, or NIPF. Material and substantial participation requires that each of the

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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, ranch, or NIPF would be seriously impaired.

*Buy-Protect-Sell transaction* means a legal arrangement between an eligible entity and NRCS relating to land owned or being purchased by an eligible entity on a transitional basis during which an agricultural land easement will be secured on eligible private or Tribal land, and ownership of the land transferred to a qualified farmer or rancher following conditions specified in this part.

*Certified entity* means an eligible entity that NRCS has determined to meet the certification requirements in § 1468.26 for the purposes of ACEP-ALE.

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

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

*Commodity Credit Corporation (CCC)* is a wholly-owned government corporation within the Department of Agriculture.

*Compatible use* means a use or activity conducted on a wetland reserve easement that NRCS determines, in its sole discretion, is consistent with the long-term protection and enhancement of the wetland and other natural values of the easement area when performed according to amount, method, location, timing, frequency, intensity, and duration limitations prescribed by NRCS.

*Conservation plan* is for ACEP-ALE the document that—

(1) Applies to highly erodible cropland;

(2) Describes the conservation-system applicable to the highly erodible cropland and describes the decisions of the person with respect to location, land use, tillage systems, and conservation treatment measures and schedules and where appropriate, may include conver-

sion of highly erodible cropland to less intensive uses; and

(3) Is developed in accordance with 7 CFR part 12.

*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 CCC as required by 16 U.S.C. 3831–3836.

*Converted wetland* means a wetland that has been drained, dredged, filled, leveled, or otherwise manipulated (including the removal of woody vegetation or any activity that results in impairing or reducing the flow, circulation, or reach of water) for the purpose of, or to have the effect of, making possible the production of an agricultural commodity if such production would not have been possible but for such action, and before such action such land was wetland, farmed wetland, or farmed-wetland pasture and was neither highly erodible land nor highly erodible cropland.

*Cost-share payment* means the payment made by NRCS to an eligible entity for the purchase of an ACEP-ALE easement as set forth in subpart B of this part.

*Dedicated fund* means an account held by a certified nongovernmental organization which is sufficiently capitalized for the purpose of covering expenses associated with the management, monitoring, and enforcement of agricultural land easements and where such account cannot be used for other purposes.

*Easement administration action* means an easement subordination, easement modification, easement exchange, or easement termination.

*Easement area* means the portion of a parcel that is encumbered by an ACEP easement.

*Easement exchange* means a real estate transaction where NRCS, on behalf of the United States and in its sole discretion, relinquishes all or a portion of its rights or interests in an easement which are replaced by similar rights or interests in an easement that

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have equivalent or greater conservation value, acreage, and economic value to the United States on land that is not adjacent to the original easement area. NRCS is not required to exchange any of its rights or interests in an easement, and easement exchanges are discretionary, voluntary, real estate transactions between the United States, landowner, and other parties with an interest in the easement.

*Easement modification* means a real estate transaction where NRCS, on behalf of the United States and in its sole discretion, agrees to adjust the boundaries or terms of an easement that will result in equivalent or greater conservation value, acreage, and economic value to the United States, and the modification only involves lands within or physically adjacent to the original easement area. NRCS is not required to modify any of its rights or interests in an easement, and easement modifications are discretionary, voluntary, real estate transactions between the United States, landowner, and other parties with an interest in the easement that are subject to the requirements of this part.

*Easement payment* means the consideration paid to a participant or their assignee for an easement conveyed to the United States under the ACEP-WRE, or the consideration paid to an Indian Tribe or Tribal members for entering into 30-year contracts under ACEP-WRE.

*Easement restoration agreement* means the agreement or contract NRCS enters into with the landowner or a third party to implement the WRPO on a wetland reserve easement or 30-year contract.

*Easement subordination* means a real estate transaction where NRCS, on behalf of the United States and in its sole discretion, agrees to subordinate all or a portion of its rights or interests in an easement. NRCS is not required to subordinate any of its rights or interests in an easement, and easement subordinations are discretionary, voluntary, real estate transactions between the United States, landowner, and other parties with an interest in the easement that are subject to the requirements of this part. As determined by NRCS, the subordination must be in

the public interest or further the practical administration of the program, minimally affect the easement acreage, and increase or have limited negative effects on the conservation values of the easement area.

*Easement termination* means a real estate transaction where NRCS, on behalf of the United States and in its sole discretion, agrees to terminate all or a portion of its rights or interests in an easement. The termination must address a compelling public need for which there is no practicable alternative even with avoidance and minimization of adverse impacts and must facilitate the practical administration of the program. The United States must be provided full compensation for such termination and any costs and damages related to the termination. NRCS is not required to terminate any of its rights or interests in an easement, and easement terminations are discretionary, voluntary, real estate transactions between the United States, landowner, and other parties that are subject to the requirements of this part. Unless and until the parties enter into a binding termination agreement, any party may withdraw its approval of a termination proposal at any time during the termination process.

*Eligible activity* means an action other than a conservation practice that has the effect of alleviating problems or improving the condition of the resources, such as ensuring proper management or maintenance of the wetland functions and values restored, protected, or enhanced through an ACEP-WRE easement or 30-year contract as identified in the WRPO.

*Eligible entity* means an Indian Tribe, State government, local government, or a nongovernmental organization that has a farmland or grassland protection program that purchases agricultural land easements for the purposes of protecting:

(1) The agricultural use and future viability, and related conservation values, of eligible land by limiting non-agricultural uses of that land that negatively affect the agricultural uses and conservation values; or

(2) Grazing uses and related conservation values by restoring or conserving eligible land.

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*Eligible land* means private land or acreage owned by Indian Tribes that NRCS has determined to meet the requirements of §1468.20 or §1468.30 of this part.

*Fair market value* means the value of an agricultural land easement as determined using the Uniform Standards of Professional Appraisal Practice, an areawide market analysis or survey, or another industry-approved method approved by the Chief, as established in subpart B or, for a wetland reserve easement, the value of the land as determined using the Uniform Standards of Professional Appraisal Practices or areawide market analysis or survey, as established in subpart C.

*Farm and ranch land of local importance* means farm or ranch land used to produce food, feed, fiber, forage, biofuels, and oilseed crops that are locally important but not identified as having national or statewide importance. Criteria for defining and delineating this land are to be determined by the appropriate local agency or agencies. Farmlands of local importance may include tracts of land that have been designated for agriculture by local ordinance.

*Farm and ranch land of statewide importance* means, in addition to prime and unique farmland, land that is of statewide importance for the production of food, feed, fiber, forage, biofuels, and oilseed crops. Criteria for defining and delineating this land are to be determined by the appropriate State agency or agencies. Generally, additional farmlands of statewide importance include those that are nearly prime farmland and that economically produce high yields of crops when treated and managed according to acceptable farming methods. Some may produce as high a yield as prime farmlands if conditions are favorable. In some States, additional farmlands of statewide importance may include tracts of land that have been designated for agriculture by State law in accordance with 7 CFR part 657.

*Farm or ranch succession plan* means a general plan to address the continuation of some type of agricultural business on the enrolled land. The farm or ranch succession plan may include, but is not limited to, specific intra-family

succession agreements or business asset transfer strategies to create opportunities for new or beginning farmers or ranchers, veteran farmers or ranchers, or other historically underserved landowners.

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

*Field Office Technical Guide (FOTG)* means the official local NRCS source of resource information and interpretations of guidelines, criteria, and requirements for planning and applying conservation practices and conservation management systems. The FOTG contains detailed information on the conservation of soil, water, air, plant, animal, and energy resources applicable to the local area for which it is prepared.

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

*Forest management plan* means a site-specific plan that describes management practices that conserve, protect, or enhance the viability of the forest land. Forest management plans may include a forest stewardship plan, as specified in section 5 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103a) or other plan approved by the State forester.

*Future viability* means the legal, physical, and financial conditions under which the land itself will remain capable and available for continued sustained productive agricultural or grassland uses while protecting related conservation values such as management of the agricultural land easement area consistent with an agricultural land easement plan or adoption of a farm or ranch succession plan.

*Grassland* means land on which the vegetation is dominated by grasses, grass-like plants, shrubs, or forbs, including shrubland, land that contains forbs, pastureland, and rangeland, and improved pastureland and rangeland.

*Grassland of special environmental significance* means grasslands that contain little or no noxious or invasive species, as designated or defined by State or Federal law; are subject to the threat of conversion to non-grassland uses or fragmentation; and the land:

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(1)(i) Is rangeland, pastureland, shrubland, or wet meadows on which the vegetation is dominated by native grasses, grass-like plants, shrubs, or forbs, or

(ii) Is improved, naturalized pastureland, rangeland, or wet meadows;

(2)(i) Provides, or could provide, habitat for threatened or endangered species or at-risk species,

(ii) Protects sensitive or declining native prairie or grassland types or grasslands buffering wetlands, or

(iii) Provides protection of highly sensitive natural resources as identified by NRCS, in consultation with the State technical committee.

*Grasslands management plan* means a site-specific plan that describes the grassland resources, the management system and practices that conserve, protect, or enhance the viability of the grassland, and as applicable, the habitat, species, or sensitive natural resources.

*Grazing management plan* means for ACEP-WRE, a site-specific plan developed as a component of the WRPO that provides for grazing of the grass and grass-like cover while accomplishing the wetland functions and values of the easement area as identified by NRCS.

*Historical and archaeological resources* mean resources that are:

(1) Listed in the National Register of Historic Places (established under the National Historic Preservation Act (NHPA), 54 U.S.C. 300101, *et seq.*);

(2) Formally determined eligible for listing in the National Register of Historic Places (by the State Historic Preservation Office (SHPO) or Tribal Historic Preservation Office (THPO) and the Keeper of the National Register in accordance with section 106 of the NHPA);

(3) Formally listed in the State or Tribal Register of Historic Places of the SHPO (designated under section 101(b)(1)(B) of the NHPA) or the THPO (designated under section 101(d)(1)(C) of the NHPA); or

(4) Included in the SHPO or THPO inventory with written justification as to why it meets National Register of Historic Places criteria.

*Historically underserved landowner* means a beginning, limited resource,

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socially disadvantaged farmer or rancher, or veteran farmer or rancher.

*Imminent harm* means easement violations or threatened violations that, as determined by NRCS, would likely cause immediate and significant degradation to the conservation values for which the easement was acquired.

*Impervious surface* means surfaces that are covered by asphalt, concrete, roofs, or any other surface that does not allow water to percolate into the soil.

*Indian Tribe* means any Indian Tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established as required by the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), that is eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

*Land evaluation and site assessment system* means the land evaluation system approved by NRCS and used, when applicable, to rank land for farm and ranch land protection purposes based on soil potential for agriculture, as well as social and economic factors such as location, access to markets, and adjacent land use. For additional information see the Farmland Protection Policy Act regulation at 7 CFR part 658.

*Landowner* means a person, legal entity, or Indian Tribe having legal ownership of eligible land and those who may be buying eligible land under a purchase agreement. The term landowner may include all forms of collective ownership including joint tenants and tenants-in-common, and includes heirs, successors, assigns, and anyone claiming under them. State and local governments are not eligible as landowners. For ACEP-ALE, nongovernmental organizations and Indian tribes that qualify as eligible entities are not eligible as landowners unless otherwise determined by the Chief following an approved buy-protect-sell transaction.

*Lands substantially altered by flooding* means agricultural lands where flooding has created wetland hydrologic conditions which, with a high degree of

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certainty, will develop and retain wetland soil, hydrology, and vegetation characteristics over time.

*Limited resource farmer or rancher* means either:

(1)(i) A person with direct or indirect gross farm sales not more than the current indexed value in each of the previous two fiscal years (adjusted for inflation using Prices Paid by Farmer Index as compiled by National Agricultural Statistical Service), and

(ii) 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 Commerce Department Data); or

(2) A legal entity or joint operation if all individual members independently qualify under paragraph (1) of this definition.

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

*Monitoring report* means a report, the contents of which are formulated and prepared by the easement holder, or their delegate, that accurately documents on an annual basis whether the land subject to easement is in compliance with the terms and conditions of the easement.

*Natural Resources Conservation Service (NRCS)* means an agency of the U.S. Department of Agriculture (USDA), including when NRCS carries out program implementation using the funds, facilities, or authorities of the CCC.

*Nongovernmental organization* means any organization that for purposes of qualifying as an eligible entity under subpart B:

(1) Is organized for, and at all times since the formation of the organization, has been operated principally for, one or more of the conservation purposes specified in clause (i), (ii), (iii), or (iv) of section 170(h)(4)(A) of the Internal Revenue Code of 1986;

(2) Is an organization described in section 501(c)(3) of that Code that is exempt from taxation under 501(a) of that Code; and

(3) Is described in—

(i) Section 509(a)(1) and (2) of that Code, or

(ii) Section 509(a)(3) of that Code and is controlled by an organization described in section 509(a)(2) of that Code.

*Nonindustrial private forest land (NIPF)* means rural land, as determined by the NRCS, that has existing tree cover or is suitable for growing trees; and is owned by any nonindustrial private individual, group, association, corporation, Indian Tribe, or other private legal entity that has definitive decision-making authority over the land.

*Other interests in land* include any right in real property other than easements that are recognized by State law that the Chief determines can be purchased by an eligible entity to further the agricultural use of the land and other ACEP-ALE purposes.

*Other productive soils* means farm and ranch land soils, in addition to prime farmland soils, that include unique farmland or farm and ranch land of statewide and local importance.

*Parcel* means the defined area of land and may be a portion or all of the area of land that is owned by the landowner.

*Participant* means a person, legal entity, Indian Tribe, native corporation, or eligible 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 agreement to purchase, an agreement to enter a 30-year contract, or an ALE-agreement.

*Pending offer* means a written bid, contract, or option between a landowner and an eligible entity for the acquisition of an agricultural conservation easement in perpetuity, or for the maximum duration allowed by State law, before the legal title to these rights has been conveyed for the purposes of protecting:

(1) The agricultural use and future viability, and related conservation values, of eligible land by limiting non-agricultural uses of that land; or

(2) Grazing uses and related conservation values by restoring or conserving eligible land.

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

*Person* means a natural person.

*Prime farmland* means land that has the best combination of physical and chemical characteristics for producing food, feed, fiber, forage, oilseed, and other agricultural crops with minimum inputs of fuel, fertilizer, pesticides, and labor without intolerable soil erosion, as determined by NRCS.

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

*Right of enforcement* means the right of the United States to enforce the easement entered into under this part in those instances in which the grantee of the easement does not fully protect the interests provided to the grantee under the easement.

*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 producer who is a member of a group whose members have been subjected to racial or ethnic prejudices without regard to its members' individual qualities. For a legal entity, at least 50-percent ownership in the legal entity must be held by socially disadvantaged individuals.

*State conservationist* means the NRCS employee authorized to direct and supervise NRCS activities in a State and includes the directors of the Caribbean Area (Puerto Rico and the Virgin Islands), or the Pacific Islands Area (Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands).

*State technical committee* means a committee established under 16 U.S.C. 3861 and 7 CFR part 610, subpart C.

*Unique farmland* means land other than prime farmland that is used for the production of specific high-value food and fiber crops as determined by

NRCS. It has the special combination of soil quality, location, growing season, and moisture supply needed to economically produce sustained high quality or high yields of specific crops when treated and managed according to acceptable farming methods. Examples of such crops include citrus, tree nuts, olives, cranberries, fruits, and vegetables. Additional information on the definition of prime, unique, or other productive soil can be found in 7 CFR part 657 and 7 CFR part 658.

*Veteran farmer or rancher* means a producer who meets the definition in section 2501(a) of the Food, Agriculture, Conservation, and Trade Act of 1990, as amended (7 U.S.C. 2279(a)).

*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 socio-economic 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.
- (7) Carbon sequestration.
- (8) Contribution to educational and scientific scholarship.

*Wetland reserve 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 United States, but the landowner retains those rights, title, and interests in the property which are

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specifically reserved to the landowner in the easement deed.

*Wetland reserve plan of operations* (*WRPO*) means the document that is developed or approved by NRCS that identifies how the wetland functions and values and associated habitats on the easement will be restored, improved, protected, managed, maintained, and monitored to achieve the purposes of the wetland reserve easement enrollment.

*Wetland restoration* means the rehabilitation of degraded or lost wetland and associated habitats pursuant to published State-specific criteria and guidelines developed in coordination with the State technical committee in a manner such that:

(1) The original, native vegetative community and hydrology are, to the extent practical, reestablished; or

(2) A hydrologic regime and native vegetative community different from what likely existed prior to degradation of the site is established that will:

(i) Substantially replace the original habitat functions and values while providing significant support or benefit for migratory waterfowl or other wetland-dependent wildlife; or

(ii) Address local resource concerns or needs for the restoration of wetland functions and values for wetland-dependent wildlife as identified in an approved State wildlife action plan or NRCS national initiative.

[85 FR 571, Jan. 6, 2020, as amended at 86 FR 8130, Feb. 4, 2021]

EDITORIAL NOTE: At 86 FR 8130, Feb. 4, 2021, § 1468.3 was amended; however, the amendment could not be incorporated due to inaccurate amendatory instruction.

**§ 1468.4 Appeals.**

(a) *ACEP-ALE eligibility of entities*. An entity which has submitted an ACEP-ALE application to be considered an eligible entity may obtain a review of any administrative determination concerning their eligibility for participation utilizing the administrative appeal regulations provided in 7 CFR parts 11 and 614.

(b) *ACEP-WRE applicants and participants*. An applicant or participant in the ACEP-WRE may obtain a review of any administrative determination concerning eligibility for participation or

receipt of payment utilizing the administrative appeal regulations provided in 7 CFR parts 11 and 614.

(c) *Easement administration and management determinations under ACEP after easement closing*. NRCS determinations that are made pursuant to its rights or interests in an ACEP-funded easement after closing may only be appealed to the State conservationist as specified in the notice provided to the landowner or easement holder when NRCS exercises its rights under the easement. Such determinations are not subject to appeal under 7 CFR parts 11 or 614.

**§ 1468.5 Scheme or device.**

(a) In addition to other penalties, sanctions, or remedies that may apply, if it is determined by NRCS that anyone has employed a scheme or device to defeat the purposes of this part, any part of any program payment otherwise due or paid during the applicable period may be withheld or be required to be refunded with interest, thereon, as determined appropriate by NRCS.

(b) A scheme or device includes, but is not limited to, coercion, fraud, misrepresentation, depriving anyone of a program benefit, or for the purpose of obtaining a payment to which they would otherwise not be entitled.

**§ 1468.6 Subordination, exchange, modification, and termination.**

(a) After an easement has been recorded, no subordination, modification, exchange, or termination will be made in any interest in land, or portion of such interest, except as approved by the NRCS. NRCS may approve such easement administration actions if NRCS determines, in accordance with the sequencing considerations under the National Environmental Policy Act, that—

(1)(i) The subordination, modification, or exchange action results in no net loss of easement acres, and is in the public interest or will further the practical administration and management of the easement area or the program, as determined by the NRCS, or

(ii) The termination action will address a compelling public need for which there is no practicable alternative even with avoidance and minimization, and will further the practical

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administration and management of the easement area or the program, as determined by the NRCS.

(2) For modification or exchange actions—

(i) There is no reasonable alternative that would avoid the easement area, or if the easement area cannot be avoided entirely, then the preferred alternative must minimize impacts to the original easement area and its conservation functions and values to the greatest extent practicable and any remaining adverse impacts must be mitigated, as determined by NRCS, at no cost to the government.

(ii) The action is consistent with the original intent of the easement and is consistent with the purposes of the program, and

(iii) The action results in equal or greater conservation functions and value and equal or greater economic value to the United States. A determination of equal or greater economic value to the United States will be made in accordance with an approved easement valuation methodology for agricultural land easements under subpart B or for wetland reserve easements under subpart C. In addition to the value of the easement itself, NRCS may consider other financial investments it has made in the acquisition, restoration, and management of the original easement to ensure that the easement administration action results in equal or greater economic value to the United States.

(3) For subordination actions, the action—

(i) Increases conservation functions and values or has a limited negative effect on conservation functions and values;

(ii) Is at no cost to the Government; and

(iii) Notwithstanding paragraph (a)(5) of this section, will only minimally affect the acreage subject to the interest in land.

(4) For termination actions, the action—

(i) Is in the interest of the Federal Government; and

(ii) The United States will be fully compensated for the fair market value of the interest in land including any

costs and damages related to the termination.

(5) The easement administration action will not affect more than 10 percent of the original easement area unless NRCS determines that it is impracticable to achieve program purposes on the original easements area, in which case NRCS may authorize a greater percentage of the original easement area to be affected.

(6) The landowner and, if applicable, the agricultural land easement holder agrees to such easement administration action prior to NRCS considering that such easement administration action may be approved.

(b) Easement subordinations or modifications are preferred to easement exchanges that may involve lands that are not physically adjacent to the original easement area. Easement exchanges are limited to circumstances where there are no available lands adjacent to the original easement area that will result in equal or greater conservation and economic values to the United States.

(c) Replacement of easement acres as part of an easement exchange must occur within the same State and within the same eight-digit watershed as determined by the hydrologic unit codes developed by the U.S. Geological Survey.

(d) Where NRCS determines that recordation of an amended or new easement deed is necessary to affect an easement administration action under this section, NRCS may use the most recent version of the ACEP deed document or deed terms approved by NRCS. The amended or new easement deed must be duly prepared and recorded in conformity with standard real estate practices, including requirements for title approval, subordination of liens, and recordation of documents.

(e) Modification or exchange of all or a portion of an interest in land enrolled in ACEP-ALE may not increase any payment to an easement holder.

(f)(1) A termination action must meet criteria identified in this part and are limited to those circumstances where NRCS determines it is in the Federal Government's interest to terminate all or a portion of the interest in the land enrolled in the program,

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that the purposes of the program can no longer be achieved on the original easement area, or the terms of the easement are no longer enforceable and there are no acceptable replacement acres available.

(2) NRCS will enter into a compensatory agreement with the proponent of the termination that identifies the costs for which the United States must be reimbursed, including but not limited to the value of the easement itself based upon current valuation methodologies, repayment of legal boundary survey costs, legal title work costs, associated easement purchase and restoration costs, legal filing fees, costs relating to the termination, and any damages determined appropriate by NRCS.

(3) At least 90 days prior to taking any termination action, written notice of such termination action will be provided to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

(g) Insofar as is consistent with the easement and applicable law, NRCS may approve modifications to an easement plan that do not affect provisions of the easement. Easement plans include any conservation plan, WRPO, wetland reserve easement restoration agreements, grazing management plan, habitat management plans, or other plans required as a condition of enrollment. Any easement plan modification must meet this part and must result in equal or greater conservation benefits on the enrolled land.

[85 FR 571, Jan. 6, 2020, as amended at 86 FR 8130, Feb. 4, 2021]

**§ 1468.7 Transfer of land.**

(a) *Offers voided.* Any transfer of the property prior to recording the easement in the applicable land records or executing the 30-year contract may void the availability of ACEP funding for that transaction, unless the new landowner is determined eligible, the transfer is approved by NRCS, and the new landowner is willing to comply with ACEP requirements.

(b) *Payments to participants.* For wetland reserve easements with annual installment payments, any remaining easement payments will be made to the

original participants unless NRCS receives an assignment of proceeds.

(c) *Claims to payments.* With respect to any and all payments owed to participants, NRCS will bear no responsibility for any full payments or partial distributions of funds between the original participant and the participant's successor. In the event of a dispute or claim on the distribution of payments, NRCS may withhold payments without the accrual of interest pending an agreement or adjudication on the rights to the funds.

**§ 1468.8 Payments not subject to claims.**

Any cost-share, contract, agreement, or easement payment or portion, thereof, due any person, legal entity, Indian Tribe, eligible entity, or other party under this part will be allowed without regard to any claim or lien in favor of any creditor, except agencies of the United States.

**§ 1468.9 Assignments.**

Any person, legal entity, Indian Tribe, eligible entity, or other party entitled to any cash payment under this program may assign the right to receive such cash payments, in whole or in part.

**§ 1468.10 Environmental markets.**

(a) *Ecosystem services credits for conservation improvements under a wetland reserve easement.* Landowners may obtain environmental credits under other programs if one of the purposes of such program is the facilitation of additional conservation benefits that are consistent with the conservation purposes for which the easement was acquired, and such action does not adversely affect the rights or interests granted under the easement to the United States.

(b) *Ecosystem services credits related to an agricultural land easement.* Landowners may obtain environmental credits under other programs if one of the purposes of such program is the facilitation of additional conservation benefits that are consistent with the conservation purposes for which the easement was acquired, and such action does not adversely affect the interests granted under the easement to

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the grantee or to the United States right of enforcement.

(c) *Voluntary action.* ACEP funds may not be used to acquire easements to establish protections or to implement conservation practices that the landowner is required to establish as a result of a court order or to satisfy any mitigation requirement for which the ACEP landowner is otherwise responsible.

### Subpart B—Agricultural Land Easements

#### § 1468.20 Program requirements.

(a) *General.* (1) Under ACEP-ALE, NRCS will facilitate and provide cost-share assistance for the purchase by eligible entities of agricultural land easements or other interests in eligible private or Tribal land that is—

(i) Subject to a written pending offer; or  
(ii) Owned or in the process of being purchased by the eligible entity as part of an approved buy-protect-sell transaction.

(2) To participate in ACEP-ALE, eligible entities as identified in (b) below must submit applications to NRCS State offices to partner with NRCS to acquire conservation easements on eligible land. Eligible entities must enter into an ALE-agreement with NRCS and address the ACEP-ALE deed requirements specified therein, the effect of which is to protect natural resources and the agricultural nature of the land and permit the landowner the right to continue agricultural production and related uses.

(3) Under the ALE-agreement, unless otherwise specified in this part, the Federal share of the cost of an agricultural land easement or other interest in eligible land will not exceed 50 percent of the fair market value of the agricultural land easement and the eligible entity will provide a share that is at least equivalent to the Federal share.

(4) The duration of each agricultural land easement or other interest in land will be in perpetuity or the maximum duration allowed by State law.

(b) *Entity eligibility.* (1) To be eligible to receive ACEP-ALE funding, an Indian Tribe, State, unit of local govern-

ment, or a nongovernmental organization must meet the definition of eligible entity as listed in § 1468.3. In addition, eligible entities interested in receiving ACEP-ALE funds must provide NRCS sufficient evidence of—

(i) A commitment to long-term conservation of agricultural lands,

(ii) A demonstrated capability to acquire, manage, and enforce easements,

(iii) Sufficient number of staff dedicated to monitoring and easement stewardship,

(iv) The estimated easement and related costs and the anticipated sources of funding sufficient to meet the non-Federal share requirements for each parcel as described in § 1468.24, and

(v) For individual parcels on which the eligible entity's own cash resources will comprise less than 10 percent of the fair market value of the agricultural land easement for payment of easement compensation to the landowner, the eligible entity must provide NRCS specific evidence of funding available to manage, monitor, and enforce the easement.

(2) All eligible entities identified on an application or ALE-agreement must—

(i) Ensure that their records and the records of all landowners of parcels identified on an application have been established in the USDA customer records system and that USDA has all the documentation needed to establish these records, and

(ii) Eligible entities must also comply with applicable registration and reporting requirements of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109-282, as amended) and 2 CFR parts 25 and 170, and maintain such registration for the duration of the ALE-agreement.

(c) *Landowner eligibility.* Under ACEP-ALE, all parcel landowners, including an eligible entity owner of private or Tribal land in an approved buy-protect-sell transaction, must—

(1) Be in compliance with the highly erodible land and wetland conservation provisions in 7 CFR part 12,

(2) Persons or legal entities must be in compliance with the Adjusted Gross Income Limitation provisions of 7 CFR part 1400;

(3) Agree to provide access to the property and such information to NRCS as the agency deems necessary or desirable to assist in its determination of eligibility for program implementation purposes; and

(4) Have their records established in the USDA customer records system.

(d) *Land eligibility.* (1) Land will only be considered eligible for enrollment in ACEP-ALE based on NRCS determination that such private or Tribal agricultural land, including land on a farm or ranch that—

(i) Is subject to a written pending offer by an eligible entity or part of an approved buy-protect-sell transaction;

(ii)(A) Contains at least 50 percent prime or unique farmland, or designated farm and ranch land of State or local importance unless otherwise determined by NRCS;

(B) Contains historical or archaeological resources;

(C) The enrollment of which would protect grazing uses and related conservation values by restoring or conserving land, or

(D) Further a State or local policy consistent with the purposes of the ACEP-ALE;

(iii) Is—

(A) Cropland;

(B) Rangeland;

(C) Grassland or land that contains forbs or shrubland for which grazing is the predominant use;

(D) Located in an area that has been historically dominated by grassland, forbs, or shrubs and could provide habitat for animal or plant populations of significant ecological value;

(E) Pastureland; or

(F) Nonindustrial private forest land that contributes to the economic viability of a parcel offered for enrollment or serves as a buffer to protect such land from development; and

(iv) Possesses suitable onsite and offsite conditions which will allow the easement to be effective in achieving the purposes of the program.

(2) If land offered for enrollment is determined eligible under paragraph (d)(1) of this section, then NRCS may also enroll land that is incidental to the eligible land if the incidental land is determined by NRCS to be necessary

for the efficient administration of an agricultural land easement.

(3) Eligible land, including eligible incidental land, may not include non-industrial private forest land of greater than two-thirds of the easement area unless waived by NRCS with respect to lands identified by NRCS as sugar bush that contributes to the economic viability of the parcel.

(e) *Ineligible land.* The land specified in paragraphs (e)(1) through (7) of this section is not eligible for enrollment in ACEP-ALE:

(1) Lands owned by an agency of the United States, other than land held in trust for Indian Tribes;

(2) Lands owned in fee title by a State, including an agency or a subdivision of a State, or unit of local government;

(3) Land owned by a nongovernmental organization whose purpose is to protect agricultural use and related conservation values including those listed in the statute under eligible land unless the eligible land is owned on a transitional basis as part of an approved buy-protect-sell transaction;

(4) Land subject to an easement or deed restriction which, as determined by NRCS, provides similar restoration and protection as would be provided by enrollment in the program;

(5) Land where the purposes of the program would be undermined due to onsite or offsite conditions, such as risk of hazardous materials, permitted or existing rights-of-way, infrastructure development, or adjacent land uses;

(6) Land which NRCS determines to have unacceptable exceptions to clear title or insufficient legal access; or

(7) Land on which gas, oil, earth, or mineral rights exploration has been leased or is owned by someone other than the landowner is ineligible under ACEP-ALE unless it is determined by NRCS that the third-party rights will not harm or interfere with the conservation values or agricultural uses of the easement, that any methods of exploration and extraction will have only a limited and localized impact on the easement, and the limitations are specified in the ALE deed.

(f) *Buy-Protect-Sell transaction land eligibility.* (1) NRCS may enter into a

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buy-protect sell transaction with an eligible entity on a parcel that—

(i) Otherwise meets the eligibility criteria described in this section.

(ii) Is subject to conditions, as determined by NRCS, that necessitate the ownership of the parcel by the eligible entity on a transitional basis prior to the creation of an agricultural land easement, such as imminent threat of development, including, but not limited to, planned or approved conversion of grasslands to more intensive agricultural uses, and

(iii) Is owned by or is in the process of being purchased by the eligible entity.

(2) At the time of application, the eligible entity must provide NRCS evidence of ownership or active purchase of the parcel, such as a valid purchase agreement.

(3) The eligible entity must meet all program requirements and any specific provisions related to buy-protect-sell transactions as specified in this part.

[85 FR 571, Jan. 6, 2020, as amended at 86 FR 8130, Feb. 4, 2021]

### § 1468.21 Application procedures.

(a) To apply for enrollment an eligible entity must submit an entity application for an ALE-agreement and any associated individual parcel applications to NRCS. For buy-protect-sell transactions, additional information may be required at the time of application as identified by NRCS.

(b) NRCS may conduct initial eligibility determinations for the fiscal year an application is submitted. As determined by NRCS, the entity eligibility requirements must be met for the fiscal year in which the ALE-agreement is executed, and the land and landowner must be eligible for the fiscal year the parcel is approved for funding through an ALE-agreement. NRCS eligibility determinations are based on the application materials provided by the eligible entity, onsite assessments, and the criteria in § 1468.20.

### § 1468.22 Establishing priorities, ranking considerations, and project selection.

(a) NRCS will use national and State criteria to rank and select eligible parcels for funding. The national ranking

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criteria will comprise at least half of the ranking score. The State criteria will be developed by NRCS on a State-by-State basis, with input from the State technical committee. The weighting of ranking criteria, including adjustments to account for geographic differences, will be developed to maximize the benefit of the Federal investment under the program. Parcels are ranked and selected for funding at the State level.

(b) The national ranking criteria are—

(1) Percent of prime, unique, and other important farmland soils in the parcel to be protected;

(2) Percent of cropland, rangeland, grassland, historic grassland, pastureland, or nonindustrial private forest land in the parcel to be protected;

(3) Ratio of the total acres of land in the parcel to be protected to average farm size in the county according to the most recent USDA Census of Agriculture;

(4) Decrease in the percentage of acreage of farm and ranch land in the county in which the parcel is located between the last two USDA Censuses of Agriculture;

(5) Percent population growth in the county as documented by the United States Census;

(6) Population density (population per square mile) as documented by the most recent United States Census;

(7) Existence of a farm or ranch succession plan or similar plan established to address agricultural viability for future generations;

(8) Proximity of the parcel to other protected land, such as military installations; land owned in fee title by the United States or an Indian Tribe, State or local government, or by a non-governmental organization whose purpose is to protect agricultural use and related conservation values; or land that is already subject to an easement or deed restriction that limits the conversion of the land to nonagricultural use or protects grazing uses and related conservation values;

(9) Proximity of the parcel to other agricultural operations and agricultural infrastructure;

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(10) Maximizing the protection of contiguous or proximal acres devoted to agricultural use;

(11) Whether the land is currently enrolled in CRP in a contract that is set to expire within 1 year and is grassland that would benefit from protection under a long-term easement or is land under a CRP contract that is in transition to a covered farmer or rancher pursuant to 16 U.S.C. 3835(f);

(12) Decrease in the percentage of acreage of permanent grassland, pasture, and rangeland, other than cropland and woodland pasture, in the county in which the parcel is located between the last two USDA Censuses of Agriculture;

(13) Percent of the fair market value of the agricultural land easement that is the eligible entity's own cash resources for payment of easement compensation to the landowner and comes from sources other than the landowner; and

(14) Other criteria as determined by NRCS.

(c) State or local criteria as determined by NRCS, with advice of the State technical committee, may only include—

(1) The location of a parcel in an area zoned for agricultural use;

(2) The eligible entity's performance in managing and enforcing easements. Performance must be measured by the efficiency by which easement transactions are completed or percentage of parcels that have been monitored annually and the percentage of monitoring results that have been reported annually;

(3) Multifunctional benefits of farm and ranch land protection including—

(i) Social, economic, historic, and archaeological benefits;

(ii) Enhancing carbon sequestration;

(iii) Improving climate change resiliency;

(iv) At-risk species protection;

(v) Reducing nutrient runoff and improving water quality;

(vi) Other related conservation benefits.

(4) Geographic regions where the enrollment of particular lands may help achieve national, State, and regional agricultural or conservation goals and

objectives, or enhance existing government or private conservation projects;

(5) Diversity of natural resources to be protected or improved;

(6) Score in the land evaluation and site assessment system as identified in 7 CFR part 658 or equivalent measure for grassland enrollments, to serve as a measure of agricultural viability (access to markets and infrastructure);

(7) Measures that will be used to maintain or increase agricultural viability, such as succession plans, agricultural land easement plans, or entity deed terms that specifically address long-term agricultural viability; and

(8) Other criteria determined by NRCS that will account for geographic differences provided such criteria allow for the selection of parcels that will achieve ACEP-ALE purposes and continue to maximize the benefit of the Federal investment under the program.

(d) If NRCS determines that the purchase of two or more agricultural land easements are comparable in achieving program goals, NRCS will not assign a higher priority to any one of these agricultural land easements solely on the basis of lesser cost to the program.

(e) NRCS will rank all eligible parcels that have been submitted prior to an application cut-off date in accordance with the national and State ranking criteria before selecting parcels for funding.

(f) Eligible parcels selected for funding by NRCS will be identified in an agreement executed by NRCS and an eligible entity, either as part of the ALE-agreement or through a supplemental arrangement as agreed to by the parties.

(g) Pursuant to the terms of the ALE-agreement, eligible parcels may be selected for funding in a fiscal year subsequent to the fiscal year in which the parties entered into an ALE-agreement.

[85 FR 571, Jan. 6, 2020, as amended at 86 FR 8130, Feb. 4, 2021]

**§ 1468.23 ALE-agreements.**

(a) NRCS will enter into an ALE-agreement with a selected eligible entity that stipulates the terms and conditions under which the eligible entity is permitted to use ACEP-ALE funding

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and will incorporate all ACEP–ALE requirements. NRCS will make available to eligible entities the ALE-agreement terms and conditions, including any applicable templates, based on enrollment type. The ALE-agreement will address—

(1) The interests in land to be acquired, including the United States' right of enforcement, the deed requirements specified in this part, as well as the other terms and conditions of the easement deed;

(2) The management and enforcement of the rights on lands acquired with ACEP–ALE funds;

(3) The responsibilities of NRCS;

(4) The responsibilities of the eligible entity on easements acquired with ACEP–ALE funds;

(5) The requirement for any conservation plan for highly erodible cropland or agricultural land easement plans to be developed as required or agreed-to prior to execution of the easement deed and payment of easement compensation to the landowner;

(6) As applicable, the allowance of eligible parcel substitution upon mutual agreement of the parties;

(7) The certification by the landowner at the time of easement execution and payment of easement compensation of the extent of any charitable contribution or other donation the landowner has provided to the eligible entity;

(8) The submission of documentation of procured costs for each parcel, including appraisal, boundary survey, phase-I environmental site assessment, title commitment or report, title insurance, and closing cost if such procured costs are to be considered as part of the eligible entity's non-Federal share; and

(9) Other requirements deemed necessary by NRCS to meet the purposes of this part or protect the interests of the United States.

(10) For buy-protect-sell transactions, the ALE-agreement will also include the requirements identified in § 1468.27.

(b) The term of standard ALE-agreements, except as described in § 1468.27 for ALE-agreements for approved buy-protect-sell transactions, will be:

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(1) A minimum of 5 fiscal years and not to exceed 7 fiscal years following the fiscal year the agreement is signed for certified entities; and

(2) At least 3 fiscal years and not to exceed 5 fiscal years following the fiscal year the agreement is signed for other eligible entities.

(c) Eligible parcels selected for funding by NRCS will be identified on an attachment to the ALE-agreement. The attachment will include landowners' names, acreage of the easement area, the estimated fair market value, the estimated Federal contribution, and other relevant information.

(d) The ALE-agreement will require the eligible entity to comply with applicable registration and reporting requirements of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282, as amended) and 2 CFR parts 25 and 170.

(e) With NRCS approval, the eligible entity may substitute acres within a pending easement offer. Substituted acres must not reduce the easements capability in meeting program purposes.

(f) With NRCS approval, an eligible entity may substitute pending easement offers within a standard ALE-agreement. The substituted landowner and easement offer must meet eligibility criteria as described in § 1468.20. NRCS may require re-ranking of substituted acres within an easement offer and substituted easement offers within an ALE-agreement. Substitutions are not authorized under ALE-agreements for buy-protect-sell transactions.

[85 FR 571, Jan. 6, 2020, as amended at 86 FR 8130, Feb. 4, 2021]

### § 1468.24 Compensation and funding for agricultural land easements.

(a) *Determining the fair market value of the agricultural land easement.* (1) The Federal share will not exceed 50 percent of the fair market value of the agricultural land easement, as determined using—

(i) An appraisal using the Uniform Standards of Professional Appraisal Practices or the Uniform Appraisal Standards for Federal Land Acquisitions,

(ii) An areawide market analysis or survey, or

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(iii) Another industry-approved method approved by NRCS.

(2) Prior to receiving funds for an agricultural land easement, the eligible entity must provide NRCS with an acceptable determination of the fair market value of the agricultural land easements that conforms to applicable industry standards and NRCS specifications and meets the requirements of this part.

(3) If the value of the easement is determined using an appraisal, the appraisal must be completed and signed by a State-certified general appraiser and must contain a disclosure statement by the appraiser. The appraisal must conform to the Uniform Standards of Professional Appraisal Practices or the Uniform Appraisal Standards for Federal Land Acquisitions as selected by the eligible entity.

(4) If the fair market value of the easement is determined using an areawide market analysis or survey, the areawide market analysis or survey must be completed and signed by a person determined by NRCS to have professional expertise and knowledge of agricultural land values in the area subject to the areawide market analysis or survey. The use of areawide market analysis or survey must be approved by NRCS prior to entering into an ALE-agreement.

(5) Requests to use another industry-approved method must be submitted to NRCS and approved by NRCS prior to entering into the ALE-agreement. NRCS will identify the applicable industry standards and any associated NRCS specifications based on the methodology approved.

(6) NRCS will review for quality assurance purposes, appraisals, areawide market analysis or surveys, valuation reports, or other information resulting from another industry-approved method approved for use by NRCS.

(7) Eligible entities must provide a copy of the applicable report or other information used to establish the fair market value of the agricultural land easement to NRCS at least 90 days prior to the planned easement closing date.

(8) Prior to the eligible entity's purchase of the easement, including payment of easement compensation to the

landowner, NRCS must approve the determination of the fair market value of the agricultural land easement upon which the Federal share will be based.

(b) *Determining the Federal share of the agricultural land easement.* (1) Subject to the statutory limits, NRCS may provide up to 50 percent of the fair market value of the agricultural land easement. An eligible entity will provide a non-Federal share that is at least equivalent to the Federal share.

(2) The non-Federal share provided by an eligible entity may be comprised of—

(i) The eligible entity's own cash resources for payment of easement compensation to the landowner or for a buy-protect-sell transaction, the amount of the fair market value of the agricultural land easement, less the amount of the Federal share, that is provided through the conveyance of the agricultural land easement by the eligible entity;

(ii) A charitable donation or qualified conservation contribution (as defined by section 170(h) of the Internal Revenue Code of 1986) from the landowner;

(iii) Where the amounts as identified in paragraphs (b)(2)(i) and (ii) of this section are not sufficient to meet the non-Federal share amount, the eligible entity may also include the procured costs paid by the eligible entity to a third-party for an appraisal, boundary survey, phase-I environmental site assessment, title commitment or report, title insurance, baseline reports, mineral assessments, or closing cost; and

(iv) Where the amounts as identified in paragraphs (b)(2)(i) through (iii) of this section are not sufficient to meet the non-Federal share amount, the eligible entity may also include up to 2 percent of the fair market value of the agricultural land easement for easement stewardship and monitoring costs provided by the eligible entity.

(3) NRCS may authorize a waiver to increase the Federal share of the cost of an agricultural land easement to an amount not to exceed 75 percent of the fair market value of the agricultural land easement if—

(i) NRCS determines the lands to be enrolled are grasslands of special environmental significance as defined in this part,

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(ii) An eligible entity provides a non-Federal share that is at least equivalent to the Federal share or comprises the remainder of the fair market value of the agricultural land easement, whichever is less, and

(iii) The eligible entity agrees to incorporate and enforce the additional necessary deed restrictions to manage and enforce the easement to ensure the grassland of special environmental significance attributes are protected.

(c) *Uses of NRCS ACEP-ALE funds.* (1) ACEP-ALE funds may not be provided or used for eligible entity expenditures for expenses, such as: Appraisals, areawide market analysis, legal surveys, access, title clearance or title insurance, legal fees, phase I environmental site assessments, closing services, development of agricultural land easement plans or component plans by the eligible entity, costs of easement monitoring, and other related administrative and transaction costs incurred by the eligible entity.

(2) NRCS will conduct its own technical and administrative review of appraisals, areawide market analysis, or other easement valuation reports and hazardous materials reviews.

(3) NRCS may provide technical assistance for the development of a conservation plan on those portions of a parcel that contain highly erodible cropland, or if requested, to assist in compliance with the terms and conditions of easements.

[85 FR 571, Jan. 6, 2020, as amended at 86 FR 8130, Feb. 4, 2021]

### § 1468.25 Agricultural land easement deeds.

(a) Under ACEP-ALE, a landowner grants an easement to an eligible entity with which NRCS has entered into an ALE-agreement. The easement deed will require that the easement area be maintained in accordance with ACEP-ALE goals and objectives for the term of the easement.

(b) The term of an agricultural land easement must be in perpetuity, except where State law prohibits a permanent easement. In such cases where State law limits the term of a conservation easement, the easement term will be for the maximum duration allowed under State law.

(c) The eligible entity may use its own terms and conditions in the agricultural land easement deed, but the agricultural land easement deed must provide for the effective administration, management, and enforcement of the agricultural land easement by the eligible entity or its successors and assigns and must address the deed requirements as specified by this part and by NRCS in the ALE-agreement.

(d) All deeds, as further specified in the ALE-agreement, must address the following regulatory deed requirements:

(1) Include a right of enforcement clause for NRCS. NRCS will specify the terms for the right of enforcement clause, including that such interest in the agricultural land easement:

(i) May be used only if the terms and conditions of the easement are not enforced by the eligible entity;

(ii) Extends to a right of inspection only if the holder of the easement fails to provide monitoring reports in a timely manner or NRCS has a reasonable and articulable belief that the terms and conditions of the easement have been violated;

(iii) Remains in effect for the duration of the easement and any changes that affect NRCS's interest in the agricultural land easement must be reviewed and approved by NRCS under § 1468.6 of this part.

(2) Specify that impervious surfaces will not exceed 2 percent of the ACEP-ALE easement area, excluding NRCS-approved conservation practices unless NRCS grants a waiver as follows:

(i) The eligible entity may request a waiver of the 2-percent impervious surface limitation at the time an individual parcel is approved for funding.

(ii) NRCS may waive the 2-percent impervious surface limitation on an individual easement basis, provided that no more than 10 percent of the easement area is covered by impervious surfaces.

(iii) Before waiving the 2 percent limitation, NRCS will consider, at a minimum, population density; the ratio of open, prime, and other important farmland versus impervious surfaces on the easement area; the impact to water quality concerns in the area; the type of agricultural operation; parcel size;

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and the purposes for which the easement is being acquired,

(iv) Eligible entities may submit an impervious surface limitation waiver process to NRCS for review and consideration. The eligible entities must apply any approved impervious surface limitation waiver processes on an individual easement basis, and

(v) NRCS will not approve blanket waivers or entity blanket waiver processes of the impervious surface limitation. All ACEP-ALE easements must include language limiting the extent of impervious surfaces within the easement area.

(3) Include an indemnification clause requiring the landowner to indemnify and hold harmless the United States from any liability arising from or related to the property enrolled in ACEP-ALE.

(4) Include clauses requiring that any changes to the easement deed or easement area made after easement recordation, including any amendment to the easement deed, any subordination of the terms of the easement, or any modifications, exchanges, or terminations of some or all of the easement area, must be consistent with the purposes of the agricultural land easement and this part and must be approved by NRCS and the easement holder in accordance with § 1468.6 prior to recordation or else the action is null and void.

(5) Prohibit commercial and industrial activities except those activities that NRCS has determined are consistent with the agricultural use of the land.

(6) Limit the subdivision of the property subject to the agricultural land easement, except where State or local regulations explicitly require subdivision to construct residences for employees working on the property or where otherwise authorized by NRCS.

(7) Prohibit subsurface mineral development unless the terms of the deed, as determined by NRCS, specify that any subsurface mineral development allowed by the eligible entity on the easement area must—

(i) Be conducted in accordance with applicable State law;

(ii) Have a limited and localized impact;

(iii) Not harm the agricultural use and conservation values of the land subject to the easement;

(iv) Not materially alter or affect the existing topography;

(v) Comply with a subsurface mineral development plan that includes a plan for the remediation of impacts to the agricultural use or conservation values of the land subject to the easement and is approved by NRCS prior to the initiation of mineral development activity;

(vi) Not be accomplished by any surface mining method;

(vii) Be within the impervious surface limits of the easement under paragraph (d)(2) of this section;

(viii) Use practices and technologies that minimize the duration and intensity of impacts to the agricultural use and conservation values of the land subject to the easement; and

(ix) Ensure that each area impacted by the subsurface mineral development are reclaimed and restored by the holder of the mineral rights at cessation of operation.

(8) Include specific protections related to the purposes for which the agricultural land easement is being acquired, including provisions to protect historical or archaeological resources or grasslands of special environmental significance.

(9) For parcels with highly erodible cropland, include terms that ensure compliance with the conservation plan that will be developed and managed in accordance with the Food Security Act of 1985, as amended, and its associated regulations.

(10) Include any additional provisions needed to address the attributes for which a parcel was ranked and selected for funding by NRCS, such as the purchase of the agricultural land easement, the development and maintenance of an agricultural land easement plan, or use of the minimum deed terms as described in paragraph (f) of this section.

(11) Include terms, if required by the eligible entity, that identify an intent to keep the land subject to the agricultural land easement under ownership of a farmer or rancher.

(12) Include other minimum deed terms specified by NRCS to ensure that ACEP-ALE purposes are met.

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(e) NRCS reserves the right to require additional specific language or require removal of language in the agricultural land easement deed to ensure the enforceability of the easement deed, protect the interests of the United States, or to otherwise ensure ALE purposes will be met.

(f) For eligible entities that have not been certified, the deed document must be reviewed and approved by NRCS in advance of use as provided herein:

(1) NRCS will make available for an eligible entity's use a standard set of minimum deed terms that satisfactorily address the deed requirements in paragraph (d) of this section and may be wholly incorporated along with the eligible entity's own deed terms into the agricultural land easement deed, or as an addendum that is attached and incorporated by reference into the deed. The standard minimum deed terms addendum will specify the terms that will prevail in the event of a conflict.

(2) If an eligible entity agrees to use the standard set of minimum deed terms as published by NRCS, NRCS and the eligible entity will identify in the ALE-agreement the use of the standard minimum deed terms as a requirement and National Office review of individual deeds may not be required. NRCS may place priority on applications where an eligible entity agrees to use the standard set of minimum deed terms as published.

(3) The eligible entity must submit all individual agricultural land easement deeds to NRCS at least 90 days before the planned easement closing date and be approved by NRCS in advance of use.

(4) Eligible entities with multiple eligible parcels may submit an agricultural land easement deed template for review and approval. The deed templates must be reviewed and approved by NRCS in advance of use.

(5) NRCS may conduct an additional review of the agricultural land easement deeds for individual parcels prior to the execution of the easement deed by the landowner and the eligible entity to ensure that they contain the same language as approved by the National Office and that the appropriate

site-specific information has been included.

(g) The eligible entity will acquire, hold, manage, monitor, and enforce the easement. The eligible entity may have the option to enter into an agreement with appropriately qualified governmental or private organizations that have no property rights or interests in the easement area to carry out easement monitoring, management, and enforcement responsibilities.

(h) All agricultural land easement deeds acquired with ACEP-ALE funds must be recorded. The eligible entity will provide proof of recordation to NRCS within the timeframe specified in the ALE-agreement.

[85 FR 571, Jan. 6, 2020, as amended at 86 FR 8131, Feb. 4, 2021]

**§ 1468.26 Eligible entity certification.**

(a) To be considered for certification, an entity must submit a written request for certification to NRCS, which specifically addresses the items in paragraphs (a)(1) through (7) of this section:

(1) An explanation of how the entity meets the requirements identified in § 1468.20(b) of this section;

(2) An agreement to use for ACEP-ALE funded acquisitions easement valuation methodologies identified in section § 1468.24 of this part;

(3) A showing of a demonstrated record of completing acquisition of easements in a timely fashion;

(4) A showing that it has the capacity to monitor and enforce the provisions of easement deeds and history of such monitoring and enforcement;

(5) A plan for administering easements enrolled under this part, as determined by NRCS;

(6) Proof that the eligible entity—

(i) Has been accredited by the Land Trust Accreditation Commission and has acquired not fewer than 10 agricultural land easements under ACEP-ALE, the Farm and Ranch Lands Protection Program, or the Farmland Protection Program;

(ii) Is a State department of agriculture or other State agency with statutory authority for farm and ranchland protection and has acquired not fewer than 10 agricultural land

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easements under ACEP-ALE or its predecessor programs; or

(iii) Holds, manages, and monitors a minimum of 25 agricultural land conservation easements, of which a minimum of 10 of these easements are agricultural land easements under ACEP-ALE or its predecessor programs, and if the eligible entity is a nongovernmental organization, provides evidence that the eligible entity possesses a dedicated fund for the purposes of managing, monitoring, and enforcing each easement held by the eligible entity; and

(7) Successfully met the responsibilities of the eligible entity under the applicable agreements with NRCS, as determined by NRCS, relating to agricultural land easements that the eligible entity has acquired under the program or any predecessor program;

(b) NRCS will notify an eligible entity in writing whether they have been certified and the rationale for the agency's decision. When NRCS determines an eligible entity qualifies as certified—

(1) NRCS may enter into an ALE-agreement with the certified entity that is for a period of a minimum of 5 fiscal years and not to exceed 7 fiscal years following the fiscal year the agreement is executed. NRCS will review and select parcel applications submitted for funding by certified entities as specified in §1468.22. Funding for selected parcels is identified on an attachment to the ALE-agreement.

(2) The terms of the ALE-agreement will include the regulatory deed requirements specified in §1468.25 of this part that must be addressed in the deed to ensure that ACEP-ALE purposes will be met without requiring NRCS to pre-approve each easement transaction prior to closing.

(i) Certified entities may purchase easements without NRCS approving the agricultural land easement deeds, baseline reports, titles, or appraisals before the purchase of the easement;

(ii) Certified entities will prepare the agricultural land easement deeds, baseline reports, titles, and appraisals in accordance with NRCS requirements as identified in the ALE-agreement;

(3) NRCS will conduct quality assurance reviews of a percentage of the

closed agricultural land easement transactions and annual monitoring reports submitted by the certified entity; and

(4) NRCS will provide the certified entity an opportunity to correct errors or remedy deficiencies identified in the NRCS quality assurance review. If the certified entity fails to remedy the identified items to NRCS's satisfaction, NRCS will consider whether to allow the certified entity to continue to purchase ALE-funded easements without prior NRCS approval, to decertify the entity in accordance with paragraph (c) of this section, or, require the certified entity to take administrative steps necessary to remedy the deficiencies.

(c)(1) NRCS will conduct a quality assurance review of the certified entity a minimum of once every 3 fiscal years to ensure that the certified entities are meeting the certification criteria established in this section.

(2) If NRCS determines that the certified entity no longer meets these criteria, the Chief will—

(i) Provide the certified entity a specified period of time, at a minimum 180 days, in which to take such actions as may be necessary to correct the identified deficiencies, and

(ii) If NRCS determines the certified entity does not meet the criteria established in this part after the 180 days, NRCS will send written notice of decertification. This notice will specify the actions that have not been completed to retain certification status, the actions the entity must take to regain certification status, the status of funds in the ALE-agreement; and the eligibility of the entity to apply for future ACEP-ALE funds. The entity may contest the notice of decertification in writing to NRCS within 20 calendar days of receipt of the notice of decertification. The entity's letter must provide specific reasons why the decision to decertify is in error.

(3) The period of decertification may be up to 3 years, based upon the circumstances associated with the action.

(4) The entity may submit a new request for certification to NRCS only

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after the decertification period has expired.

[85 FR 571, Jan. 6, 2020, as amended at 86 FR 8131, Feb. 4, 2021]

### § 1468.27 Buy-Protect-Sell transactions.

(a) NRCS may enter into an ALE-agreement with an eligible entity for a buy-protect-sell transaction to provide cost-share assistance for the purchase of an agricultural land easement on eligible private or Tribal agricultural land that an eligible entity owns or is in the process of purchasing for the purposes of securing the long-term protection of natural resources and the agricultural nature of the land and ensuring timely transfer to a qualified farmer or rancher.

(b) At the time the individual parcel application is submitted, the eligible entity must identify the specific buy-protect-sell transaction type as either—

(1) Pre-closing transfer, wherein the eligible entity will transfer fee title ownership to a farmer or rancher at or prior to closing on the agricultural land easement and the eligible entity will hold the agricultural land easement prior to receiving the Federal share, or

(2) Post-closing transfer, wherein the eligible entity will transfer fee title ownership to a farmer or rancher not later than 3 years after closing on the agricultural land easement, unless an extension of such time has been authorized by NRCS based on documentation of extenuating circumstances provided by the eligible entity.

(c) The ALE-agreement must contain the information described in § 1468.23 and must specify the details of the legal arrangement for the individual buy-protect-sell transaction, including that for all buy-protect-sell transactions the eligible entity must—

(1) Own the land or within 12 months of execution of the ALE-agreement for the buy-protect-sell transaction by both NRCS and the eligible entity, and the eligible entity has completed the purchase of the land or has demonstrated to the satisfaction of NRCS that completion of the purchase of the land is imminent.

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(2) Make an initial sale of the land to a farmer or rancher that is or will be subject to the agricultural land easement pursuant to the terms of the ALE-agreement.

(3) Sell the land to the farmer or rancher for a purchase price that does not exceed the lesser of—

(i) The original purchase price of the land paid by the eligible entity; or  
(ii) The agricultural value of the land as determined by an appraisal.

(4) Ensure that amounts included in the sale of the land to the farmer or rancher for reasonable holding and transaction costs incurred by the eligible entity in total do not exceed more than 10 percent of the agricultural value of the land.

(5) Submit documentation satisfactory to NRCS that confirms the sale of the land that is or will be subject to the agricultural land easement meets the buy-protect-sell transaction requirements. Pursuant to the terms and conditions of the ALE-agreement for the buy-protect-sell transaction, the eligible entity must provide—

(i) Evidence that the purchaser of the land is a qualified farmer or rancher,

(ii) Documentation of the purchase price for the land paid by the eligible entity,

(iii) The appraisal used to determine the agricultural value of the land,

(iv) An itemized list of the allowable holding or transaction costs included in the sales price,

(v) A copy of the settlement statements identifying the sale price and all holding and transaction costs charged to the farmer or rancher purchaser, and

(vi) Other documents as specified by NRCS in the ALE-agreement.

(6) Reimburse NRCS for the entirety of the Federal share provided if, as determined by NRCS, the eligible entity failed to transfer ownership per the terms and conditions of the ALE-agreement for the buy-protect-sell transaction.

(d) In addition to the requirements identified in paragraph (c) of this section, for buy-protect-sell transactions that involve a pre-closing transfer as required by paragraph (b)(1) of this section:

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(1) The maximum duration of the ALE-agreement may be the same as described in § 1468.23(b).

(2) The Federal share for the agricultural land easement will be provided on a reimbursable basis only, after the agricultural land easement has closed and the required documents have been provided to and reviewed by NRCS.

(e) For buy-protect-sell transactions that involve a post-closing transfer as required by paragraph (b)(2) of this section:

(1) At the time of application, in addition to the information identified § 1468.21, the eligible entity must provide NRCS specific information on the proposed structure of the buy-protect-sell transaction, including the parties to be involved in the transaction, the roles and responsibilities of each party related to the acquisition, holding, monitoring, and enforcement of the easement and the fee title ownership of the land, relevant State law that authorizes such transactions, proposed timeline, and other information identified by NRCS.

(2) NRCS will determine the legal conformance of the proposed arrangement for the buy-protect-sell transaction.

(3) Based on the NRCS determination of legal conformance of the proposed buy-protect-sell transaction, for eligible applications selected for funding based on ranking and availability of funds, NRCS will identify the specific terms of the ALE-agreement for the buy-protect-sell transaction.

(4) The buy-protect-sell transaction must meet the timing requirements in paragraphs (e)(4)(i) through (iv) of this section—

(i) The term of the ALE-agreement for a buy-protect-sell transaction will be for a period no longer than 5 fiscal years following the fiscal year of execution of the ALE-agreement by NRCS and the eligible entity.

(ii) The agricultural land easement must be closed within 2 fiscal years following the fiscal year of ALE-agreement execution, and the sale of the land subject to the agricultural land easement to a qualified farmer or rancher must occur within 3 years of closing on the agricultural land easement.

(iii) The Federal share for the agricultural land easement will be provided on a reimbursable basis only, after the agricultural land easement has closed and the required documents have been provided to and reviewed by NRCS.

(iv) Prior to the expiration of the 3-year timeframe, the eligible entity may submit to NRCS a request for an extension that includes documentation of extenuating circumstances and the anticipated timeline, not to exceed 12 months, in which the sale of the land subject to the easement will occur.

(v) NRCS may, in its discretion, authorize such additional time for the sale of the land subject to the agricultural land easement to a qualified farmer or rancher through a modification to the ALE-agreement.

[85 FR 571, Jan. 6, 2020, as amended at 86 FR 8131, Feb. 4, 2021]

**§ 1468.28 Violations and remedies.**

(a) In the event of a violation of the agricultural land easement terms, the agricultural land easement holder will notify the landowner and the violator, if different than the landowner, and NRCS. The landowner may be given reasonable notice and, where appropriate, an opportunity to voluntarily correct the violation in accordance with the terms of the agricultural land easement.

(b) In the event that the agricultural land easement holder, or its successors or assigns, fails to enforce any of the terms of the agricultural land easement as determined by NRCS, NRCS may exercise the United States' rights to enforce the terms of the agricultural land easement through any and all authorities available under Federal or State law.

(c) Notwithstanding paragraph (a) of this section, NRCS reserves the right to enter upon and inspect the easement area if the annual monitoring report provided by the agricultural land easement holder documenting compliance with the agricultural land easement is insufficient or is not provided annually, the United States has a reasonable and articulable belief that the terms and conditions of the easement have been violated, or to remedy deficiencies or easement violations as it

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relates to the conservation plan in accordance with 7 CFR part 12. Prior to its inspection, NRCS will notify the agricultural land easement holder and the landowner and provide a reasonable opportunity for the agricultural land easement holder and the landowner to participate in the inspection.

(d) In the event of an emergency, the entry onto the easement area may be made at the discretion of NRCS when the actions are deemed necessary to prevent, terminate, or mitigate a potential or unaddressed violation with notification to the landowner and the agricultural land easement holder provided at the earliest practicable time. The landowner will be liable for any costs incurred by NRCS as a result of the landowner's failure to comply with the easement requirements as it relates to agricultural land easement violations.

(e) The United States will be entitled to recover any and all costs from the eligible entity, or its successors or assigns, including attorney's fees or expenses, associated with any enforcement or remedial action as it relates to the enforcement of the agricultural land easement.

(f) In instances where an easement is terminated in whole or in part, the proponent of the termination action must pay to CCC an amount determined by NRCS.

(g) If NRCS exercises its rights identified under an agricultural land easement NRCS will provide written notice to the agricultural land easement holder at their last-known address. The notice will set forth the nature of the noncompliance by the agricultural land easement holder, or its successors or assigns, and provide a 180-day period to cure. If the agricultural land easement holder fails to cure within the 180-day period, NRCS will take the action specified under the notice. NRCS reserves the right to decline to provide a period to cure if NRCS determines that imminent harm may result to the conservation values or other interest in land that it seeks to protect.

[85 FR 571, Jan. 6, 2020, as amended at 86 FR 8131, Feb. 4, 2021]

## Subpart C—Wetland Reserve Easements

### § 1468.30 Program requirements.

(a) *General.* (1) Under the ACEP-WRE, NRCS may purchase wetland reserve easements from eligible landowners who voluntarily cooperate to restore, protect, and enhance wetlands on eligible private or Tribal lands. A 30-year contract enrollment option is also available for acreage owned by Indian Tribes.

(2) To participate in ACEP-WRE, a landowner must agree to the implementation of a WRPO, the effect of which is to restore, protect, enhance, maintain, manage, and monitor the hydrologic conditions of inundation or saturation of the soil, native vegetation, and natural topography of eligible lands.

(3) NRCS may provide financial assistance through an easement restoration agreement for the conservation practices and eligible activities that promote the restoration, protection, enhancement, maintenance, and management of wetland functions and values and associated habitats.

(4) For ACEP-WRE enrollments, NRCS may implement such conservation practices and eligible activities through an agreement with the landowner, a contract with a vendor, an interagency agreement, or a cooperative agreement. The specific restoration, protection, enhancement, maintenance, and management actions authorized by NRCS, may be undertaken by the landowner, NRCS, or its designee.

(5) The duration of a wetland reserve easement may be either perpetual, 30-years, or the maximum duration allowed by State law. The duration of a 30-year contract on acreage owned by Indian Tribes is 30 years.

(b) *Acreage limitations.* (1) No more than 25 percent of the total cropland in any county, as determined by the FSA, may be enrolled in CRP and ACEP-WRE, and no more than 15 percent of the total cropland in the county may be subject to an easement under ACEP-WRE.

(2) The limitations in paragraph (b)(1) of this section do not apply to areas devoted to windbreaks or

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shelterbelts after November 28, 1990, or to cropland designated by NRCS with "subclass w" in the land capability classes IV through VIII because of severe use limitations due to factors related to excess water such as poor soil drainage, wetness, high water table, soil saturation, or inundation.

(3) NRCS and the FSA will concur before a waiver of the 25-percent limit of paragraph (b)(1) of this section can be approved for an easement proposed for enrollment in ACEP-WRE. Such a waiver will only be approved if the waiver will not adversely affect the local economy, and operators in the county are having difficulties complying with the conservation plans implemented under 16 U.S.C. 3812.

(c) *Landowner eligibility.* To be eligible to enroll in the ACEP-WRE, all landowners must be in compliance with the highly erodible land and wetland conservation provisions in 7 CFR part 12. Persons or legal entities must be in compliance with the Adjusted Gross Income Limitation provisions at 7 CFR part 1400 and:

(1) Be the landowner of eligible land for which enrollment is sought;

(2) Provide any documentation required by NRCS as necessary to determine eligibility; and

(3) For easement applications, have been the landowner of such land for the 24-month period prior to the time of application unless it is determined by NRCS that:

(i) The land was acquired by will or succession as a result of the death of the previous landowner or pursuant to the terms of an existing trust;

(ii) The ownership change occurred due to foreclosure on the land and the owner of the land immediately before the foreclosure exercises a right of redemption from the mortgage holder in accordance with State law, or

(iii) The land was acquired under circumstances that give adequate assurances, as determined by NRCS, that such land was not acquired for the purposes of placing it in the program. Adequate assurances will include documentation that the change of ownership resulted from circumstances such as:

(A) The prior landowner owned the land for 2 years or more and trans-

ferred ownership amongst members of the immediate family (father, mother, spouse, children, grandparents, or grandchildren),

(B) A completion of a contract for deed entered into 24 months or more prior to the application date,

(C) The new landowner had leased the land for agricultural purposes for 24 months or more prior to the application date, or

(D) The easement area is a portion of a larger property where the majority portion was acquired for agriculture purposes.

(4) Agree to provide such information to NRCS as the agency deems necessary to assist in its determination of eligibility for program benefits and for other program implementation purposes.

(d) *New landowner.* When a parcel of land that has been accepted for enrollment into the ACEP-WRE is sold or transferred prior to NRCS purchase of the easement, NRCS will cancel the application or agreement to purchase and remove the acres from enrollment unless the new landowner meets the requirements of paragraph (c) of this section and accepts the terms and conditions of enrollment. The new landowner must submit required documentation for NRCS review and execute any required agreements or contracts. The decision to approve and execute an enrollment transferred prior to closing is at NRCS's discretion.

(e) *Land eligibility.* (1) Only private land or acreage owned by an Indian Tribe may be considered for enrollment into ACEP-WRE.

(2) NRCS will determine whether land is eligible for enrollment and whether, once found eligible, the lands may be included in the program based on the likelihood of successful restoration of such land and resultant wetland functions and values merit inclusion of such land in the program when considering the cost of acquiring the easement and the cost of the restoration, protection, enhancement, maintenance, management, and monitoring.

(3) Land will only be considered eligible for enrollment in the ACEP-WRE if NRCS determines that the enrollment

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of such land maximizes wildlife benefits and wetland function and values.

(4) To be determined eligible, NRCS must also determine that such land is—

(i) Farmed wetland or converted wetland, together with adjacent lands that are functionally dependent on the wetlands, if such land is identified by NRCS as:

(A) Wetlands farmed under natural conditions, farmed wetlands, prior converted cropland, commenced conversion wetlands, farmed wetland pastures, and agricultural lands substantially altered by flooding so as to develop and retain wetland functions and values; or

(B) Former or degraded wetlands that occur on lands that have been used or are currently being used for the production of food and fiber, including rangeland and forest production lands, where the hydrology has been significantly degraded or modified and will be substantially restored; or

(C) Farmed wetland and adjoining land enrolled in CRP that has the highest wetland functions and values and is likely to return to production after the land leaves CRP; or

(D) A riparian area along a stream or other waterway that links, or after restoring the riparian area, will link wetlands protected by the ACEP-WRE easement, another easement, or other device or circumstance that achieves the same objectives as an ACEP-WRE easement.

(ii) Cropland or grassland that was used for agricultural production prior to flooding from the natural overflow of—

(A) A closed basin lake, together with adjacent land that is functionally dependent upon it, if the State or other entity is willing to provide a 50-percent share of the cost of the easement; or

(B) A pothole and adjacent land that is functionally dependent on it; and

(C) The size of the parcel offered for enrollment is a minimum of 20 contiguous acres. Such land meets the requirement of likelihood of successful restoration only if the soils are hydric and the depth of water is 6.5 feet or less.

(5) If land offered for enrollment is determined eligible under this section,

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then NRCS may also enroll land adjacent or contiguous to such eligible land together with the eligible land, if such land maximizes wildlife benefits and contributes significantly to wetland functions and values. Such adjacent or contiguous land may include buffer areas, created wetlands, noncropped natural wetlands, riparian areas that do not meet the requirements of paragraph (e)(4)(i)(D) of this section, and restored wetlands, but not more than NRCS, in consultation with the State technical committee, determines is necessary to maximize wildlife benefits and contribute significantly to wetland functions and values. NRCS will not enroll as eligible adjacent or contiguous land any constructed wetlands that treat wastewater or contaminated runoff.

(6) To be enrolled in the program, eligible land must have sufficient access and be configured in a size and with boundaries that allow for the efficient management and monitoring of the area for program purposes and otherwise promote and enhance program objectives as determined by NRCS.

(f) *Enrollment of CRP lands.* Land subject to an existing CRP contract may be enrolled in ACEP-WRE only if the land and landowner meet the requirements of this part and the enrollment is requested by the landowner and agreed to by NRCS. To enroll in ACEP-WRE, the CRP contract for the property must be terminated or otherwise modified subject to such terms and conditions as are mutually agreed upon by FSA and the landowner.

(g) *Ineligible land.* The land specified in paragraphs (g)(1) through (7) of this section is not eligible for enrollment in the ACEP-WRE:

(1) Converted wetlands if the conversion was commenced after December 23, 1985;

(2) Land established to trees under the CRP, except in cases where the land meets all other WRE eligibility criteria, the established cover conforms to WRE restoration requirements and NRCS specifications, an active CRP contract will be terminated or otherwise modified upon purchase of the WRE easement, and any additional

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criteria NRCS uses to determine if enrollment of such lands would further the purposes of the program;

(3) Lands owned by the United States other than held in trust for Indian Tribes;

(4) Lands owned in fee title by a State, including an agency or a subdivision of a State or a unit of local government;

(5) Land subject to an easement or deed restriction which, as determined by NRCS, provides similar restoration and protection of wetland functions and values as would be provided by enrollment in ACEP-WRE;

(6) Lands where the purposes of the program or implementation of restoration practices would be undermined due to onsite or offsite conditions, including, but not limited to—

(i) Risk of hazardous materials or petroleum products either onsite or offsite;

(ii) Permitted or existing rights of way, either onsite or offsite, for infrastructure development;

(iii) Adjacent land uses, such as airports, that would either impede complete restoration or prevent wetland functions and values from being fully restored; or

(7) Land which NRCS determines to have unacceptable exceptions to clear title or legal access that is encumbered, nontransferable, restricted, or otherwise insufficient.

**§ 1468.31 Application procedures.**

(a) *Application for participation.* To apply for enrollment, a landowner must submit an application to NRCS.

(b) *Preliminary agency action.* By filing an application, the landowner consents to an NRCS representative entering upon the land for purposes of assessing the wetland functions and values and for other activities, such as the ranking and development of the preliminary WRPO, that are necessary or desirable for NRCS to evaluate applications. The landowner is entitled to accompany an NRCS representative on any site visits.

(c) *Voluntary reduction in costs.* In order to enhance the probability of enrollment in ACEP-WRE, the landowner or someone other than the landowner may offer to contribute financially to

the cost of the acquisition or restoration of the wetland reserve easement to leverage Federal funds. This offer must be made in writing to NRCS.

**§ 1468.32 Establishing priorities, ranking consideration, and project selection.**

(a) When evaluating easements or 30-year contract applications from landowners, NRCS, with advice from the State technical committee, may consider:

(1) The conservation benefits of obtaining an easement or other interest in the land, including but not limited to—

(i) Habitat that will be restored for the benefit of migratory birds and wetland-dependent wildlife, including diversity of wildlife that will be benefitted or life-cycle needs that will be addressed;

(ii) Extent and use of habitat that will be restored for threatened, endangered, or other at-risk species or number of different at-risk species benefitted;

(iii) Protection or restoration of native vegetative communities;

(iv) Habitat diversity and complexity to be restored;

(v) Proximity and connectivity to other protected habitats;

(vi) Extent of beneficial adjacent land uses;

(vii) Proximity to impaired water bodies;

(viii) Extent of wetland losses within a geographic area, including wetlands generally or specific wetland types;

(ix) Capacity of the wetland to improve water quality;

(x) Hydrology restoration potential, which must comprise at least 50 percent of the points for conservation benefits.

(2) The cost effectiveness of each easement;

(3) Whether the landowner or another person or entity is offering to contribute financially to the cost of the easement or other interest in the land to leverage Federal funds;

(4) The extent to which the purposes of this part would be achieved on the land;

(5) The productivity of the land;

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(6) The on-farm and off-farm environmental threats if the land is used for the production of agricultural commodities;

(7) Such other factors as NRCS determines are necessary to carry out the purposes of the program.

(b) To the extent practicable, taking into consideration costs and future agricultural and food needs, NRCS will give priority to—

(1) Obtaining permanent easements over shorter term easements; and

(2) Acquiring easements based on the value of the easement for protecting and enhancing habitat for migratory birds and other wetland-dependent wildlife or improving water quality, in coordination with FWS at the local level, as may be appropriate.

(c) NRCS, in consultation with the State technical committee, may place higher priority on—

(1) Certain land types or geographic regions of the State where restoration of wetlands may better achieve State and regional goals and objectives; and

(2) Land that is currently enrolled in CRP in a contract that is set to expire within 1 year from the date of application or land under a CRP contract that is in transition to a covered farmer or rancher pursuant to 16 U.S.C. 3835(f), and such land and is farmed wetland and adjoining land that has the highest wetland functions and values and is likely to return to production after the land leaves CRP.

(d) Notwithstanding any limitation of this part regarding priority ranking, NRCS may enroll eligible lands at any time to encompass total wetland areas subject to multiple ownership or otherwise to achieve program objectives. NRCS may, at any time, exclude enrollment of otherwise eligible lands if the participation of the adjacent landowners is essential to the successful restoration of the wetlands and those adjacent landowners are unwilling or ineligible to participate.

[85 FR 571, Jan. 6, 2020, as amended at 86 FR 8131, Feb. 4, 2021]

### § 1468.33 Enrollment process.

(a) *Tentative selection.* Based on the priority ranking, NRCS will notify an affected landowner of tentative acceptance into the program.

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(b) *Effect of notice of tentative selection.* The notice of tentative acceptance into the program does not bind NRCS or the United States to enroll the proposed project in ACEP-WRE, nor does it bind the landowner to continue with enrollment in the program. The notice informs the landowner of NRCS's intent to continue the enrollment process on their land.

(c) *Acceptance and effect of offer of enrollment—(1) Wetland reserve easement.* For applications requesting enrollment through a wetland reserve easement, NRCS will present an agreement to purchase to the landowner which will describe the easement area, the easement compensation amount, the easement terms and conditions, and other terms and conditions for participation that may be required by NRCS as appropriate. The easement compensation amount will be based upon the lowest of the fair market value of the land, the geographic area rate cap, or the landowner offer, as provided in § 1468.34 of this part. The landowner accepts enrollment in the ACEP-WRE by signing the agreement to purchase. NRCS will continue with easement acquisition activities after the property has been enrolled.

(2) *30-year contract.* For applications requesting enrollment of acreage owned by an Indian Tribe through the 30-year contract option, NRCS will present an agreement to enter 30-year contract to the Tribal landowner which will describe the contract area, the contract compensation amount, the contract terms and conditions, and other terms and conditions for participation that may be required by NRCS as appropriate. The Tribal landowner accepts enrollment in the ACEP-WRE by signing the agreement to enter 30-year contract. NRCS will proceed with implementation of the WRPO after the 30-year contract has been executed.

(d) *Restoration responsibility and the scope of enrollment.* (1) The agreement to purchase or agreement to enter 30-year contract is the enrollment document that establishes the terms of enrollment consistent with the terms and conditions of this part and identifies the—

(i) Scope of the agreement between NRCS and the landowner,

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(ii) Basis for NRCS to obligate funds,  
(iii) Nature and method through which NRCS will provide ACEP-WRE technical and financial assistance to the landowner, and

(iv) Withholding of the landowner's share of the restoration cost from the easement payment for applicable 30-year or nonpermanent easement or 30-year contract enrollments.

(2) The agreement to purchase between NRCS and the landowner under the easement option also constitutes the agreement for—

(i) Granting an easement on the enrolled land and sufficient access to the enrolled land as set forth under § 1468.37,

(ii) Implementing a WRPO which provides for the restoration, protection, and management of the wetland functions and values,

(iii) Recording the easement in accordance with applicable State law, and

(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 and in accordance with Department of Justice Title Standards.

(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 its own or through an agreement with the landowner or other third party, any activities to restore, protect, enhance, manage, maintain, 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 or 30-year contract 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, insufficient access, sale of the land, risk of contamination from hazardous mate-

rials or petroleum products, or other reasons.

(f) *Landowner failure to accept enrollment offer in timely manner.* The offer of enrollment to the landowner will be void if not executed by the landowner within the time specified.

**§ 1468.34 Compensation for easements and 30-year contracts.**

(a) *Determination of easement compensation values.* (1) Compensation for an easement or 30-year contract under this part will be made in cash in such amount as is agreed to and specified in the agreement to purchase or agreement to enter 30-year contract and finalized in the warranty easement deed or 30-year contract.

(2) Payments for 30-year easements, nonpermanent easements as limited by State law, or 30-year contracts will 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 will pay as compensation the lowest of the values from paragraphs (a)(3)(i) through (iii) of this section:

(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) A written offer made by the landowner.

(4) Each fiscal year NRCS, in consultation with the State technical committee, will establish one or more geographic area rate caps within a State. NRCS will determine the geographic area rate cap using the best information which is readily available in that State. Such information may include soil types, types 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

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payment may be less than the fair market value of the interests and rights to be conveyed by the landowner under the easement.

(2)(i) For easements or 30-year contracts valued at \$500,000 or less, NRCS will provide compensation in up to 10 annual payments, as requested by the participant, as specified in the 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, NRCS may provide compensation in at least 5, but not more than 10 annual payments. NRCS may provide compensation in a single payment for such easements or 30-year contracts when, as determined by the NRCS Chief, it would further the purposes of the program. The applicable payment schedule will be specified in the agreement to purchase or 30-year contract, entered into between NRCS and the landowner.

(c) *Reimbursement of a landowner's expenses.* For completed easement conveyances, NRCS will reimburse the landowner for fair and reasonable expenses, if any, incurred for legal boundary surveys and other related costs, as authorized and determined by NRCS.

(d) *Per-acre-basis-calculations.* If easement or 30-year contract compensation values are calculated on a per-acre basis, NRCS will identify an estimated amount in its agreement to purchase and the final easement or 30-year contract payment will be made based on final determination of value and acreage and specified in the warranty easement deed or 30-year contract.

## § 1468.35 Wetland Reserve Enhancement Partnerships.

(a) The purpose of the Wetland Reserve Enhancement Partnership (WREP) option is to target and leverage resources to address high priority wetland protection, restoration, and enhancement objectives through agreements with States (including a political subdivision or agency of a State), nongovernmental organizations, or Indian Tribes.

(b) NRCS will establish priorities for funding, required level of partner contribution of resources, ranking criteria, and other criteria. NRCS will prioritize proposals that address wet-

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land restoration needs of national or regional importance, including special project or area-wide proposals.

(c) NRCS will make the information regarding WREP available to the public and potential partners.

(d) NRCS will evaluate proposals and make final funding selections based upon the priorities identified in the public notice of funding availability.

(e) NRCS will enter into WREP agreements with partners who have projects selected for funding.

## § 1468.36 WRPO payments.

(a) NRCS may provide financial assistance for implementing the WRPO on the enrolled land subject to an easement or 30-year contract. The amount and terms and conditions of the financial assistance will be subject to the restrictions in paragraphs (a)(1) and (2) of this section on the costs of establishing or installing conservation practices or eligible activities specified in the WRPO:

(1) On enrolled land subject to a permanent easement, NRCS will offer to pay at least 75 percent but not more than 100 percent of such costs; and

(2) On enrolled land subject to a 30-year or nonpermanent easement or 30-year contract, NRCS will offer to pay at least 50 percent but not more than 75 percent of such costs. The landowner's share of the WRPO implementation costs may be withheld from the easement or 30-year contract payment.

(b) Payments may be made only upon a determination by NRCS that an eligible conservation practice or component of the conservation practice has been implemented in compliance with appropriate NRCS standards and specifications; or an eligible activity has been implemented in compliance with the appropriate requirements detailed in the WRPO.

(c) Payments may be made for repair or replacement of an eligible conservation practice or activity, if NRCS determines that the conservation practice or eligible activity is still needed and that the disrepair or failure of the original conservation practice or eligible activity was due to reasons beyond the control of the participant.

(d) A participant may seek additional assistance from other public or private

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organizations as long as the conservation practices or eligible activities funded are approved by NRCS and implemented in compliance with this part.

**§ 1468.37 Easement and 30-year contract participation requirements.**

(a) *Easement requirements.* (1) To enroll eligible land in ACEP-WRE through the permanent or 30-year easement option, a landowner will grant an easement to the United States. The easement will require that the easement area be maintained in accordance with ACEP-WRE goals and objectives for the duration of the term of the easement, including the restoration, protection, enhancement, maintenance, management, and monitoring of wetland and other land functions and values.

(2) For the duration of its term, the easement will require, at a minimum, that the landowner and the landowner's heirs, successors, and assigns will cooperate in the restoration, protection, enhancement, maintenance, management, and monitoring of the land in accordance with the warranty easement deed and with the terms of the WRPO. In addition, the easement will grant to the United States:

(i) A sufficient right of legal access to the easement area,

(ii) The right to authorize compatible uses of the easement area, including but not limited to such activities as hunting and fishing, managed timber harvest, water management, or periodic haying or grazing, if such use is consistent with the long-term protection and enhancement of the wetland resources for which the easement was established,

(iii) All rights, title, and interest in the easement area except those rights specifically reserved in the deed, and

(iv) The right to restore, protect, enhance, maintain, manage, and monitor activities on the easement area.

(3) The landowner will convey title to the easement in a manner that is acceptable to NRCS. The landowner will warrant that the easement granted to the United States is superior to the rights of all others, except for title exceptions deemed acceptable by NRCS.

(4) The participant will—

(i) Comply with the terms of the easement,

(ii) Comply with all terms and conditions of any related contract or agreement,

(iii) Agree to the permanent retirement of any existing cropland base and allotment history for the easement area, as determined by FSA,

(iv) Agree to the long-term restoration, protection, enhancement, maintenance, management, and monitoring of the easement in accordance with the terms of the easement and related agreements, and

(v) Agree that each person or legal entity that is subject to the easement will be jointly and severally responsible for compliance with the easement and 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 easement or the provisions of this part.

(b) *30-year contract requirements.* (1) To enroll eligible land in ACEP-WRE through the 30-year contract option, a landowner will enter into a contract with NRCS. The contract will require that the enrolled area be maintained in accordance with ACEP-WRE goals and objectives for the duration of the contract, including the restoration, protection, enhancement, maintenance, management, and monitoring of wetland and other land functions and values.

(2) For the duration of the 30-year contract, the contract will require, at a minimum, that the landowner and the landowner's heirs, successors, and assigns will, consistent with the terms of this part, cooperate in the restoration, protection, enhancement, maintenance, management, and monitoring of the land in accordance with the contract and with the terms of the WRPO. In addition, the 30-year contract will grant to NRCS:

(i) A sufficient right of legal access to the entire contract area for the duration of the contract,

(ii) The right to authorize compatible uses of the contract area, including such activities as a traditional Tribal use of the land, hunting and fishing, managed timber harvest, water management, or periodic haying or grazing if such use is consistent with the long-

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term protection and enhancement of the wetland resources for which the contract was established, and

(iii) The right to restore, protect, enhance, maintain, manage, and monitor activities on the enrolled area.

(3) The landowner will—

(i) Comply with the terms of the contract,

(ii) Comply with all terms and conditions of any associated agreement,

(iii) Agree to the long-term restoration, protection, enhancement, maintenance, management, and monitoring of the enrolled area in accordance with the terms of the contract and related agreements, and

(iv) Agree that each person or legal entity that is subject to the contract will be jointly and severally responsible for compliance with the contract and 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 contract or the provisions of this part.

(c) *Reservation of grazing rights.* (1) NRCS may include in the terms and conditions of an easement a provision under which the landowner reserves grazing rights if NRCS determines that the reservation and use of the grazing rights:

(i) Is compatible with the land subject to the wetland reserve easement or 30-year contract,

(ii) Is consistent with the historical natural uses of the land and long-term wetland restoration, protection, and enhancement goals for which the wetland reserve easement or 30-year contract was established,

(iii) Is subject to a recorded exhibit to the deed outlining grazing purposes and limitations, and

(iv) Complies with a WRPO developed by NRCS, which may include a grazing management plan component that is consistent with the WRPO and is reviewed and modified as necessary, at least every 5 years.

(2) Compensation for easements or 30-year contracts where the grazing rights are reserved under this section will be based on the method described in § 1468.34, except such compensation will be reduced by an amount equal to the value of the reserved grazing rights, as determined by NRCS.

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### § 1468.38 Development and revision of the WRPO and associated compatible use authorizations.

(a) The WRPO will be developed and updated as determined by NRCS in consultation with the State technical committee and consideration of available site-specific technical input from FWS at the local level and others as appropriate.

(b) The WRPO will specify the manner in which the enrolled land will be restored, protected, enhanced, maintained, managed, and monitored to accomplish the goals of the program. The WRPO, and any revisions thereto, will be developed to ensure that cost-effective restoration and maximization of wildlife benefits and wetland functions and values will result. Specifically, the WRPO will consider and address, to the extent practicable, the onsite alterations and the offsite watershed conditions that adversely impact the hydrology and associated wildlife, water quality, and wetland functions and values.

(c) The WRPO will identify the conservation practices and eligible activities needed to restore the functions and values on the enrolled land. NRCS may review, revise, and supplement the WRPO as needed throughout the duration of the enrollment to ensure that program goals are fully and effectively achieved. Revisions to the WRPO may result in the addition of conservation practices or eligible activities needed to enhance, maintain, manage, repair, replace or otherwise to protect the functions and values of the easement or 30-year contract area.

(d) As required by the terms of the easement deed as described in § 1468.37(a)(2)(ii) or 30-year contract as described in § 1468.37(b)(2)(ii), NRCS may, in its sole discretion, authorize the landowner to conduct compatible uses as defined in this part on the easement or contract area. Compatible use authorizations are time-limited and may be modified or rescinded at any time by NRCS. In evaluating and authorizing compatible uses of the easement or contract area, NRCS will—

(1) Consider whether the authorized use will facilitate the practical administration and management of the land subject to the easement or contract; and

(2) Ensure that the authorized use furthers the functions and values for which the easement or 30-year contract was enrolled.

#### § 1468.39 Violations and remedies.

(a) *Easement violations.* (1) In the event of a violation of the easement involving the landowner, the landowner will be given reasonable notice and an opportunity to voluntarily correct the violation within 30 days of the date of the notice, or such additional time as NRCS determines is necessary to correct the violation at the landowner's expense.

(2) Notwithstanding paragraph (a)(1) of this section, NRCS reserves the right to enter upon the easement or 30-year 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 wetland 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 failure to comply with easement obligations.

(3) If there is failure to comply with easement obligations, the easement will remain in effect, and NRCS may, in addition to any other remedy available to the United States, retain any payment otherwise required to be paid under this part and require the refund of any payment previously made under this part.

(b) *30-year contract or wetland reserve easement restoration agreements violations.* (1) If NRCS determines that a landowner is in violation of the terms of a 30-year contract or wetland reserve easement restoration agreement, or documents incorporated by reference into the 30-year contract or wetland reserve easement restoration agreement, the landowner will be given reasonable notice and an opportunity to voluntarily correct the violation within 30 days of the date of the notice, or such additional time as NRCS determines is necessary to correct the violation. If the violation continues, NRCS may terminate the 30-year contract or wetland reserve easement restoration agreement.

(2) Notwithstanding the provisions of paragraph (b)(1) of this section, a 30-year contract or wetland reserve easement restoration agreement termination is effective immediately upon a determination by the NRCS that the landowner has—

- (i) Submitted false information,
- (ii) Filed a false claim, or
- (iii) Engaged in any act for which a finding of ineligibility for payments is permitted under this part.

(3) If NRCS terminates a 30-year contract or wetland reserve easement restoration agreement, the landowner will forfeit all rights for future payments under the 30-year contract or wetland reserve easement restoration agreement, and must refund all or part, as determined by NRCS, of the payments received, plus interest.

### PART 1469—CONSERVATION SECURITY PROGRAM

#### Subpart A—General Provisions

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#### Subpart B—Contracts and Payments

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- 1469.30 Fair treatment of tenants and share-croppers.
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- 1469.35 Offsets and assignments.
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