

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

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

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

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

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

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

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

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

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

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

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

*Wetland* means land that:

- (1) Has a predominance of hydric soils;
- (2) Is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and
- (3) Supports a prevalence of such vegetation under normal circumstances.

*Wetland functions and values* means the hydrological and biological characteristics of wetlands and the 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; and
- (7) Contribution to educational and scientific scholarship.

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

- (1) The original vegetation community and hydrology are, to the extent practical, re-established; or
- (2) A community different from what likely existed prior to degradation of the site is established. The hydrology and native self-sustaining vegetation

being established will substantially replace original habitat functions and values and does not involve more than 30 percent of the wetland restoration area.

*Wetlands Reserve Plan of Operations (WRPO)* means the conservation plan that identifies how the wetland functions and values will be restored, improved, and protected and which is approved by NRCS.

**§ 1467.4 Program requirements.**

(a) *General.* (1) Under the WRP, NRCS may purchase conservation easements from, or enter into 30-year contracts or restoration cost-share agreements with, eligible landowners who voluntarily cooperate to restore, protect, or enhance wetlands on eligible private and Tribal lands. The 30-year contract enrollment option is only available to acreage owned by Indian Tribes.

(2) To participate in WRP, a landowner must agree to the implementation of a WRPO, the effect of which is to restore, protect, enhance, maintain, and manage the hydrologic conditions of inundation or saturation of the soil, native vegetation, and natural topography of eligible lands. NRCS may provide cost-share assistance through a restoration cost-share agreement or an easement restoration agreement for the conservation practices and activities that promote the restoration, protection, enhancement, maintenance, and management of wetland functions and values. For easement transactions, NRCS may implement such conservation practices and activities through an agreement with the landowner, a contract with a vendor, or a cooperative agreement with a cooperating entity. Specific restoration, protection, enhancement, maintenance, and management actions may be undertaken by the landowner, NRCS, or other designee.

(b) *Acreage limitations.* (1) Except for areas devoted to windbreaks or shelterbelts after November 28, 1990, no more than 25 percent of the total cropland in any county, as determined by the FSA, may be enrolled in the CRP and the WRP, and no more than 10 percent of the total cropland in the county may be subject to an easement acquired through the WRP.

(2) NRCS and FSA shall concur before a waiver of the 25 percent limit of this paragraph can be approved for an easement proposed for enrollment in the WRP. 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 WRP, a person, legal entity, or Indian Tribe 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 Subpart G of 7 CFR part 1400, and:

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

(2) For easement applications, have been the landowner of such land for the 7-year period prior to the time the land is determined eligible for enrollment unless it is determined by the State Conservationist that:

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

(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, such as demonstration of status as a beginning farmer or rancher.

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

(d) When a parcel of land that has been accepted for enrollment into the WRP is sold or transferred prior to the easement being perfected, the application or option agreement to purchase will be cancelled and acres will be removed from enrollment. If the new

§ 1467.4

7 CFR Ch. XIV (1–1–10 Edition)

landowner wishes to continue enrollment, a new application must be filed so that all eligibility criteria may be examined and documented.

(e) *Land eligibility.* (1) Only private land or land owned by Indian Tribes may be considered for enrollment into WRP.

(2) NRCS shall 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 wetland functions and values when considering the cost of acquiring the easement and the cost of the restoration, protection, enhancement, maintenance, and management.

(3) Land shall only be considered eligible for enrollment in the WRP if NRCS determines, in consultation with the FWS, that:

(i) The enrollment of such land maximizes wildlife benefits and wetland values and functions;

(ii) Such land is—

(A) Farmed wetland or converted wetland, together with adjacent lands that are functionally dependent on the wetlands; or

(B) Cropland or grassland that was used for agricultural production prior to flooding from the natural overflow of a closed basin lake or pothole, together with the adjacent land, where practicable, that is functionally dependent on the cropland or grassland; and

(iii) The likelihood of the successful restoration of such land and the resultant wetland values merit inclusion of such land in the program, taking into consideration the cost of such restoration.

(4) Land may be considered farmed wetland or converted wetland under paragraph (3)(ii)(A) of this section if such land is identified by NRCS as:

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

(ii) 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.

(5) Land under paragraph (e)(3)(ii)(B) of this section may be considered for enrollment into 30-year easements if it meets the criteria under paragraph (e)(3) of this section, it is located in the Prairie Pothole Region as defined under §1467.3 of this part, and 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.

(6) If land offered for enrollment is determined eligible under paragraph (e)(3) and (e)(5) of this section, 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:

(i) Is farmed wetland and adjoining lands enrolled in CRP, with the highest wetland functions and values, and is likely to return to production after it leaves CRP;

(ii) Is a riparian area along streams or other waterways that links or, after restoring the riparian area, will link wetlands which are protected by an easement or other device or circumstance that achieves the same objectives as an easement; or

(iii) Land adjacent to the eligible land that would contribute significantly to wetland functions and values, such as buffer areas, wetland creations, non-cropped natural wetlands, and restored wetlands, but not more than the State Conservationist, in consultation with the State Technical Committee, determines is necessary for such contribution.

(7) To be enrolled in the program, eligible land must be configured in a size and with boundaries that allow for the efficient management 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 the WRP only if the land and landowner meet the requirements of this part, and the enrollment is requested by the landowner and agreed to