

Floodplains Reserve Program

Modified from the Wetlands Reserve Program and the Emergency Watershed Protection Program.

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§ xxxx.1 Applicability.

- (a) Floodplains Reserve Program (FRP) technical and financial assistance may be made available to a qualified sponsor, or landowners when a floodplain easement is the selected alternative by the Secretary of Agriculture, upon a qualified sponsor or landowner’s request when a Federal emergency is declared by the President or when a local emergency is declared by the Natural Resources Conservation Service (NRCS) State Conservationist.
- (b) The regulations in this part set forth the policies, procedures, and requirements for the FRP as administered by the NRCS for program implementation.

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

§ xxxx.2 Administration.

- (a) The regulations in this part will be administered under the general supervision and direction of the Chief.
- (b) The Chief is authorized to modify or waive a provision of this part if the Chief deems the application of that provision to a particular limited situation to be inappropriate and inconsistent with the public safety, environmental and cost-efficiency goals of the FRP. This authority cannot be further delegated. The Chief may not modify or waive any provision of this part that is required by applicable law.
- (c) The NRCS State Conservationist will seek advice from the State Technical Committee on the development of the geographic area rate caps of compensation for an easement, a priority ranking process, and related policy matters.
- (d) NRCS may delegate at any time easement management, monitoring, and enforcement responsibilities to other Federal or State agencies that have the appropriate authority, expertise, and technical and financial resources, as determined by NRCS to carry out such delegated responsibilities.
- (e) NRCS may enter into cooperative agreements with Federal or State agencies, conservation districts, and private conservation organizations to assist NRCS with program implementation, including the provision of technical assistance.
- (f) NRCS shall consult with the U.S. Department of the Interior's Fish and Wildlife Service (FWS), the U.S. Army Corps of Engineers (USACE), and FEMA at the local level in determinations of land eligibility and as appropriate throughout the program implementation process. NRCS may consult Federal or State agencies, conservation districts, or other organizations in program administration. No determination by these agencies or organizations shall compel NRCS to take any action which NRCS determines will not serve the purposes of the program established by this part.
- (g) The Chief may allocate funds for purposes related to:
 - a. Encouraging enrollment by historically underserved producers as authorized by 16 U.S.C. 3844;
 - b. special pilot programs for floodplain management and monitoring;
 - c. acquisition of wetland and floodplain easements;
 - d. cooperative agreements with other Federal or State agencies for program implementation;
 - e. coordination of easement enrollment across State boundaries;
 - f. coordination of the development of conservation plans;
 - g. or, for other goals of the FRP found in this part.

NRCS may designate areas as conservation priority areas where flood-related public safety ~~environmental~~ concerns are especially pronounced and to assist landowners in meeting nonpoint source pollution requirements and other conservation needs.

- (h) If the President declares an area to be a major disaster area, NRCS will provide assistance which will be coordinated with the FEMA or its designee. FEMA is the lead federal agency for Presidentially-declared natural disasters.

- (i) When an NRCS State Conservationist determines that a watershed impairment exists, but the President does not declare an area to be a major disaster area, FEMA does not coordinate assistance. In this situation, NRCS will assume the lead, provide assistance, and coordinate work with the appropriate State office of emergency preparedness and other Federal, tribal, or local agencies involved with emergency activities, as appropriate.
- (j) In the case where the watershed impairment exists solely on USDA Forest Service System lands, the Forest Service will determine the existence of the impairment, assume the lead, provide assistance and coordinate work with the appropriate State office of emergency preparedness and other Federal, tribal, or local agencies involved with emergency activities, as appropriate.

§ xxxx.3 Definitions.

The following definitions are applicable to this part:

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

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

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

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

Aquatic functions and values means the hydrological and biological characteristics of aquatic systems and the socioeconomic value placed upon these characteristics, including characteristics that contribute to:

- (1) Protection and propagation of fish and aquatic life and wildlife,
- (2) Recreational purposes, and
- (3) Water withdrawals for public water supply, agricultural, industrial, and other purposes.

Army Corps of Engineers (ACE) is an agency of the United States Department of Defense.

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

such that if each of the members did not provide these inputs, operation of the farm or ranch would be seriously impaired.

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

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

Conservation practice means a specified treatment, such as a vegetative, structural, or land management practice, that is planned and applied according to NRCS standards and specifications pursuant to 16 U.S.C. 2001-2009.

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

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

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

Defensibility means the extent to which an action is:

- (1) More beneficial than adverse in the extent and intensity of its environmental and economic effects;
- (2) In compliance with Federal, State, and local laws;
- (3) Acceptable to affected individuals and communities;
- (4) Effective in restoring or protecting the natural resources;
- (5) Complete with all necessary components included; and
- (6) Efficient in achieving the desired outcome.

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

Easement area means the land encumbered by an easement.

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

Easement Restoration Agreement means the agreement used to implement the Floodplain Restoration Plan of Operations for projects enrolled through the permanent easement-

Exigency means those situations that demand immediate action to avoid potential loss of life or property, including situations where a second event may occur shortly thereafter that could compound the impairment, cause new damages or the potential loss of life if action to remedy the situation is not taken immediately.

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

Farmed Floodplain includes floodplain land used for agricultural purposes, such as crop and livestock production, including grazing and pasture.

Federal Emergency Management Agency (FEMA) is an agency of the United States Department of Homeland Security.

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

Floodplain means

- (1) An area of land that has been damaged by flooding at least once within the previous calendar year or has been subject to flood damage at least twice within the previous 10 years; or
- (2) Other lands within the geological floodplain that may contribute to the restoration of the flood storage and flow, erosion control, or that would improve the practical management of the easement; or
- (3) Lands that would be inundated or adversely impacted as a result of a dam or levee breach.

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

Floodplain functions and values means the hydrological and biological characteristics of floodplains and the socioeconomic value placed upon these characteristics, including:

- (4) Protection from additional flooding or soil erosion;
- (5) Reduction in threats to life or property from watershed impairment;
- (6) Restoration of hydraulic capacity to the natural environment; and
- (7) Enhancement of aquatic and wetland functions and values.

Floodplain Restoration means returning connectivity between the floodplain and the river, stream or other water body to allow

- (1) water to access the floodplain during and after precipitation events, and
- (2) flood volume and frequency to support floodplain functions and values.

Floodplain Reserve Plan of Operations (FRPO) means the conservation plan that identifies how the floodplain functions and values will be restored, improved, and protected and which is approved by NRCS. FRPOs shall include appropriate conservation measures to restore, improve and protect wetland functions and values within the floodplain complex.

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

Imminent threat means a substantial natural occurrence that could cause significant damage to property or threaten human life in the near future.

Indian Tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688, 43 U.S.C. 1601 et seq.), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

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

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

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

Limited resource area is defined as a county where:

- (a) Housing values are less than 75 percent of the State housing value average; and
- (b) Per capita income is 75 percent or less than the National per capita income; and
- (c) Unemployment is at least twice the U.S. average over the past 3 years based upon the annual unemployment figures.

NRCS will use the most recent National census information available when determining this section.

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

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

Natural occurrence includes, but is not limited to, floods, fires, windstorms, ice storms, hurricanes, typhoons, tornadoes, earthquakes, volcanic actions, slides, and drought

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

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

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

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.

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

Project sponsor means a State government or a State agency or a legal subdivision thereof, local unit of government, or any Native American tribe or tribal organization as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b), with a legal interest in or responsibility for the values threatened by a watershed emergency; is capable of obtaining necessary land rights; and is capable of carrying out any operation and maintenance responsibilities that may be required.

Restoration Cost-Share Agreement means the legal document that describes the rights and obligations of participants who have been accepted to participate in FRP restoration costshare enrollment option that is used to implement conservation practices and activities to protect, restore, or enhance ~~wetlands~~ floodplain 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 Floodplain 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.

Watershed emergency means adverse impacts to resources exist when a natural occurrence causes a sudden impairment of a watershed and creates an imminent threat to life or property.

Watershed impairment means the situation that exists when the ability of a watershed to carry out its natural functions is reduced to the point where an imminent threat to health, life, or

property is created. This impairment can also include sediment and debris deposition in floodplains and upland portions of the watershed.

Wetland means land that:

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

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

- (1) Habitat for migratory birds and other wildlife, in particular at risk species;
- (2) Protection and improvement of water quality;
- (3) Attenuation of water flows due to flood;
- (4) The recharge of ground water;
- (5) Protection and enhancement of open space and aesthetic quality;
- (6) Protection of flora and fauna which contributes to the Nation's natural heritage; and
- (7) Contribution to educational and scientific scholarship.

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

- (1) The original vegetation community and hydrology are, to the extent practical, re-established; or
- (2) A community different from what likely existed prior to degradation of the site is established. The hydrology and native self-sustaining vegetation being established will substantially replace original habitat functions and values and does not involve more than 30 percent of the wetland restoration area.

Wetland Reserve Program are those easements enrolled under the Agriculture Conservation Easement Program Wetland Reserve Easements pursuant to 16 U.S. Code § 3865c.

Wildlife Benefits means the ecological and socioeconomic value placed upon birds, fishes, mammals, and all other classes of wild animals and all types of aquatic and land vegetation upon which wildlife is dependent

§ xxxx.4 Program requirements.

(a) *General.*

- (1) Under the FRP, NRCS may purchase floodplain easements from, eligible landowners who voluntarily cooperate to restore, protect, or enhance floodplains on eligible private and Tribal lands.
- (2) Floodplain easements will be held by the United States, through the Secretary of Agriculture, administered by the NRCS or its designee, and perpetual in duration.
- (3) To participate in FRP, a landowner must agree to the implementation of a FRPO, the effect of which is to restore, protect, enhance, maintain, and manage the floodplain to retard runoff, prevent erosion, and relieve hazards to life and property caused by a natural disaster. 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 floodplain 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.

(4) NRCS may, upon request, make assistance available to a sponsor which must be a State or political subdivision thereof, qualified Indian tribe or tribal organization, or unit of local government. Private entities or individuals may receive assistance through the sponsorship of a governmental entity.

(5) Sponsors must:

(i) Contribute their share of the project costs, as determined by NRCS, by providing funds or certain services necessary to undertake the activity. Contributions that may be applied towards the sponsor's applicable cost share of construction costs include:

(A) Cash;

(B) In-kind services such as labor, equipment, design, surveys, contract administration and construction inspection, and other services as determined by the State Conservationist; or

(C) A combination of cash and in-kind services;

(ii) Obtain any necessary real property rights, water rights, and regulatory permits;

(iii) Agree to provide for any required operation and maintenance of the completed emergency measures; and

(iv) 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.

(b) *Eligibility.* NRCS will provide assistance based upon the NRCS State Conservationist's determination that the current condition of the land or watershed impairment poses a threat to health, life, or property. This assistance includes Emergency Watershed Protection (EWP) practices associated with the removal of public health and safety threats, and restoration of the natural environment after disasters, including acquisition of floodplain easements.

(1) Priority EWP assistance is available to alleviate exigency situations. NRCS may approve assistance for temporary correction practices to relieve an exigency situation until a more acceptable solution can be designed and implemented.

(2) *Limitations.*

(i) In cases where the same type of natural event occurs within a 10- year period and a structural measure has been installed or repaired twice within that period using EWP assistance, then EWP assistance is limited to those sites eligible for the purchase of a floodplain easement as described in this part.

(ii) FRP assistance will not be used to perform operation or maintenance, such as the periodic work that is necessary to maintain the efficiency and effectiveness of a measure to perform as originally designed and installed.

(iii) FRP assistance will not be used to repair, rebuild, or maintain private or public transportation facilities, public utilities, or similar facilities.

- (iv) FRP assistance, funded by NRCS, will not be provided on any Federal lands if such assistance is found to augment the appropriations of other Federal agencies.
 - (v) FRP assistance is not available for repair or rehabilitation of nonstructural management practices, such as conservation tillage and other similar practices.
- (3) Repair of structural, enduring, and long-life conservation practices.
- (i) Sponsors may receive FRP assistance for structural, enduring, and long-life conservation practices including, but not limited to, grassed waterways, terraces, embankment ponds, diversions, and water conservation systems, except where eligible landowners receive assistance through recovery measures under the Emergency Conservation Program administered by the Farm Service Agency.
 - (ii) FRP assistance may be available for the repair of certain structural practices (i.e., dams and channels) originally constructed under Public Law 83–566; Public Law 78–534; Subtitle H of Title XV of the Agriculture and Food Act of 1981 (16 U.S.C. 3451 et seq., commonly known as the Resource Conservation and Development Program); and the Pilot Watershed Program of the Department of Agriculture Appropriation Act of 1954 (Pub. L. 83–156; 67 Stat. 214). EWP assistance may not be used to perform operation and maintenance activities specified in the agreement for the covered structure project entered into with the eligible local organization responsible for the works of improvement.
 - (iii) NRCS may authorize FRP assistance for modifying damaged practices when technology advances or construction techniques warrant modifications, including when modifications are the result of federal permitting or other requirements necessary to implement the recovery measure, and will be cost-shared as described herein.
 - (iv) FRP assistance may be used to restore floodplain functions and values where other compatible easement and land deed restrictions exist if the landowner or a sponsor agrees to a FRPO.
- (4) Increased level of protection. In cases other than those ineligible expenses described herein, if the sponsor desires to increase the level of protection that would be provided by the FRP, the sponsor will be responsible for paying 100 percent of the costs of the upgrade or additional work.
- (c) Eligible practices. NRCS will only provide assistance for measures that:
- (1) Provide protection from additional flooding or soil erosion; and
 - (2) Reduce threats to life or property from a watershed impairment, including sediment and debris removal in floodplains and uplands; and
 - (3) Restore the hydraulic capacity to the natural environment to the maximum extent practical; and
 - (4) Enhance aquatic and wetland functions and values; and
 - (5) Are economically and environmentally defensible and technically sound.
- (d) *Documentation*. NRCS will document the economic rationale of proposed practices in appropriate detail before the allocation of emergency funding, including projects under consideration for floodplain easements. Generally, the expected value of the property restored should exceed the cost of emergency measures, including taking into consideration environmental benefits. Documentation will include, but is not limited to:

- (1) Number of locations and extent of damage, including environmental and cultural resources at risk, because of the watershed impairment;
 - (2) Estimated damages to the values at risk if the threat is imminent but not yet realized;
 - (3) Events that must occur for any imminent threat to be realized and the estimated probability of their occurrence both individually and collectively;
 - (4) Estimates of the nature, extent, and costs of the emergency practices to be constructed to recover from an actual threat or relieve an imminent threat;
 - (5) Thorough description of the beneficial and adverse effects on environmental resources, including fish and wildlife habitat;
 - (6) Description of water quality and water conservation impacts, as appropriate;
 - (7) Analysis of effects on downstream water rights; and
 - (8) Other information deemed appropriate by NRCS to describe adequately the environmental impacts to comply with the National Environmental Policy Act, Endangered Species Act, National Historic Preservation Act, and related requirements.
- (d) When a parcel of land that has been accepted for enrollment into the FRP 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 landowner wishes to continue enrollment, a new application must be filed so that all eligibility criteria may be examined and documented.
- (e) Land may be considered farmed floodplain under this section if such land is identified by NRCS as:
- (1) Floodplains farmed under natural conditions, farmed floodplains, farmed floodplain pastures, and lands substantially altered by flooding so as to develop floodplain functions and values; or
 - (2) Former or degraded floodplains 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.
- (f) If land offered for enrollment is determined eligible under 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:
- (1) Is farmed floodplain and adjoining lands enrolled in Wetland Reserve or Conservation Reserve Easement, with the highest wetland or floodplain functions and values, and is likely to return to production after it leaves Wetland Reserve or Conservation Reserve Easement;
 - (2) Is a riparian area along streams or other waterways that links or, after restoring the riparian area, will link floodplains which are protected by an easement or other device or circumstance that achieves the same objectives as an easement; or
 - (3) Land adjacent to the eligible land that would contribute significantly to floodplain functions and values, such as riparian areas, non-cropped natural land, wetlands, and other buffer areas, but not more than the State Conservationist, in consultation with the State Technical Committee, determines is necessary for such contribution.
- (g) 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.

- (h) *Enrollment of CRP and WRP lands.* Land subject to an existing CRP or WRP contract may be enrolled in the FRP 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 FRP, the CRP and WRP 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.
- (i) *Ineligible land.* The following land is not eligible for enrollment in the FRP:
- (1) Land that contains timber stands established under a CRP contract or pastureland established to trees under a CRP contract;
 - (2) Lands owned by an agency of the United States, other than held in trust for Indian Tribes;
 - (3) Lands owned in fee title by a State, including an agency or a subdivision of a State, or a unit of local government;
 - (4) Land subject to an easement or deed restriction which, as determined by NRCS, provides similar restoration and protection of floodplain functions and values as would be provided by enrollment in FRP; and
 - (5) Lands where implementation of restoration practices would be undermined due to on-site or off-site conditions, such as risk of hazardous substances either on-site or off-site, proposed or existing rights of way, either on-site or off-site, for infrastructure development, or adjacent land uses, such as airports, that would either impede complete restoration or prevent floodplain functions and values from being fully restored.

§ xxxx.5 Application procedures.

- (a) *Application for participation.* To apply for enrollment, a landowner must submit an Application for Participation in the FRP.
- (b) *Preliminary agency actions.* By filing an Application for Participation, the landowner consents to an NRCS representative entering upon the land for purposes of assessing the floodplains functions and values, and for other activities, such as the development of the preliminary FRPO, 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 compensation.* In order to enhance the probability of enrollment in FRP, a landowner may voluntarily offer to accept a lesser payment than is being offered by NRCS.

§ xxxx.6 Establishing priority for enrollment of properties in FRP.

- (a) When evaluating easement, or restoration cost share agreement offers from landowners, the NRCS, with advice from the State Technical Committee, may consider:
- (1) The conservation benefits of obtaining an easement, or other interest in the land;
 - (2) The cost effectiveness of each easement or other interest in eligible land, so as to maximize the environmental benefits per dollar expended;
 - (3) Whether the landowner or another person 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 the easement program would be achieved on the land;
 - (5) The productivity of the land; and

- (6) The on-farm and off-farm environmental threats if the land is used for the production of agricultural commodities.
- (b) To the extent practicable, taking into consideration costs and future agricultural and food needs, NRCS shall 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 wildlife, in consultation with FWS.
 - (3) Acquiring easements based on the value of the easement for reducing flood risk, in consultation with USACE and FEMA or their designees.
- (c) Notwithstanding any limitation of this part, the State Conservationist 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 floodplains and those adjacent landowners are unwilling or ineligible to participate. The State Conservationist may coordinate with other Federal, State, municipal, and nonprofit organizations to encourage the restoration of floodplains on adjacent ineligible lands, especially in priority geographic areas.
- (d) Funding priorities for recovery measures. NRCS will provide FRP assistance based on the following criteria, which are ranked in the order of importance:
 - (1) Exigency situations;
 - (2) Sites where there is a serious, but not immediate threat to human life;
 - (3) Sites where buildings, utilities, or other important infrastructure components are threatened;
 - (4) When reviewing paragraphs (b)(3)(i) through (iii) of this section, NRCS will take into account the following resources as they may affect the priority, including, but not limited to:
 - i. Sites inhabited by federally listed threatened and endangered species or containing federally designated critical habitat where the species or the critical habitat could be jeopardized, destroyed, or adversely modified without the EWP practice;
 - ii. Sites that contain or are in the proximity to cultural sites listed on the National Register of Historic Places where the listed resource would be jeopardized if the EWP practice were not installed;
 - iii. Sites where prime farmland supporting high value crops is threatened;
 - iv. Sites containing wetlands that would be damaged or destroyed without the FRP practice;
 - v. Sites that have a major effect on water quality; and
 - vi. Sites containing unique habitat, including but not limited to, areas inhabited by State-listed threatened and endangered species, fish and wildlife management areas, or State-identified sensitive habitats; and
 - vii. Other funding priorities established by the Chief of NRCS.

§ xxx.7 Enrollment process.

- (a) *Tentative Selection.* Based on the priority ranking, NRCS will notify an affected landowner of tentative acceptance into the program.
- (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 FRP, nor does

it bind the landowner to continue with enrollment in the program. The notice informs the landowner of NRCS' intent to continue the enrollment process on their land unless otherwise notified by the landowner.

(c) *Acceptance and effect of offer of enrollment—*

- (1) *Easement.* For applications requesting enrollment through an easement, an option agreement to purchase will be presented by NRCS 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 landowner accepts enrollment in the FRP by signing the option agreement to purchase. NRCS will continue with easement acquisition activities after the property has been enrolled.
- (2) *Restoration cost-share agreement.* For applications requesting enrollment through the restoration cost-share agreement option, a restoration cost share agreement shall be presented by NRCS to the landowner, which will describe the enrolled area, the agreement terms and conditions, and other terms and conditions for participation that may be required by NRCS as appropriate. The landowner accepts enrollment in the FRP by signing the restoration cost-share agreement. NRCS will proceed with implementation of the FRPO after the property has been enrolled.

(d) *Restoration responsibility and the scope of enrollment.*

- (1) The enrollment document 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;
 - (ii) Basis for NRCS to obligate funds; and
 - (iii) Nature and method through which NRCS will provide FRP technical and financial assistance to the landowner.
- (2) The option agreement to purchase between NRCS and the landowner under the easement option constitutes the agreement for:
 - (i) Granting an easement on the enrolled land as set forth under **§ 1467.11**;
 - (ii) Implementing a FRPO which provides for the restoration and protection of the functions and values of floodplains;
 - (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.
- (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 FRPO identified in **paragraph (d)(2)(ii)** of this section. In particular, the easement deed identifies that NRCS has the right to enter the easement area to undertake, on a cost-share basis with the landowner or other entity, any activities to restore, protect, manage, maintain, enhance, and monitor the floodplain and other natural values of the easement area.
- (4) At the time NRCS enters into an agreement to purchase, NRCS agrees, subject to **paragraph (e)** of this section, to acquire and provide for restoration of the land enrolled into the program.

(e) *Withdrawal of offer of enrollment.* Prior to execution of the easement deed by the United States and the landowner, NRCS may withdraw the land from enrollment at any time due to lack of availability of funds, inability to clear title, sale of the land, risk of

hazardous substance contamination, or other reasons. The offer of enrollment to the landowner shall be void if not executed by the landowner within the time specified.

§ xxxx.8 Compensation for easements.

(a) Determination of easement payment rates.

- (1) Compensation for an easement under this part shall be made in cash in such amount as is agreed to and specified in the option agreement to purchase.
- (2) NRCS shall pay as compensation the lowest of the following:
 - (i) The fair market value of the land using the Uniform Standards for Professional Appraisal Practices, or based on an area-wide market analysis or survey;
 - (ii) The geographic area rate cap determined under paragraph (a)(3) of this section; or
 - (iii) The landowner offer.
- (3) The State Conservationist, in consultation with the State Technical Committee, shall establish one or more geographic area rate caps within a state. The State Conservationist shall submit geographic area rate caps and supporting documentation to the Chief for approval. Each State Conservationist will determine the geographic area rate cap using the best information which is readily available in that State. Such information may include: Soil types, type(s) of crops capable of being grown, production history, location, real estate market values, and tax rates and assessments.

(b) Acceptance of offered easement compensation.

- (1) NRCS will not acquire any easement unless the landowner accepts the amount of the easement payment offered by NRCS. The easement payment may or may not equal the fair market value of the interests and rights to be conveyed by the landowner under the easement. By voluntarily participating in the program, a landowner waives any claim to additional compensation based on fair market value.

(c) Reimbursement of a landowner's expenses. For completed easement conveyances, NRCS will reimburse participants for their fair and reasonable expenses, if any, incurred for legal boundary surveys and other related costs, as determined by NRCS. The State Conservationist, in consultation with the State Technical Committee, may establish maximum payments to reimburse participants for reasonable expenses, if incurred.

(d) Tax implications of easement conveyances. Subject to applicable regulations of the Internal Revenue Service, a participant may be eligible for a bargain sale tax deduction which is the difference between the fair market value of the easement conveyed to the United States and the easement payment made to the participant. NRCS disclaims any representations concerning the tax implications of any easement or cost-share transaction.

(e) Per acre basis calculations. If easement payments are calculated on a per acre basis, adjustment to stated easement payment will be made based on final determination of acreage.

(f) Cost-sharing.

- (1) Except as provided in paragraph (b) of this section, the Federal contribution toward the implementation of emergency measures may not exceed 75 percent of

the construction cost of such emergency measures, including work done to offset or mitigate adverse impacts as a result of the emergency measures.

- (2) If NRCS determines that an area qualifies as a limited resource area, the Federal contribution toward the implementation of emergency measures may not exceed 90 percent of the construction cost of such emergency measures.

§ xxxx.9 Floodplains Reserve Enhancement Program.

(a) *Floodplains Reserve Enhancement Program (FREP).*

- (1) The purpose of FREP is to target and leverage resources to address high priority floodplains protection, restoration, and enhancement objectives through agreements with States (including a political subdivision or agency of a State), nongovernmental organizations, and Indian Tribes.
- (2) Funding for FREP agreements will be announced in the FEDERAL REGISTER.
 - (i) The announcement will provide details on the priorities for funding, required level of partner matching funds, ranking criteria, level of available funding, and additional criteria as determined by the Chief.
 - (ii) The Chief will determine the funding level for FREP on an annual basis. Funds for FREP are derived from funds available for FRP.
- (3) Proposals will be submitted to the State Conservationist of the State in which the majority of the project area resides.
 - (i) State Conservationists will evaluate proposals based on the ranking criteria established in the announcement and provide proposals recommended for funding to the Chief.
 - (ii) The Chief will evaluate proposals recommended for funding and make final funding selections, in accordance with ranking factors identified in the announcement.
- (4) Selected proposals and associated funding will be provided to the State Conservationist to enter into FREP agreements with the eligible partner to carry out the project.

(b) *Reserved Rights .*

- (1) The Chief shall carry out a-reserved rights subject to the requirements established in this part.
- (2) Under the reserved rights ~~pilot~~, a landowner may reserve grazing rights in the warranty easement deed, if the State Conservationist determines that the reservation and use of the grazing rights:
 - (i) Is compatible with the land subject to the easement; and
 - (ii) Is consistent with the long-term floodplain protection and enhancement goals for which the easement was established; and
 - (iii) Complies with a FRPO developed with NRCS.
- (3) Compensation for easements entered into under the reserved rights ~~pilot~~ will be based on the method described in § 1467.8 with the following exceptions:
 - (i) Section 1467.8(a)(2)(i) is adjusted to reduce the fair market value of the land by an amount equal to the value of the retained grazing rights as determined by a Uniform Standards for Professional Appraisal Practices appraisal or a market survey; and

- (ii) Section 1467.8(a)(2)(ii) is adjusted to reduce the geographic area rate cap determined as described in § 1467.8(a)(3) by an amount equal to the value of the retained grazing rights.

§ xxxx.10 Cost-share payments.

- (a) NRCS may share the cost with participants of implementing the FRPO on the enrolled land. The amount and terms and conditions of the cost-share assistance shall be subject to the following restrictions on the costs of establishing or installing conservation practices or activities specified in the FRPO:
 - (1) NRCS will offer to pay up to 100 percent of such costs; and
 - (2) The total amount of payments that a person or legal entity may receive, directly or indirectly, for one or more restoration cost-share agreements, for any year, may not exceed \$50,000.
- (b) Cost-share 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 FRPO. Identified conservation practices or activities may be implemented by the participant, NRCS, or other NRCS designee.
- (c) Cost-share payments may be made for replacement of an eligible conservation practice, if NRCS determines that the practice is still needed and that the failure of the original conservation practice was due to reasons beyond the control of the participant.
- (d) A participant may seek additional cost-share assistance from other public or private organizations as long as the conservation practices or activities funded are in compliance with this part. In no event shall the participant receive an amount that exceeds 100 percent of the total actual cost of the restoration.

§ xxxx.11 Easement participation requirements.

(a) Easement requirements.

- (1) To enroll land in FRP, a landowner shall grant an easement to the United States. The easement shall require that the easement area be maintained in accordance with FRP goals and objectives for the duration of the term of the easement, including the restoration, protection, enhancement, maintenance, and management of floodplain and other land functions and values.
- (2) For the duration of its term, the easement shall require, at a minimum, that the participant, and the participant's heirs, successors and assigns, shall, consistent with the terms of this part, cooperate in the restoration, protection, enhancement, maintenance, and management of the land in accordance with the warranty easement deed and with the terms of the FRPO. In addition, the easement shall grant to the United States, through NRCS:
 - (i) A right of access to the easement area;
 - (ii) The right to permit compatible uses of the easement area, including such activities as hunting and fishing, managed timber harvest, 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; and

- (iv) The right to restore, protect, enhance, maintain, and manage activities on the easement area.
- (3) The participant shall convey title to the easement in a manner that is acceptable to NRCS. The participant shall warrant that the easement granted to the United States is superior to the rights of all others, except for exceptions to the title that are deemed acceptable by NRCS.
- (4) The participant shall:
 - (i) Comply with the terms of the easement;
 - (ii) Comply with all terms and conditions of any associated contract or agreement;
 - (iii) Agree to the permanent retirement of any existing cropland base and allotment history for the easement area under any program administered by the Secretary, as determined by the FSA;
 - (iv) Agree to the long-term restoration, protection, enhancement, maintenance, and management of the easement in accordance with the terms of the easement and related agreements;
 - (v) Have the option to enter into an agreement with governmental or private organizations to assist in carrying out any participant responsibilities on the easement area; and
 - (vi) Agree that each person or legal entity that is subject to the easement shall 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.

§ xxxx.12 The FRPO development.

- (a) The development of the FRPO will be made through the local NRCS representative, in consultation with the State Technical Committee, with consideration of site-specific technical input from FWS and the Conservation District.
- (b) The FRPO will specify the manner in which the enrolled land shall be restored, protected, enhanced, maintained, and managed to accomplish the goals of the program.
- (c) The FRPO will be developed to ensure that cost-effective restoration and maximization of wildlife benefits and floodplain functions and values will result.
- (d) The FRPO will consider and address, to the extent practicable, the on-site alternations and the off-site watershed conditions that adversely impact the hydrology and associated wildlife and floodplain functions and values.
- (e) When planning emergency recovery practices, NRCS will emphasize measures that are the most economical and are to be accomplished by using the least damaging practical construction techniques and equipment that retain as much of the existing characteristics of the landscape and habitat as possible.
 - a. Construction of emergency practices may include, but are not limited to, timing of the construction to avoid impacting fish spawning, clearing of right-of-ways, reshaping spoil, debris removal, use of bioengineering techniques, and revegetation of disturbed areas.
- (f) Mitigation actions needed to offset potential adverse impacts of the EWP Program practices should be planned for installation before, or concurrent with, the installation of

- the EWP Program practices. In rare occurrences where mitigation cannot be installed concurrently, plans will require mitigation be accomplished as soon as practical.
- (g) NRCS will review, revise, and supplement the FRPO as needed throughout the duration of the enrollment to ensure that program goals are fully and effectively achieved.
 - (h) NRCS may determine that a measure is not eligible for assistance for any reason, including economic and environmental factors or technical feasibility.

§ xxxx.13 Modifications.

(a) *Easements.*

- (1) After an easement has been recorded, no modification will be made in the easement except by mutual agreement with the Chief and the participant. The Chief will consult with FWS and the Conservation District prior to making any modifications to easements.
 - (2) Approved modifications will be made only in an amended easement, which is duly prepared and recorded in conformity with standard real estate practices, including requirements for title approval, subordination of liens, and recordation.
 - (3) The Chief may approve modifications to facilitate the practical administration and management of the easement area or the program so long as the modification will not adversely affect the ~~wetland~~ floodplain functions and values for which the easement was acquired or when adverse impacts will be mitigated by enrollment and restoration of other lands that provide greater ~~wetland~~ floodplain functions and values at no additional cost to the government.
 - (4) Modifications must result in equal or greater environmental and economic values to the United States and address a compelling public need, as determined by the Chief.
- (b) Insofar as is consistent with the easement and applicable law, the State Conservationist may approve modifications to the FRPO that do not affect provisions of the easement in consultation with the participant and with consideration of site-specific technical input from the FWS and the Conservation District.
- (c) Any FRPO modification must meet FRP regulations and program objectives, comply with the definition of floodplain restoration as defined in § 1467.3, must result in equal or greater wildlife benefits, floodplain functions and values, and ecological and economic values to the United States.

§ xxxx.14 Transfer of land.

- (a) *Offers voided.* Any transfer of the property prior to the enrollment of the easement, or restoration cost-share agreement contract, including the landowner entering into a contract or purchase agreement to sell the land subject to offer, shall void the offer of enrollment.
- (b) *Payments to landowners.* For easements with multiple annual payments, any remaining easement payments will be made to the original participant unless NRCS receives an assignment of proceeds.
- (c) *Claims to payments.* With respect to any and all payments owed to participants, NRCS shall 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 cost-share payments, NRCS may withhold payments

without the accrual of interest pending an agreement or adjudication on the rights to the funds.

§ xxxx.15 Violations and remedies.

(a) Easement violations.

- (1) In the event of a violation of the easement, ~~30-year contract~~, or any restoration cost-share agreement involving the participant, the participant shall 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 the State Conservationist 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 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~~ floodplain functions and values or other rights of the United States under the easement. The participant shall be liable for any costs incurred by the United States as a result of the participant's negligence or failure to comply with easement or contractual obligations.
- (3) At any time there is a material breach of the easement covenants or any associated agreement, the easement shall remain in force and NRCS may withhold or require the refund of any easement and cost-share payments owed or paid to participants. Such withheld or refunded funds may be used to offset costs incurred by the United States in any remedial actions or retained as damages pursuant to court order or settlement agreement. This remedy is in addition to any and all legal or equitable remedies available to the United States under applicable Federal or State law.
- (4) The United States shall be entitled to recover any and all administrative and legal costs, including attorney's fees or expenses, associated with any enforcement or remedial action.

(b) Restoration Cost-Share Agreement violations.

- (1) If the NRCS determines that a participant is in violation of the terms of restoration cost share agreement, or documents incorporated by reference into the restoration cost-share agreement, the participant shall 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 the State Conservationist determines is necessary to correct the violation. If the violation continues, the State Conservationist may terminate the restoration cost-share agreement.
- (2) Notwithstanding the provisions of paragraph (b)(1) of this section, a restoration cost-share agreement termination is effective immediately upon a determination by the State Conservationist that the participant has:
 - (i) Submitted false information;
 - (ii) Filed a false claim;
 - (iii) Engaged in any act for which a finding of ineligibility for payments is permitted under this part; or
 - (iv) Taken actions NRCS deems to be sufficiently purposeful or negligent to warrant a termination without delay.

- (3) If NRCS terminates a restoration cost-share agreement, the participant will forfeit all rights for future payments under the restoration cost-share agreement, and must refund all or part, as determined by NRCS, of the payments received, plus interest.

§ xxxx.16 Payments not subject to claims.

Any cost-share, or easement payment or portion thereof due any person under this part shall be allowed without regard to any claim or lien in favor of any creditor, except agencies of the United States Government.

§ xxxx.17 Assignments.

Any person entitled to any cash payment under this program may assign the right to receive such cash payments, in whole or in part.

§ xxxx.18 Appeals.

- (a) A person participating in the FRP may obtain a review of any administrative determination concerning eligibility for participation utilizing the administrative appeal regulations provided in **7 CFR part 614**.
- (b) Before a person may seek judicial review of any administrative action taken under this part, the person must 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.

§ xxxx.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.

§ xxxx.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 FRP, and that environmental credits may be gained as a result of implementing activities compatible with the purposes of a FRP easement, 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 FRPO, and easement deed are met. Where activities required under an environmental credit agreement may affect land covered under a FRP easement, 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.

16 U.S. Code § 3861 is amended as follows.

Establishment of State technical committees

(a) Establishment

The Secretary shall establish a technical committee in each State to assist the Secretary in the considerations relating to implementation and technical aspects of the conservation programs under this chapter.

(b) Standards The Secretary shall review and update as necessary –

- (1) standard operating procedures to standardize the operations of State technical committees; and
- (2) standards to be used by State technical committees in the development of technical guidelines for the implementation of the conservation provisions of this chapter.

(c) Composition Each State technical committee shall be composed of agricultural producers and other professionals that represent a variety of disciplines in the soil, water, wetland, and wildlife sciences. The technical committee for a State shall include representatives from among the following:

- (1) The Natural Resources Conservation Service.
- (2) The Farm Service Agency.
- (3) The Forest Service.
- (4) The National Institute of Food and Agriculture.
- (5) The State fish and wildlife agency.
- (6) The State forester or equivalent State official.
- (7) The State water resources agency.
- (8) The State department of agriculture.
- (9) The State association of soil and water conservation districts.
- (10) Agricultural producers representing the variety of crops and livestock or poultry raised within the State.
- (11) Owners of nonindustrial private forest land.
- (12) Nonprofit organizations within the meaning of section 501(c)(3) of title 26 with demonstrable conservation expertise and experience working with agriculture producers in the State.
- (13) Agribusiness.
- (14) The State Cooperative Extension Service and land grant university in the State.
- (15) The State Hazard Mitigation Officer or their designee.