

### § 633.3

*Conservation plan* means a written record of the land user's decision on the use and management of the wetland and adjacent areas covered by the agreement.

*Cost-share payment* means the payment made by the NRCS to achieve the protection of the wetland functions and values of the agreement area in accordance with the conservation plan.

*Landowner* means a person or persons having legal ownership of farmland, including those who may be buying farmland under a purchase agreement. Landowner may include all forms of collective ownership including joint tenants, tenants in common, and life tenants and remaindermen in a farm property.

*Natural Resources Conservation Service (NRCS)* is an agency of the United States Department of Agriculture, formerly called the Soil Conservation Service.

*Operator* means the person who is in general control of the farming operations on the farm during the crop year.

*Person* means one or more individuals, partnerships, associations, corporations, estates or trusts, or other business enterprises or other legal entities and, whenever applicable, a State, a political subdivision of a State, or any agency thereof.

*Practice* means a measure necessary or desirable to accomplish the desired program objectives.

*State Technical Committee* means a committee established by the Secretary of the United States Department of Agriculture in a State pursuant to 16 U.S.C. 3861. The State Conservationist will be the chairperson of the State Technical Committee.

*U.S. Fish and Wildlife Service* is an agency of the United States Department of the Interior.

*Wetlands* mean the inland fresh areas defined under 16 U.S.C. 1302 and described as types 1 through 7 in Circular 39, Wetlands of the United States, as published by the United States Department of the Interior.

*Wetlands functions and values* mean the hydrological and biological characteristics of wetlands and the social worth placed upon these characteristics, including:

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(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 flooding;

(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.

*WBP* means the Water Bank Program.

#### § 633.3 Administration.

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

(b) As determined by the Chief and the Administrator of the Farm Service Agency, the NRCS will seek the agreement of the Farm Service Agency in establishing policies, priorities, and guidelines related to the implementation of this part.

(c) The State Conservationist will consult with the State Technical Committee, on program administration and related policy matters. No determination by the State Technical Committee shall compel the NRCS to take any action which the NRCS determines will not serve the purposes of the program established by this part.

(d) The NRCS may enter into cooperative agreements with Federal or State agencies and with private conservation organizations to assist the NRCS with educational efforts, agreement management and monitoring, program implementation assistance, and to assure a solid technical foundation for the program.

(e) The NRCS shall consult with the U.S. Fish and Wildlife Service in the implementation of the program and in establishing program policies.

(f) The Chief may allocate funds for such purposes related to special pilot programs for wetland management and monitoring, emergencies, cooperative agreements with other Federal or State agencies for program implementation, coordination of enrollment

across State boundaries, or for other goals of the WBP found in this part.

#### § 633.4 Program requirements.

(a) *General.* Under the WBP, the NRCS will enter 10-year agreements with eligible persons who voluntarily cooperate in the protection of wetlands and associated lands. To participate in WBP, a person will agree to the implementation of a conservation plan, the effect of which is to protect, enhance, maintain, and manage the hydrologic conditions of inundation or saturation of the soil, native vegetation, and natural topography of eligible lands. The NRCS may provide cost-share assistance for the activities that promote the protection of wetland functions and values. Specific protection actions may be undertaken by the participant or other NRCS designee.

(b) *Participant eligibility.* To be eligible to participate in the WBP, a person must:

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

(2) Have possession of the land by written lease over all designated acreage in the agreement for at least two years preceding the date of the agreement and will have possession over the all designated acreage for the agreement period.

(c) *Eligible land.* (1) The 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 protection of wetland functions and values when considering the cost of entering the agreement and protection costs. Land placed under an agreement shall be specifically identified and designated for the period of the agreement.

(2) The following land is eligible for enrollment in the WBP:

(i) Privately owned inland fresh wetland areas of types 1 through 7.

(ii) Privately owned inland fresh wetland areas of types 1 through 7 which are under a drainage easement with the U.S. Department of the Interior or with a State government which permits agricultural use; or

(iii) Other privately owned land which is adjacent to or within one quarter mile of designated types 1

through 7 wetlands and which is determined by the State Conservationist to be essential for the nesting, breeding, or feeding of migratory waterfowl, or for the protection of wetland.

(d) *Ineligible land.* The following land is not eligible for enrollment in the WBP:

(1) Converted wetlands if the conversion was in violation of 16 U.S.C. 3821 et seq.;

(2) Lands owned by an agency of the United States;

(3) Land which is set aside or diverted under any other program administered by the Department of Agriculture;

(4) Land which is harvested in the first year of the agreement period prior to being designated, except for land on which timber is harvested in accordance with a Forest Management Plan which is included in the conservation plan and is approved by the State forester or equivalent State official;

(5) Lands where implementation of agreement practices would be futile due to on-site or off-site conditions; and

(6) Land on which the ownership has changed during the 2-year period preceding the first year of the agreement period unless:

(i) The new ownership was acquired by will or succession as a result of the death of the previous owner,

(ii) The land was acquired by the owner or operator to replace eligible land from which he was displaced because of its acquisition by any Federal, State, or other agency having the right of eminent domain, or

(iii) The new owner operated the land to be designated for as long as 2 years preceding the first year of the agreement and has control of such land for the agreement period.

#### § 633.5 Application procedures.

(a) Application for participation. To apply for enrollment, a person must submit an application for participation in the WBP.

(b) Preliminary agency actions. The NRCS must certify that the designated acreage that would be placed under an agreement constitutes a viable wetland unit, contains sufficient adjacent land