■ The additions and revisions read as follows:

§ 999.1 Regulation governing the importation of dates.

* * * * *

(c) * * *

(2) * * *

(iii) The Customs entry number pertaining to the lot or shipment covered by the certificate;

* * *

(e) *Importation.* No person may import dates into the United States unless he or she first files with the Collector of Customs at the port at which the Customs entry is filed, as a condition of each such importation, either an inspection certificate or an executed Form FV–6—'Importer's Exempt Commodity Form.'

(1) * * *

(2) *Dates for processing and dates prepared or preserved—importation.* Any person may import dates for processing and dates prepared or preserved exempt from the grade, inspection, and certification requirements of this section if the importer first files as a condition of such importation an executed Form FV–6—'Importer's Exempt Commodity Form.' The importer shall promptly transmit a copy of the executed Form FV–6 to the Fruit and Vegetable Division.

(3) *Dates for processing—Sale by importer.* No importer or other person may import, sell, or use any dates for processing other than for use as set forth in paragraph (a)(4) of this section or as otherwise permitted by this section. Each importer of dates for processing shall obtain from each purchaser, no later than the time of delivery to such purchaser, and file with the Fruit and Vegetable Division not later than the fifth day of the month following the month in which the dates were delivered, an executed Form FV–6.

* * * * *

■ 8. In § 999.100, amend paragraph (c)(2), by redesignating paragraphs (c)(2)(iv) and (c)(2)(v) as paragraphs (c)(2)(v) and (c)(2)(vi), respectively, and adding a new paragraph (c)(2)(iv) to read as follows:

§ 999.100 Regulations governing imports of walnuts.

* * * * *

(c) * * *

(2) * * *

(iv) The Customs entry number pertaining to the lot or shipment covered by the certificate;

* * * * *

§ 999.200 [Amended]

■ 9. In § 999.200, lift the suspension of May 27, 2005, and amend the section as follows:

■ A. Remove the phrase "Prune Form No. 1 'Prunes—Section 8e Entry Declaration' " in paragraph (b)(5), and add in its place the phrase "Form FV–6—'Importer's Exempt Commodity Form.' "

■ B. Redesignate paragraphs (c)(2)(iii) through (c)(2)(v) as paragraphs (c)(2)(iv) through (c)(2)(vi) and add a new paragraph (c)(2)(iii).

■ C. Remove the phrase " 'Prunes—Section 8e Entry Declaration,' prescribed in paragraph (c)(2) of this section as Prune Form No. 1" in the second sentence of paragraph (c)(1), and add the phrase "Form FV–6—'Importer's Exempt Commodity Form;' " in its place;

■ D. Remove the phrase " 'Prunes—Section 8e Certification of Processor or Reseller,' prescribed in paragraph (c)(3) of this section as Prune Form No. 2" in the fifth sentence of paragraph (c)(1), and add the phrase "Form FV–6—'Importer's Exempt Commodity Form' " in its place.

■ E. Remove paragraphs (c)(2) and (c)(3).

■ F. Redesignate paragraph (c)(4) as paragraph (c)(2).

■ G. Revise newly designated paragraph (c)(2).

■ The additions and revisions read as follows:

§ 999.200 Regulation governing the importation of prunes.

* * * * *

(c) * * *

(2) * * *

(iii) The Customs entry number pertaining to the lot or shipment covered by the certificate;

* * * * *

(c) * * *

(2) *Manufacturing Grade Substandard Prune—sale by other than importer.* Each wholesaler or other reseller of manufacturing grade substandard prunes should, for his or her protection, obtain from each purchaser and hold in his or her files an executed Form FV–6—'Importer's Exempt Commodity Form' covering each sale during the calendar year.

* * * * *

§ 999.200 [Suspended]

■ 10. Suspend § 999.200 indefinitely.

§ 999.300 [Amended]

■ 11. Amend § 999.300 as follows:

■ A. Redesignate paragraph (c)(2)(iv) through (c)(2)(vi) as paragraphs (c)(2)(v) through (c)(2)(vii) and add a new paragraph (c)(2)(iv).

■ B. Remove the phrase " 'Raisins—Section 8e Entry Declaration' prescribed in paragraph (c)(2)(i) of this section as 'Raisin Form No. 1' " in the second sentence of paragraph (c)(2), and add the phrase "Form FV–6—Importer's Exempt Commodity Form" in its place.

■ C. Remove the phrase " 'Raisins—Section 8e Certification of Processor or Reseller,' prescribed in paragraph (c)(2)(ii) of this section as 'Raisin Form No. 2' " in the fifth sentence of paragraph (c)(2), and add the phrase "Form FV–6" in its place.

■ D. Remove the phrase "Raisin Form No. 2" in the seventh sentence of paragraph (c)(2), and add the phrase "Form FV–6" in its place.

■ E. Remove paragraphs (c)(2)(i) and (c)(2)(ii).

■ The addition reads as follows:

§ 999.300 Regulation governing importation of raisins.

* * * * *

(c) * * *

(2) * * *

(iv) The Customs entry number pertaining to the lot or shipment covered by the certificate;

* * * * *

■ 12. In § 999.400, amend paragraph (c)(3) by redesignating paragraphs (c)(3)(iv) through (c)(3)(vi) as paragraphs (c)(3)(v) through (c)(3)(vii) and adding a new paragraph (c)(3)(iv) to read as follows:

§ 999.400 Regulation governing the importation of filberts.

* * * * *

(c) * * *

(3) * * *

(iv) The Customs entry number pertaining to the lot or shipment covered by the certificate;

* * * * *

Dated: January 13, 2009.

James E. Link,

Administrator, Agricultural Marketing Service.

[FR Doc. E9–1008 Filed 1–15–09; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1491

RIN 0578–AA46

Farm and Ranch Lands Protection Program

AGENCY: Natural Resources Conservation Service (NRCS) and the Commodity Credit Corporation (CCC),

United States Department of Agriculture (USDA).

ACTION: Interim final rule with request for comments.

SUMMARY: The Food, Conservation, and Energy Act of 2008 (the 2008 Act) amended the Farmland Protection Program (FPP), established by the Federal Agriculture Improvement and Reform Act of 1996, and reauthorized by the Farm Security and Rural Investment Act of 2002. In the implementing rulemaking, the program was named the Farm and Ranch Lands Protection Program (FRPP) to describe best the types of land the program seeks to protect. Under the FRPP, the Secretary of Agriculture, acting through the Natural Resources Conservation Service (NRCS), an agency of the U.S. Department of Agriculture (USDA), is authorized, on behalf of the Commodity Credit Corporation (CCC) and under its authorities, to facilitate and provide funding for the purchase of conservation easements or other interests in land for the purpose of protecting the agricultural use and related conservation values by limiting nonagricultural uses of the land. This rulemaking implements changes to FRPP made by the 2008 Act and makes administrative improvement to the program.

DATES: *Effective Date:* The rule is effective January 16, 2009.

Comment Date: Submit comments on or before March 17, 2009. Comments will be made available to the public or posted publicly in their entirety.

ADDRESSES: You may send comments (identified by Docket Number NRCS–IFR–08006) using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending comments electronically.
- *Mail:* Easements Programs Division, Natural Resources Conservation Service, Farm and Ranch Lands Program Comments, P.O. 2890, Room 6819–S, Washington, DC 20013.
- *E-mail: frpp2008@wdc.usda.gov.*
- *Fax:* 1–202–720–9689
- *Hand Delivery:* Room 6819–S of the USDA South Office Building, 1400 Independence Avenue, SW., Washington, DC 20250, between 9 a.m. and 4 p.m., Monday through Friday, except Federal Holidays. Please ask the guard at the entrance to the South Office Building to call 202–720–4527 in order to be escorted into the building.
- This interim final rule may be accessed via Internet. Users can access the NRCS homepage at *http://www.nrcs.usda.gov/*; select the *Farm Bill* link from the menu; select the *Interim final* link from beneath *the Final and Interim Final Rules Index* title under the heading ''2008 NRCS Farm Bill Conservation Program Rules''. Select *Farm and Ranch Lands Protection Program*. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA TARGET Center at: (202) 720–2600 (voice and TDD).

FOR FURTHER INFORMATION CONTACT: Director, Easement Programs Division, U.S. Department of Agriculture, Natural Resources Conservation Service, Room 6819, P.O. Box 2890, Washington, DC 20013–2890; fax (202) 720–9689; or e-mail: *FRPP2008@wdc.usda.gov*. Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Regulatory Certifications

Executive Order 12866

Pursuant to Executive Order 12866, this interim final rule with request for comment has been determined to be a significant regulatory action. The administrative record is available for public inspection in Room 5831 South Building, USDA, 14th and Independence Avenue, SW., Washington, DC. In accordance with Executive Order 12866, NRCS conducted an economic analysis of the potential impacts associated with this program. A summary of the economic analysis can be found at the end of this preamble and a copy of the analysis is available upon request from the Director, Easement Programs Division, Natural Resources Conservation Service, Room 6819, Washington, DC 20250–2890.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this interim final rule because the CCC is not required by 5 U.S.C. 553, or by any other provision of law, to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Availability of the Environmental Assessment and Finding of No Significant Impact

A programmatic Environmental Assessment (EA) has been prepared in association with this rulemaking. The analysis has determined there will not be a significant impact to the human environment and as a result an Environmental Impact Statement (EIS) is not required to be prepared (40 CFR part 1508.13) The EA and FONSI are available for review and comment for 60 days from the date of publication of this interim final rule in the **Federal Register**. Copies of the EA and FONSI may be obtained from the National Environmental Coordinator, Natural Resources Conservation Service, Ecological Sciences Division, 1400 Independence Ave., SW., Washington, DC 20250. The FRPP EA and FONSI will also be available at the following Internet address: *http://www.nrcs.usda.gov/programs/Env_Assess*. Written comments on the EA and FONSI should be specific and reference that comments are regarding the EA or FONSI. Public comment may be submitted by any of the following means: (1) E-mail comments to *NEPA2008@wdc.usda.gov*, (2) e-mail to e-gov Web site *http://www.regulations.gov*, or (3) mail written comments to National Environmental Coordinator, Natural Resources Conservation Service, Ecological Sciences Division, 1400 Independence Ave., SW., Washington, DC 20205.

Civil Rights Impact Analysis

USDA has determined through a Civil Rights Impact Analysis that the issuance of this rule discloses no disproportionately adverse impacts for minorities, women, or persons with disabilities. Copies of the Civil Rights Impact Analysis are available, and may be obtained from the Director, Easement Programs Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013–2890, or electronically at *http://www.nrcs.usda.gov/programs/FRPP*.

Paperwork Reduction Act

Section 2904 of the Food, Conservation and Energy Act of 2008 requires that the implementation of this provision be carried out without regard to the Paperwork Reduction Act, Chapter 35 of title 44, United States Code. Therefore, USDA is not reporting recordkeeping or estimated paperwork burden associated with this interim final rule.

Government Paperwork Elimination Act

NRCS is committed to compliance with the Government Paperwork Elimination Act and the Freedom to E-File Act, which require government agencies in general and NRCS in particular, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Executive Order 12988

This interim final rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. The rule is not retroactive and preempts State and local laws to the extent that such laws are inconsistent with this rule. Before an action may be brought in a Federal court of competent jurisdiction, the administrative appeal rights afforded persons at 7 CFR parts 11 and 614 must be exhausted.

Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994

Pursuant to section 304 of the Federal Crop Insurance Reform Act of 1994 (Pub. L. 103–354), USDA classified this rule as non-major. Therefore, a risk analysis was not conducted.

Unfunded Mandates Reform Act of 1995

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, USDA assessed the effects of this interim final rule on State, local, and Tribal governments, and the public. This rule does not compel the expenditure of $100 million or more by any State, local, or Tribal governments or anyone in the private sector; therefore, a statement under section 202 of the Unfunded Mandates Reform Act is not required.

Executive Order 13132

This interim final rule has been reviewed in accordance with the requirements of Executive Order 13132, Federalism. USDA has determined that this interim final rule conforms with the Federalism principles set forth in the Executive Order; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities on the various levels of government. Therefore, USDA concludes that this interim final rule does not have Federalism implications.

Executive Order 13175

This interim final rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. USDA has assessed the impact of this interim final rule on Indian Tribal Governments and has concluded that this proposed rule will not negatively affect communities of Indian Tribal governments. The rule will neither impose substantial direct compliance costs on tribal governments, nor preempt tribal law.

Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

Section 2904(c) of the Food, Conservation, and Energy Act of 2008 requires that the Secretary use the authority in section 808(2) of title 5, United States Code, which allows an agency to forgo SBREFA's usual Congressional Review delay of the effective date of a regulation if the agency finds that there is a good cause to do so. NRCS hereby determines that it has good cause to do so in order to meet the Congressional intent to have the conservation programs authorized or amended by Title II in effect as soon as possible. Accordingly, this rule is effective upon filing for public inspection by the Office of the **Federal Register**.

Background

FRPP is a voluntary program to help farmers and ranchers preserve their agricultural land. The program provides matching funds to State, Tribal, and local governments, and nongovernmental organizations with farmland protection programs to purchase conservation easements. The Federal Agriculture Improvement and Reform Act of 1996 (1996 Farm Bill), Public Law 104–387, established the Farmland Protection Program (FPP). The Farm Security and Rural Investment Act of 2002 (2002 Farm Bill), Public Law 107–171, repealed the FPP and created a new farmland protection program. USDA promulgated a proposed rule on October 29, 2002 (67 FR 65907), and a final rule on May 16, 2003 (68 FR 26474) implementing the FPP statutory authority and naming the program the Farm and Ranch Lands Protection Program (FRPP). On July 27, 2006, NRCS amended the final rule by promulgating an interim final rule. The interim final rule was prepared to clarify the following policies and legal requirements: Fair market value definition; the eligibility of forest lands; the nature of the United States' real property rights and how the United States will exercise those rights; compliance with Department of Justice (DOJ) Title Standards; the implementation of Federal appraisal requirements required by the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970; impervious surface limitations on the easement area; and indemnification requirements. NRCS viewed these issues to be matters of public interest and thus sought public comment on associated agency policy. Section 2401 of the Food, Conservation, and Energy Act of 2008 (2008 Act), Public Law 110–246, reauthorized FRPP and made several amendments.

The Farm and Ranch Lands Protection Program has enrolled 533,068 acres on 2,764 farms and ranches since 1996. That area has included 386,444 acres of prime, unique, and important farmland soil or about 72 percent of the total acreage enrolled. The program has also enrolled 50,007 acres of upland forest, 13,287 acres of forested wetlands, and 29,174 acres of non-forested wetlands. The Federal contribution to those enrolled parcels was $536 million, the eligible entity contribution was $857 million, the landowner donation was $215 million, and the total estimated value of those easements was $1.6 billion. The average Federal contribution was 33 percent of the total estimated value, the eligible entity contribution was 53 percent, and the landowner donation was 13 percent.

Summary of 2008 Act Changes

The 2008 Act revised the Farm and Ranch Lands Protection Program to:

- Expand the program purpose to protecting agricultural lands by limiting nonagricultural uses.
- Shift the program focus from purchasing conservation easements to facilitating the purchase of conservation easements by eligible entities.
- Require the Secretary to enter into agreements with eligible entities to stipulate the terms and conditions under which the entity is authorized to use FRPP funds to acquire easements.
- Authorize an eligible entity to use its own conservation easement deed terms and conditions, as approved by the Secretary, so long as such terms and conditions are consistent with the purposes of the program, permit effective enforcement of the conservation easement deed or other interest and include, among other terms, a limit on the impervious surfaces to be allowed that is consistent with the agricultural activities to be conducted.
- Require the establishment of a certification process by which the Secretary will directly qualify certain eligible entities as certified entities.
- Require that to be certified, an eligible entity must have a plan for administering easements consistent with FRPP purposes, the capacity and resources to monitor and enforce conservation easements, policies and procedures to ensure long-term integrity of conservation easements, timely completion of acquisitions, and timely reporting of use of funds.
- Require that the fair market value of the conservation easement or other

interest in eligible land is determined on the basis of an appraisal using an industry-approved method, selected by the eligible entity and approved by the Secretary.

• Require that entities provide a share of the cost of purchasing a conservation easement or other interest in eligible land in an amount that is not less than 25 percent of the acquisition purchase price.

• Require that the Secretary hold a right of enforcement in FRPP funded conservation easements.

• Amend the definition of eligible land to allow for the inclusion of forest land as an eligible land use.

• Allow for the inclusion of forest land that contributes to the economic viability of an agricultural operation or serves as a buffer to protect an agricultural operation.

Description of Changes to the Regulation

Subpart A—General Provisions

Section 1491.1 Applicability

Section 1491.1(a) is revised to update the effective date by removing the reference to ''May 16, 2003'' and inserting that cooperative agreements shall be administered under the regulations in effect at the time the cooperative agreement is signed. This change is necessary for administrative clarity because NRCS is administering active cooperative agreements that were entered into before passage of the 2008 Act. In addition, the word ''easements'' is removed from paragraph (a). The term ''easements'' is removed for administrative clarity because the terms and conditions in effect when the cooperative agreements were signed will determine the terms and conditions for a given easement.

Further, § 1491.1(a) is revised to change ''will'' to ''shall''. The change from ''will'' to ''shall'' is made throughout this regulation for consistency and to strengthen the understanding of the requirement, this change will not be referenced again in this preamble.

Section 1491.2 Administration

Section 1491.2, in paragraph (b)(4) is revised to clarify that a landowner's eligibility must be determined as well as the land eligibility and the eligibility of the entity that receives cost-share through FRPP to purchase the easement. Other non-substantive changes are included to improve readability

Section 1491.3 Definitions

The purpose of the definition section set forth at § 1491.3 is to ensure consistent interpretation by the public and NRCS personnel of the terms used throughout the regulation. Through this rulemaking, NRCS is amending portions of the definition section to implement 2008 Act changes as well as to provide consistency with other conservation programs when practicable.

The definition of ''Agriculture uses'' is amended to use more current and correct terminology, and to broaden the definition to reflect the new statutory program purposes. The definition in the 2003 rule linked to the state's purchase of development rights (PDR) program. The revised definition uses a more universal term, ''farm or ranch land protection program or equivalent.'' The definition is also revised to change the program purpose from protecting topsoil, the purpose of the 2002 Act, to ''protect agricultural use and related conservation uses'' as provided for in the 2008 Act. Additional non-substantive changes were made to improve readability.

The term ''Certified entities'' is added to conform to the new statutory requirement providing for an eligible entity certification process. Certification of ''eligible entities'' is discussed in the description of changes to § 1491.4.

The definition for ''contingent right'' is removed because the regulation no longer refers to the term.

The term ''Cooperative agreement'' is added to define the document that specifies the obligations and rights of NRCS and the eligible entities.

The term ''Dedicated fund'' is added and describes an account that can only be used for the purposes of management, monitoring, and enforcement of conservation easements. This requirement applies to non-governmental organizations wishing to become ''certified entities'' and serves as evidence of their capacity to ensure the long term protection of easements.

The definition of ''Eligible entities'' is revised to reflect the statutory change in the program's purpose and to remove language that is irrelevant to the new definition. The 2008 Act amended the definition of an eligible entity to add organizations that are described in paragraph (1) of section 509(a) of the Internal Revenue Code of 1986.

The definition of ''Eligible land'' is removed because the term is fully explained in § 1491.4(f).

The definition of ''Fair market value'' is amended to reflect the change in the statute regarding easement valuation methodology. NRCS will approve the use of either the Uniform Standards for Professional Appraisal Practice (USPAP) or the Uniform Appraisal Standards for Federal Land Acquisition (UASFLA) procedures by the eligible entity for determining ''fair market value.'' This decision is discussed further in this preamble where the agency addresses changes to § 1491.4(g).

The definition of ''Farm and ranchland of statewide importance'' is added to provide greater specificity to the existing umbrella term ''other productive soils.'' This new definition is more descriptive and technically correct than the current definition of this land type, which is subsumed in general term ''other productive soils.''

The definition of ''Farm and ranchland of local importance'' is added for the same reason discussed above under ''Farm and ranchland of statewide importance.''

The definition of ''Farm or ranch succession plan'' is changed to correct typographical errors in capitalization and lower case. The phrase ''Farm or Ranch Succession Plan is * * *'' is changed to ''Farm or Ranch Succession Plan means * * *'' for consistency purposes.

The definition of ''Field Office Technical Guide (FOTG)'' is revised to provide consistency with the way the term is defined in other NRCS program regulations.

The definition of ''Forest land'' is amended to delete the minimum acreage requirement for forest land. The 2008 Act provides that forest land is eligible providing it contributes to the economic viability of an agricultural operation or serves as a buffer to protect an agricultural operation from development. No minimum acreage enrollment levels were established in statute.

The term ''Forest management plan'' is added to define a newly established documentation requirement needed to demonstrate forest land eligibility, when the ''forest land'' is being enrolled under the ''contributes to the economic viability of the agricultural operation'' land eligibility category. NRCS is using the ''forest management plan'' as documentation of eligibility rather than requiring submission of receipts or tax returns, which may be viewed as intrusive. The definition is consistent with the way the term is defined in other NRCS program regulations.

The definition of Historical and archaeological resources is amended to include resources listed in the State Historic Preservation Officer or Tribal Historic Preservation Officer inventory with written justification as to why the resource meets National Register of Historic Places criteria. This change is made to more fully recognize preservation efforts of State, Tribal, and local preservation offices.

The definition of ''Imminent harm'' is amended to incorporate the change in statutory purpose of the program from protection of topsoil to protection of agricultural use and related conservation values. Other non-substantive changes are made to improve sentence structure and clarity.

The definition of ''Indian Tribe'' is updated to give the term the meaning provided in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450(b)(e)). This definition is consistent with the way the term is defined for other NRCS easement programs.

The definition of ''landowner'' is amended to clarify that a landowner may be a ''person, legal entity, or Indian Tribe.'' The definition clarifies that State and local governments, and non-governmental organizations are not considered eligible landowners. This clarification was previously included in policy, but it was not included in the regulation.

The term ''Natural Resources Conservation Service'' is amended to more appropriately refer to the ''United States'' rather than ''U. S.'' and to denote ''NRCS'' as the defined acronym.

The definition of ''Non-governmental organization'' is amended in accordance with the 2008 Act to incorporate reference to organizations that are described in section 509(a)(1) of the Internal Revenue Code.

The definition of ''Other interests in land'' is amended to clarify that other interests are interests other than easements.

The definition of ''Other productive soils'' is amended to identify that the term is restricted to farm and ranch land soils that are considered ''unique farmland,'' and ''farm and ranch land of statewide and local importance.'' The terms ''unique farmland'', ''farm and ranch land of statewide importance'' and ''farm and ranch land of local importance'' are now defined separately rather than within the definition of ''other productive soils.'' The change was made to provide specific definitions for these types of land.

The definition of ''Prime and unique farmland'' is deleted and replaced with separate definitions for ''Prime farmland'' and ''Unique farmland.'' The change is made to improve the clarity and technical correctness of the definitions for these types of land.

The definition of ''Purchase price'' is added to provide for consistent use of the term in the regulation. ''Purchase price'' is the appraised fair market value of the easement minus the landowner donation. The definition of ''purchase price'' is essential to determining the entity's minimum contribution as provided for in the 2008 Act.

The term ''Right of enforcement'' is added to clarify that a right of enforcement is an interest in the land which the United States may exercise under specific circumstances to enforce the terms of the conservation easement. The exercise of this right is provided in the description of changes to § 1491.22.

The definition of ''Secretary'' is amended to more appropriately refer to the ''United States'' rather than the ''U. S.''.

The definition of ''State Technical Committee'' is changed to remove ''of the U.S. Department of Agriculture'' following the term ''Secretary'' to simplify the definition. The definition for the term ''Secretary'' already includes these words.

The definition of ''State Conservationist'' is updated to use the current terminology for the ''Pacific Island Area'' rather than ''Pacific Basin Area.''

As noted above, the term ''Unique farmland'' is added to improve clarity and provide a more technically accurate definition of this type of land than is described in the existing regulation under ''Prime and unique farmland.''

The term ''United States' rights'' is removed because the 2008 Act limited the Secretary's interest in FRPP funded easements to a right of enforcement which runs with the land. The term ''right of enforcement'' is defined in this section.

Section 1491.4 Program Requirements

Section 1491.4(a) is amended to incorporate the statutory requirement that NRCS provide funding for conservation easements or other interests in land versus acquiring a Federal interest in land; change the reference from the ''Secretary'' to ''Chief''; and to add the ''right of enforcement''. The ''right of enforcement'' is discussed further under the description of changes to § 1491.22. The 2008 Act changed the role of the Secretary to ''facilitate and provide funding for the purchase of conservation easements or other interests in eligible land'' rather than to directly purchase easements. Related changes are made to remove the requirement that the United States is named as a grantee on the deed and instead require that the United States' right of enforcement is noted in the opening paragraph of the deed that acknowledges the parties. The purpose for requiring this acknowledgement is to put the public on notice of the Federal right and to guard against condemnation of FRPP-funded deeds. Minor non-substantive changes are also made to improve readability.

Section 1491.4(b) is amended to add that in states that limit the term of the easement, the term of the easement must be the maximum allowed by State law.

Section 1491.4(c) is amended to make non-substantive changes to improve readability.

A new § 1491.4(d) is added, and subsequent paragraphs are re-designated, to address the requirements that an entity must meet to become a ''certified entity.'' The certification process was added by the 2008 Act as an option for entities. To meet the certification requirements established under the 2008 Act, NRCS is requiring that an entity demonstrate long-term and substantial experience directly with the FRPP program. This section also includes a requirement for the existence of a dedicated fund for non-governmental organizations, as described in the changes to § 1491.3. Section 1491.4(d)(1) includes the requirement that an entity have a demonstrated ability to complete timely acquisition of easements through compliance with the terms under previously executed FRPP cooperative agreements.

A new § 1491.4(e) is added to describe the provisions for review and revocation of certification included in the 2008 Act.

Section 1491.4(f), previously § 1491.4(d), is restructured to increase clarity and readability. Section 1491.4(f) is amended in paragraph (1) to combine the provisions of the former § 1491.4(d)(2) and certain provisions found in the ''eligible land'' definition in § 1491.3. Section 1491.4(f)(1) is also amended to add the new statutory eligibility land category identified as ''to further a State or local policy consistent with the purposes of the program.'' Section 1491.4(f)(2) is added to describe the type of agriculture land categories that are eligible for enrollment. This language was previously found in the definition of ''eligible land'' in § 1491.3, except that, the text in paragraph (f)(2) contains restrictions on forest land provided in the 2008 Act. Section § 1491.4(f)(3) is added to include language on incidental lands formerly found in the definition of ''eligible land''. Section 1491.4(f)(4), previously § 1491.4(d)(1), is revised to clarify that whole or part of a farm or ranch may be offered for enrollment. In § 1491.4(f)(5), NRCS is establishing a threshold for requiring the development of forest management plans. The threshold will be the greater of 10 acres of forest or 10 percent of the easement area in forest. Based on historical program

participation, NRCS estimates that this policy would have resulted in forest management plans on about 40 percent of the parcels enrolled in the program currently. Farms that are less than 100 acres in size with less than 10 acres of forest are not required to have a plan to be eligible. A forest management plan will help ensure that the Federal investment in an easement encompassing significant forest acreage will have long-term viability for food, fiber, and environmental benefits. The requirement also helps to ensure that these forest lands contribute to the viability of the agricultural operation as required by the 2008 Act.

Section 1491.4(f)(6), previously § 1491.4(d)(5), is revised to clarify that lands currently under ownership by an entity whose purpose is to protect agricultural uses and related conservation values are not eligible for the program. Lands owned by these entities are already protected. Exclusion of these lands will allow program investments to protect additional acreage. This provision is already included in the FRPP policy, and is now being incorporated into the regulation by this rulemaking.

Section 1491.4(f)(7), previously § 1491.4(d)(6), is amended to add the current regulatory Adjusted Gross Income (AGI) eligibility reference, non-substantive changes are made to improve clarity, and paragraphs are re-numbered as appropriate.

Section 1491.4(f)(8) is added to describe the on-site and off-site conditions that are not compatible with the program's purposes.

Section 1491.4(f)(9) is added to clarify that a landowner may submit an application on land on which the mineral estate is owned by someone other than the landowner (also referred to as a split estate), but that USDA reserves the right to determine the impacts of third party rights upon a potential easement and to deny funding where the purposes of the program cannot be achieved.

Section 1491.4(g), previously § 1491.4(e), is amended to define the industry-approved appraisal methods specified in the 2008 Act as the Uniform Standards of Professional Appraisal Practices (USPAP) or the Uniform Appraisal Standards for Federal Land Acquisition (UASFLA). USPAP and UASFLA are the guidelines that professional appraisers use for appraising properties. The entity may choose which of these methods they prefer to use. The 2008 Act specified that an appraisal would be used; therefore, administrative valuation processes which are used by some farm and ranchland protection programs will not be acceptable because they are not appraisal methodologies.

Section 1491.4(h), previously § 1491.4(f), is amended to clarify that a standard deed form may be required and is updated to reflect the passage of the 2008 Act by indicating that any standard form must meet the purposes of this part.

Section 1491(4)(i), previously § 1491.4(g), was not otherwise amended. Section 1491.4(i) contains the requirement that a landowner must meet the payment eligibility requirements of 7 CFR part 12.

Section 1491.5 Application Procedures

The text of the existing section is deleted in its entirety and replaced with a new application process. Section 1491.5(a) establishes that an entity must submit an application to the State Conservationist in the State where the parcels are located. Section 1491.5(b) provides that the Chief will determine whether an eligible entity qualifies as a certified entity based on the criteria in § 1491.4(d) and in the NRCS national FRPP database.

Section 1491.5(c) indicates that the State Conservationist will notify the entity about whether or not the entity has been determined to be eligible or certified.

Section 1491.5 (d) clarifies that an entity with an established cooperative agreement will not need to submit an annual application in response to an RFP, but that the entity may re-apply when their cooperative agreement expires. NRCS determined, based on experience administering other easement programs, that FRPP can be implemented using a continuous signup process. This process provides better service to agency clients because applications can be submitted in accordance with their own schedule. Clients do not have to wait for a **Federal Register** publication. It also reduces administrative burden for the agency.

Section 1491.5(e) identifies that the new application process will allow continuous sign-up, which is consistent with other conservation programs. The State Conservationist will announce periodic ranking dates no less than 60 days before the date of the ranking. The process will allow certified and non-certified eligible entities to compete under the same application and ranking process. NRCS has decided to have certified and non-certified entities participate similarly in the program to simplify the application process and allow parcels to compete on equal resource-based terms, regardless of the status of the entity.

To eliminate confusion and miscommunication on the status of non-selected parcels at the end of each fiscal year, § 1491.5(f) provides that NRCS will purge the unfunded parcels from the application list on September 30 of each year unless the entity requests that the parcels be considered for funding in the next fiscal year. If an entity fails to request that their parcels be retained on the list, a new list of parcels must be submitted for consideration each year. This process will allow NRCS State Offices to purge their lists of parcels that may have dropped their applications or were funded with other sources, and eliminate confusion for entities regarding the status of their existing applications.

Section 1491.6 Ranking Considerations and Proposal Selection

The existing section is deleted and replaced by a new ranking process. Section 1491.6(a) establishes that prior to scoring and ranking parcels for funding, NRCS must evaluate the eligibility of both the landowner and the land. Section 1491.6(b) of this section establishes that such parcels will be ranked according to both National and State criteria. Within the State ranking criteria, the National criteria must comprise at least half of the available ranking points. Section 1491.6(c) identifies that State Conservationists will establish and announce a date for ranking the applications that were accepted and scored in the continuous signup. Section 1491.6(d) states that applications from certified entities and non-certified entities will be ranked together and not separately so that the parcels submitted compete equally.

Section 1491.6(e) provides that parcels selected for funding will be included in the cooperative agreements signed by both NRCS and the entity; that funds for each fiscal year will be obligated through an amendment signed by both parties to the existing cooperative agreement; and that the amendment will identify the closing and payment reimbursement deadline applicable to each funding year's parcels.

Paragraph (f) sets forth the national ranking criteria. The national ranking criteria are changed to reflect site (parcel)-specific criteria rather than entity performance criteria and language has been added to clarify that the national requirements are mandatory for inclusion in the state ranking. The national criteria set forth in the 2003 Rule included information in the State FRPP plans, and criteria on eligible entities regarding their histories of protecting farms and ranches. These

criteria did not include parcel specific criteria; however, it is the individual parcels that are being rated and ranked. Therefore, these changes are made because the use of the new factors provides a more quantifiable resource-based ranking of individual parcels.

In addition, in order to clarify and streamline their use, funding priorities set forth in the existing § 1491.7 are being incorporated into the new national and the state funding criteria established by this rulemaking in § 1491.6(f) and (g). In the ''other protected land'' criteria set forth at § 1491.6(f)(7), this rulemaking adds a reference to military installations to emphasize the USDA partnership with the Department of Defense under its buffer program.

Section 1491.6(g) identifies the type of criteria that a State Conservationist, with advice of the State Technical Committee, may include. The State ranking criteria may address the viability of the parcel for agriculture into the future, the landowner's willingness to grant public access for recreational purposes, and the performance of the entity. Because the leveraging factors may skew the ranking of individual parcels and the other factors set forth in the existing regulation are not relevant to individual parcels, the State ranking criteria is being changed by this rulemaking to eliminate criteria related to the type of farm, the maximum amount of Federal funding required per acre, the percent leveraging, and an entity's history of assisting beginning farmers and ranchers. Funding priorities from the former § 1491.7, however, were incorporated as possible State factors.

Section 1491.6(h), previously § 1491.6(b), provides that the State ranking criteria will be developed on a State-by-State basis. However, it removes the language in § 1491.6(b) that recommends interested entities request ranking criteria from the State Conservationist. This language is replaced with a provision that requires NRCS State Conservationists to make available the full listing of National and State ranking criteria. Section 1491.6(i) is removed because the purpose of (i) is addressed with the changes in § 1491.4 (g).

Section 1491.7 Funding Priorities

Section 1491.7 is deleted and its elements incorporated in § 1491.6 as noted above to improve the structure of the regulation.

Subpart B—Cooperative Agreements and Conservation Easement Deeds

Section 1491.20 Cooperative Agreements

Section 1491.20(a) is amended to reflect changes to the contents of cooperative agreements that are necessitated by the 2008 Act, including the change that FRPP funds are used to assist eligible entities with the purchase of rights in land rather than to purchase these rights directly by the United States. To implement 2008 Act statutory changes, the following additions have been made to this section: requirements of the easement deed, management and enforcement requirements, the responsibilities of NRCS, the responsibilities of the eligible entity, the ability to substitute parcels by mutual agreement, and other requirements deemed necessary by NRCS. These issues have been addressed in the cooperative agreements since 1996, but their presence in the cooperative agreements has never been required by regulation. These issues are included in this regulation to inform the eligible entities what their responsibilities are in the agreement and list the responsibilities of NRCS. Other non-substantive changes were made to paragraph (a) to improve its readability.

A new § 1491.20(b) is added which sets forth the new statutory requirement that the terms of agreements be a minimum of five years for certified entities and three years for other eligible entities.

The existing § 1491.20(b) is being redesignated as § 1491.20(c) and is amended to require that the list of parcels funded under a cooperative agreement include the acreage, the estimated fair market value of the parcel, and the FRPP contribution amount. The requirement for a location map is being removed from the existing regulation, but such information may be still required as a matter of policy under the category of ''other relevant information''.

Section 1491.21 Funding

Section 1491.21(a) is amended to reflect that NRCS may share the cost of an interest in land, and not just the cost of a conservation easement. Section 1491.21(b) incorporates the 2008 Act change that the minimum entity cost-share to be an amount that is not less than 25 percent of the acquisition purchase price. As discussed above in the changes to the definitions section, ''purchase price'' is defined as the fair market value of the easement less the landowner's contribution. Section 1491.21(c) authorizes landowner donations without restrictions. The previous rule limited landowner donations to 25 percent. Section 1491.21(d) includes the requirement that the entity must provide a minimum of 25 percent of the purchase price of the conservation easement. Section 1491.21(e) remains unchanged. Section 1491.21(f) emphasizes that a State Conservationist shall not assign a higher priority to any easement solely based on its lesser cost to FRPP.

Section 1491.21(g) is added to affirm that NRCS asserts no direct or indirect interests to environmental credits associated with an easement purchased in part with FRPP funds.

Section 1491.22 Conservation Easement Deeds

Section 1491.22(b) is amended to clarify that easements in States where State law prohibits permanent easements shall be of the maximum duration allowed by state law. The 2008 Act requires that entities may use their own terms and conditions of conservation easement deeds, provided that such terms and conditions meet the minimum requirements set forth in the statute and are approved by the Secretary. Consequently, this rulemaking amends § 1491.22(c) to provide that eligible entities may use their own easement deeds when the deed form to be used for its land transactions under the cooperative agreement has been submitted to and approved by NRCS in advance.

In accordance with the 2008 Act change made to the property interest acquired by the United States in FRPP funded easements, this rulemaking deletes the language of the existing § 1491.22(d), which requires the United States to be named a grantee on FRPP funded easements.

New language is set forth in § 1491.22(d) incorporating the 2008 Act requirement that the Secretary shall require the inclusion of a ''contingent right of enforcement'' for the Secretary in the terms of the conservation easement deed. Because this right is new in the 2008 Act and is not a standard real property term, NRCS has carefully considered its meaning while promulgating this rule. Specifically, NRCS interpreted the plain meaning of the statutory language, considered the legislative history, and consulted with the Office of the General Counsel for the Department.

The purpose of the right is to ensure that the easement is enforced and that the Federal investment is protected. The FRPP statute requires that the easement deed include a contingent right of enforcement. Given the requirement for

inclusion of a contingent right of enforcement in the terms of the deed, the Agency has determined that it is Congress' intent that such a right run with the land for the duration of the easement.

The only legislative history discussing the nature of the contingent right of enforcement is found in the Manager's Report for FRPP. Here the Managers indicated that Congress did not want the contingent right of enforcement considered an acquisition of real property. The House version of FRPP included specific statutory language stating that the contingent right of enforcement was not a real property acquisition. However, Congress adopted the Senate version (with amendment), which did not include this language.

NRCS has concluded that it cannot accomplish the intent of the Managers as reflected in the legislative history regarding the effect of ''contingent right of enforcement'' and give meaning to the plain statutory language of FRPP. This is because when an interest is to run with the land, it constitutes a real property right. The agency has considered other theories, including contractual and constitutional authority under the Spending Clause, but none provide a sufficient legal justification for the Secretary to enforce the terms of the easement for its duration against subsequent landowners. Consequently, the Agency has concluded that the contingent right of enforcement as used in FRPP means a vested real property right, which provides the Secretary, on behalf of the United States, the right to enforce the terms of the easement for the duration of the easement. In addition, because the United States has a vested real property right in FRPP easements, i.e., its right of enforcement, the easement cannot be condemned by state or local government, thereby providing further protection of the easement and the federal investment.

Finally, the Agency is interpreting the term ''contingent'' in ''contingent right of enforcement'' to mean that the Secretary exercises that right under certain circumstances, not that the right itself is contingent. Consequently, to prevent confusion over the scope of right, the Agency is referring to its enforcement right as a ''right of enforcement.'' The definition clarifies that this right is only exercised under certain circumstances. Section 1491.22(d) is changed to provide information about the United State's right of enforcement. Specifically, the paragraph provides that the conveyance document must include the right of enforcement as set forth in the FRPP cooperative agreement, it identifies when the United States may exercise this right and it explains that the right is a vested interest in real property and cannot be condemned by State or local governments. Section 1491.22(e) is amended to remove the requirement for conservation districts to approve the conservation plan, as this is not always consistent with local practice. The change still gives NRCS the ability to work through local conservation districts in the development of conservation plans. The requirement that NRCS sign the deed accepting its terms is incorporated at § 1491.22(g) for administrative clarity.

Section 1491.22(i) retains the impervious surface limit of 2%, but is amended to increase the impervious surface waiver to up to 10% from the existing policy of 6%. This change is possible because the statute was amended to eliminate the protection of topsoil as the primary purpose of the program. This impervious surface limit should be adequate to allow for various types of agricultural needs in different regions, while providing an adequate protection against destruction of agricultural soil resources and other conservation values associated with agricultural land such as open space.

The indemnification language previously located in § 1491.30(d) is moved to § 1491.22(j) because this language describes a deed requirement and is appropriately placed in this section.

Section 1491.22(k) is added to require that any conservation easement deed include a clause which addresses amendments to its terms. In particular, § 1491.22(k) requires that any amendment be consistent with the purposes of the conservation easement and with FRPP. This paragraph replaces the provisions previously found in § 1491.23.

Section 1491.23 is removed since the United States is no longer a grantee under the terms of the conservation easements acquired with FRPP funds. Therefore, modifications to the terms of the conservation easement will be handled through an amendment clause required under § 1491.22(k).

Subpart C—General Administration

Section 1491.30 Violations and Remedies

Section 1491.30(b) and (f) are revised to incorporate the changes to the nature of the Federal right. The former section 1491.30(e) is moved to § 1491.22 as described above. Subsequent sections are re-numbered. Section 1491.30(d) clarifies that any cost recoveries levied by NRCS will be directed to the cooperating entity, not the specific landowner.

Section 1491.31 Appeals

Section 1491.31(a) is changed by replacing the term ''cooperating entity'' with the term ''eligible entity'' to refer to potential FRPP participants. The term ''cooperating entity'' is no longer used. Section 1491.31(b) is changed to add the term ''of eligible entity'' after the term ''person'' to ensure the public understands that all participants have the same rights. Paragraph (b) is further changed to refer to ''administrative action'' rather than ''any action taken under this part''. Only administrative actions are appealable. Last, paragraph (b) is changed to provide that no decision shall be a final Agency action except a decision of the Chief of NRCS. The words ''Chief of NRCS'' replace the words ''U.S. Department of Agriculture''. Paragraph (c) is added to further clarify that once an easement is recorded, enforcement actions taken by NRCS are not subject to review under administrative appeal regulations. This language is consistent with the appeal regulations at 7 CFR part 614, 7 CFR part 11, and Federal real property law.

Section 1491.32 Scheme and Device

The text of Section 1491.32 is revised by replacing ''Secretary'' with ''NRCS''.

Section 2708, ''Compliance and Performance'', of the 2008 Act added a paragraph to section 1244(g) of the 1985 Act entitled, ''Administrative Requirements for Conservation Programs,'' which states the following:

''(g) Compliance and performance.—For each conservation program under Subtitle D, the Secretary shall develop procedures—

(1) To monitor compliance with program requirements;

(2) To measure program performance;

(3) To demonstrate whether long-term conservation benefits of the program are being achieved;

(4) To track participation by crop and livestock type; and

(5) To coordinate activities described in this subsection with the national conservation program authorized under section 5 of the Soil and Water Resources Conservation Act of 1977 (16 U.S.C. 2004).''

This new provision presents in one place the accountability requirements placed on the Agency as it implements conservation programs and reports on program results. The requirements apply to all programs under Subtitle D, including the Wetlands Reserve program, the Conservation Security Program, the Conservation Stewardship Program, the Farm and Ranch Lands

Protection Program, the Grassland Reserve Program, the Environmental Quality Incentives Program (including the Agricultural Water Enhancement Program), the Wildlife Habitat Incentive Program, and the Chesapeake Bay Watershed initiative. These requirements are not directly incorporated into these regulations, which set out requirements for program participants. However, certain provisions within these regulations relate to elements of section 1244(g) of the 1985 Act and the Agency's accountability responsibilities regarding program performance. NRCS is taking this opportunity to describe existing procedures that relate to meeting the requirements of section 1244(g) of the 1985 Act, and Agency expectations for improving its ability to report on each program's performance and achievement of long-term conservation benefits. Also included is reference to the sections of these regulations that apply to program participants and that relate to the Agency accountability requirements as outlined in section 1244(g) of the 1985 Act.

Monitor compliance with program requirements. NRCS has established application procedures to ensure that participants meet eligibility requirements, and follow-up procedures to ensure that participants are complying with the terms and conditions of their contractual arrangement with the government and that the installed conservation measures are operating as intended. These and related program compliance evaluation policies are set forth in Agency guidance (440 CPM_519) (*http://directives.sc.egov.usda.gov/*).

The program requirements applicable to participants that relate to compliance are set forth in these regulations in § 1491.4, ''Program Requirements'', § 1491.22, ''Conservation Easement Deeds'', and § 1491.30, ''Violations and remedies''. These sections make clear the general program participant and entity obligations, the terms and conditions of the conservation easement, and the ramifications of noncompliance. Pursuant to the requirements of the Government Performance and Results Act of 1993 (Pub. L. 103–62, Sec. 1116) and guidance provided by OMB Circular A–11, NRCS has established performance measures for its conservation programs. Program-funded conservation activity is captured through automated field-level business tools and the information is made publicly available at: *http://ias.sc.egov.usda.gov/PRSHOME/*. Program performance also is reported annually to Congress and the public through the annual performance budget, annual accomplishments report and the USDA Performance Accountability Report. Related performance measurement and reporting policies are set forth in Agency guidance (GM_340_401 and GM_340_403) (*http://directives.sc.egov.usda.gov/*).

The actions undertaken by eligible entities and participants are the basis for measuring program performance—specific actions are tracked and reported annually, while the effects of those actions relate to whether the long-term benefits of the program are being achieved. The program requirements applicable to participants and eligible entities that relate to undertaking conservation actions are set forth in these regulations in § 1491.4, ''Program Requirements,'' § 1491.20, ''Cooperative Agreements,'' and § 1491.22 ''Conservation Easement Deeds''.

Demonstrate whether long-term conservation benefits of the program are being achieved. Demonstrating the long-term natural resource benefits achieved through conservation programs is subject to the availability of needed data, the capacity and capability of modeling approaches, and the external influences that affect actual natural resource condition. While NRCS captures many measures of ''output'' data, such as acres of conservation practices, it is still in the process of developing methods to quantify the contribution of those outputs to environmental outcomes NRCS currently uses a mix of approaches to evaluate whether long-term conservation benefits are being achieved through its programs. Since 1982, NRCS has reported on certain natural resource status and trends through the National Resources Inventory (NRI), which provides statistically reliable, nationally consistent land cover/use and related natural resource data. However, lacking has been a connection between these data and specific conservation programs. In the future, the interagency Conservation Effects Assessment Project (CEAP), which has been underway since 2003, will provide nationally consistent estimates of environmental effects resulting from conservation practices and systems applied. CEAP results will be used in conjunction with performance data gathered through Agency field-level business tools to help produce estimates of environmental effects accomplished through Agency programs, such as WRP. In 2006 a Blue Ribbon panel evaluation of CEAP strongly endorsed the project's purpose, but concluded ''CEAP must change direction'' to achieve its purposes. In response, CEAP has focused on priorities identified by the Panel and clarified that its purpose is to quantify the effects of conservation practices applied on the landscape. Information regarding CEAP, including reviews and current status is available at (*http://www.nrcs.usda.gov/technical/NRI/ceap/*. Since 2004 and the initial establishment of long-term performance measures by program, NRCS has been estimating and reporting progress toward long-term program goals. Natural resource inventory and assessment, and performance measurement and reporting policies set forth in Agency guidance (GM_290_400; GM_340_401; GM_340_403) (*http://directives.sc.egov.usda.gov/*).

Demonstrating the long-term conservation benefits of conservation programs is an Agency responsibility. Through CEAP, NRCS is in the process of evaluating how these long-term benefits can be achieved through the conservation practices and systems applied by participants under the program. The program requirements applicable to participants that relate to producing long-term conservation benefits are described previously under ''measuring program performance.''

Track participation by crop and livestock type. NRCS' automated field-level business tools capture participant, land, and operation information. This information is aggregated in the National Conservation Planning database and is used in a variety of program reports. Additional reports will be developed to provide more detailed information on program participation to meet congressional needs. These and related program management procedures supporting program implementation are set forth in Agency guidance (440 CPM 519).

The program requirements applicable to participants that relate to tracking participation by crop and livestock type are put forth in these regulations in § 1491.4, ''Program Requirements,'' which makes clear program eligibility requirements, including the requirement to provide NRCS the information necessary to implement WRP.

Coordinate these actions with the national conservation program authorized under the Soil and Water Resources Conservation Act (RCA). The 2008 Act reauthorized and expanded on a number of elements of the RCA related to evaluating program performance and conservation benefits. Specifically, the 2008 Farm Bill added a provision stating, ''Appraisal and inventory of resources, assessment and inventory of conservation needs, evaluation of the effects of conservation practices, and analyses of alternative approaches to

existing conservation programs are basic to effective soil, water, and related natural resources conservation.''

The program, performance, and natural resource and effects data described previously will serve as a foundation for the next RCA, which will also identify and fill, to the extent possible, data and information gaps. Policy and procedures related to the RCA are set forth in Agency guidance (GM_290_400; M_440_525; GM_130_402)(*http://directives.sc.egov.usda.gov/*).

The coordination of the previously described components with the RCA is an Agency responsibility and is not reflected in these regulations. However, it is likely that results from the RCA process will result in modifications to the program and performance data collected, to the systems used to acquire data and information, and potentially to the program itself. Thus, as the Secretary proceeds to implement the RCA in accordance with the statute, the approaches and processes developed will improve existing program performance measurement and outcome reporting capability and provide the foundation for improved implementation of the program performance requirements of section 1244(g) of the 1985 Act.

List of Subjects in 7 CFR 1491

Administrative practice and procedure, Agriculture, Soil conservation.

■ For the reasons stated in the preamble, the Commodity Credit Corporation revises 7 CFR part 1491 to read as follows:

PART 1491—FARM AND RANCH LANDS PROTECTION PROGRAM

Subpart A—General Provisions

Sec.

1491.1 Applicability.
1491.2 Administration.
1491.3 Definitions.
1491.4 Program requirements.
1491.5 Application procedures.
1491.6 Ranking considerations and proposal selection.

Subpart B—Cooperative Agreements and Conservation Easement Deeds

1491.20 Cooperative agreements.
1491.21 Funding.
1491.22 Conservation easement deeds.

Subpart C—General Administration

1491.30 Violations and remedies.
1491.31 Appeals.
1491.32 Scheme or device.

Authority: 16 U.S.C. 3838h–3838i.

Subpart A—General Provisions

§ 1491.1 Applicability.

(a) The regulations in this part set forth requirements, policies, and procedures, for implementation of the Farm and Ranch Lands Protection Program (FRPP) as administered by the Natural Resources Conservation Service (NRCS). FRPP cooperative agreements shall be administered under the regulations in effect at the time the cooperative agreement is signed.

(b) The NRCS Chief may implement FRPP 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.

§ 1491.2 Administration.

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

(b) NRCS shall—

(1) Provide overall program management and implementation leadership for FRPP;

(2) Develop, maintain, and ensure that policies, guidelines, and procedures are carried out to meet program goals and objectives;

(3) Ensure that the FRPP share of the cost of an easement or other deed restrictions in eligible land shall not exceed 50 percent of the appraised fair market value of the conservation easement;

(4) Determine eligibility of the land, the landowner, and the entity;

(5) Ensure a conservation plan is developed in accordance with 7 CFR part 12;

(6) Make funding decisions and determine allocations of program funds;

(7) Coordinate with the Office of the General Counsel (OGC) to ensure the legal sufficiency of the cooperative agreement and the easement deed or other legal instrument;

(8) Sign and monitor cooperative agreements for the CCC with the selected entity;

(9) Monitor and ensure conservation plan compliance with highly erodible land and wetland provisions in accordance with 7 CFR part 12; and

(10) Provide leadership for establishing, implementing, and overseeing administrative processes for easements, easement payments, and administrative and financial performance reporting.

(c) NRCS shall enter into cooperative agreements with eligible entities to assist NRCS with implementation of this part.

§ 1491.3 Definitions.

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

Agricultural uses are defined by the State's farm or ranch land protection program or equivalent, or where no program exists, agricultural uses should be defined by the State agricultural use tax assessment program. (If NRCS finds that a State definition of agriculture is so broad that an included use could lead to the degradation of soils and agriculture productivity, NRCS reserves the right to impose greater deed restrictions on the property than allowable under that State definition of agriculture in order to protect agricultural use and related conservation values.)

Certified entity means an eligible entity that NRCS has determined to meet the requirements of § 1491.4(d) of this part.

Chief means the Chief of NRCS, USDA.

Commodity Credit Corporation (CCC) is a Government-owned and operated entity that was created to stabilize, support, and protect farm income and prices. CCC is managed by a Board of Directors, subject to the general supervision and direction of the Secretary of Agriculture, who is an ex-officio director and chairperson of the Board. CCC provides the funding for FRPP, and NRCS administers FRPP on its behalf.

Conservation Easement means a voluntary, legally recorded restriction, in the form of a deed, on the use of property, in order to protect resources such as agricultural lands, historic structures, open space, and wildlife habitat.

Conservation Plan is 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;

(3) Is approved by the local soil conservation district in consultation with the local committees established under Section 8(b)(5) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 5909h(b)(5)) and the Secretary, or by the Secretary.

Cooperative agreement means the document that specifies the obligations and rights of NRCS and eligible entities participating in the program.

Dedicated fund means an account held by an eligible entity sufficiently

capitalized for the purpose of covering expenses associated with the management, monitoring, and enforcement of conservation easements and where such account cannot be used for other purposes.

Eligible entity means federally recognized Indian Tribes, State, unit of local government, or a non-governmental organization, which has a farmland protection program that purchases agricultural conservation easements for the purpose of protecting agriculture use and related conservation values by limiting conversion to non-agricultural uses of the land.

Fair market value means the value of a conservation easement as ascertained through standard real property appraisal methods, as established in § 1491.4(g).

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, bio-fuels, and oil seed 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 and ranch land of local importance means farm or ranch land used to produce food, feed, fiber, forage, bio-fuels, and oilseed crops, that are not identified as having national or statewide importance. Where appropriate, these lands are to be identified by the local agency or agencies concerned. Farmlands of local importance may include tracts of land that have been designated for agriculture by local ordinance.

Farm or Ranch Succession Plan means a general plan to address the continuation of some type of agricultural business on the conserved land; the farm or ranch succession plan may include specific intra-family succession agreements or strategies to address business asset transfer planning to create opportunities for beginning farmers and ranchers.

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, and animal resources applicable to the local area for which it is prepared.

Forest land means a land cover or use category that is at least 10 percent stocked by single-stemmed woody species of any size that will be at least 13 feet tall at maturity. Also included is land bearing evidence of natural regeneration of tree cover (cutover forest or abandoned farmland) that is not currently developed for non-forest use. Ten percent stocked, when viewed from a vertical direction, equates to an aerial canopy cover of leaves and branches of 25 percent or greater.

Forest management plan means a site-specific plan that is prepared by a professional resource manager, in consultation with the participant, and is approved by the State Conservationist. 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); another practice plan approved by the State Forester; or another plan determined appropriate by the State Conservationist. The plan complies with applicable Federal, State, Tribal, and local laws, regulations and permit requirements.

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), 16 U.S.C. 470, *et seq.*),

(2) Formally determined eligible for listing in the National Register of Historic Places (by the State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (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.

Imminent harm means easement violations or threatened violations that, as determined by the Chief, would likely cause immediate and significant degradation to the conservation values; for example, those violations that would adversely impact agriculture use, productivity, and related conservation values or result in the erosion of topsoil beyond acceptable levels as established by NRCS.

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, 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 (25 U.S.C. 450(b)(e)).

Land Evaluation and Site Assessment System (LESA) means the land evaluation system approved by the NRCS State Conservationist used 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 rule at 7 CFR part 658.)

Landowner means a person, legal entity, or Indian Tribe having legal ownership of 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, tenants-in-common, and life tenants. State governments, local governments, and non-governmental organizations that qualify as eligible entities are not eligible as landowners.

Natural Resources Conservation Service (NRCS) means an agency of the United States Department of Agriculture.

Non-governmental organization means any organization that:

(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—

(i) In section 509(a)(1) and (2) of that Code; or

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

Other interests in land include any right in real property other than easements that are recognized by State law. FRPP funds shall only be used to purchase other interests in land with prior approval from the Chief.

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

Pending offer means a written bid, contract, or option extended to a landowner by an eligible entity to acquire a conservation easement before the legal title to these rights has been conveyed for the purpose of limiting non-agricultural uses of the land.

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 the Secretary.

Purchase price means the appraised fair market value of the easement minus the landowner donation.

Right of enforcement means an interest in real property set forth in the conservation easement deed, equal in scope to the right of inspection and enforcement granted to the grantee, that the United States Government may exercise under specific circumstances in order to enforce the terms of the conservation easement.

Secretary means the Secretary of the United States Department of Agriculture.

State Technical Committee means a committee established by the Secretary in a State pursuant to 16 U.S.C. 3861 and 7 CFR part 610, subpart C.

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

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 the Secretary. 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.

§ 1491.4 Program requirements.

(a) Under FRPP, the Chief, on behalf of CCC, shall provide funding for the purchase of conservation easements or other interests in eligible land that is subject to a pending offer from an eligible entity for the purpose of protecting the agricultural use and related conservation values of the land by limiting nonagricultural uses of the land. Eligible entities submit applications to NRCS State Offices to partner with NRCS to acquire conservation easements on farm and ranch land. NRCS enters into cooperative agreements with selected entities and provides funds for up to 50 percent of the fair market value of the easement. In return, the entity agrees to acquire, hold, manage, and enforce the easement. A Federal right of enforcement must also be included in each FRPP funded easement deed for the protection of the Federal investment.

(b) The term of all easements shall be in perpetuity unless prohibited by State law. In states that limit the term of the easement, the term of the easement must be the maximum allowed by State law.

(c) To be eligible to receive FRPP funding, an entity must meet the definition of ''eligible entity'' as listed in § 1491.3. In addition, eligible entities interested in receiving FRPP funds must demonstrate:

(1) A commitment to long-term conservation of agricultural lands;

(2) A capability to acquire, manage, and enforce easements;

(3) Sufficient number of staff dedicated to monitoring and easement stewardship; and

(4) The availability of funds.

(d) To be eligible as a ''certified entity,'' an entity must be qualified to be an ''eligible entity'' and have demonstrated, as determined by the Chief:

(1) The ability to complete acquisition of easements in a timely fashion;

(2) The ability to monitor easements on a regular basis;

(3) The ability to enforce the provisions of easement deeds;

(4) Experience enrolling parcels in the Farm and Ranch Lands Protection Program (FRPP) or the Farmland Protection Program (FPP);

(5) For non-governmental organizations, the existence of a dedicated fund for the purposes of easement management, monitoring, and enforcement where such fund is sufficiently capitalized in accordance with NRCS standards. The dedicated fund must be dedicated to the purposes of managing, monitoring, and enforcing each easement held by the eligible entity; and

(6) Other certification criteria, including having a plan for administering easements enrolled under this part, as determined by the Chief.

(e) Review and Revocation of Certification.

(1) The Chief shall conduct a review of certified entities every three years to ensure that the certified entities are meeting the certification criteria established in § 1491.4(d).

(2) If the Chief finds that the certified entity no longer meets the criteria in § 1491.4(d), the Chief may:

(i) Allow the certified entity a specified period of time, at a minimum 180 days, in which to take such actions as may be necessary to meet the criteria; and

(ii) Revoke the certification of the entity, if after the specified period of time, the certified entity does not meet the criteria established in § 1491.4(d).

(f) Eligible land:

(1) Must be privately owned land on a farm or ranch and contain at least 50 percent prime, unique, Statewide, or locally important farmland, unless otherwise determined by the State Conservationist; contain historical or archaeological resources; or furthers a State or local policy consistent with the purposes of the program; and is subject to a pending offer by an eligible entity;

(2) Must be cropland, rangeland, grassland, pasture land, or forest land that contributes to the economic viability of an agricultural operation or serves as a buffer to protect an agricultural operation from development;

(3) May include land that is incidental to the cropland, rangeland, grassland, pasture land, or forest land if the incidental land is determined by the Secretary to be necessary for the efficient administration of a conservation easement;

(4) May include parts of or entire farms or ranches;

(5) Must not include forest land of greater than two-thirds of the easement area. Forest land that exceeds the greater of 10 acres or 10 percent of the easement area shall have a forest management plan before closing;

(6) NRCS shall not enroll land in FRPP that is owned in fee title by an agency of the United States, a State or local government, or by an entity whose purpose is to protect agricultural use and related conservation values, including those listed in the statute under eligible land, or land that is already subject to an easement or deed restriction that limits the conversion of the land to nonagricultural use, unless otherwise determined by the Chief;

(7) Must be owned by landowners who certify that they do not exceed the adjusted gross income limitation

eligibility requirements set forth in part 1400 of this title;

(8) Must possess suitable on-site and off-site conditions which will allow the easement to be effective in achieving the purposes of the program. Suitability conditions may include, but are not limited to, hazardous substances on or in the vicinity of the parcel, land use surrounding the parcel that is not compatible with agriculture, and highway or utility corridors that are planned to pass through or immediately adjacent to the parcel; and

(9) May be land on which gas, oil, earth, or other mineral rights exploration has been leased or is owned by someone other than the applicant may be offered for participation in the program. However, if an applicant submits an offer for an easement project, USDA will assess the potential impact that the third party rights may have upon achieving the program purposes. USDA reserves the right to deny funding for any application where there are exceptions to clear title on any property.

(g) Prior to FRPP fund disbursement, the value of the conservation easement must be appraised. Appraisals 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 entity. State Conservationists will provide the guidelines through which NRCS will review appraisals for quality control purposes.

(h) The landowner shall be responsible for complying with the Highly Erodible Land and Wetland Conservation provisions of the Food Security Act of 1985, as amended, and 7 CFR part 12.

§ 1491.5 Application procedures.

(a) An entity shall submit an application to the State Conservationist in the State where parcels are located in order to determine if the entity is eligible to participate in FRPP.

(b) The Chief shall determine whether an eligible entity is a certified entity based on the criteria set forth in § 1491.4(d); information provided by the entity's application; and data in the national FRPP database.

(c) The State Conservationist shall notify each entity if it has been determined eligible, certified, or ineligible.

(d) Entities with cooperative agreements entered into after the effective date of this part will not have to resubmit an annual application for the duration of the cooperative agreement. Entities may reapply for eligibility when their cooperative agreements expire.

(e) Throughout the fiscal year, eligible entities may submit to the appropriate NRCS State Conservationist applications for parcels, in that State, with supporting information to be scored, ranked, and considered for funding.

(f) At the end of each fiscal year, the lists of pending, unfunded parcels shall be cancelled unless the entity requests that specific parcels be considered for funding in the next fiscal year. Entities must submit a new list of parcels each fiscal year in order to be considered for funding unless they request that parcels from the previous fiscal year be considered.

§ 1491.6 Ranking considerations and proposal selection.

(a) Before the State Conservationist can score and rank the parcels for funding, the eligibility of the landowner and the land must be assessed.

(b) The State Conservationist shall use National and State criteria to score and rank parcels. The national ranking criteria will be established by the Chief and the State criteria will be determined by the State Conservationist, with advice from the State Technical Committee. The national criteria shall comprise at least half of the ranking system score.

(c) When funds are available, the State Conservationist shall announce the date on which ranking of parcels shall occur. A State Conservationist may announce more than one date of ranking in a fiscal year.

(d) All parcels submitted throughout the fiscal year shall be scored. All parcels will be ranked together in accordance with the national and state ranking criteria before parcels are selected for funding.

(e) The parcels selected for funding shall be listed on the agreements of the entities that submitted the parcels and the agreements shall be signed by the State Conservationist and the eligible entity. Funds for each fiscal year's parcels shall be obligated with a new signature each year on an amendment to the agreement. Parcels funded on each fiscal year's amendment shall have a separate deadline for closing and requesting reimbursement.

(f) The national ranking criteria are:

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

(2) Percent of cropland, pastureland, grassland, and rangeland 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) Proximity of the parcel to other protected land, such as military installations land owned in fee title by the United States or a State or local government, or by an entity 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;

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

(9) Other additional criteria as determined by the Chief.

(g) State or local criteria, as determined by the State Conservationist, with advice of the State Technical Committee, may include:

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

(2) The performance of an entity experience in managing and enforcing easements. Performance must be measured by the closing efficiency or percentage of monitoring that is reported. Years of an entity's existence shall not be used as a ranking factor;

(3) Multifunctional benefits of farm and ranch land protection including social, economic, historical and archaeological, and environmental benefits;

(4) Geographic regions where the enrollment of particular lands may help achieve National, State, and regional conservation goals and objectives, or enhance existing government or private conservation projects;

(5) Diversity of natural resources to be protected;

(6) Score in the Land Evaluation and Site Assessment (LESA) system. This score serves as a measure of agricultural viability (access to markets and infrastructure);

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

(8) Landowner willingness to allow public access for recreational purposes.

(h) State ranking criteria will be developed on a State-by-State basis. The State Conservationist will make available a full listing of applicable National and State ranking criteria.

Subpart B—Cooperative Agreements and Conservation Easement Deeds

§ 1491.20 Cooperative agreements.

(a) NRCS, on behalf of CCC, shall enter into a cooperative agreement with those entities selected for funding. Once a proposal is selected by the State Conservationist, the entity must work with the State Conservationist to finalize and sign the cooperative agreement, incorporating all necessary FRPP requirements. The cooperative agreement must address:

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

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

(3) The responsibilities of NRCS;

(4) The responsibilities of the eligible entity on lands acquired with FRPP funds;

(5) The allowance of parcel substitution upon mutual agreement of the parties; and

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

(b) The term of cooperative agreements shall be a minimum of five years for certified entities and three years for other eligible entities.

(c) The cooperative agreement shall also include an attachment listing the parcels accepted by the State Conservationist. This list shall include landowners' names and addresses, acreage, the estimated fair market value, the estimated Federal contribution, and other relevant information. An example of a cooperative agreement shall be made available by the State Conservationist.

§ 1491.21 Funding.

(a) Subject to the statutory limits, the State Conservationist, in coordination with the cooperating entity, shall determine the NRCS share of the cost of purchasing a conservation easement or other interest in the land.

(b) NRCS may provide up to 50 percent of the appraised fair market value of the conservation easement, as determined in § 1491.4(g). An entity shall share in the cost of purchasing a conservation easement in accordance with the limitations of this part.

(c) A landowner may make donations toward the acquisition of the conservation easement.

(d) The entity must provide a minimum of 25 percent of the purchase price of the conservation easement.

(e) FRPP funds may not be used for expenditures such as appraisals, surveys, title insurance, legal fees, costs of easement monitoring, and other related administrative and transaction costs incurred by the entity.

(f) If the State Conservationist determines that the purchase of two or more conservation easements are comparable in achieving FRPP goals, the State Conservationist shall not assign a higher priority to any one of these conservation easements solely on the basis of lesser cost to FRPP.

(g) Environmental Services Credits.

(1) NRCS asserts no direct or indirect interest in environmental credits that may result from or be associated with an FRPP easement.

(2) NRCS retains the authority to ensure that the requirements for FRPP-funded easements are met and maintained consistent with this part.

(3) If activities required under an environmental credit agreement may affect land covered under a FRPP easement, landowners are encouraged to request a compatibility assessment from the eligible entity prior to entering into such agreements.

§ 1491.22 Conservation easement deeds.

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

(b) Pending offers by an eligible entity must be for acquiring an easement 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 shall be for the maximum allowed under state law.

(c) The entity may use its own terms and conditions in the conservation easement deed, but a conservation easement deed template used by the eligible entity shall be submitted to the NRCS National Headquarters within 30 days of the signing of the cooperative agreement. The conservation easement deed templates must be reviewed and approved by the NRCS National Headquarters in advance of use. NRCS reserves the right to require additional specific language or to remove language in the conservation easement deed to protect the interests of the United States.

(d) The conveyance document must include a ''right of enforcement'' clause for the United States. NRCS shall specify the terms for the ''right of enforcement'' clause to read as set forth in the FRPP cooperative agreement. The right of enforcement provides that the NRCS has the right to inspect and enforce the easement, if the eligible entity fails to uphold the easement, as determined by NRCS. This right is a vested interest in real property and cannot be condemned by State or local government.

(e) As a condition for participation, a conservation plan shall be developed by NRCS in consultation with the landowner and implemented according to the NRCS Field Office Technical Guide. NRCS may work through the local conservation district in the development of the conservation plan. The conservation plan will be developed and managed in accordance with the Food Security Act of 1985, as amended, 7 CFR part 12 or subsequent regulations, and other requirements as determined by the State Conservationist. To ensure compliance with this conservation plan, the easement shall grant to the United States, through NRCS, its successors or assigns, a right of access to the easement area.

(f) The cooperating entity shall acquire, hold, manage and enforce the easement. The cooperating entity may have the option to enter into an agreement with governmental or private organizations to carry out easement stewardship responsibilities.

(g) Prior to easement closing, NRCS must sign an acceptance of the conservation easement, concurring with the terms of the conservation easement and accepting its interest in the conservation easement deed.

(h) All conservation easement deeds acquired with FRPP funds must be recorded. Proof of recordation shall be provided to NRCS by the cooperating entity.

(i) Impervious surfaces shall not exceed two percent of the FRPP easement area, excluding NRCS-approved conservation practices. The NRCS State Conservationist may waive the two percent impervious surface limitation on a parcel by parcel basis, provided that no more than ten percent of the easement area is covered by impervious surfaces. Before waiving the two percent limitation, the State Conservationist must consider, at a minimum: population density; the ratio of open prime other important farmland versus impervious surfaces on the easement area; the impact to water

quality concerns in the area; the type of agricultural operation; and parcel size. All FRPP easements must include language limiting the amount of impervious surfaces within the easement area.

(j) The conservation easement deed must include an indemnification clause requiring the landowner (grantor) to indemnify and hold harmless the United States from any liability arising from or related to the property enrolled in FRPP.

(k) The conservation easement deed must include an amendment clause requiring that any changes to the easement deed after its recordation must be consistent with the purposes of the conservation easement and this part.

Subpart C—General Administration

§ 1491.30 Violations and remedies.

(a) In the event of a violation of the terms of the easement, the eligible entity shall notify the landowner. The landowner may be given reasonable notice and, where appropriate, an opportunity to voluntarily correct the violation in accordance with the terms of the conservation easement.

(b) In the event that the entity fails to enforce any of the terms of the conservation easement, as determined in the sole discretion of the Chief, the Chief and his or her successors or assigns may exercise the United States' rights to enforce the terms of the conservation easement through any and all authorities available under Federal or State law.

(c) Notwithstanding paragraph (a) of this section, NRCS, upon notification to the landowner, reserves the right to enter upon the easement area at any time to monitor conservation plan implementation or remedy deficiencies or easement violations, as it relates to the conservation plan. The entry may be made at the discretion of NRCS when the actions are deemed necessary to protect highly erodible soils and wetland resources. The landowner will be liable for any costs incurred by the NRCS as a result of the landowner's negligence or failure to comply with the easement requirements as it relates to conservation plan violations.

(d) The United States shall be entitled to recover any and all administrative and legal costs from the participating entity, including attorney's fees or expenses, associated with any enforcement or remedial action as it relates to the enforcement of the FRPP easement.

(e) In instances where an easement is terminated or extinguished, NRCS shall collect CCC's share of the conservation easement based on the appraised fair market value of the conservation easement at the time the easement is extinguished or terminated. CCC's share shall be in proportion to its percentage of original investment.

(f) In the event NRCS determines it must exercise the United States' right to enforce the terms of, or taking a property interest in, the conservation easement, NRCS shall provide written notice by certified mail to the grantee at the grantee's last known address. The notice will set forth the nature of the noncompliance by the grantee and a 60-day period to cure. If the grantee fails to cure within the 60-day period, the United States shall take the action specified under the notice. The United States reserves the right to decline to provide a period to cure if NRCS determines that imminent harm may result to the conservation easement deed or the conservation values it seeks to protect.

§ 1491.31 Appeals.

(a) A person or eligible entity which has submitted an FRPP proposal and is therefore participating in FRPP 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 or eligible entity may seek judicial review of any administrative action taken under this part, the person or eligible entity must exhaust all administrative appeal procedures set forth in paragraph (a) of this section, and for the purposes of judicial review, no decision shall be a final Agency action except a decision of the Chief of the NRCS under these provisions.

(c) Enforcement action undertaken by the NRCS in furtherance of its vested property rights are under the jurisdiction of the Federal District Court and not subject to review under administrative appeal regulations.

§ 1491.32 Scheme or device.

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

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

Signed this 9th day of 2009 in Washington, DC.

Arlen L. Lancaster,

Vice President, Commodity Credit Corporation and Chief, Natural Resources Conservation Service.

[FR Doc. E9–829 Filed 1–15–09; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1779

Rural Housing Service

7 CFR Part 3575

Rural Business—Cooperative Service

Rural Utilities Service

7 CFR Parts 4279 and 4280

Rural Business—Cooperative Service

Rural Housing Service

Rural Utilities Service

7 CFR Part 5001

[FR Doc. E8–29151]

RIN 0570–AA65

Rural Development Guaranteed Loans

AGENCIES: Rural Business—Cooperative Service, Rural Housing Service, Rural Utilities Service, USDA.

ACTION: Interim rule; delay of the effective date.

SUMMARY: Rural Development is delaying the effective date of the interim rule for Rural Development Guaranteed Loans, which was published on December 17, 2008. The interim rule establishes a unified guaranteed loan platform for the enhanced delivery of four existing Rural Development guaranteed loan programs—Community Facility; Water and Waste Disposal; Business and Industry; and Renewable Energy Systems and Energy Efficiency Improvement Projects.

DATES: This effective date of the interim rule, published on December 17, 2008 [73 FR 76698], is delayed from January 16, 2009, until February 17, 2009.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Foore, Rural Development, Business and Cooperative Programs, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Stop 3201,