

**DEPARTMENT OF AGRICULTURE****Commodity Credit Corporation****7 CFR Part 1415****RIN 0578-AA53****Grassland Reserve Program**

**AGENCY:** Commodity Credit Corporation, Natural Resources Conservation Service, United States Department of Agriculture.

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (USDA), through the Commodity Credit Corporation (CCC) published in the **Federal Register** on January 21, 2009, an interim final rule for the Grassland Reserve Program (GRP) with a 60-day public comment period. On August 21, 2009, the CCC published an amendment to the interim final rule and reopened the public comment period for an additional 60 days. The CCC is publishing a final rule that incorporates the changes associated with passage of the Food, Conservation, and Energy Act of 2008 (2008 Act) and addresses the comments received during the public comment periods.

**DATES:** *Effective Date:* The rule is effective November 29, 2010.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:****Regulatory Certifications***Executive Order 12866*

The Office of Management and Budget (OMB) reviewed the January 21, 2009, interim final rule and determined that it was a significant regulatory action. Pursuant to Executive Order 12866, USDA conducted an economic analysis of the potential impacts associated with this program. OMB also determined that this final rule is a significant regulatory action. USDA evaluated the economic analysis and expanded it to include net present value analyses using OMB's recommended 3 percent and 7 percent discount rates. In addition, policy scenario three was dropped from the

analysis because it was very similar to one of the other policy options.

The administrative record is available for public inspection at the Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue, SW., Room 6819 South Building, Washington, DC 20250. A summary of the economic analysis can be found at the end of the regulatory certifications of the preamble, and a copy of the analysis is available upon request from Leslie Deavers, Team Leader, Easement Support Team, Easement Programs Division, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue, SW., Room 6819 South Building, Washington, DC 20250.

*Regulatory Flexibility Act*

The Regulatory Flexibility Act is not applicable to this final rule because USDA 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.

*Environmental Analysis*

In compliance with the National Environmental Policy Act (NEPA), a Programmatic Environmental Assessment (EA) was prepared in association with the interim final rule. The analysis determined there will not be a significant impact to the human environment and as a result, an Environmental Impact Statement was not required to be prepared (40 CFR 1508.13). For this final rule, the agency has determined that there are no new circumstances or significant new information that has a bearing on environmental effects which warrant supplementing the previous EA and Finding of No Significant Impact (FONSI). The proposed changes identified in this final rule are considered minor changes that should be implemented for the program. The majority of these changes are administrative or technical changes to the regulation.

Copies of the EA and FONSI may be obtained from Matt Harrington, National Environmental Coordinator, Ecological Sciences Division, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue, SW., Room 6151 South Building, Washington, DC 20250. The EA and FONSI are also available at [http://www.nrcs.usda.gov/programs/Env\\_Assess/](http://www.nrcs.usda.gov/programs/Env_Assess/).

*Civil Rights Impact Analysis*

USDA has determined through a Civil Rights Impact Analysis that this final

rule discloses no disproportionately adverse impacts for minorities, women, or persons with disabilities. Outreach and communication strategies are in place to ensure all producers will be provided the same information to allow them to make informed compliance decisions regarding the use of their lands that will affect their participation in USDA programs. GRP applies to all persons equally regardless of their race, color, national origin, gender, sex, or disability status. Therefore, this final rule portends no adverse civil rights implications for women, minorities, and persons with disabilities.

Copies of the Civil Rights Impact Analysis are available from Leslie Deavers, Team Leader, Easement Support Team, Easement Programs Division, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue, SW., Room 6819 South Building, Washington, DC 20250, or electronically at <http://www.nrcs.usda.gov/programs/GRP>.

*Paperwork Reduction Act*

Section 2904 of the 2008 Act (Pub. L. 110-245), requires that implementation of programs authorized under Title II of the Act be made without regard to the Paperwork Reduction Act of 1995 (Title 44, U.S.C. 3501 *et seq.*). Therefore, USDA is not reporting recordkeeping or estimated paperwork burden associated with this final rule.

*Government Paperwork Elimination Act*

USDA is committed to compliance with the Government Paperwork Elimination Act and the Freedom to E-File Act, which require government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. To better accommodate public access, USDA has developed an online application and information system for public use.

*Executive Order 12988*

This 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, 614, and 780 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*

USDA assessed the effects of this final rule on State, local, and Tribal governments, and the public. This action does not compel the expenditure of \$100 million or more in any one year (adjusted by inflation) 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 of 1995 is not required.

*Executive Order 13132*

This final rule has been reviewed in accordance with the requirements of Executive Order 13132, Federalism. USDA has determined that this 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 final rule does not have Federalism implications.

*Executive Order 13175*

This 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 final rule on Indian Tribal governments and concluded that this final rule will not negatively affect Indian Tribal governments or their communities. The rule neither imposes substantial direct compliance costs on Tribal governments nor preempts Tribal law. However, the Natural Resources Conservation Service (NRCS) plans to undertake a series of at least six regional Tribal consultation sessions before December 30, 2010, on the impact of USDA conservation programs and services on Tribal governments and their members to establish a baseline of consultation for future actions. Reports from these sessions will be made part of the USDA annual reporting on Tribal Consultation and Collaboration. USDA will respond in a timely and meaningful manner to all Tribal governments' requests for consultation.

*Small Business Regulatory Enforcement Fairness Act of 1996*

This final rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). This rule will not result in an annual effect on the economy of \$100 million or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States based companies to compete in domestic and export markets. However, section 2904(c) of the 2008 Act requires that the Secretary use the authority in section 808(2) of Title 5, U.S.C., which allows an agency to forego SBREFA's usual congressional 60-day review delay of the effective date of a regulation if the agency finds that there is a good cause to do so. USDA hereby determines that it has good cause to do so to meet the congressional intent to have the conservation programs authorized or amended by Title II of the 2008 Act in effect as soon as possible. Accordingly, this rule is effective upon filing for public inspection by the Office of the Federal Register.

*Section 2708 of the 2008 Act*

Section 2708, "Compliance and Performance," of the 2008 Act added a paragraph to section 1244(g) of the Food Security Act of 1985, as amended 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, Conservation Security Program, Conservation Stewardship Program, Farm and Ranch Lands Protection Program, Grassland Reserve Program, Environmental Quality

Incentives Program (including the Agricultural Water Enhancement Program), 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 Food Security Act of 1985, as amended 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 Food Security Act of 1985, as amended 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 Food Security Act of 1985, as amended.

*Monitor compliance with program requirements.* NRCS has established application procedures to ensure that participants and eligible entities meet eligibility requirements and follow-up procedures to ensure that participants and eligible entities 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 will be set forth in agency guidance. The program requirements applicable to participants and eligible entities that relate to compliance are set forth in these regulations in § 1415.4 "Program requirements," § 1415.11 "Restoration agreements," and § 1415.17 "Cooperative agreements." These sections make clear the general program requirements, as well as participant and entity obligations.

*Measure program performance.* Pursuant to the requirements of the Government Performance and Results Act of 1993 (Pub. L. 103–62, Section 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 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 conservation actions undertaken by 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 that relate to undertaking conservation actions are set forth in these regulations in § 1415.4 “Program requirements,” § 1415.11 “Restoration agreements,” and § 1415.17 “Cooperative agreements.” These sections make clear participant and eligible entity obligations for implementing, operating, and maintaining GRP-funded conservation improvements, which in aggregate result in the program performance that is reflected in agency performance reports.

*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, a connection between these data and specific conservation programs has been lacking. 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 GRP. 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 are set forth in agency guidance (GM–290–400; GM–340–401; and 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 will be set forth in agency guidance.

The program requirements applicable to participants that relate to tracking participation by crop and livestock type are put forth in these regulations in § 1415.4 “Program Requirements,” which makes clear program eligibility requirements, including the requirement to provide NRCS the information necessary to implement GRP.

*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 Act 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; CPM–440–525; and 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 Food Security Act of 1985, as amended.

#### *Economic Analysis—Executive Summary*

Pursuant to Executive Order 12866, Regulatory Planning and Review, NRCS has conducted a benefit-cost analysis of GRP as formulated for the final rule. This requirement provides decisionmakers with the opportunity to develop and implement a program that is beneficial, cost-effective, and that minimizes negative impacts to health, human safety, and the environment.

GRP is a voluntary program for landowners and operators to protect, restore, and enhance grassland, including rangeland, pastureland, shrubland, and certain other lands. The program emphasizes support for grazing operations, enhancement of plant and animal biodiversity, and protection of grassland and land containing shrubs and forbs under threat of conversion.

#### **Methodology Employed in This Study**

NRCS has been charged with implementing GRP as authorized and funded by Congress in “protecting and restoring eligible grasslands through

easement purchases and rental contracts with private landowners and operators.” Given the scope of GRP, the analysis is national in scope and evaluates the potential costs and benefits under several scenarios. When possible, environmental, economic, and social costs and benefits were identified for the land user, the general public, and the government.

Given the current backlog of GRP applicants, full producer participation is expected up to the acreage constraint mandated in the 2008 Act. The main costs of agricultural land retention efforts include the restrictions on the activities landowners can pursue on the grazing land and Federal program costs

that consist of initial costs for easement contracts and annual payments for rental contracts. It is assumed that easement costs and annual rental costs capture the future land use. These costs must then be compared to the benefits of preserving the land for grazing or forage production. Benefits include the maintenance (and possible improvement) of the flow of ecological goods and services emanating from its current use in agriculture, forage production, recreation, scenic views, and other non-use benefits such as knowing that grazing lands will be available for future generations.

Two baselines were considered in this analysis. Baseline One assumes that no

changes were made to GRP, with both program features and acreage levels continued at pre-2008 levels. Baseline Two assumes that all program and acreage levels mandated in the 2008 Act are implemented. Against these baseline scenarios, two policy scenarios were examined. Policy scenario one assessed the benefits and costs of the expanded acreage targets in the 2008 Act without the program changes. Policy scenario two assessed the benefits and costs of the program changes mandated in the 2008 Act without expanded acreage targets (*i.e.*, use fiscal year (FY) 2007 acreage levels). The baselines and policy scenarios are shown in the table below.

#### SUMMARY OF GRP POLICY SCENARIOS

Baseline/Scenario	Description of baseline/scenario	Information for FY 2009–FY 2012
A. Baseline One .....	GRP policy remains unchanged and acreage will continue at FY 2007 acreage levels through FY 2009–FY 2012. That is, no action on the 2008 Act GRP changes.	Baseline of pre-2008 program.
B. Policy Scenario One .....	GRP policy remains unchanged, but acreage increases to reflect the 2008 Act acreage goal levels through FY 2009–FY 2012.	Outcomes given the 2008 Act GRP acreage goals using “Baseline one” program provisions (pre-2008 program).
C. Baseline Two .....	Full implementation of the 2008 Act GRP changes .....	Outcomes given full implementation of the 2008 Act.
D. Policy Scenario Two .....	Full implementation of the 2008 Act GRP changes, but funding/acreage goals set at FY 2007 acreage levels through FY 2009–FY 2012.	Outcomes given the 2008 Act GRP statutory provisions with previous acreage goals.

#### Analysis

The benefits and costs of the baseline and policy scenarios are shown in the following table. These results suggest that GRP creates positive net benefits. Given the estimates of benefits and costs which are described in the main text, the scenario that maximizes undiscounted net benefits is Baseline Two, implement all GRP program

changes mandated in the 2008 Farm Act. The mandated allocation of 40 percent of contract funds to rental contracts and 60 percent to easements plus the elimination of the 30-year easements and 30-year contracts contributed to the estimated \$424 million in undiscounted net benefits for Baseline Two. Although these two factors raised initial program costs, they generated a longer stream of

undiscounted benefits over a longer time period. When discounting is applied, Baseline Two maximizes discounted net benefits at the 3 percent level. At higher discount rates such as 7 percent, net benefits decrease significantly for Baseline Two. The higher upfront costs of permanent easements offset the heavily discounted (7 percent) stream of future benefits.

#### COMPARISON OF NET BENEFITS FOR THE BASELINE AND POLICY SCENARIOS

Baseline/Scenario	Total acres	Net benefits (0% discount)	Net benefits (3% discount)	Net benefits (7% discount)
Baseline One <sup>1</sup> .....	541,900	\$152,557,735	\$65,396,686	\$11,752,922
Policy Scenario One <sup>2</sup> .....	1,220,000	343,456,522	147,229,336	26,460,025
Baseline Two <sup>3</sup> .....	1,220,000	423,798,000	152,220,692	4,895,332
Policy Scenario Two <sup>4</sup> .....	542,000	186,282,400	67,373,841	2,630,771

<sup>1</sup> Do not implement GRP program changes mandated in the 2008 Act. Obligate new contracts using the FY 2007 program acres for FY 2009–FY 2012.

<sup>2</sup> Implement the new acreage goal of the 2008 Act, but do not implement any of the other required changes.

<sup>3</sup> Implement program changes mandated by the 2008 Act. These include dropping the 30-year easements and 30-year rental contracts and allocating 40 percent of the funding to rental contracts and 60 percent to permanent easements.

<sup>4</sup> Implement program changes (elimination of 30-year easements and rental contracts and 40–60 split between rental contracts and easements) mandated by the 2008 Act except for acres, which remain 542,000.

#### Conclusions

Substantial social, economic, and environmental benefits are associated with protecting grasslands in and around metropolitan and rural

communities. These benefits include improved water quality, soil quality, soil conservation, plant and animal diversity, scenic vistas, community heritage, economies, and recreational

activities. Although not all of these benefits were estimated in this analysis, both the previous GRP and the modified GRP in the 2008 Act yielded sufficient measureable benefits to offset

measurable costs. GRP, as currently implemented, maximized undiscounted net benefits as well as net benefits discounted at 3 percent. At the higher 7 percent discount rate, the front loading of costs of permanent easements at the beginning of the contracts overwhelmed the flow of discounted benefits over time. A more complete accounting of ecosystem goods and services would increase benefits over time, thus increasing net benefits for all the baseline and policy scenarios. Given this information, NRCS recommends Baseline Two, full implementation of GRP as specified in the 2008 Act.

### Discussion of the Program

Healthy grasslands protect soil quality; prevent soil erosion, provide sustainable forage for livestock, forage, and cover for wildlife; improve water quality; and sequester carbon. GRP is a voluntary program to assist landowners and agricultural operators in restoring and protecting eligible grassland, land that contains forbs, or shrublands for which grazing is the predominant use through rental contracts and easements. The Farm Security and Rural Investment Act of 2002 (2002 Act), Pub. L. 107-171, authorized GRP by adding sections 1238N through 1238Q to the Food Security Act of 1985, as amended, 16 U.S.C. 3801 *et seq.*; and providing \$254 million through FY 2007 to enroll no more than 2 million acres of restored or improved grassland, rangeland, shrubland, and pastureland. The program regulations are set forth at 7 CFR part 1415.

Section 2403 of the 2008 Act (Pub. L. 110-246) reauthorized GRP and made several amendments to the implementation of the program. The 2008 Act authorized the enrollment of an additional 1.22 million acres of eligible land from FY 2009 through FY 2012.

The Secretary of Agriculture delegated the authority to administer GRP on behalf of the CCC to the Chief, NRCS, who is a CCC Vice President and the Administrator, Farm Service Agency (FSA), who is the CCC Executive Vice President. NRCS has the lead responsibility on regulatory matters, technical issues, and easement administration, and FSA has the lead responsibility for rental contract administration and financial activities. The agencies consult on regulatory and policy matters pertaining to both rental contracts and easements. At the State level, the NRCS State Conservationist and the FSA State Executive Director determine how best to utilize the human resources of both agencies to deliver the program and implement national

policies in an efficient manner given the general responsibilities of each agency.

On January 21, 2009, the CCC published an interim final rule in the **Federal Register** (74 FR 2317) to incorporate programmatic changes authorized by the 2008 Act. The CCC also incorporated improvements to program administration. The changes made by the interim final rule included:

(a) Identifying that the program's focus changed from protecting, conserving, and restoring grassland resources on private lands to assisting owners and operators of private and Tribal land in protecting grazing uses and related conservation values by restoring and conserving eligible land;

(b) Changing the term rental agreements to rental contracts;

(c) Adding new definitions, revising existing definitions for clarity and consistency with other USDA-administered programs, and removing definitions that were no longer relevant to GRP;

(d) Removing the 30-year rental agreement and 30-year easement enrollment options;

(e) Removing the minimum acreage enrollment requirement. Previously, applicants needed to submit 40 contiguous acres for enrollment to be eligible;

(f) Offering enrollment priority for land previously enrolled in the Conservation Reserve Program (CRP) providing certain conditions exist;

(g) Expanding land eligibility criteria to include land that has been historically dominated by grassland, forbs, or shrubland when it contains historical or archaeological resources, or when it would address issues raised by State, regional, and national conservation priorities;

(h) Allowing for the inclusion of permissible and prohibited activities under a rental contract or easement;

(i) Including a separate payment limitation for restoration agreements and rental contracts;

(j) Establishing the requirements for determining easement compensation;

(k) Requiring implementation of a GRP management plan;

(l) Adding the authority to enter into cooperative agreements with eligible entities to own, write, and enforce easements; and

(m) Establishing that the entity will provide a share of the purchase price at least equivalent to the amount provided by the CCC, when eligible entities are acquiring easements under cooperative agreements.

On August 21, 2009, the CCC published an amendment to the January 21, 2009, interim final rule (74 FR

42170) to clarify the nature of the contingent right of enforcement, expand its discussion regarding GRP policy for wind and solar power facilities, and remove the blanket prohibition upon wind power facilities for off-farm power generation. Additionally, the CCC sought public comment to these changes and additional public input on the January 21, 2009, interim final rule.

### Registration and Reporting Requirements of the Federal Funding and Transparency Act of 2006

OMB recently published two regulations, 2 CFR part 25 and 2 CFR part 170, to assist agencies and recipients of Federal financial assistance comply with the Federal Funding Accountability and Transparency Act of 2006 (FFATA) (Pub. L. 109-282, as amended). Both regulations have implementation requirements beginning October 1, 2010.

The regulations at 2 CFR part 25 require, with some exceptions, recipients of Federal financial assistance to apply for and receive a Dun and Bradstreet Universal Numbering System (DUNS) number and register in the Central Contractor Registry (CCR). The regulations at 2 CFR part 170 establish new requirements for Federal financial assistance applicants, recipients, and sub recipients. The regulation provides standard wording that each agency must include in its awarding of financial assistance that requires recipients to report information about first-tier sub awards and executive compensation under those awards.

NRCS has determined that 2 CFR part 25 and 2 CFR part 170 apply to certain awards of financial assistance provided under GRP. Therefore, NRCS has incorporated, by reference, these registration and reporting requirements at § 1415.6 and will include the requisite provisions as part of the GRP contract.

### Comments and CCC Responses

USDA received a total of 19 responses that included 148 comments in response to the two GRP public comment periods. USDA received 16 responses that included 129 comments during the January 21, 2009, interim final rule comment period and 3 responses that included 19 comments during the August 21, 2009, interim final rule amendment comment period.

In this preamble discussion, the comments have been organized in alphabetic order by topic. The topics include: Administration, administrative costs, allocation, compatible use, compensation, conservation and grazing plans, cooperative agreement,

definitions, easements or agreements (duration), easements or agreements (60/40 split), ecosystem credits, enrollment requirements, general, land eligibility, misrepresentation and violations, participant, program requirements, ranking, restoration agreements, and windmills. Additionally, USDA received comments that did not fit any of these topic areas.

#### Administration

*Comment:* One commenter supported the policy that allows State officials to identify State priorities for project selection (with input from the State Technical Committee) and the authority for States to develop ranking criteria. The commenter would also like provisions to allow local stakeholders to identify priorities for GRP funds.

*Response:* USDA appreciates the support for its policies and maintains decisionmaking responsibilities at the lowest level reasonable. Local stakeholders may provide GRP input on program priorities by participating in local working groups authorized by 7 CFR part 610. The local working groups provide input to the State Technical Committee, authorized by 7 CFR part 610, on a myriad of topics including potential program application ranking criteria. No changes were made to the final rule.

*Comments:* Section 1415.2(a)(3) provides that the NRCS Chief and FSA Administrator ensure that national, State, and local-level information regarding program implementation is made available to the public. Two commenters recommended USDA clarify in the final rule how the information will be made available to the public and identify whether there will be an opportunity for further public input. They recommended that USDA utilize public input through State Technical Committees for improving implementation of the program.

*Response:* Section 1415.2(a)(3) provides flexibility for the agency leaders to determine the appropriate approach and methods for ensuring the public is provided information regarding program implementation. State Technical Committee meetings are open to the public, and USDA provides opportunity for people to comment on program implementation at any time. The public can view the State Technical Committee standard operating procedures at <http://directives.sc.egov.usda.gov/>, or obtain a copy from their local NRCS office. No changes were made to the final rule.

*Comments:* One commenter recommended that USDA revise § 1415.2(b)(4) to require input from the

State Technical Committee when developing program outreach materials, and that USDA revise § 1415.2(b)(6) by requiring input from the State Technical Committee when developing grazing management plans and restoration agreements. The commenter indicated that grazing management plans should improve biodiversity and requested that guidance be provided by the State Technical Committee on criteria that is needed and must be included in the grazing management plans to address the biodiversity component.

*Response:* The State Technical Committee is established to assist USDA by making recommendations relating to the implementation and technical aspects of natural resource conservation activities and programs. The State Technical Committee provides recommendations on a myriad of topics including, but not limited to, recommendations on:

- (1) The criteria to be used in prioritizing program applications;
- (2) The State-specific application criteria;
- (3) Priority natural resource concerns in the State;
- (4) Emerging natural resource concerns and program needs; and
- (5) Conservation practice standards and specifications.

USDA agrees with the comment that reference to the State Technical Committee should be added to § 1415.2(b)(4). Therefore, paragraph (b)(4) has been revised to read as follows: "With advice from the State Technical Committee, developing program outreach materials at the State and local levels to help ensure landowners, operators, and tenants of eligible land are aware and informed that they may be eligible for the program."

USDA believes that the State Technical Committee provides guidance on GRP management plans by making recommendations on conservation practice standards and specifications. Biodiversity is addressed in the NRCS Field Office Technical Guide (FOTG) and through its conservation practice standards.

#### Administrative Costs

USDA received five comments from two respondents related to the administrative cost provisions in § 1415.11 Restoration agreements, and § 1415.17 Cooperative agreements. Section 1415.11 describes the applicability of restoration agreements and the terms of such agreements; and § 1415.17 describes the terms through which USDA will enter into an agreement with an eligible entity for

such entity to write, hold, and enforce a GRP easement.

*Comments:* One commenter expressed that the policy in § 1415.17(c)(10) places undue financial burden on the potential cooperators, and the policy in § 1415.17(c)(13) places undue restrictions and unfair burdens that will make it difficult for cooperators to participate.

Further, § 1415.17(c)(13) expressly disallows GRP funds for expenditures for administrative costs such as appraisals, surveys, and title insurance that are authorized when the United States purchases a GRP easement directly from the landowner. The commenter contends it is appropriate for GRP funds to be used for these expenses on at least a cost-share basis when a qualified eligible entity is conducting this administrative function under a cooperative agreement.

*Response:* The GRP statute provides that eligible entities who enter into an agreement with USDA to acquire easements will assume the costs incurred in administering the easement. In the interim final rule, USDA explained that it patterned GRP after the Farm and Ranch Lands Protection Program (FRPP) where the partnering entity assumes responsibility for the majority of the administrative costs related to acquisition. This decision was intended to apply consistent policies to the extent allowable under the terms of each program's statute. Financial assistance funds are used in both GRP and FRPP to purchase a share of the conservation easement. USDA will use program funds to conduct an environmental database records search and appraisal reviews as it does with FRPP. No changes were made to the final rule.

*Comments:* Section 1415.11(k) includes provisions for restoration agreements when title for an easement acquired by USDA is transferred to an eligible entity. One commenter recommended revising policy that requires the entity be responsible for providing funding for the completion of the restoration agreement. The commenter recommended the entity only be responsible for the administration of the restoration agreement. The commenter contends that the policy limits USDA's ability to transfer easements to other entities capable of managing the easement. The commenter had a similar comment about the policy in § 1415.11(l) regarding easements held by eligible entities.

*Response:* USDA agrees that the provisions in paragraphs (k) and (l) of § 1415.11 may reduce the interest in

holding or acquiring GRP easements for some otherwise eligible entities. However, these provisions are required by the GRP statute (16 U.S.C. 3838q(c)(1)(C)). When the Secretary transfers easement title of ownership to an eligible entity to hold and enforce, in lieu of the Secretary, and when the Secretary enters into a cooperative agreement with an eligible entity for the entity to acquire easements, the eligible entity agrees to assume the costs incurred in administering and enforcing the easement, including the costs of restoration or rehabilitation of the land as specified by the owner and the eligible entity. No changes were made to the final rule.

#### *Allocation*

*Comments:* Seven commenters recommended USDA revise § 1415.2(a)(2) to require USDA to use State wildlife action plans in determining national allocation formulas or when establishing program priorities. The commenters also recommend that USDA coordinate with State fish and wildlife agencies as part of assessing natural resource concerns. Another commenter expressed that considering issues raised by State, regional, and national conservation priorities, as required in § 1415.5(b)(2)(iii), to inform local ranking priorities should also be used to inform the national allocation process. By incorporating fish and wildlife resource priorities for grasslands into the allocation process, USDA can help maximize the fish and wildlife benefits while emphasizing the support for grazing operations.

*Response:* USDA considered using State wildlife action plans in national allocation formulas. However, USDA concluded that the plans do not lend themselves to being used in a standardized formula process because of inconsistencies in the format of the plans across the country. USDA will consider using these plans in allocation formulas when a more consistent format is developed. State wildlife action plans can be used by State Technical Committees to assess natural resource concerns and determine project ranking at the State level. No changes were made to the final rule.

*Comments:* One commenter expressed that § 1415.2(a)(2), as written, did not provide sufficient assurance that the agency will use the national allocation process in a way that maximizes the conservation benefits that grazing operations can deliver.

*Response:* USDA developed an allocation process to consider the three priorities of the program as provided for

in the 2008 Act at 16 U.S.C. 3838p(a)(2). The national allocation process considers the amount of range and pastureland and loss, number of livestock operations, Federally listed threatened and endangered species, and candidate species. Additional factors can be added at the State level for individual application ranking by State Technical Committees whose members include State fish and wildlife agencies. No changes were made to the final rule.

#### *Compatible Use*

*Comments:* Two commenters expressed concern related to a participating landowner's rights regarding hunting and fishing. They wanted these activities identified as reserved rights of the landowner. The commenters recommended USDA change this language as well as other compatible use language in this final rule.

Another commenter recommended rewording the definition of compatible use as follows: "Compatible use includes those activities, uses, or measures that do not interfere with the timely implementation or full effectiveness of conservation practices as described in the restoration plan."

*Response:* The term compatible use is not used in the GRP rule. The rule does provide the authority in § 1415.4(h)(6) to allow USDA to determine the manner, number, intensity, location, operation, and other features associated with an activity that will not adversely affect the grassland resources or related conservation values protected under an easement or rental contract.

However, USDA did clarify the easement deed and rental contracts, as well as § 1415.4(h)(6) regarding hunting and other reserved rights by including the following revised language: "This also includes undeveloped, passive, recreational uses such as hiking, camping, bird watching, hunting, and fishing as long as such uses, as determined by the grantee, do not impair the grazing uses and other conservation values."

#### *Compensation*

*Comments:* One commenter recommended NRCS eliminate the new requirement for market analysis and reinstate the use of an individual appraisal for determining value of a GRP easement. The commenter expressed an opinion that a market analysis will not accurately reflect the fair market value of a property. The main concern is that the broad brush approach will discourage landowners from applying for the program and ultimately protecting their land.

*Response:* The 2008 Act specifies that easement compensation will not exceed the fair market value of the land less the grazing value of the land encumbered by the easement. Further, either an appraisal or area-wide market analysis will be used as one method for determining easement compensation. USDA agrees with the commenter that an area-wide market analysis would not accurately reflect the fair market value of a property in areas where insufficient market data exists. In those cases, USDA will be using an appraisal; therefore, no changes were made to the final rule.

*Comments:* Another commenter expressed that it is not clear in the interim final rule how FSA will determine grazing value for rental contracts. The commenter would like the final rule to clarify that the NRCS Chief and FSA Administrator may allow flexibility to adjust rental rates to be competitive with other uses, such as pasture rental, to attract program participants.

*Response:* USDA agrees that if rental rates become too low, inadequate offers will be received to maximize the environmental benefits. Currently however, demand for rental contracts is high with more applicants than funding allows. Raising rental rates would reduce the acres enrolled. FSA determines GRP rental rates by using an administrative process which considers rates established for similar uses under other conservation programs. This process considers rates such as marginal pastureland rates and other rates used for CRP, as well as trying to ensure consistency between counties. With the current high demand for GRP rental contracts at the present rental rates, no changes were made to the final rule.

#### *Conservation and Grazing Plans*

*Comments:* One commenter recommended USDA revise § 1415.2(b)(6) to include "developing conservation plans" to the list of State Conservationist's responsibilities.

*Response:* The State Conservationist is responsible for all planning activities including conservation plans, when applicable. USDA agrees with the commenter that clarity is needed. USDA is using the term GRP management plan to include conservation plans and restoration plans in addition to any applicable grazing management systems. Therefore, USDA revised § 1415.2(b)(6) to read "Developing GRP management plans and restoration agreements, when applicable."

#### *Cooperative Agreement*

*Comments:* One commenter questioned how § 1415.12(a) will be



interpreted. The commenter recommended that USDA clarify that conservation easements may be amended if such amendments clearly preserve or benefit the conservation values of the property. Most easements include an amendment provision. The commenter expressed concern that a strict no amendment standard may have future adverse and unintended consequences as management practices change and knowledge of proper resource management advances.

*Response:* USDA agrees that § 1415.12(a) should be clarified. USDA understands the commenter's concerns and is aware that easement deeds typically include modification provisions if the modification serves the conservation purposes of the easement. USDA does not currently have legal authority to change the substantive terms of a GRP conservation easement once it has been recorded. Specifically, modifications that would result in acquisition or divestiture of additional property rights cannot be made. However, deed changes that do not result in the acquisition or divestiture of property rights may be made, such as technical changes or clarifications of deed text. As management practices change, the GRP management plan may be modified to address advances in resource management knowledge.

*Comments:* One commenter expressed that to the extent an eligible entity is holding and managing an easement, the eligible entity must be privy to the grazing plan in addition to USDA and the landowner. The eligible entity should also be privy and a party to any modifications of a grazing plan if it is holding the easement. The commenter believes this is what is meant under statutory reference to mutual agreement of the parties under section 12380(b)(6). Another commenter questioned whether it is the responsibility of the eligible entity or NRCS to develop these plans. If it is the role of NRCS, the commenter suggested the eligible entity should provide input into the plans if they are expected to monitor and enforce them.

*Response:* Section 1415.4(c) provides that all participants are required to implement a GRP management plan. USDA added, "NRCS will develop GRP management plans with eligible entities." This language ensures the partnering entity is fully aware of the GRP management plan requirements and is party to the development of these plans. No changes were made to the final rule.

*Comments:* One commenter stated that the GRP statute does not specify that a dedicated fund is required by an eligible entity for the purpose of

easement management, monitoring, and enforcement. While the commenter agreed that it is appropriate and desirable for entities to have an adequate stewardship endowment fund to assure they can meet the perpetual management of conservation easements they hold and administer, they identified that conservation monitoring and management functions may be addressed separately from enforcement purposes in the organization's operational budget. In such cases, the various funding sources may not be considered dedicated. They recommend that USDA change the final rule to clarify the funds be a necessary requirement for eligible entities, but the fund need not be dedicated. The commenter also expressed that GRP should be set up and run in a similar manner to the FRPP, so that eligible third parties can certify for both programs.

*Response:* The GRP statute provides that the Secretary may approve an eligible entity if the Secretary determines the entity has the resources necessary to effectuate the purposes of its charter. The dedicated fund requirement established in the interim final rule provides USDA a level of assurance that the easement will be managed, monitored, and enforced for the duration of the easement. Unlike the FRPP statute, the GRP statute does not include a certification process. The dedicated fund requirement, however, provides USDA a means to evaluate if an eligible entity has sufficient resources to administer, manage, monitor, and defend a GRP conservation easement. NRCS will evaluate the funding structure of an entity's stewardship activities when making the determination of whether there is a dedicated fund. No changes were made to the final rule.

*Comments:* Six commenters expressed that USDA should include landowners' donations, when applicable, as part of the entity's share of the purchase. The commenters further expressed that it is important to note that eligible entities are providing a significant role in furthering the purpose of GRP by committing to perpetually monitoring and enforcing the terms of the easements and plans. Many States with considerable grassland resources do not have dedicated State resources for leveraging Federal funds. The commenters believe USDA's policy inhibits GRP participation in areas of the country where local conservation easement purchase funds are limited or nonexistent, and thus, the restriction places too great a financial burden on potential cooperating entities.

*Response:* USDA evaluated the policy related to landowner donations and entity purchase price. USDA agrees with the commenters and has revised the definition of purchase price to read: "Purchase price means the amount paid to acquire an easement under a cooperative agreement between NRCS and an eligible entity. It is the fair market value of the easement." This change allows landowner donations to count as part of the entity share.

*Comments:* USDA received a number of comments related to the Federal Government's interest in GRP easements. The GRP interim final rule amendment alleviated a number of concerns related to the easement acquisition process and whether Federal real property acquisition requirements apply. One commenter supported maintaining language in § 1415.17(e)(1) that the rights acquired by the United States are a vested property right and cannot be condemned or terminated by State or local government.

*Response:* USDA agrees with the comment about § 1415.17(e)(1). No changes were made to the final rule regarding the interest of the United States being a vested property right.

#### Definitions

##### Biodiversity

*Comments:* Eleven commenters requested USDA add a definition for the term biodiversity. They would like to add a definition for biodiversity to read: Biodiversity means the variety and variability among living organisms native to the local ecological sub-region and ecological complex. They also want the term biodiversity added to the Common Grazing Practices definition as follows: "Common Grazing Practices means \* \* \* activities necessary to maintain and improve the biodiversity and viability of forage. \* \* \*"

*Response:* USDA agrees with the commenters that including a definition for biological diversity improves understanding of the regulation. Therefore, USDA adds a definition for biological diversity to the final rule that reads as follows: "Biological diversity means the variety and variability among living organisms and the ecological complexes in which they live." USDA removed the definition for the term "plant and animal biodiversity" because this term is no longer needed.

Common grazing practices are allowable uses in a local area. Plant species composition is considered in the development of GRP management plans. Because specific grazing practices vary by region, they may or may not improve biodiversity. While GRP emphasizes



support of biodiversity, common grazing practices customary to the region are allowed. No change was made to the definition of common grazing practices in the final rule.

#### Conservation Plan

*Comments:* One commenter requested USDA expand the definition of conservation plan to reflect all grassland values. Specifically, the commenter requested the definition be amended as follows: "conservation plan means a record of the GRP participant's decisions and supporting information that will be developed to address resource concerns in addition to grazing land uses. The conservation plan will describe the conservation values of the grassland or shrubland to be addressed and will include. \* \* \*

*Response:* USDA agrees with the comment and added the definition of GRP management plan to include a conservation plan. The GRP management plan means the document developed by NRCS that describes the implementation of the grazing management system consistent with the prescribed grazing standard contained in the FOTG. The GRP management plan will include a description of the grazing management system, permissible and prohibited activities, any associated restoration plan or conservation plan if applicable, and a description of USDA's right of ingress and egress.

A conservation plan will be accepted as a GRP management plan and will describe the implementation and maintenance of grazing management and conservation practices directly related to eligibility criteria under which the land is enrolled.

#### Conservation Values

*Comments:* One commenter recommended USDA revise the definition of conservation values to mean those natural resource attributes that "sustain and enhance ecosystem functions and values of grasslands and shrublands including, but not limited to, native plant and animal biodiversity, habitat for native grassland and shrubland. \* \* \*

*Response:* The purpose of GRP is to assist owners and operators to protect grazing use and related conservation values. Improved range and pasture which protect grazing uses may or may not include native grasslands as a related conservation value. USDA did not restrict the definition of conservation value to only native plants and animals since the primary purpose of the program is to protect grazing uses. However, USDA agrees the definition

can be improved. Therefore, the definition has been amended to read "Conservation values means those natural resource attributes that sustain and enhance ecosystem functions and values of the grassland area including, but not limited to, habitat for grassland and shrubland dependent plants and animals, native plant and animal biodiversity, soil erosion control, forage production, and air and water quality protection."

#### Enhancement

*Comments:* One commenter expressed that the definition of enhancement refers to the viability of grassland resources but fails to recognize grazing values. The definition only refers to wildlife habitat, which is just one purpose of the program. The commenter wants the definition of enhancement to recognize grazing values.

*Response:* USDA agrees with the comment and added grazing resources to the definition.

#### Grazing Management Plan

*Comments:* Several comments were received regarding the definition of grazing management plans. They expressed that the grazing management plan should always be associated with a conservation plan and recommended rewording the definition to reflect this. One specific concern is that grazing management plans will not address related conservation values; another concern is that the definition of grazing management plans does not accomplish the protection of related conservation values and is not consistent with the stated intent of the managers to ensure conservation purposes are met.

One commenter recommended specific amendatory language to read: "The grazing management plan will include a description of the grazing management system, permissible and prohibited activities, an associated conservation plan, any associated restoration plan, if applicable, and a description of USDA's right of ingress and egress." Other commenters also expressed that requiring participants and grantees to develop and follow two separate plans adds complexity and confusion. Section 1415.4(c) indicates participants may have to agree to and implement a grazing management plan and a conservation plan when a participant receives ranking points for resource concerns other than grazing resources. A more practicable approach would be to require the grazing management plan to incorporate specific conservation objectives if the application is accepted because of State priorities for local conservation needs.

They want to stress that any management plan must be developed and agreed to by the grantor and grantee prior to the closing of the easement deed. Furthermore, especially for land in perpetual easements, it may be necessary to modify or restructure management plans as environmental conditions and grassland management knowledge and opportunities develop in the future.

*Response:* USDA agrees that the language in the interim final rule is confusing regarding when a grazing management plan is required and when a conservation plan is required. This final rule changes the definition of "grazing management plan" to a "GRP management plan" as the minimum planning requirement for GRP participation. A conservation plan is not required, but can be used as a GRP management plan for certain lands enrolled in the program. The prescribed grazing standard used for developing a GRP management plan does address related conservation values because it includes vegetation and forage management, water quality and quantity, riparian and watershed function, soil erosion and condition, wildlife, and prescribed fire.

USDA revised the language in § 1415.4(c) to read that all participants in GRP are required to implement a GRP management plan approved by NRCS. NRCS will develop GRP management plans with eligible entities. In cases where a participant receives ranking points on the basis of resource concerns other than grazing land concerns, all such resource concerns will be addressed in an applicable conservation plan.

#### Infrastructure

*Comments:* The interim final rule amendment discusses the footprint of the related infrastructure but does not include a definition. USDA received comments that suggested describing the infrastructure of power generation facilities to include transmission corridors and roads.

*Response:* USDA did not adopt the recommendation to add a definition for the term infrastructure. Specific infrastructure needs may vary from project-to-project and are difficult to define. Since USDA will conduct site-specific environmental analysis for proposed projects associated with renewable energy, the specific types of infrastructure will be addressed on a case-by-case basis.

## Native

*Comments:* USDA received multiple comments recommending that GRP be restricted to native grassland systems.

*Response:* The GRP statute provides that the purpose of the program is to “assist owners and operators in protecting grazing uses and related conservation values. \* \* \*” Native grasslands are included in program purposes, as are improved rangeland and pastureland for which grazing is the predominant use. Priority for native grasslands can be addressed through the ranking process. Native grasslands can be a priority at either the national, State, or regional level. No changes were made to the final rule.

## Nesting Season

*Comments:* GRP participants are permitted to hay, mow, or harvest for seed production subject to appropriate restrictions, as determined by the State Conservationist, during the nesting season for birds in the local area that are in significant decline, or are conserved in accordance with Federal or State law. The interim final rule defined nesting season as the time of year that animals (birds and others) build or otherwise find a place of refuge for purposes of reproduction or dormancy. Commenters requested clarification of the intent of the term dormancy in the definition. USDA received a number of comments on the definition of nesting season including clarifying or removing the phrase “subject to appropriate restrictions;” insert “birds and other animals” in place of birds and others; and clarify “or dormancy.”

*Response:* The GRP statute identifies birds in the local area that are in significant decline. For clarification, given the specificity in the statute, USDA revises the definition of nesting season to read “the time of year that grassland dependent birds in significant decline in the local area build nests or otherwise find a place of refuge for purposes of reproduction.” NRCS identifies the bird species and nesting season in the GRP management plan.

## Purchase Price

*Comments:* USDA received comments expressing that the rule goes beyond statutory authority to define the term purchase price in such a way as to require a cash match from the eligible entity, which the statute does not require. The commenters suggested that the eligible entity at least match the Secretary with a combination of cash and landowner donation.

*Response:* USDA has revised the definition of purchase price to read

“Purchase price means the amount paid to acquire an easement under a cooperative agreement between NRCS and an eligible entity. It is the fair market value of the easement.” This change allows landowner donations to count as part of the entity share.

## Shrubland

*Comments:* One commenter recommended USDA remove the following words from the shrubland definition: “and generally produces several basal shoots instead of a single bole.” The commenter explained there is a number of shrubland species that are single boled and such distinction is not necessary to include in this definition.

*Response:* USDA agrees with the comment and has changed the definition in the final rule.

## Easements or Agreements (Duration)

*Comments:* One commenter disagreed with the removal of the 30-year rental agreement as an enrollment option. The commenter supports shorter-term easements and cost-share agreements over permanent easements.

*Response:* The removal of the 30-year agreement and easement options was the result of the 2008 Act, and therefore, USDA has no discretion to change it. No changes were made to the final rule.

## Easements or Agreements (60/40 Split)

*Comments:* USDA received four comments on the statutory requirement that the Secretary will use, to the extent practicable, 40 percent of the funds for rental contracts and 60 percent of the funds for easements. The interim final rule provides that USDA will manage the program nationally to ensure that, to the extent practicable, “no more than 60 percent of the funds are used for the purchase of easements \* \* \* and no more than 40 percent of the funds are used for rental contracts.” The commenters recommended USDA drop the “no more than” language since it is not required in statute and is unnecessarily limiting.

*Response:* USDA agrees that the phrase “no more than” creates an inflexibility that was not established in statute. Further, it creates an impractical impediment to efficient program implementation. Therefore, USDA removed “no more than” in § 1415.8(j).

## Ecosystem Credits

*Comments:* Three comments were received requesting § 1415.10(h) be revised to be consistent with the Healthy Forest Reserve Program (HFRP) regulation in 7 CFR part 625.

*Response:* The following revision was made to § 1415.10(h) to be consistent with HFRP:

USDA recognizes that environmental benefits will be achieved by implementing conservation practices and activities funded through GRP, and that ecosystem credits may be gained as a result of implementing activities compatible with the purposes of a GRP easement, rental contract, or associated restoration agreement. USDA asserts no direct or indirect interest in these credits except:

- (1) In the event the participant sells or trades credits arising from GRP funded activities, USDA retains the authority to ensure that the requirements for GRP rental contracts, easements, or restoration agreements are met and maintained consistent with this part; and
- (2) If activities required under an ecosystem credit agreement may affect land covered under a GRP rental contract, easement, or restoration agreement, participants are highly encouraged to request an assessment from USDA about the compatibility of the activity prior to entering into such agreements.

## Enrollment Requirements

*Comments:* In addition to the requests to amend the definition of grazing management plan as explained above, USDA received requests to revise the second sentence of § 1415.9(e) to read “NRCS will proceed with the development of the *grazing and conservation management plans and the restoration plan*, if applicable.” The commenters expressed that all grazing management plans should be part of a conservation plan which addresses related conservation values associated with the program purpose.

*Response:* Grazing management plans are usually a part of a conservation plan. The GRP management plan includes grazing, conservation, and restoration planning. No changes were made to the final rule.

*Comments:* One commenter expressed concern about policy related to crop acreage bases in § 1415.4(l). Paragraph (l) requires rental contract participants to suspend any existing cropland base and allotment history for the land under another program administered by the Secretary. The commenter expressed support for allowing producers to maintain their crop base history as long as the producer has met all contract obligations. However, the commenter recommends that if program payments are reduced or delayed for 90 days or longer, the producer should have the option to withdraw from the contract without penalty, and program crop bases would be restored to their prior level.

*Response:* GRP rental contracts are fully funded for all years under the

contract once it is approved and signed by the CCC. USDA does not foresee a situation where producer's payments could be delayed for 90 days; therefore, no changes were made to the final rule.

#### General

*Comments:* One commenter recommended that § 1415.4(h)(4) be revised to read: "Grazing related activities, such as fencing and livestock watering facilities, provided that such activities will not adversely affect the related conservation values, including habitat for grassland and shrubland dependent birds and other animals."

*Response:* All permitted activities listed under § 1415.4(h) must be consistent with the conservation easement deed or rental contract terms. Permitted activities, such as grazing related activities, must also follow the GRP management plan and be consistent with GRP purposes, including related conservation values and appropriate restrictions during the nesting season for birds in the local area that are in significant decline.

*Comments:* USDA received one comment on the provisions related to permitted activities in § 1415.4(h)(6) that describes limits on infrastructure development along existing right-of-ways. The commenter identified that the text appears to prohibit any development on future right-of-ways. It was suggested that USDA and the grantee should have the ability to use discretion for future right-of-ways, especially when it is determined to be in the public benefit and grassland resources and related conservation values will not be adversely impacted.

*Response:* USDA recognizes the difficulty related to developing agreements without complete foresight into the potential future needs for the enrolled property. However, USDA does not have the statutory authority to amend GRP conservation easements. Therefore, USDA cannot amend an easement to reflect future right-of-ways. No changes were made to the final rule.

*Comments:* One commenter supports the use of the grazing management plan as the primary plan for GRP participants. No matter which of these plans are used (conservation plans, restoration plans, and grazing management plans), the commenter believed that landowners operating under these plans or agreements should have assurance they will not be found in violation of the Endangered Species Act or other Federal or State environmental laws by implementing their requirements.

*Response:* USDA follows its National Planning and Procedures Handbook in

the development of GRP management plans to ensure that conservation practices are identified in accordance with NRCS standards and specifications. While the GRP management plans identify the management activities the landowner will conduct on the easement area, including implementation of conservation practices, the identification of an activity in a plan does not bestow upon the activity immunity from other legal requirements that a landowner must follow when conducting activities on private land, nor do USDA approvals bind other Federal or State agencies in the implementation of their own regulations. A landowner remains responsible for ensuring the activities conducted on his or her farm or ranch operation are in compliance with the law, including obtaining any necessary permits or approvals by other governmental entities. No changes were made to the final rule.

*Comments:* One commenter recommended an increase in the percentage of incidental land allowed. The commenter expressed that limiting the amount of incidental land that may be included in the GRP easement to 10 percent will result in awkward configurations that may not be the best conservation outcome and may be difficult to steward.

*Response:* The regulation does not limit incidental land to a percentage. The interim final rule provided in § 1415.5(c) that incidental land may be considered for enrollment to allow for the efficient administration of an easement or rental contract. The rule did not specify a percentage. Since the regulation provides USDA the flexibility to make determinations about incidental land, no changes were made to the final rule.

*Comments:* One commenter strongly disagreed with the statement in the preamble (in the section entitled Summary of 2008 Act Changes) that the expansion of the statement of purposes was intended to change the program's focus from protecting, conserving, and restoring grassland resources on private lands. Both the 2002 Act and the 2008 Act referred to restoring and conserving eligible land. The commenters identified that no language in the statute or the Statement of Managers supports the interpretation the agency has apparently taken that the addition of the reference to grazing uses represents a significant shift that justifies a decreased focus in the rule on meeting the program's conservation purposes. The commenter expressed that it is important to make this point because

the change in program purposes in the statute is cited in the preamble to the interim final rule as justification for a number of changes USDA has made to the final rule. For example, the change in purposes is cited to support the agency's decision to remove in § 1415.1(b), the statement that one of the objectives of GRP is to emphasize preservation of native and naturalized grasslands and shrublands. The preamble states that the change in program purposes means that the program is not limited to native and naturalized grasslands.

*Response:* The change in emphasis was made to implement the intent of Congress as indicated in the statutory changes made in the new Farm Bill. Specifically, the statute states that the purpose of GRP is to assist owners and operators in protecting grazing uses and related conservation values. The previous statute emphasized preservation of native and naturalized grasslands and shrublands. Native grasslands are included in program purposes in this statute, as are improved rangeland and pastureland for which grazing is the predominant use. Applications are evaluated and ranked to emphasize support for grazing operations, plant and animal biodiversity, and threat to conversion to uses other than grazing. Native grasses are considered during the ranking process, and native grasslands are considered as part of the biodiversity emphasis. No changes were made to the final rule.

#### Land Eligibility

*Comments:* Two commenters supported the policy that allows and gives priority to enrollment of expiring CRP lands and for continuing to recognize the value of native grasslands. One commenter that recommended priority to native grasslands also suggested that expiring CRP, that was not established to native grasslands but that supported lesser or greater prairie chickens, should be an exception to a priority of native grasslands.

*Response:* USDA appreciates the support for its policies and maintains decisionmaking responsibilities at the lowest level reasonable. Priority for expiring CRP is authorized in 16 U.S.C. 3838n(A). Determination of the high ecological value and threat of conversion to uses other than grazing of these lands is determined by the State Conservationist, with input from the State Technical Committee. Local stakeholders do have the opportunity in GRP to provide input on land eligibility by participating in local working groups

authorized under 7 CFR part 610. No changes were made to the final rule.

*Comments:* Three commenters recommended adding the word native in § 1415.5(b)(2)(i).

*Response:* The purpose of GRP is to assist owners and operators in protecting grazing uses and related conservation values, and USDA recognizes the value of conserving native grasslands. USDA does not want to limit land eligibility to only native grasslands because this would preclude acceptance of other significant habitats such as expiring CRP lands with non-native grasses supporting lesser or greater prairie chickens. No changes were made to the final rule.

*Comments:* Two commenters suggested USDA coordinate with U.S. Fish and Wildlife Service (USFWS) and State fish and wildlife agencies when assessing potential impact of third party mineral rights for a GRP easement under § 1415.5(e). Another commenter believes that § 1415.5(e) will make it possible to place a GRP easement on a property with a split estate.

*Response:* Gas, oil, earth, or other mineral rights exploration may have adverse effects on the conservation values the GRP is protecting. USDA reserves the right to deny funding when there are exceptions to clear title on a property offered for a GRP easement that may undermine the purposes for which the United States acquired the easement. As part of its due diligence to determine whether outstanding rights may impact the conservation values, USDA will require a mineral remoteness test for any property with severed mineral rights. Consultation with the USFWS and State fish and wildlife agencies would not determine the potential for extraction of resources; therefore, no changes were made to the final rule.

*Comments:* One commenter appreciated the recognition of State, regional, and national conservation priorities and the inclusion of incidental lands under § 1415.5.

*Response:* USDA agrees with the comment and appreciates support of its policies.

*Comments:* One commenter believes that § 1415.5(b)(1) will allow USDA to target large tracts of grassland in the West.

*Response:* Grasslands, land that contains forbs, or shrubland, for which grazing is the predominant use, are eligible for funding consideration. Lands located in areas historically dominated by grassland, forbs, or shrubland that is compatible with grazing uses and related conservation values are also eligible. USDA is not

targeting any particular region of the country. No changes were made to the final rule.

#### *Misrepresentation and Violations*

*Comments:* One commentator requested that USDA revise § 1415.14(b)(2) and (3) to include provisions for NRCS or an easement holder representative to enter easement lands when there is an easement violation and to allow both NRCS and an easement holder, who acquires an easement in accordance with either § 1415.17 or § 1415.18, to monitor the easement for violations.

*Response:* Section 1415.14 includes provisions for when the United States remains the easement holder. Sections 1415.17 and 1415.18 include provisions for when someone other than the United States holds title to the deed. The GRP deed provides "Upon notification to the grantor, grantee, or grantee's agents may enter the property to inspect for violations including, but not limited to, assessing compliance with the GRP management plan. However, notification by the grantee prior to entry is not required when the grantee believes there may be a violation of the terms of this deed. If the grantee finds a violation, the grantee may at its discretion take appropriate legal action in law or equity. Upon discovery of a violation, the grantee will notify the grantor in writing of the violation. Except when an ongoing or imminent violation could, as determined by grantee, seriously impair the conservation values of the property, the grantee will give the grantor written notice of the violation and 30 days to correct it before filing any legal action."

#### *Participant*

*Comments:* Two commenters recommended adding the following phrase to § 1415.4(h)(6): " \* \* \* when it is determined by NRCS, in consultation with USFWS and State fish and wildlife agencies, that granting such right-of-way. \* \* \* "

*Response:* USDA recognizes the need to engage appropriate expertise when considering allowing infrastructure development. Each State Technical Committee includes USFWS and State and fish wildlife agencies. USDA will coordinate with those agencies when evaluating any allowable activities. No changes were made to the final rule.

#### *Program Requirements*

*Comments:* One commenter suggested removing any restrictions to haying, mowing, or harvesting for seed production, stating that there should not be any restrictions on GRP land due to nesting season. The commenter also

suggested that restrictions during the nesting season may be considered as part of a grazing management plan only if it is in the interest of the landowner.

*Response:* These restrictions are required by section 1238O(d)(1)(B) of the Food Security Act of 1985, as amended. Haying, mowing, or harvesting for seed production were made permissible activities provided appropriate restrictions were in place to protect birds in the local area that are in significant decline or are conserved in accordance with Federal or State law. No changes were made to the final rule.

*Comments:* Several commenters suggested adding the words other animals after birds in the restriction to haying, mowing, or harvesting for seed production in § 1415(h)(2).

*Response:* Haying, mowing, or harvesting for seed production may impact habitat for grassland dependent bird species if done during the nesting season in some areas. USDA agrees that other animals may also be impacted in local areas. The State Conservationist has authority to determine these impacts based upon species concerns at the local level. No changes were made to the final rule.

*Comments:* Two commenters suggested adding "and related conservation values" in § 1415.4(i)(1) and § 1415.4(i)(2). One of the commenters also suggested that orchards be specifically prohibited.

*Response:* USDA agrees that consistent terms should be used in both § 1415.4(i)(1) and § 1415.4(i)(2) and so has added the phrase "and related conservation values" to both sections in the final rule. Because orchards include fruit trees, as well as other agricultural commodities such as nuts, USDA has revised § 1415.4(i)(1) to read: "The production of crops (other than hay), orchards, vineyards, or other agricultural commodity that is inconsistent with maintaining grazing land and related conservation values."

#### *Ranking*

*Comments:* Three commenters requested USDA insert in § 1415.8(i)(2) the words "with advice from the State Technical Committee" after USDA to ensure informed decisions regarding high ecological value and significant threats.

*Response:* USDA accepts the comment and has revised § 1415.8(i)(2) accordingly.

*Comments:* Section 1415.8(i)(4) provides that expired CRP land enrolled under the CRP priority will not exceed 10 percent of the total number of acres accepted for enrollment in GRP in any year. Three commenters requested

USDA insert national before enrollment so that the CRP 10 percent limitation is managed at a national level. Another commenter requested USDA limit use of the CRP priority enrollment to areas where there is little or no remnant native prairie available.

*Response:* Because the CRP enrollment is managed nationally, the suggested change was made to § 1415.8(i)(4). USDA supports decisionmaking at the lowest level reasonable and believes that States with expiring CRP acres in areas with little or no remnant native prairie will rank these applications appropriately.

*Comments:* USDA received multiple requests to give the highest priority to native grasslands.

*Response:* No changes were made to the final rule. The statutory language does not restrict GRP to native grassland systems. There are situations in which the native habitat has been destroyed and introduced species are utilized to protect soil resources. The insertion of the term native would create a barrier for participation in those situations. Additionally, the GRP management plan addresses plant composition and is written to accomplish grazing management objectives, including biodiversity.

#### *Restoration Agreements*

The interim final rule in § 1415.11(g) provides if the participant is receiving cost-share for the same conservation practice or activity from another conservation program, USDA will adjust the GRP cost-share rate proportionately so that the amount received by the participant does not exceed 100 percent of the costs of restoration. The participant cannot receive cost-share from more than one USDA cost-share program for the same conservation practice or activity on the same land.

*Comments:* Two commenters recommended changing another conservation program to another Federal source. USDA and the States need the ability to use other non-Federal funding sources and opportunities to facilitate implementation. Both commenters also expressed that the paragraph was confusing as written.

*Response:* To reduce confusion, NRCS separated § 1415.11(g) into two paragraphs, paragraphs (g) and (h), to read as follows:

“(g) If the participant is receiving cost-share for the same conservation practice or activity from another conservation program, USDA will adjust the GRP cost-share rate proportionately so that the amount received by the participant does not exceed 100 percent of the costs of restoration.

(h) The participant cannot receive cost-share from more than one USDA cost-share

program for the same conservation practice or activity on the same land.

Regarding the cost-share limitation language, USDA believes that the Federal cost-share assistance contribution should not enable a participant to receive more than 100 percent of the cost of the practice, no matter what the source. No changes were made to the final rule.

#### *Windmills*

*Comments:* In response to USDA's specific request for public comment on its policy related to windmill placement, the following comments were received:

(a) The GRP statute does not specifically address wind turbines or renewable energy within context of GRP. It is not authorized. Based on soil disturbance and associated road infrastructure needed for maintenance, as well as potential power substations, wind turbines should not be allowed with GRP. Wind turbines are not consistent with the GRP purpose to protect grazing uses and related conservation values or priority to land that could provide habitat for animal or plant populations of significant ecological value.

(b) USDA should revise the preamble to read:

\* \* \* USDA will follow the guidelines being developed by the USFWS on avoiding and minimizing wildlife impacts from wind turbines. Until the guidelines are published, USDA will assess potential wildlife impacts in coordination with USFWS and the appropriate State fish and wildlife agency before authorizing any wind power generation facilities (on-farm or off-farm) on GRP lands. USDA will authorize power generation facilities only when the footprint of the facility and related infrastructure would have a minimal impact on the nature of the grazing lands and other conservation values obtained through the contract or easement.

(c) One commenter was encouraged by open communication and coordination between USDA and interested stakeholders to develop a consistent process for determining impacts from wind and solar generation and related infrastructure to grassland and migratory wildlife and other natural resources. The commenter expressed support for USDA following USFWS guidelines to minimize wildlife impacts in landscapes where wind energy development is pursued. The commenter asked that USDA consider site-specific scale of energy generation facilities and impact on original intent and purpose of GRP.

(d) The siting of wind power generation facilities must be consistent

with the voluntary program's goal of protecting grassland for which grazing is the predominant use. Clearly, wind power generation for any end-user is consistent with a voluntary grazing program. The final rule should acknowledge this. Requirements for an onsite evaluation to determine potential impacts from wind generation on threatened and endangered species or at-risk species, *etc.* should be removed. In addition § 1415.4(i)(3) also prohibits wind power generation and should be removed from the final rule. It should make no difference to USDA if the wind power is being generated for on-farm use or for sale to electrical generators.

(e) One commenter recommended that existing or future State or Federal regulatory siting documents be used for wind energy developments proposed on GRP easements to minimize adverse effects on biodiversity.

(f) Impact to wildlife and habitat from power generation facilities are often cumulative across the landscape. The commenter recommended analyses conducted on a case-by-case basis that includes larger, landscape consideration as part of the NEPA review. NRCS will still have to coordinate with USFWS and the appropriate State fish and wildlife agency in order to allow power generation facilities that do not adversely affect biodiversity.

(g) Multiple comments were received that NRCS should consult with USFWS until the guidelines for windmill sitings are finalized. Some recommended USDA revise § 1415.4(h)(5) to read: “In addition, USDA will follow the guidelines being developed by the USFWS on avoiding and minimizing wildlife impacts from wind turbines. USDA will authorize wind power facilities only when the footprint of the facility and related infrastructure would have a minimal impact on the nature of the grazing lands and other conservation values obtained through the contract or easement.”

(h) Four commenters agreed with the language in the interim final rule that limits consideration for windmill placement to on-farm use only. Another commended USDA for limiting wind power development on GRP easements. Footprint and associated disturbance can have adverse effects on biological diversity, a purpose of the program.

(i) One commenter expressed that there may be instances for the marketing of excess electricity generation from smaller wind turbines and other renewable energy structures such as hydroelectric facilities and solar panels (designed for on-farm use) through net-metering or parallel electricity generation. USDA should consider

allowing such small-scale use on GRP lands and allowing landowners to utilize the various renewable energy sources that are available, as long as they do not adversely impact the conservation values.

*Response:* USDA will consider potential renewable energy on GRP lands when the scope and scale of the facility and associated infrastructure is consistent with protection of grazing uses and related conservation values. A site-specific analysis of the potential environmental effects will be conducted in consultation with the USFWS. USDA will not authorize any renewable energy generating facilities on GRP lands unless USDA determines, based on a site-specific NEPA environmental analysis conducted in coordination with USFWS and the appropriate State fish and wildlife agency, that there will be no adverse effect on threatened, endangered, or other at-risk species, migratory wildlife, or related natural resources, cultural resources, or the human environment or when the impacts of such facilities can be mitigated to a level of non-significance. Furthermore, USDA will only authorize power generation facilities after evaluating their site-specific and cumulative environmental effects, whether a reasonable alternative exists, whether there is a compelling public need, whether the purposes for which the easement was acquired can be maintained, and the degree to which the footprint of the facility and related infrastructure impacts the nature of the grazing lands and other conservation values obtained through the contract or easement. No changes were made to the final rule.

#### Other

*Comments:* Several comments were received regarding the content of the GRP conservation easement deed. One commenter recommended that USDA omit the language in the deed that prohibits any activity that breaks the surface of the soil. Another commenter suggested that USDA's easement template deed be modified, and urged USDA to consider submitting a draft GRP easement deed for public review and comment before sign-up begins.

Another commenter suggested that language be added to allow for periodic inspection upon appropriate notice to the landowner in § 1415.18(b). Another commenter suggested that requiring notices to be in writing and personally delivered or sent by certified return receipt would be over-burdensome and that electronic e-mail correspondence would be sufficient.

*Response:* With the changes made to GRP by section 2403 of the 2008 Act, the GRP deed was changed, and the prohibition against breaking the surface of the soil was removed. Other changes include the requirement that all GRP easements will be permanent or the maximum duration allowed under State law. The GRP template deed ensures legal requirements of the authorizing legislation are met and is reviewed by USDA attorneys for legal sufficiency. USDA may also accept conservation easements owned, written, and enforced by eligible entities through a cooperative agreement. All GRP deeds require notification to the landowner prior to entering the property. In § 1415.18(b), if USDA transfers title of ownership of an easement to an eligible entity, the terms and conditions of the deed remain in force, thus USDA or the eligible entity will be required to notify a landowner prior to entering a property. USDA has an established deed review process. No changes were made to the final rule.

*Comments:* One commenter questioned the need to require prior approval in writing for every instance of applying animal waste to property subject to a GRP easement.

*Response:* The required GRP management plan addresses application of animal waste and can be updated with changes to the grazing management system. A written approval is not required for each instance of applying animal waste or fertilizer. The GRP deed supports the program requirement of a written grazing management plan. No changes were made to the final rule.

*Comments:* One commenter points out that grasslands desirable for GRP participation are in remote areas where future public utility access may be unavoidable. The commenter supports the prohibition of development, but suggests that a total prohibition will invite unnecessary conflicts between public utility interests, neighbors, governments, and GRP participants. The commenter suggested language that ensures that any public utility access must be done in a manner that maintains the grassland and that other conservation values is sufficient to preserve the objectives of the program.

*Response:* USDA understands the commenter's concerns and is aware that easement deeds typically include modification provisions if the modification serves the conservation purposes of the easement. USDA does not currently have legal authority to change the substantive terms of a GRP conservation easement once it has been recorded. Specifically, modifications that would not result in acquisition or

divestiture of additional property rights cannot be made. USDA will not knowingly enroll GRP easements in areas located along potential right-of-ways for infrastructure projects and will include adequate buffers on existing infrastructure to allow for inevitable expansion. Additionally, the current deed will allow for utility easements that service the needs of the landowner's operation.

*Comments:* One commenter says that controlling wildlife damage is a critical factor in maintaining the success of American agriculture and suggests language that recognizes the lawful ability of landowners to remove trees, brush, and wildlife that may be jeopardizing agricultural or livestock enterprises.

*Response:* USDA understands the rights of private landowners and utilizes conservation easements on a voluntary basis. GRP assists landowners and operators in protecting grazing uses and related conservation values. Protection of related conservation values, such as habitat for wildlife under GRP, may not be consistent with some landowner's desires. Consequently, USDA encourages landowners and operators to consider their decision to enroll in any conservation easement program carefully. No changes were made to the final rule.

*Comments:* One commenter requested clarification that the regulations require consultation with Indian Tribes when actions USDA funds off the reservation directly impact a treaty reserved resource of the Tribes.

*Response:* USDA will comply with section 106 of the National Historic Preservation Act and all applicable Federal laws, including treaties and executive orders. No changes were made to the final rule.

#### List of Subjects in 7 CFR Part 1415

Administrative practice and procedure, agriculture, soil conservation, grassland, grassland protection, grazing land protection.

■ For reasons stated above, the CCC revises part 1415 of Title 7 of the CFR to read as follows:

#### PART 1415—GRASSLANDS RESERVE PROGRAM

##### Sec.

- 1415.1 Purpose.
- 1415.2 Administration.
- 1415.3 Definitions.
- 1415.4 Program requirements.
- 1415.5 Land eligibility.
- 1415.6 Participant eligibility.
- 1415.7 Application procedures.
- 1415.8 Establishing priority for enrollment of properties.

- 1415.9 Enrollment of easements and rental contracts.
- 1415.10 Compensation for easements and rental contracts acquired by the Secretary.
- 1415.11 Restoration agreements.
- 1415.12 Modifications to easements and rental contracts.
- 1415.13 Transfer of land.
- 1415.14 Misrepresentation and violations.
- 1415.15 Payments not subject to claims.
- 1415.16 Assignments.
- 1415.17 Cooperative agreements.
- 1415.18 Easement transfer to eligible entities.
- 1415.19 Appeals.
- 1415.20 Scheme or device.

**Authority:** 16 U.S.C. 3838n–3838q.

#### **§ 1415.1 Purpose.**

(a) The purpose of the Grassland Reserve Program (GRP) is to assist landowners and operators in protecting grazing uses and related conservation values by conserving and restoring grassland resources on eligible private lands through rental contracts, easements, and restoration agreements.

(b) GRP emphasizes:

- (1) Supporting grazing operations;
- (2) Maintaining and improving plant and animal biodiversity; and
- (3) Protecting grasslands and shrublands from the threat of conversion to uses other than grazing.

#### **§ 1415.2 Administration.**

(a) The regulations in this part set forth policies, procedures, and requirements for program implementation of GRP, as administered by the Natural Resources Conservation Service (NRCS) and the Farm Service Agency (FSA). The regulations in this part are administered under the general supervision and direction of the NRCS Chief and the FSA Administrator. These two agency leaders:

- (1) Concur in the establishment of program policy and direction, development of the national allocation formula, and development of broad national ranking criteria;
- (2) Use a national allocation formula to provide GRP funds to NRCS State Conservationists and FSA State Executive Directors that emphasizes support for grazing operations, biodiversity of plants and animals, and grasslands under the greatest threat of conversion to uses other than grazing. The national allocation formula may also include additional factors related to improving program implementation, as determined by the NRCS Chief and the FSA Administrator. The allocation formula may be modified periodically to change the emphasis of any factor(s) in order to address a particular natural resource concern, such as the

precipitous decline of a population of a grassland-dependent bird(s) or animal(s);

(3) Ensure the national, State, and local-level information regarding program implementation is made available to the public;

(4) Consult with USDA leaders at the State level and other Federal agencies with the appropriate expertise and information when evaluating program policies and direction; and

(5) Authorize NRCS State Conservationists and FSA State Executive Directors to determine how funds will be used and how the program will be implemented at the State level.

(b) At the State level, the NRCS State Conservationist and the FSA State Executive Director are jointly responsible for:

- (1) Determining how funds will be used and how the program will be implemented at the State level to achieve the program purposes;
- (2) Identifying State priorities for project selection based on input from the State Technical Committee;
- (3) Identifying Department of Agriculture (USDA) employees at the field level responsible for implementing the program by considering the nature and extent of natural resource concerns throughout the State and the availability of human resources to assist with activities related to program enrollment;
- (4) Developing, with advice from the State Technical Committee, program outreach materials at the State and local levels to help ensure landowners, operators, and tenants of eligible land are aware and informed that they may be eligible for the program;
- (5) Approving conservation practices eligible for cost-share and cost-share rates;
- (6) Developing GRP management plans and restoration agreements, when applicable;
- (7) Administering and enforcing the terms of easements and rental contracts unless this responsibility is transferred to an eligible entity as provided in § 1415.17 and § 1415.18; and
- (8) Developing, with advice from the State Technical Committee, criteria for ranking eligible land consistent with national criteria and program objectives and State priorities.

(c) The funds, facilities, and authorities of the Commodity Credit Corporation (CCC) are available to NRCS and FSA to implement GRP.

(d) Subject to funding availability, the program may be implemented 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.

(e) The NRCS Chief or the FSA Administrator may modify or waive a provision of this part if he or she deems the application of that provision to a particular limited situation to be inappropriate and inconsistent with the conservation purposes and sound administration of GRP. This authority cannot be further delegated. No provision of this part, which is required by law, may be waived.

(f) No delegation in this part to lower organizational levels will preclude the NRCS Chief or the FSA Administrator from determining any issue arising under this part or from reversing or modifying any determination arising from this part.

(g) The USDA Forest Service may hold GRP easements on properties adjacent to USDA Forest Service land, with the consent of the landowner.

(h) Program participation is voluntary.

(i) Applications for participation will be accepted on a continual basis at local USDA Service Centers. Eligible entities wishing to enter into a cooperative agreement under § 1415.17 in order to purchase, own, write, and hold easements may apply on a continuous basis to the NRCS State Conservationist. The NRCS State Conservationist and FSA State Executive Director will establish cut-off periods to rank and select applications for participation. These cut-off periods will be available in program outreach material provided by the local USDA Service Center. Once funding levels have been exhausted, unfunded eligible applications will remain on file until they are funded or the applicant chooses to be removed from consideration.

(j) The services of third parties as provided for in part 652 of this title may be used to provide technical services to participants.

#### **§ 1415.3 Definitions.**

*Activity* means an action other than a conservation practice that is included as a part of a GRP management or conservation plan that has the effect of alleviating problems or improving treatment of the resources, including ensuring proper management or maintenance of the functions and values restored, protected, or enhanced through an easement or rental contract.

*Administrator* means the Administrator of FSA or the person delegated authority to act for the Administrator.

*Applicant* means a person, legal entity, joint operator, or Indian Tribe who applies to participate in the program.



*Chief* means the Chief of NRCS or designee.

*Biological diversity* means the variety and variability among living organisms and the ecological complexes in which they live.

*Commodity Credit Corporation* is a government-owned and operated entity that was created to stabilize, support, and protect farm income and prices. The 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. The CCC provides the funding for GRP, and FSA and NRCS administer GRP on its behalf.

*Common grazing practices* means those grazing practices, including those related to forage and seed production, common to the area of the subject ranching or farming operation. Included are routine management activities necessary to maintain the viability of forage or browse resources that are common to the locale of the subject ranching or farming operation.

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

*Conservation plan* means a record of the GRP participants' decisions and supporting information that will be developed to address resource concerns in addition to grazing land uses. The conservation plan will describe the implementation and maintenance of GRP management and conservation practices directly related to any additional land eligibility criteria under which the land is enrolled. Additional land eligibility criteria may include, but is not limited to, significant animal or plant habitat and historical or archeological resources.

*Conservation practice* means a specified treatment, such as a vegetative, structural, or land management practice, that is planned and applied according to NRCS Field Office Technical Guide (FOTG) standards and specifications.

*Conservation values* means those natural resource attributes that sustain and enhance ecosystem functions and values of the grassland area including, but not limited to, habitat for grassland and shrubland dependent plants and animals, native plant and animal

biodiversity, soil erosion control, forage production, and air and water quality protection.

*Cost-share payment* means the payment made by USDA to a program participant or vendor to achieve the restoration, enhancement, and protection goals in accordance with the GRP restoration plan component of the restoration agreement.

*Dedicated account* means a dedicated fund of the eligible entity held in a separate account for the management, monitoring, and enforcement of conservation easements and that cannot be used for other purposes.

*Easement* means a conservation easement, which is an interest in land defined and delineated in a deed whereby the landowner conveys certain rights, title, and interests in a property to the United States, an eligible entity, or both for the purpose of protecting the grassland and other conservation values of the property. Under GRP, the property rights are conveyed by a conservation easement deed.

*Easement area* means the land encumbered by an easement.

*Easement payment* means the consideration paid to a landowner for an easement conveyed to the United States, an eligible entity, or both under GRP.

*Eligible entity* means, for the purposes of entering into a cooperative agreement under 16 U.S.C. 3838q(d), an agency of State or local government, an Indian Tribe, or a nongovernmental organization that has the relevant experience necessary, as appropriate for the application, to administer an easement on grassland, land that contains forbs, or shrubland; has a charter that describes a commitment to conserving ranchland, agricultural land, or grassland for grazing and conservation purposes; and has the resources necessary to effectuate the purposes of the charter.

*Enhancement* means to increase or improve the viability of grassland and grazing resources, including habitat for declining species of grassland dependent birds and animals.

*Farm Service Agency* is an agency of the Department of Agriculture.

*FSA State Executive Director* means the FSA employee authorized to implement GRP and direct and supervise FSA activities in a State, Caribbean Area, or the Pacific Islands Area.

*Field Office Technical Guide* 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. It contains detailed information on the conservation of soil, water, air, plant, and animal resources applicable to the local area for which it is prepared.

*Fire pre-suppression* means activities as outlined in a GRP management plan such as the establishment and maintenance of firebreaks and prescribed burning to prevent or limit the spread of fires.

*Forb* means any herbaceous plant other than those in the grass family.

*Functions and values of grasslands and shrublands* means ecosystem services provided, including domestic animal productivity, biological productivity, plant and animal richness and diversity, fish and wildlife habitat (including habitat for pollinators and native insects), water quality and quantity benefits, aesthetics, open space, and recreation.

*Grantor* means the landowner who is transferring land rights to the United States or an eligible entity, or both through an easement.

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

*GRP management plan* means the document developed by NRCS that describes the implementation of the grazing management system consistent with the prescribed grazing standard contained in the FOTG. The GRP management plan will include a description of the grazing management system, permissible and prohibited activities, any associated restoration plan or conservation plan, if applicable, and a description of USDA's right of ingress and egress.

*Grazing value* means the financial worth of the land as used for grazing or forage production. The term is used in the calculation of compensation for rental contracts and easements. For easements, this value is determined by NRCS through an appraisal process or a market survey process. For rental contracts, FSA determines the grazing value based upon an administrative process.

*Historical and archeological 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 Keeper

of the National Register in accordance with section 106 or 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 Tribal Register of Historic Places (designated under section 101(d)(1)(C) of the NHPA); or

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

*Improved rangeland or pastureland* means grazing land permanently producing naturalized forage species that receives varying degrees of periodic cultural treatment to enhance forage quality and yields and is primarily harvested by grazing animals.

*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.*) that is eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

*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. The term landowner includes Indian Tribes. State governments, local governments, and nongovernmental organizations that qualify as eligible entities are not eligible as landowners.

*Legal entity* means an entity created under Federal or State law and that: (1) Owns land or an agricultural commodity, product, or livestock; or (2) produces an agricultural commodity, product, or livestock.

*Maintenance* means work performed to keep the applied conservation practice functioning for the intended purpose during its life span. Maintenance includes work to manage and prevent deterioration, repair damage, or replace the practice to its original condition if one or more components fail.

*Native* means a species that is indigenous and is a part of the original fauna or flora of the area.

*Natural Resources Conservation Service* is an agency of the Department of Agriculture.

*NRCS State Conservationist* means the NRCS employee authorized to implement GRP and direct and supervise NRCS activities in a State,

Caribbean Area, or the Pacific Islands Area.

*Naturalized* means an introduced, desirable forage species that is ecologically adapted to the site and can perpetuate itself in the community without cultural treatment. The term naturalized does not include noxious weeds.

*Nesting season* means the time of year that grassland dependent birds in significant decline in the local area build nests or otherwise find a place of refuge for purposes of reproduction.

*Nongovernmental organization* means any organization that:

(1) Is organized for, and at all times since, the formation of the organization, and 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) or 509(a)(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.

*Participant* means a person, legal entity, joint operation, or Indian Tribe who is accepted to participate in GRP through a rental contract or option agreement to purchase an easement.

*Pastureland* means grazing lands comprised of introduced or domesticated native forage species that are used primarily for the production of livestock. These lands receive periodic renovation and cultural treatments, such as tillage, aeration, fertilization, mowing, and weed control, and may be irrigated. This term does not include lands that are in rotation with crops.

*Permanent easement* means an easement that lasts in perpetuity or for the maximum duration allowed under the law of a State.

*Private land* means land that is not owned by a governmental entity and includes Tribal lands.

*Purchase price* means the amount paid to acquire an easement under a cooperative agreement between NRCS and an eligible entity. It is the fair market value of the easement.

*Rangeland* means a land cover or use category with a climax or potential plant cover composed principally of native grasses, grass-like plants, forbs, or shrubs suitable for grazing and browsing, and introduced forage species that are managed like rangeland. Rangeland includes lands re-vegetated

naturally or artificially when routine management of that vegetation is accomplished mainly through manipulation of grazing. This term includes areas where introduced hardy and persistent grasses are planted and such practices as deferred grazing, burning, chaining, and rotational grazing are used with little or no chemicals or fertilizer being applied. Grasslands, savannas, many wetlands, some deserts, and tundra are considered to be rangeland. Certain communities of low forbs and shrubs, such as mesquite, chaparral, mountain shrub, and pinyon juniper are also included as rangeland.

*Rental contract* means the legal document that specifies the obligations and rights of a participant in GRP, including the annual rental payments to be provided to the participant for the length of the contract to maintain or restore grassland functions and values under GRP.

*Restoration* means implementing any conservation practice, system of practices, or activities to restore functions and values of grasslands and shrublands. The restoration may re-establish grassland functions and values on degraded land, or on land that has been converted to another use.

*Restoration agreement* means an agreement between the program participant and NRCS or eligible entity to carry out activities and conservation practices necessary to restore or improve the functions and values of that land. A restoration agreement will include a restoration plan.

*Restoration plan* is the portion of the restoration agreement that includes the schedule and conservation practices and activities to restore the functions and values of grasslands and shrublands, including protection of associated streams, ponds, and wetlands. The restoration plan incorporates the requirement that program participants will maintain GRP-funded conservation practices and activities for their expected lifespan as described in the plan.

*Right of enforcement* means a property interest in the easement the Chief may exercise on behalf of the United States under specific circumstances in order to enforce the terms of the conservation easement. The right of enforcement provides that the Chief has the right to inspect and enforce the easement if the eligible entity fails to uphold the easement or attempts to transfer the easement without first securing the consent of the Secretary.

*Secretary* means the Secretary of the Department of Agriculture.

*Shrubland* means land where the dominant plant species is shrubs, which are plants that are persistent, have woody stems, and a relatively low growth habit.

*Significant decline* means a decrease of a species population to such an extent that it merits conservation priority as determined by the State Conservationist, in consultation with the State Technical Committee.

*State Technical Committee* means a committee established by the Secretary in a State pursuant to 16 U.S.C. 3861.

*Tribal land* means:

(1) Land held in trust by the United States for individual Indians or Indian Tribes; or

(2) Land, the title to which is held by individual Indians or Indian Tribes subject to Federal restrictions against alienation or encumbrance; or

(3) Land which is subject to rights of use, occupancy, and benefit of certain Indian Tribes; or

(4) Land held in fee title by an Indian, Indian family, or Indian Tribe.

*USDA* means the Department of Agriculture and its agencies and offices, as applicable.

#### **§ 1415.4 Program requirements.**

(a) Except as provided for under § 1415.17, only landowners may submit applications for easements. For rental contracts, applicants must own or provide written evidence of control of the property for the duration of the rental contract.

(b) The easement or rental contract will require that the area be maintained in accordance with GRP goals and objectives for the term of the easement or rental contract, including the conservation, protection, enhancement, and if necessary, restoration of the grassland functions and values.

(c) All participants in GRP are required to implement a GRP management plan approved by NRCS. When an eligible entity holds the GRP easement, NRCS will develop GRP management plans with eligible entities. In cases where a participant receives ranking points on the basis of resource concerns other than grazing land concerns, all such resource concerns will be addressed in an applicable conservation plan.

(d) The easement or rental contract must grant USDA or its representatives a right of ingress and egress to the easement or rental contract area. For easements, this access is legally described by the conservation easement deed and the GRP management plan. Access to rental contract areas is identified in the GRP management plan.

(e) Easement participants are required to convey unencumbered title that is

acceptable to the United States and provide consent or subordination agreements from each holder of a security or other interest in the land. The landowner must warrant that the easement granted the United States or eligible entity is superior to the rights of all others, except for exceptions to the title that are deemed acceptable by USDA.

(f) Landowners are required to use a standard GRP conservation easement deed developed by USDA or developed by an eligible entity and approved by USDA under § 1415.17 of this part. The easement grants development rights, title, and interest in the easement area in order to protect grassland and other conservation values.

(g) The program participant must comply with the terms of the easement or rental contract, and comply with all terms and conditions of the GRP management plan and any associated conservation plan or restoration agreement.

(h) Easements and rental contracts allow, consistent with their terms and the program purposes, the following activities as outlined in the GRP management plan:

(1) Common grazing practices, including maintenance and necessary conservation practices and activities (e.g., prescribed grazing; upland wildlife habitat management; prescribed burning; fencing, watering, and feeding necessary for the raising of livestock; and related forage and seed production) on the land in a manner that is consistent with maintaining the viability of grassland, forb, and shrub species common to the locality;

(2) Haying, mowing, or harvesting for seed production subject to appropriate restrictions, as determined by the State Conservationist, during the nesting season for birds in the local area that are in significant decline, or are conserved in accordance with Federal or State law;

(3) Fire pre-suppression, rehabilitation, and construction of firebreaks;

(4) Grazing related activities, such as fencing and livestock watering facilities;

(5) Facilities for power generation through renewable sources of energy production provided the scope and scale of the footprint of the facility and associated infrastructure is consistent with program purposes as determined by USDA through analysis of the potential site-specific environmental effects; and

(6) Other activities that USDA determines the manner, number, intensity, location, operation, and other features associated with the activity will not adversely affect the grassland

resources or related conservation values protected under an easement or rental contract. This includes infrastructure development along existing right-of-ways where the easement deed allows the landowner to grant right-of-ways when it is determined by NRCS that granting such right-of-ways are in the public interest, that grassland resources and related conservation values will not be adversely impacted, and the landowner agrees to a restoration plan for the disturbed area as developed by NRCS, but at no cost to NRCS. This also includes undeveloped, passive, recreational uses such as hiking, camping, bird watching, hunting, and fishing as long as such uses, as determined by the grantee, do not impair the grazing uses and other conservation values.

(i) Easement and rental contracts prohibit the following activities:

(1) The production of crops (other than hay), orchards, vineyards, or other agricultural commodity that is inconsistent with maintaining grazing land and related conservation values; and

(2) Except as permitted under a restoration plan, the conduct of any other activity that would be inconsistent with maintaining grazing uses and related conservation values protected under an easement or rental contract.

(j) Rental contracts may be terminated by USDA without penalty or refund if the original participant dies, is declared legally incompetent, or is otherwise unavailable during the contract period.

(k) Participants, with the agreement of USDA, may convert a rental contract to an easement, provided that funds are available and the project meets conditions established by USDA. Land cannot be enrolled in both a rental contract option and an easement enrollment option at the same time. The rental contract will be terminated prior to the date the easement is recorded in the local land records office.

(l) Rental contract participants are required to suspend any existing cropland base and allotment history for the land under another program administered by the Secretary.

(m) Easement participants are required to eliminate any existing cropland base and allotment history for the land under another program administered by the Secretary.

#### **§ 1415.5 Land eligibility.**

(a) GRP is available on privately owned lands, which include private and Tribal land. Publicly owned land is not eligible.

(b) Land is eligible for funding consideration if the State

Conservationist determines that the land is:

(1) Grassland, land that contains forbs or shrubland (including improved rangeland and pastureland) for which grazing is the predominant use; or

(2) Located in an area that has been historically dominated by grassland, forbs, or shrubland, and the State Conservationist, with advice from the State Technical Committee, determines that it is compatible with grazing uses and related conservation values, and

(i) Could provide habitat for animal or plant populations of significant ecological value if the land is retained in its current use or is restored to a natural condition,

(ii) Contains historical or archeological resources, or

(iii) Would address issues raised by State, regional, and national conservation priorities.

(c) Incidental lands, in conjunction with eligible land, may also be considered for enrollment to allow for the efficient administration of an easement or rental contract. Incidental lands may include relatively small areas that do not specifically meet the eligibility requirements, but as a part of the land unit, may contribute to grassland functions and values and related conservation values, or its inclusion may increase efficiencies in land surveying, easement management, and monitoring by reducing irregular boundaries.

(d) Land will not be enrolled if the functions and values of the grassland are already protected under an existing contract, easement, or deed restriction, or if the land already is in ownership by an entity whose purpose is to protect and conserve grassland and related conservation values. This land becomes eligible for enrollment in GRP if the existing contract, easement, or deed restriction expires or is terminated, and the grassland values and functions are no longer protected.

(e) 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 the grassland resources. USDA reserves the right to deny funding for any application where there are exceptions to clear title on the property.

#### **§ 1415.6 Participant eligibility.**

To be eligible to participate in GRP, an applicant, except as otherwise described in § 1415.17:

(a) Must be a landowner for easement participation or be a landowner or have control of the eligible acreage being offered for rental contract participation;

(b) Agree to provide such information to USDA that is necessary or desirable to assist in its determination of eligibility for program benefits and for other program implementation purposes;

(c) Meet the Adjusted Gross Income requirements in 7 CFR part 1400 of this title, unless exempted under part 1400 of this title;

(d) Meet the conservation compliance requirements found in part 12 of this title; and

(e) Comply with applicable registration and reporting requirements of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282, as amended) and 3 CFR parts 25 and 170.

#### **§ 1415.7 Application procedures.**

(a) Applicants, except as otherwise described under § 1415.17, may submit an application through a USDA Service Center for participation in GRP. Applications may be submitted throughout the year.

(b) By filing an application for participation, the applicant consents to a USDA representative entering upon the land offered for enrollment for purposes of assessing the grassland functions and values and for other activities that are necessary for USDA to make an offer of enrollment. Generally, the applicant will be notified prior to a USDA representative entering upon their property.

(c) Applicants submit applications that identify the duration of the easement or rental contract for which they seek to enroll their land. Rental contracts may be for the duration of 10-years, 15-years, or 20-years; easements may be permanent in duration or for the maximum duration authorized by State law.

#### **§ 1415.8 Establishing priority for enrollment of properties.**

(a) USDA, at the national level, will provide to NRCS State Conservationists and FSA State Executive Directors, national guidelines for establishing State-specific ranking criteria for selection of applications for funding.

(b) NRCS State Conservationists and FSA State Executive Directors, with advice from State Technical Committees, establish criteria to evaluate and rank applications for easement and rental contract enrollment, including applications from eligible entities under § 1415.17, following the guidance established in paragraph (a) of this section.

(c) Ranking criteria will emphasize support for:

(1) Grazing operations;

(2) Protection of grassland, land that contains forbs, and shrubland at the greatest risk from the threat of conversion to uses other than grazing;

(3) Plant and animal biodiversity; and

(4) In ranking parcels offered by eligible entities, these additional criteria will also be considered—

(i) Leveraging of non-Federal funds, and

(ii) Entity contributions in excess of 50 percent of the purchase price, as defined in § 1415.3.

(d) When funding is available, NRCS State Conservationists and FSA State Executive Directors will periodically select for funding the highest ranked applications, including applications from entities under § 1415.17, based on applicant and land eligibility and the State-developed ranking criteria.

(e) NRCS State Conservationists and FSA State Executive Directors may establish separate ranking pools to address, for example, specific conservation issues raised by State, regional, and national conservation priorities.

(f) The NRCS State Conservationist and FSA State Executive Director, with advice from the State Technical Committee, may emphasize enrollment of unique grasslands or specific geographic areas of the State.

(g) The NRCS State Conservationist and the FSA State Executive Director, with advice from the State Technical Committee, will select applications for funding.

(h) If available funds are insufficient to accept the highest ranked application, and the applicant is not interested in reducing the acres offered to match available funding, the State Conservationist or State Executive Director may select a lower ranked application that can be fully funded.

(i) Land enrolled in a Conservation Reserve Program (CRP) contract that is within one year of the scheduled expiration date will receive a priority for enrollment. To receive this priority, the following criteria must be met:

(1) The land must be eligible as defined in § 1415.5;

(2) USDA, with advice from the State Technical Committee, must determine it is of high ecological value and under significant threat of conversion to uses other than grazing;

(3) The land must be offered for easement or 20-year rental contract enrollment;

(4) Expired CRP land enrolled under this priority will not exceed 10 percent of the total number of acres accepted for

national enrollment in GRP in any year; and

(5) This priority applies only up to 12 months before the scheduled expiration of the CRP contract.

(j) USDA will manage the program nationally to ensure that, to the extent practicable, 60 percent of funds are used for the purchase of easements, either directly or through cooperative agreements with eligible entities as set forth in § 1415.17 and 40 percent of funds are used for rental contracts.

#### **§ 1415.9 Enrollment of easements and rental contracts.**

(a) Based on the priority ranking, NRCS or FSA, as appropriate, will notify applicants in writing of their tentative acceptance into the program for either rental contract or conservation easement options. The letter notifies the applicant of the intent to continue the enrollment process unless otherwise notified by the applicant. Enrollment under cooperative agreements is described under § 1415.17.

(b) An offer of tentative acceptance into the program neither binds USDA to acquire an easement or enter into a rental contract, nor binds the applicant to convey an easement, enter into a rental contract, or agree to restoration activities.

(c) Offer of enrollment will be through either:

(1) An agreement to purchase an easement presented by NRCS to the applicant which will describe the easement, the easement terms and conditions, and other terms and conditions that may be required by NRCS; or

(2) A rental contract will be presented by FSA to the applicant which will describe the contract area, the contract terms and conditions, and other terms and conditions that may be required by FSA.

(d) For rental contracts, land will be considered to be enrolled in GRP once an FSA representative approves the GRP rental contract. FSA may withdraw the offer before approval of the contract due to lack of available funds or other reasons.

(e) For easements, after the option agreement to purchase an easement is executed by NRCS and the participant, the land will be considered enrolled in GRP. NRCS will proceed with the development of the GRP management plan, conservation or restoration plan if applicable, and various easement acquisition activities, which may include conducting a legal survey of the easement area, securing necessary subordination agreements, procuring title insurance, and conducting other

activities necessary to record the easement or implement GRP.

(f) Prior to closing an easement, NRCS may withdraw the land from enrollment at any time due to lack of available funds, title concerns, or other reasons.

#### **§ 1415.10 Compensation for easements and rental contracts acquired by the Secretary.**

(a) The Chief will not pay more than the fair market value of the land, less the grazing value of the land encumbered by the easement.

(b) To determine this amount, the Chief will pay as compensation the lowest of:

(1) The fair market value of the land encumbered by the easement as determined by the Chief using—

(i) The Uniform Standards of Professional Appraisal Practice, or

(ii) An area-wide market analysis or market survey;

(2) The amount corresponding to a geographical cap, as determined by the State Conservationist, with advice from the State Technical Committee; or

(3) An offer made by the landowner.

(c) For 10-, 15-, and 20-year rental contracts, the participant will receive not more than 75 percent of the grazing value in an annual payment for the length of the contract, as determined by FSA. As provided by the regulations at part 1400 of this title, payments made under one or more rental contracts to a person or legal entity, directly or indirectly, may not exceed, in the aggregate, \$50,000 per year.

(d) In order to provide for better uniformity among States, the NRCS Chief and FSA Administrator may review and adjust, as appropriate, State or other geographically based payment rates for rental contracts.

(e) Easement or rental contract payments received by a participant will be in addition to, and not affect, the total amount of payments that the participant is otherwise eligible to receive under other USDA programs.

(f) Easement payments will be made in a single payment to the landowner unless otherwise requested by the landowner.

(g) USDA may accept and use contributions of non-Federal funds to support the purposes of the program. These funds are available to USDA without further appropriation and until expended, to carry out the program.

(h) USDA recognizes that environmental benefits will be achieved by implementing conservation practices and activities funded through GRP, and that ecosystem credits may be gained as a result of implementing activities compatible with the purposes of a GRP

easement, rental contract, or associated restoration agreement. USDA asserts no direct or indirect interest in these credits except:

(1) In the event the participant sells or trades credits arising from GRP funded activities, USDA retains the authority to ensure that the requirements for GRP rental contracts, easements, or restoration agreements are met and maintained consistent with this part; and

(2) If activities required under an ecosystem credit agreement may affect land covered under a GRP rental contract, easement, or restoration agreement, participants are required to obtain an assessment from USDA about the compatibility of the activity prior to entering into such agreements.

#### **§ 1415.11 Restoration agreements.**

(a) Restoration agreements are only authorized to be used in conjunction with easements and rental contracts. NRCS, in consultation with the program participant, determines if the grassland resources are adequate to meet the participant's objectives and the purposes of the program, or if a restoration agreement is needed. Such a determination is also subject to the availability of funding. USDA may condition participation in the program upon the execution of a restoration agreement depending on the condition of the grassland resources. When the functions and values of the grassland are determined adequate by NRCS, a restoration agreement is not required. However, if a restoration agreement is required, NRCS will set the terms of the restoration agreement. The restoration plan component of the restoration agreement identifies conservation practices and activities necessary to restore or improve the functions and values of the grassland to meet both USDA and the participant's objectives and purposes of the program. If the functions and values of the grassland decline while the land is subject to a GRP easement or rental contract through no fault of the participant, the participant may enter into a restoration agreement at that time to improve the functions and values with USDA approval and when funds are available.

(b) The NRCS State Conservationist, with advice from the State Technical Committee and in consultation with FSA, determines the conservation practices and activities and the cost-share percentages, not to exceed statutory limits available under GRP. A list of conservation practices and activities approved for cost-share assistance under GRP restoration plans is available to the public through the

local USDA Service Center. NRCS may work through the local conservation district with the program participant to determine the terms of the restoration plan. The conservation district may assist NRCS with determining eligible conservation practices and activities and approving restoration agreements.

(c) Only approved conservation practices and activities are eligible for cost-sharing. Payments under the GRP restoration agreements may be made to the participant of not more than 50 percent for the cost of carrying out the conservation practices or activities. As provided by the regulations at part 1400 of this chapter, payments made under one or more restoration agreements to a person or legal entity, directly or indirectly, may not exceed, in the aggregate, \$50,000 per year.

(d) The participant is responsible for the operation and maintenance of conservation practices in accordance with the restoration agreement.

(e) All conservation practices must be implemented in accordance with the FOTG.

(f) Technical assistance is provided by NRCS, or an NRCS approved third party.

(g) If the participant is receiving cost-share for the same conservation practice or activity from another conservation program, USDA will adjust the GRP cost-share rate proportionately so that the amount received by the participant does not exceed 100 percent of the costs of restoration.

(h) The participant cannot receive cost-share from more than one USDA cost-share program for the same conservation practice or activity on the same land.

(i) Cost-share payments may be made only upon a determination by a qualified individual approved by the NRCS State Conservationist that an eligible restoration practice has been established in compliance with appropriate standards and specifications.

(j) Conservation practices and activities identified in the restoration plan may be implemented by the participant or other designee.

(k) Cost-share payments will not be made for conservation practices or activities implemented or initiated prior to the approval of a rental contract or easement acquisition unless a written waiver is granted by the NRCS State Conservationist or FSA State Executive Director, as appropriate, prior to installation of the practice.

(l) Upon transfer of an easement with a restoration agreement to an eligible entity as described in § 1415.18, the entity will be responsible for

administration of the agreement and providing funds for payment of any costs associated with the completion of the restoration agreement. The eligible entity may, with participant consent, revise an existing restoration agreement or develop a new restoration agreement. Restoration plans must be consistent with the GRP management plan or any associated conservation plan as described in § 1415.4.

(m) Cooperating entities under § 1415.17 will be responsible for development, administration, and implementation costs of restoration plans.

#### **§ 1415.12 Modifications to easements and rental contracts.**

(a) After an easement has been recorded, no substantive modification will be made to the easement. Modifications that would not result in acquisition or divestiture of additional property rights may be made.

(b) State Conservationists may approve modifications for restoration agreements and GRP management plans or conservation plans where applicable, as long as the modifications do not affect the provisions of the easement and meet program objectives.

(c) USDA may approve modifications to rental contracts, including corresponding changes to conservation plans, GRP management plans, and restoration plans to facilitate the practical administration and management of the enrolled area so long as the modification will not adversely affect the grassland functions and values for which the land was enrolled.

#### **§ 1415.13 Transfer of land.**

(a) Any transfer of the property prior to an applicant's acceptance into the program will void the offer of enrollment, unless at the option of the State Conservationist or State Executive Director, as appropriate, an offer is extended to the new landowner and the new landowner agrees to the same easement or rental contract terms and conditions.

(b) After acreage is accepted in the program, for easements with multiple payments, any remaining easement payments will be made to the original participant unless NRCS receives an assignment of proceeds.

(c) Future annual rental payments will be made to the successor participant.

(d) The new landowner is responsible for complying with the terms of the recorded easement, and the contract successor is responsible for complying with the terms of the rental contract and for assuring completion of all activities

and practices required by any associated restoration agreement. Eligible cost-share payments will be made to the new participant upon presentation that the successor assumed the costs of establishing the practices.

(e) With respect to any and all payments owed to participants, the United States bears no responsibility for any full payments or partial distributions of funds between the original participant and the participant's successor. In the event of a dispute or claim on the distribution of cost-share payments, USDA may withhold payments, without the accrual of interest, pending an agreement or adjudication on the rights to the funds.

(f) The rights granted to the United States in an easement will apply to any of its agents or assigns. All obligations of the participant under the GRP conservation easement deed also bind the participant's heirs, successors, agents, assigns, lessees, and any other person claiming under them.

(g) Rental contracts may be transferred to another landowner, operator, or tenant that acquires an interest in the land enrolled in GRP. The successor must be determined by FSA to be eligible to participate in GRP and must assume full responsibility under the contract. FSA may require a participant to refund all or a portion of any financial assistance awarded under GRP, plus interest, if the participant sells or loses control of the land under a GRP rental contract, and the new landowner, operator, or tenant is not eligible to participate in the program or declines to assume responsibility under the contract.

#### **§ 1415.14 Misrepresentation and violations.**

(a) The following provisions apply to violations of rental contracts:

(1) Rental contract violations, determinations, and appeals are handled in accordance with the terms of the rental contract;

(2) A participant who is determined to have erroneously represented any fact affecting a program determination made in accordance with this part may not be entitled to rental contract payments and must refund to CCC all payments, plus interest, in accordance with part 1403 of this title; and

(3) In the event of a violation of a rental contract, the participant will be given notice and an opportunity to voluntarily correct the violation within 30 days of the date of the notice, or such additional time as CCC may allow. Failure to correct the violation may result in termination of the rental contract.

(b) The following provisions apply to violations of easement deeds:

(1) Easement violations are handled under the terms of the easement deed;

(2) Upon notification of the participant, NRCS has the right to enter upon the easement area at any time to monitor compliance with the terms of the GRP conservation easement deed or remedy deficiencies or violations;

(3) When NRCS believes there may be a violation of the terms of the GRP conservation easement deed, NRCS may enter the property without prior notice; and

(4) The participant will be liable for any costs incurred by the United States as a result of the participant's negligence or failure to comply with the easement terms and conditions.

(c) USDA may require the participant to refund all or part of any payments received by the participant under the program contract or agreement.

(d) In addition to any and all legal and equitable remedies available to the United States under applicable law, USDA may withhold any easement payment, rental payment, or cost-share payments owing to the participant at any time there is a material breach of the easement covenants, rental contract, or any contract. Such withheld funds may be used to offset costs incurred by the United States in any remedial actions or retained as damages pursuant to court order or settlement agreement.

(e) Under a GRP conservation easement, the United States will be entitled to recover any and all administrative and legal costs, including attorney's fees or expenses, associated with any enforcement or remedial action.

#### **§ 1415.15 Payments not subject to claims.**

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

#### **§ 1415.16 Assignments.**

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

(b) If a participant that is entitled to a payment dies, is declared legally incompetent, or is otherwise unable to receive the payment, or is succeeded by another person who renders or completes the required performance, such a participant may be eligible to receive payment in such a manner as USDA determines is fair and reasonable in light of all the circumstances.

#### **§ 1415.17 Cooperative agreements.**

(a) NRCS may enter into cooperative agreements which establish terms and conditions under which an eligible entity will use funds provided by NRCS to own, write, and enforce a grassland protection easement.

(b) To be eligible to receive GRP funding, an eligible entity must demonstrate:

(1) A commitment to long-term conservation of agricultural lands, ranch land, or grassland for grazing and conservation purposes;

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

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

(4) The availability of funds; and

(5) For nongovernmental organizations, the existence of a dedicated account and funds for the purposes of easement management, monitoring, and enforcement of each easement held by the eligible entity.

(c) NRCS enters into a cooperative agreement with those eligible entities selected for funding. Once a proposal is selected by the State Conservationist, the eligible entity must work with the appropriate State Conservationist to finalize and sign the cooperative agreement, incorporating all necessary GRP requirements. The cooperative agreement addresses:

(1) The interests in land to be acquired, including the form of the easement deeds to be used and terms and conditions;

(2) The management and enforcement of the interests acquired;

(3) The responsibilities of NRCS;

(4) The responsibilities of the eligible entity on lands acquired with the assistance of GRP;

(5) The parcels accepted by the State Conservationist, landowners' names, addresses, location map(s), and other relevant information in an attachment to the cooperative agreement;

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

(7) The manner in which violations are addressed;

(8) The right of the Secretary to conduct periodic inspections to verify the eligible entity's enforcement of the easements;

(9) The manner in which the eligible entity will evaluate and report the use of funds to the Secretary;

(10) The eligible entity's agreement to assume the costs incurred in administering and enforcing the easement, including the costs of restoration and rehabilitation of the land as specified by the owner and eligible

entity. The entity will also assume the responsibility for enforcing the GRP management plan or conservation plan, as applicable. The eligible entity must incorporate any required plan into the conservation easement deed by reference or otherwise;

(11) The source of funding. The eligible entity may include a charitable donation or qualified conservation contribution (as defined by section 170(h) of the Internal Revenue Code of 1986) from the landowner as part of the entity's share of the purchase price;

(12) The schedule of payments to an eligible entity, as agreed to by NRCS and the eligible entity;

(13) GRP 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;

(14) NRCS may provide a share of the purchase price of an easement under the program. The eligible entity will be required to provide a share of the purchase price at least equivalent to that provided by NRCS. The Federal share will be no more than 50 percent of the purchase price, as defined in § 1415.3;

(15) The eligible entity's succession plan, which describes how its successors or assigns will hold, manage, and enforce the interests in land acquired in the event that the eligible entity is no longer able to fulfill its obligations under the cooperative agreement entered into with NRCS; and

(16) Other requirements deemed necessary by NRCS to protect the interests of the United States.

(d) Easements funded under the cooperative agreement option will be in perpetuity, except where State law prohibits a permanent easement, and will require that the easement area be maintained in accordance with GRP goals and objectives for the term of the easement.

(e) 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 will be submitted to the Chief within 30 days of the signing of the cooperative agreement. The conservation easement deed templates will be reviewed and approved by the Chief. 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.

(1) In order to protect the public investment, the conveyance document must contain a right of enforcement. NRCS will specify the terms for the right of enforcement clause to read as set



forth in the GRP cooperative agreement. This right is a vested property right and cannot be condemned or terminated by State or local government;

(2) The eligible entity will acquire, hold, manage, and enforce the easement. The eligible entity may have the option to enter into an agreement with governmental or private organizations to carry out easement stewardship responsibilities if approved by NRCS;

(3) Prior to 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;

(4) All conservation easement deeds acquired with GRP funds must be recorded in the appropriate land records. Proof of recordation will be provided to NRCS by the eligible entity; and

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

#### **§ 1415.18 Easement transfer to eligible entities.**

(a) NRCS may transfer title of ownership to an easement to an eligible entity to hold and enforce an easement if:

(1) The Chief determines that transfer will promote protection of grassland, land that contains forbs, or shrubland;

(2) The owner authorizes the eligible entity to hold and enforce the easement; and

(3) The eligible entity agrees to assume the costs incurred in administering and enforcing the easement, including the costs of restoration or rehabilitation of the land as specified by the owner and the eligible entity, and the entity assumes responsibility for enforcing the GRP management plan or conservation plan, as applicable, as approved by NRCS.

(b) NRCS has the right to conduct periodic inspections to verify the eligible entities enforcement of the easement, which includes the terms and requirements set forth in the GRP management plan and any associated restoration or conservation plan for any easements transferred pursuant to this section.

(c) An eligible entity that seeks to hold and enforce an easement will

apply to the NRCS State Conservationist for approval.

(d) The Chief may approve an application if the eligible entity:

(1) Has relevant experience necessary, as appropriate for the application, to administer an easement on grassland, land that contains forbs, or shrublands;

(2) Has a charter that describes the commitment of the eligible entity to conserving ranch land, agricultural land, or grassland for grazing and conservation purposes;

(3) Possesses the human and financial resources necessary, as determined by the Chief, to effectuate the purposes of the charter;

(4) Has sufficient financial resources to carry out easement administrative and enforcement activities;

(5) Presents proof of a dedicated fund for enforcement as described in § 1415.17(b)(5), if the entity is a nongovernmental organization; and

(6) Presents documentation that the landowner has concurred in the transfer.

(e) The Chief or his or her successors and assigns, will retain a right of enforcement in any transferred GRP funded easement, which provides the Secretary the right to inspect the easement for violations and enforce the terms of this easement through any and all authorities available under Federal or State law, in the event that the eligible entity fails to enforce the terms of the easement, as determined by NRCS.

(f) Should an easement be transferred pursuant to this section, all warranties and indemnifications provided for in the deed will continue to apply to the United States. Upon transfer of the easement, the easement holder will be responsible for enforcement of the GRP management plan, as approved by NRCS, and implementation of any associated conservation or restoration plans and costs of such restoration as agreed to by the landowner and entity.

(g) Due to the Federal interest in the GRP easement, GRP-funded easements cannot be condemned.

#### **§ 1415.19 Appeals.**

(a) Applicants or participants may obtain a review of any administrative determination concerning eligibility for participation utilizing the administrative appeal regulations provided in parts 614 and 780 of this title.

(b) Before a person may seek judicial review of any administrative action

concerning eligibility for program participation under this part, the person must exhaust all administrative appeal procedures set forth in paragraph (a) of this section, and for the purposes of judicial review, no decision will be a final agency action except a decision of the NRCS Chief or the FSA Administrator, as applicable, under these procedures.

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

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

#### **§ 1415.20 Scheme or device.**

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

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

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

Signed this 15th day of November, 2010 in Washington, DC.

**Dave White,**

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

**Jonathan W. Coppess,**

*Executive Vice President, Commodity Credit Corporation, and Administrator, Farm Service Agency.*

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