

exceed 50 percent of the appraised fair market value of the conservation easement;

(4) Determine land and entity eligibility;

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

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

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

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

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

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

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

§ 1491.3 Definitions.

The following definitions may be applicable to this part:

Agricultural uses are defined by the State's Purchase of Development Rights (PDR) program, or where no PDR program exists, agricultural uses should be defined by the State agricultural use assessment program. (If the Agency finds that a State definition of agriculture is so broad that an included use could lead to the degradation of soils, NRCS reserves the right to impose greater deed restrictions on the property than allowable under that State definition of agriculture in order to protect topsoil.)

Chief means the Chief of NRCS, USDA.

Commodity Credit Corporation (CCC) is a Government-owned and operated entity that was created to stabilize, support, and protect farm income and prices. CCC is managed by a Board of Directors, subject to the general supervision and direction of the Secretary of

Agriculture, who is an ex-officio director and chairperson of the Board. CCC provides the funding for FRPP, and NRCS administers FRPP on its behalf.

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

Conservation Plan is the document that—

(1) Applies to highly erodible cropland;

(2) Describes the conservation system applicable to the highly erodible cropland and describes the decisions of the person with respect to location, land use, tillage systems, and conservation treatment measures and schedules;

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

Eligible entities means Federally recognized Indian Tribes, States, units of local government, and certain non-governmental organizations, which have a farmland protection program that purchases agricultural conservation easements for the purpose of protecting topsoil by limiting conversion to non-agricultural uses of the land.

Additionally, to be eligible for FRPP, the entity must have pending offers, for acquiring conservation easements for the purpose of protecting agricultural land from conversion to non-agricultural uses.

Eligible land is privately owned land on a farm or ranch that has prime, unique, Statewide, or locally important soil, or contains historical or archaeological resources, and is subject to a pending offer by an eligible entity. Eligible land includes cropland, rangeland, grassland, and pasture land, as well as forest land that is an incidental part of an agricultural operation. Other incidental land that would not otherwise be eligible, but when considered as part of a pending offer, may be considered eligible, if inclusion of such land would significantly augment protection of the associated farm or ranch land.

Fair market value is ascertained through standard real property appraisal methods. Fair market value is the amount in cash, or in terms reasonably equivalent to cash, for which in all probability the property would have sold on the effective date of the appraisal, after a reasonable exposure of time on the open competitive market, from a willing and reasonably knowledgeable seller, to a willing and reasonably knowledgeable buyer with neither acting under any compulsion to buy or sell, giving due consideration to all available economic uses of the property at the time of the appraisal. Easement price will be determined by completing an appraisal for market value of the whole property (larger parcel) before the easement (before value) and an appraisal for market value of the whole property (larger parcel) after the easement (after value) is placed. The difference between the before value and the after value is deemed the value of the conservation easement.

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

Field Office Technical Guide (FOTG) is the official document for NRCS guidelines, criteria, and standards for planning and applying conservation treatments and conservation management systems. The FOTG contains detailed information on the conservation of soil, water, air, plant, and animal resources applicable to the local area for which it is prepared.

Forest land means a land cover/use category that is at least 10 percent stocked by single-stemmed woody species of any size that will be at least 4 meters (13 feet) tall at maturity. Also included is land bearing evidence of natural regeneration of tree cover (cut over forest or abandoned farmland) that is not currently developed for non-forest use. Ten percent stocked, when viewed from a vertical direction, equates to an aerial canopy cover of leaves and branches of 25 percent or

greater. The minimum area for classification as forest land is 1 acre, and the area must be at least 100 feet wide. Exceptions may be made by the Chief for land primarily managed through a low-input system for food, fiber, or other agricultural products.

Historical and archaeological resources must be:

(1) Listed in the National Register of Historic Places (established under the National Historic Preservation Act (NHPA), 16 U.S.C. 470, *et seq.*), or

(2) Formally determined eligible for listing in the National Register of Historic Places (by the State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO) and the Keeper of the National Register in accordance with section 106 of the NHPA), or

(3) Formally listed in the State or Tribal Register of Historic Places of the SHPO (designated under section 101 (b)(1)(B) of the NHPA) or the THPO (designated under section 101(d)(1)(C) of the NHPA).

Imminent harm means those easement violations or threatened violations that, in the opinion of the Agency, would likely cause immediate and significant degradation to the conservation values; for example, those violations which would adversely impact soil structure or result in the erosion of topsoil beyond acceptable levels as established by NRCS.

Land Evaluation and Site Assessment System (LESA) is the land evaluation system approved by the NRCS State Conservationist used to rank land for farm and ranch land protection purposes, based on soil potential for agriculture, as well as social and economic factors, such as location, access to markets, and adjacent land use. (For additional information see the Farmland Protection Policy Act rule at 7 CFR part 658.)

Landowner means a person, persons, estate, corporation, or other business or nonprofit entity having fee title ownership of farm or ranch land.

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

Non-governmental organization is defined as any organization that:

Commodity Credit Corporation, USDA

§ 1491.4

(1) Is organized for, and at all times since the formation of the organization, has been operated principally for one or more of the conservation purposes specified in clause (i), (ii), (iii), or (iv) of section 170(h)(4)(A) of the Internal Revenue Code of 1986;

(2) Is an organization described in section 501(c)(3) of that Code that is exempt from taxation under 501(a) of that Code;

(3) Is described in section 509(a)(2) of that Code; or

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

Other interests in land include any right in real property recognized by State law, including fee title. FRPP funds will only be used to purchase other interests in land with prior approval from the Chief.

Other productive soils are soils that are contained on farm or ranch land that is identified as farmland of Statewide or local importance and is used for the production of food, feed, fiber, forage, or oilseed crops. The appropriate State or local government agency determines Statewide or locally important farmland with concurrence from the State Conservationist. Generally, these farmlands produce high yields of crops when treated and managed according to acceptable farming methods. In some States and localities, farmlands of Statewide and local importance may include tracts of land that have been designated for agriculture by State law or local ordinance. 7 CFR part 657 sets forth the process for designating soils as Statewide or locally important.

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

Prime and unique farmland are defined separately, as follows:

(1) Prime farmland is land that has the best combination of physical and chemical characteristics for producing food, feed, fiber, forage, oilseed, and other agricultural crops with minimum inputs of fuel, fertilizer, pesticides, and

labor, without intolerable soil erosion, as determined by the Secretary.

(2) Unique farmland is land other than prime farmland that is used for the production of specific high-value food and fiber crops, as determined by the Secretary. It has the special combination of soil quality, location, growing season, and moisture supply needed to economically produce sustained high quality or high yields of specific crops when treated and managed according to acceptable farming methods. Examples of such crops include citrus, tree nuts, olives, cranberries, fruits, and vegetables. Additional information on the definition of prime, unique, or other productive soil can be found in 7 CFR part 657 and 7 CFR part 658.

Secretary is the Secretary of the U.S. Department of Agriculture.

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

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

United States' rights means rights in real property including the right to enforce the terms of the conservation easement deed and take sole title to the conservation easement deed.

[68 FR 26474, May 16, 2003, as amended at 71 FR 42571, July 27, 2006]

§ 1491.4 Program requirements.

(a) Under FRPP, the Secretary, on behalf of CCC, shall purchase conservation easements, in partnership with eligible entities, from landowners who voluntarily wish to protect their farm and ranch lands from conversion to nonagricultural uses. Eligible entities submit applications to NRCS State Offices to partner with NRCS to acquire conservation easements on farm and ranch land. NRCS enters into cooperative agreements with selected entities and provides funds for up to 50 percent of the appraised market value for the