

§ 658.2 Definitions.

(a) *Farmland* means prime or unique farmlands as defined in section 1540(c)(1) of the Act or farmland that is determined by the appropriate state or unit of local government agency or agencies with concurrence of the Secretary to be farmland of statewide or local importance. "Farmland" does not include land already in or committed to urban development or water storage. Farmland "already in" urban development or water storage includes all such land with a density of 30 structures per 40-acre area. Farmland already in urban development also includes lands identified as "urbanized area" (UA) on the Census Bureau Map, or as urban area mapped with a "tint overprint" on the USGS topographical maps, or as "urban-built-up" on the USDA Important Farmland Maps. Areas shown as white on the USDA Important Farmland Maps are not "farmland" and, therefore, are not subject to the Act. Farmland "committed to urban development or water storage" includes all such land that receives a combined score of 160 points or less from the land evaluation and site assessment criteria.

(b) *Federal agency* means a department, agency, independent commission, or other unit of the Federal Government.

(c) *Federal program* means those activities or responsibilities of a Federal agency that involve undertaking, financing, or assisting construction or improvement projects or acquiring, managing, or disposing of Federal lands and facilities.

(1) The term "Federal program" does not include:

(i) Federal permitting, licensing, or rate approval programs for activities on private or non-Federal lands; and

(ii) Construction or improvement projects that were beyond the planning stage and were in either the active design or construction state on August 4, 1984.

(2) For the purposes of this section, a project is considered to be "beyond the planning stage and in either the active design or construction state on August 4, 1984" if, on or before that date, actual construction of the project had commenced or:

(i) Acquisition of land or easements for the project had occurred or all required Federal agency planning documents and steps were completed and accepted, endorsed, or approved by the appropriate agency;

(ii) A final environmental impact statement was filed with the Environmental Protection Agency or an environmental assessment was completed and a finding of no significant impact was executed by the appropriate agency official; and

(iii) The engineering or architectural design had begun or such services had been secured by contract. The phrase "undertaking, financing, or assisting construction or improvement projects" includes providing loan guarantees or loan insurance for such projects and includes the acquisition, management and disposal of land or facilities that a Federal agency obtains as the result of foreclosure or other actions taken under a loan or other financial assistance provided by the agency directly and specifically for that property. For the purposes of this section, the phrase "acquiring, managing, or disposing of Federal lands and facilities" refers to lands and facilities that are acquired, managed, or used by a Federal agency specifically in support of a Federal activity or program, such as national parks, national forests, or military bases, and does not refer to lands and facilities that are acquired by a Federal agency as the incidental result of actions by the agency that give the agency temporary custody or ownership of the lands or facilities, such as acquisition pursuant to a lien for delinquent taxes, the exercise of conservatorship or receivership authority, or the exercise of civil or criminal law enforcement forfeiture or seizure authority.

(d) *State or local government policies or programs to protect farmland* include: Zoning to protect farmland; agricultural land protection provisions of a comprehensive land use plan which has been adopted or reviewed in its entirety by the unit of local government in whose jurisdiction it is operative within 10 years preceding proposed implementation of the particular Federal

program; completed purchase or acquisition of development rights; completed purchase or acquisition of conservation easements; prescribed procedures for assessing agricultural viability of sites proposed for conversion; completed agricultural districting and capital investments to protect farmland.

(e) *Private programs to protect farmland* means programs for the protection of farmland which are pursuant to and consistent with State and local government policies or programs to protect farmland of the affected State and unit of local government, but which are operated by a nonprofit corporation, foundation, association, conservancy, district, or other not-for-profit organization existing under State or Federal laws. Private programs to protect farmland may include: (1) Acquiring and holding development rights in farmland and (2) facilitating the transfer of development rights of farmland.

(f) *Site* means the location(s) that would be converted by the proposed action(s).

(g) *Unit of local government* means the government of a county, municipality, town, township, village, or other unit of general government below the State level, or a combination of units of local government acting through an areawide agency under a State law or an agreement for the formulation of regional development policies and plans.

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§ 658.3 Applicability and exemptions.

(a) Section 1540(b) of the Act, 7 U.S.C. 4201(b), states that the purpose of the Act is to minimize the extent to which Federal programs contribute to the unnecessary and irreversible conversion of farmland to nonagricultural uses. Conversion of farmland to nonagricultural uses does not include the construction of on-farm structures necessary for farm operations. Federal agencies can obtain assistance from USDA in determining whether a proposed location or site meets the Act's definition of farmland. The USDA Natural Resources Conservation Service (NRCS) field office serving the area will provide the assistance. Many State

or local government planning offices can also provide this assistance.

(b) Acquisition or use of farmland by a Federal agency for national defense purposes is exempted by section 1547(b) of the Act, 7 U.S.C. 4208(b).

(c) The Act and these regulations do not authorize the Federal Government in any way to regulate the use of private or non-Federal land, or in any way affect the property rights of owners of such land. In cases where either a private party or a non-Federal unit of government applies for Federal assistance to convert farmland to a non-agricultural use, the Federal agency should use the criteria set forth in this part to identify and take into account any adverse effects on farmland of the assistance requested and develop alternative actions that would avoid or mitigate such adverse effects. If, after consideration of the adverse effects and suggested alternatives, the landowners want to proceed with conversion, the Federal agency, on the basis of the analysis set forth in § 658.4 and any agency policies or procedures for implementing the Act, may provide or deny the requested assistance. Only assistance and actions that would convert farmland to nonagricultural uses are subject to this Act. Assistance and actions related to the purchase, maintenance, renovation, or replacement of existing structures and sites converted prior to the time of an application for assistance from a Federal agency, including assistance and actions related to the construction of minor new ancillary structures (such as garages or sheds), are not subject to the Act.

(d) Section 1548 of the Act, as amended, 7 U.S.C. 4209, states that the Act shall not be deemed to provide a basis for any action, either legal or equitable, by any person or class of persons challenging a Federal project, program, or other activity that may affect farmland. Neither the Act nor this rule, therefore, shall afford any basis for such an action. However, as further provided in section 1548, the governor of an affected state, where a state policy or program exists to protect farmland, may bring an action in the Federal district court of the district where a Federal program is proposed to enforce the requirements of section 1541