

**DEPARTMENT OF AGRICULTURE****Commodity Credit Corporation****7 CFR Part 1415**

RIN 0578-AA38

**Grassland Reserve Program**

**AGENCY:** Commodity Credit Corporation (CCC), United States Department of Agriculture (USDA).

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** The Grasslands Reserve Program (GRP) assists landowners and operators in protecting grazing uses and other related conservation values by restoring and conserving eligible grassland and certain other lands through rental contracts and easements. This interim final rule sets forth how USDA, using the funds, facilities, and authorities of the Commodity Credit Corporation (CCC), will implement GRP in response to the changes made to the program by section 2403 of the Food, Conservation, and Energy Act of 2008. In addition, this interim final rule incorporates other changes to the regulation for clarification or program administrative improvement.

**DATES:** *Effective date:* The rule is effective January 21, 2009.

*Comment date:* Submit comments on or before March 23, 2009.

**ADDRESSES:** You may send comments using any of the following methods:

- *Government-wide rulemaking Web site:* Go to <http://www.regulations.gov> and follow the instructions for sending comments electronically.

- *Mail:* Easements Programs Division, Natural Resources Conservation Service, Grassland Reserve Program Comments, P.O. 2890, Room 6819-S, Washington, DC 20013.

- *E-mail:* [grp2008@wdc.usda.gov](mailto:grp2008@wdc.usda.gov).

- *Fax:* 1-202-720-9689.

- *Hand Delivery:* Room 6819-S of the USDA South Office Building, 1400 Independence Avenue, SW., Washington, DC 20250, between 9 a.m. and 4 p.m., Monday through Friday, except Federal Holidays. Please ask the guard at the entrance to the South Office Building to call 202-720-4527 in order to be escorted into the building.

- This interim final rule may be accessed via Internet. Users can access the NRCS homepage at <http://www.nrcs.usda.gov/>; select the *Farm Bill* link from the menu; select the *Interim final* link from beneath the *Final and Interim Final Rules Index* title. Persons with disabilities who require alternative means for communication

(Braille, large print, audio tape, etc.) should contact the USDA TARGET Center at: (202) 720-2600 (voice and TDD).

**FOR FURTHER INFORMATION CONTACT:** Robin Heard, Director, Easement Programs Division, U.S. Department of Agriculture, Natural Resources Conservation Service, Room 6819, P.O. Box 2890, Washington, DC 20013-2890; phone (202) 720-1875; fax (202) 720-9689.

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

Pursuant to Executive Order 12866, this interim final rule with request for comment was reviewed by the Office of Management and Budget (OMB) and determined that this interim final rule is a significant regulatory action. The administrative record is available for public inspection in Room 5831 South Building, USDA, 14th and Independence Avenue, SW., Washington, DC. Pursuant to Executive Order 12866, NRCS conducted an economic analysis of the potential impacts associated with this program.

*Regulatory Flexibility Act*

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

*Environmental Analysis*

A programmatic environmental assessment has been prepared in association with this rulemaking. NRCS has determined that there will not be a significant impact to the human environment and as a result an Environmental Impact Statement is not required to be prepared (40 CFR part 1508.13). The EA and FONSI are available for review and comment for 60 days from the date of publication of this interim final rule in the **Federal Register**. A copy of the Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) may be obtained from the following Web site: [http://www.nrcs.usda.gov/programs/Env\\_Assess/](http://www.nrcs.usda.gov/programs/Env_Assess/). A hard copy may also be requested from the following address and contact: National Environmental Coordinator, Natural Resources Conservation Service, Ecological Sciences Division, 1400 Independence Ave., SW., Washington, DC 20250. Comments from the public should be specific and reference that comments provided are on the EA and FONSI.

Public comment may be submitted by any of the following means: (1) E-mail comments to [NEPA2008@wdc.usda.gov](mailto:NEPA2008@wdc.usda.gov), (2) E-mail to egov Web site—<http://www.regulations.gov>, or (3) written comments to: National Environmental Coordinator, Natural Resources Conservation Service, Ecological Sciences Division, 1400 Independence Ave., SW., Washington, DC 20250.

*Civil Rights Impact Analysis*

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

*Paperwork Reduction Act*

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

*Government Paperwork Elimination Act*

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

*Executive Order 12988*

This interim final rule has been reviewed in accordance with Executive Order 12988. The provisions of this interim final rule are not retroactive. Furthermore, the provisions of this interim final rule preempt State and local laws to the extent such laws are inconsistent with this interim final 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*

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), USDA assessed the effects of this interim final rule on State, local, and Tribal governments, and the public. This action does not compel the expenditure of \$100 million or more by any State, local, or Tribal government, or anyone in the private sector; therefore, a statement under section 202 of the Unfunded Mandates Reform Act is not required.

#### *Small Business Regulatory Enforcement Fairness Act of 1996*

This interim final rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This interim final 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 U.S.-based companies to compete in domestic and export markets.

#### *Executive Order 13132*

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

#### *Executive Order 13175*

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

#### *Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)*

Section 2904(c) of the Food, Conservation, and Energy Act of 2008

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

#### *Economic Analysis—Executive Summary*

Pursuant to Executive Order 12866, Regulatory Planning and Review, the Natural Resources Conservation Service (NRCS) has conducted a benefit-cost analysis of the Grassland Reserve Program (GRP) as formulated for the Interim Final Rule. This requirement provides decision makers 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.

GRP is one tool in the suite of agricultural land retention mechanisms available to agricultural producers and local communities. Producers and local communities are the main drivers in agricultural land retention efforts and incur the greatest costs and potential benefits. These efforts are driven by local decision makers and involve site-specific impacts which affect a host of non-use valued attributes (scenic views, environmental amenities, etc), making it difficult to accurately quantify the costs and benefits of various policy alternatives. This analysis recognizes these problems and offers an analysis weighed heavily on identifying the main costs and benefits in qualitative terms to explore policy and program alternatives.

The main costs of this agricultural land retention effort include the restriction on the range of activities placed on the grazing land on landowners and the initial contract cost (in the case of easements) and annual payments (in the case of rental contracts) to the government. These

costs must then be compared with the benefits of preserving its current land use in grazing or forage production. These benefits include: the maintenance (and possible improvement) of the flow of ecological goods and services (EGS) emanating from its current use in agriculture; the possibility of increased forage production; and difficult to quantify non-use values associated with the provision of scenic views and recreational opportunities; wildlife habitat; and the preservation of current land-use patterns.

In many cases, the funding provided through GRP leverages landowner donations, local governmental monies, and non-governmental contributions to preserve its' current land use in grazing. This qualitative benefit-cost analysis suggests that GRP assistance to local agricultural land preservation programs can bear positive net benefits. A main determinant of the realization of positive net benefits would be the actual fate of the current land use (grazing) in the future with respect to its conversion to non-agricultural and non-grazing agricultural use. Programs such as GRP could play an important role in keeping this land in its most highly valued grazing use (taking into account its non-use value attributes).

#### *Administrative Requirements for Conservation Programs*

Section 2708, "Compliance and Performance", of the 2008 Act added a paragraph to section 1244(g) of the 1985 Act entitled, "Administrative Requirements for Conservation Programs," which states the following: "(g) Compliance and performance.— For each conservation program under Subtitle D, the Secretary shall develop procedures—

- (1) To monitor compliance with program requirements;
- (2) To measure program performance;
- (3) To demonstrate whether long-term conservation benefits of the program are being achieved;
- (4) To track participation by crop and livestock type; and
- (5) To coordinate activities described in this subsection with the national conservation program authorized under section 5 of the Soil and Water Resources Conservation Act of 1977 (16 U.S.C. 2004)."

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

Program, the Farm and Ranch Lands Protection Program, the Grassland Reserve Program, the Environmental Quality Incentives Program (including the Agricultural Water Enhancement Program), the Wildlife Habitat Incentive Program, and the Chesapeake Bay Watershed initiative. These requirements are not directly incorporated into these regulations, which set out requirements for program participants. However, certain provisions within these regulations relate to elements of section 1244(g) of the 1985 Act and the Agency's accountability responsibilities regarding program performance. NRCS is taking this opportunity to describe existing procedures that relate to meeting the requirements of section 1244(g) of the 1985 Act, and Agency expectations for improving its ability to report on each program's performance and achievement of long-term conservation benefits. Also included is reference to the sections of these regulations that apply to program participants and that relate to the Agency accountability requirements as outlined in section 1244(g) of the 1985 Act. 985.

*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, Sec. 1116) and guidance provided by OMB Circular A-11, NRCS has established performance measures for its conservation programs. Program-funded conservation activity is captured through automated field-level business tools and the information is made publicly available at: <http://ias.sc.egov.usda.gov/PRSHOME/>. Program performance also is reported annually to Congress and the public

through the annual performance budget, annual accomplishments report and the USDA Performance Accountability Report. Related performance measurement and reporting policies are set forth in Agency guidance (GM\_340\_401 and GM\_340\_403 (<http://directives.sc.egov.usda.gov/>)). The 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, lacking has been a connection between these data and specific conservation programs. In the future, the interagency Conservation Effects Assessment Project (CEAP), which has been underway since 2003, will provide nationally consistent estimates of environmental effects resulting from conservation practices and systems applied. CEAP results will be used in conjunction with performance data gathered through Agency field-level business tools to help

produce estimates of environmental effects accomplished through Agency programs, such as 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 set forth in Agency guidance (GM\_290\_400; GM\_340\_401; GM\_340\_403) (<http://directives.sc.egov.usda.gov/>)).

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

*Track participation by crop and livestock type.* NRCS' automated field-level business tools capture participant, land, and operation information. This information is aggregated in the National Conservation Planning database and is used in a variety of program reports. Additional reports will be developed to provide more detailed information on program participation to meet congressional needs. These and related program management procedures supporting program implementation 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 Farm Bill added a provision stating, "Appraisal and inventory of resources, assessment and inventory of conservation needs, evaluation of the effects of conservation practices, and analyses of alternative approaches to existing conservation programs are basic to effective soil, water, and related natural resources conservation."

The program, performance, and natural resource and effects data described previously will serve as a foundation for the next RCA, which will also identify and fill, to the extent possible, data and information gaps. Policy and procedures related to the RCA are set forth in Agency guidance (GM\_290\_400; M\_440\_525; GM\_130\_402) (<http://directives.sc.egov.usda.gov/>).

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

#### Background

The Grassland Reserve Program 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 (the 2002 Act), Public Law 107-171, 116 Stat. 237, 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 fiscal year (FY) 2007 to enroll no more than 2 million acres of restored or improved grassland, rangeland, shrubland, and pastureland. USDA promulgated an interim final rule on May 21, 2004 (69 FR 29173), and a final rule on March 6, 2006 (71 FR 11139). The program regulations are set forth at 7 CFR part 1415. Section 2403 of the Food, Conservation, and Energy Act of 2008 (the 2008 Act), Public Law

110-246, 122 Stat. 1819, reauthorized GRP and made several amendments. 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.

#### Summary of 2008 Act Changes

The 2008 Act amended the Grassland Reserve Program to:

- Change the program's focus 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;
- Change rental agreements to rental contracts;
- Remove the 30-year rental agreement and 30-year easement enrollment options;
- Remove the minimum acreage enrollment requirement. Previously, applicants needed to submit 40 contiguous acres for enrollment to be eligible;
- Require the Secretary to offer enrollment priority for land previously enrolled in the Conservation Reserve Program providing certain conditions exist, such as: the land is eligible for GRP, the land is of high ecological value, and the land is under significant threat of conversion to uses other than grazing. The number of acres enrolled under this priority is limited to ten percent of the total acreage enrolled in that year;
- Expand 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;

- Require participants with rental contracts to suspend any existing cropland base and allotment history for the land under another program administered by the Secretary. Easement participants must "eliminate" base and allotment history;
- Allow for the inclusion of permissible and prohibited activities under a rental contract or easement;
- Include a separate payment limitation for restoration agreements and rental contracts;
- Establish the requirements for determining fair market value for easement compensation;
- Include a definition of eligible entity;
- Require implementation of a grazing management plan;
- Add the authority for the Secretary to enter into cooperative agreements with eligible entities to own, write, and enforce easements; and
- Establish that the entity shall pay an amount of the purchase price at least equivalent to the amount provided by the Secretary, when eligible entities are acquiring easements under cooperative agreements.

#### Description of Changes to the Regulations

##### Section 1415.1 Purpose

Section 1415.1(a) describes the purpose of GRP. Section 1415.1(a) is revised to emphasize that the purpose of GRP is to assist owners and operators of private lands in protecting grazing uses and related conservation values by restoring and conserving eligible land. The term "rental agreements" is changed to "rental contracts" in this section and throughout the regulation. The changes to § 1415.1(a) address the 2008 Act amendment of GRP to apply to operators as well as owners.

Section 1415.1(b) describes the objectives of GRP. Section 1415.1(b) is revised by replacing the phrase "The objectives of GRP are to:" with the phrase "GRP emphasizes," consistent with the statutory changes in the 2008 Act. Paragraph (b)(1), which states that an objective of GRP is the preservation of native and naturalized grasslands and shrublands, is being removed to reflect the program purposes established by the 2008 Act. USDA continues to recognize the conservation value of native and naturalized grasslands and provide States the authority to prioritize such lands in program ranking criteria; however, the 2008 Act's purpose of protecting grazing uses and related conservation values are not limited to

native and naturalized grasslands. Paragraph (b)(2) describes the GRP objective of protecting grasslands and shrublands from the threat of conversion. Paragraph (b)(2), redesignated as paragraph (b)(3), is revised by adding “to uses other than grazing” following the term “conversion,” consistent with the 2008 Act. Paragraphs (b)(3) and (b)(4) are redesignated as paragraphs (b)(1) and (b)(2) respectively. This redesignation mirrors the order listed in statute.

#### Section 1415.2 Administration

Section 1415.2(a) describes the administration of GRP by NRCS and FSA. This rulemaking revises paragraph (a)(1) to replace “State” with “National,” which clarifies that the National office has responsibility for developing the allocation formula. Paragraph (a)(2) describes the use of a national allocation funding formula. Paragraph (a)(2) is revised to replace the term “USDA State offices” with “NRCS State Conservationists and FSA State Executive Directors” to make clear that they are the State level fund allowance holders. Additionally paragraph (a)(2) is changed to include the words “to uses other than grazing” after “conversion.” The revisions made to paragraph (a)(2) are to align GRP with the 2008 Act by emphasizing the protection of land that contains forbs and shrubland, and reflecting the program purposes of protecting grazing uses with the addition of “conversion to uses other than grazing.”

Section 1415.2(b) describes the administration of GRP by NRCS and FSA at the state level. A new paragraph (b)(1) is added that emphasizes the role of the State Conservationist and State Executive Director in determining how GRP will be implemented at the State level. Subsequent paragraphs are redesignated. Former paragraph (b)(5), relating to the development of conservation plans and restoration agreements, is redesignated as paragraph (b)(6). In compliance with new language in 2008 Act, the term “conservation plans” is removed and the term “grazing management plans” is added. Former paragraph (b)(6), redesignated as paragraph (b)(7), relates to administering and enforcing the terms of easements and rental contracts. The paragraph is revised by replacing the “third party” with “eligible entity.” The term “eligible entity” is substituted for “third party” to avoid confusion because the term “third party” is also used to refer to technical service providers. A reference to § 1415.18 is added at the end of paragraph (b)(7), because a new section on cooperative

agreements is added at § 1415.17, and the former section at § 1415.17, is redesignated as § 1415.18. Paragraph (b)(8), formerly (b)(7) in the 2006 GRP final rule, describes the consideration of State Technical Committee recommendations. The last sentence of this paragraph is removed because the language was redundant of provisions of the State Technical Committee regulation found in part 610 of this title.

Section 1415.2(e) describes the ability to modify or waive a provision of this part. This rulemaking replaces the term “Secretary” with the “Chief, NRCS, or the Administrator, FSA” to better align with how these determinations are made.

Section 1415.2(i) describes the acceptance of applications. A sentence is being added allowing NRCS to enter into cooperative agreements with eligible entities to own, write, and enforce easements. This addition is required by section 2403 of the 2008 Act, which now provides authority for NRCS to partner with eligible entities to purchase easements. This section is also being modified to provide that eligible entities may apply to participate in GRP through the cooperative agreement on a continuous basis. This change is discussed in detail in the description of changes for § 1415.17, cooperative agreements, of this regulation.

#### Section 1415.3 Definitions

Section 1415.3, “Definitions,” sets forth definitions for terms used throughout this regulation. New definitions are being added, others have been revised for clarity and consistency with other USDA-administered programs, and some have been removed as no longer relevant to these regulations. Specifically, this rulemaking makes the following changes to the definitions:

The definition of “*activity*” is added to § 1415.3 to describe an action that is not a conservation practice but alleviates resource problems or improves treatment and is included in a grazing management or conservation plan. This term is used throughout this USDA regulation, as well as other easement program regulations, and is intended to provide a consistent definition for the public. The definition was added to clarify a term that was previously used in the regulation but not defined.

The definition of “*applicant*” is added to describe “a person, legal entity, joint operation, or Indian Tribe who applies to participate in the program.” The definition is consistent with other USDA easement programs and is intended to provide a consistent

definition for the public. The definition was added to clarify a term that was previously used in the regulation but not defined.

The definition of “*common grazing practices*” is revised to include “browse” as a forage resource that is utilized by grazing livestock for food. This change provides clarification of a grazing practice term based on technical recommendations. Other minor editorial corrections are made to the definition to improve the sentence structure.

The definition of “*Conservation District*” is modified to add “natural resource district”. This change is intended to ensure that all types of conservation districts are included by expanding the list to include another commonly used name for conservation districts.

The definition of “*conservation plan*” is amended to clarify that for GRP purposes a conservation plan will only be required under certain circumstances. This new definition of conservation plan is being adopted to comport with the 2008 Act statute that requires a “grazing management plan” be implemented and specifies that the plan also include implementation and maintenance schedule for planned practices. The requirements of a conservation plan and the relationships between grazing management plan, conservation plan, and restoration plan are further discussed in the description of changes to § 1415.4 of this regulation.

The definition of “*Conservation practice*” is modified to include “vegetative” practices as a type of conservation practice, in addition to structural and land management practices, which were already included in the definition. In addition, the reference to “standards and specifications” is clarified to refer to “NRCS Field Office Technical Guide standards and specifications”.

The definition of “*conservation values*” is revised to reflect “those natural resource attributes that provide ecosystem functions and values of the grassland area.” The 2008 Act changed the statutory purpose to focus on support for grazing uses and related conservation values. This statutory change requires the definition be expanded to include all conservation values rather than the existing focus on declining species.

The term “*cost-share payment*” is added to describe a type of payment made to a GRP participant. The term cost-share is associated with the GRP restoration plan, which is a part of the restoration agreement. The definition was added to clarify a term that was

previously used in the regulation but not defined.

The term “*cultural practice*” is removed. The term was used only in the context of common grazing practices, so the definition language is placed within the discussion of common grazing practices in § 1415.4(h)(1).

The term “*Department*” is removed. The term was only used in § 1415.20, Scheme or Device, the use of which has now been obviated by the substitution of “U.S. Department of Agriculture,” in that section.

The term “*dedicated account*” is added and describes a dedicated fund that can only be used for the purposes of management, monitoring, and enforcement of conservation easements. This term is added to ensure the qualifications of the non-governmental organizations to carry out their responsibilities under the program are clear. These responsibilities include the acquisition, monitoring, enforcement and implementation of management policies and procedures that ensure the long-term integrity of the easement protections.

The phrase “eligible entity or both” is added to the definition of “*easement*.” This modification adds eligible entities as having interest in land, through a deed, for the purpose of protecting grasslands and other conservation values under GRP easements. This addition ensures the interests of eligible entities holding and enforcing easements under the terms of the cooperative agreement in § 1415.17 and the easement transfer to third parties in § 1415.18.

The phrase “eligible entity or both” is added to the definition of “*easement payment*.” This revision incorporates the addition of eligible entities as having an interest in property for which the landowner receives an easement payment. This addition ensures the inclusion of eligible entities as holders of easements under the terms of the cooperative agreement in § 1415.17.

The definition of “*eligible entity*” is added to incorporate the 2008 Act’s requirements that eligible entities own, write, and enforce a GRP easement. This new term explains the meaning of “eligible entity” used in the cooperative agreement in § 1415.17 and the easement transfer to third parties in § 1415.18.

The definition of “*Farm Service Agency (FSA)*” is added to define the USDA agency that shares authority in implementing GRP.

The term “*FSA State Executive Director*” is added to refer to the FSA employee authorized to implement GRP at the State level.

The definition of “*Field Office Technical Guide*” is revised to include “requirements” in place of “standards” and “practices” in place of “treatments.” The change updates the definition to the current NRCS definition of the Field Office Technical Guide.

The definition of “*fire pre-suppression*” is added to clarify the term used in the 2008 Act describing an activity in the grazing management plan. Fire pre-suppression may include the establishment and maintenance of fire breaks and prescribed burning to prevent or limit the spread of fires.

The definition of “*functions and values of grasslands and shrublands*” is added to clarify the term’s use in the regulation and provide a consistent definition with other USDA easement programs. USDA is providing a definition that includes a variety of values intrinsic to grasslands and shrublands that will be considered during ranking of applications and the development of grazing management plans, conservation plans, or restoration plans.

The phrase “eligible entity or both” is added to the definition of “*grantor*.” This addition ensures the inclusion of the transfer of land rights to eligible entities holding and enforcing easements under the terms of the cooperative agreement in § 1415.17 and the easement transfer to third parties in § 1415.18.

The definition of “*grassland*” is revised to include grammatical corrections that are intended to improve the sentence structure. No technical changes were made to the definition.

The definition of “*grazing management plan*” is added to describe the document used in implementing a grazing management system. This addition was made to incorporate the 2008 Act language that requires the implementation of a grazing management plan. The requirements of a grazing management plan and the relationships between grazing management plan, conservation plan, and restoration plan are further discussed in the description of changes to § 1415.4 of this regulation.

The definition of “*grazing value*” adds the phrase “or a market survey” in place of “an appraisal” as an option to establish grazing values for easements. This change is made to be consistent with the changes in the 2008 Act.

The definition of “*historical and archeological resources*” is added to describe the criteria required for a resource to be considered historical or archeological. This addition is made as part of implementing the 2008 Act’s

requirement that land containing historical or archeological resources and located in an area that has been historically dominated by grassland, forbs or shrublands is eligible for GRP. This definition also ensures consistency with other USDA programs, including FRPP, and with State, local and Tribal preservation office practices.

The term “*improved grassland, pasture, or rangeland*” is modified to read “improved rangeland or pastureland.” This change is consistent with the use of these terms in the regulation. “Grassland” was dropped because it is redundant in the definition.

The definition of “*Indian Tribe*” is added and has the meaning given in section 4(e) of the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450b(e). This definition is consistent with the definition in section 1001 of the 2008 Act.

The definition of “*landowner*” is revised to include various types of owners and ownership, including legal entities and Indian Tribes, as eligible for GRP participation. The definition also adds language that clarifies that governments and non-governmental organizations that meet eligible entity requirements are not considered eligible landowners because the land owned by these entities is already under protection from the conversion to non-grazing uses.

The definition of “*legal entity*” is added to describe an entity that is created under Federal or State law. This term is defined because it is included in the definitions of “applicant” and “landowner”. The definition clarifies that a legal entity does not include State and local governments; this rationale is explained in § 1415.5(d).

The definition of “*maintenance*” is added to describe work performed on lands enrolled in GRP to keep the applied conservation practices functioning for the intended purpose, and includes work that prevents a practice from failing, such as repairing damage and replacement. The definition is added to provide consistency with other USDA easement programs.

The word “indigenous” is added to the definition of “*native*.” This addition clarifies the definition of native.

The definition of “*Natural Resources Conservation Service (NRCS)*” is added to define the USDA agency that shares authority to implement GRP.

The definition of “*NRCS State Conservationist*” is added to refer to the NRCS employee with authority to implement GRP and direct activities at the State level.

The phrase “for the purposes of this regulation” is removed from the definition of “*naturalized*.” This change reflects a minor grammatical correction that is intended to improve the sentence structure.

The definition of “*nesting season*” is added to denote a specific time of year for species whose habitat is being protected on enrolled lands.

The definition of term “*non-governmental organization*” is added to describe the criteria such an organization must meet in order to be considered as an eligible entity for purposes of holding or acquiring easements with GRP funds, and is taken directly from the 2008 Act.

The definition of “*participant*” is revised by removing the phrase “landowner, operator, or tenant” and replacing it with “person, legal entity, joint operation, or Indian Tribe” to reflect the breadth of individuals and entities that may participate in the program. The modification also removes the last sentence that described that owners of land subject to a GRP easement are considered program participants regardless of whether they were a party to the conveyance of easement. This sentence is inconsistent with the appeal regulations at part 614 of this title. After a conservation easement is conveyed, the landowner is no longer a “participant” for easement enforcement and management matters and, therefore, may not appeal those matters administratively. This rationale based upon real property law principles and is consistent with NRCS appeal regulations at part 614 of this title.

The definition of “*pastureland*” is revised to describe a type of grazing land, its uses, and treatments. This definition is added to provide consistency with other USDA easement programs and clarifies that cropland in rotation is not considered pastureland.

The definition of “*permanent easement*” is revised by adding “or for the maximum duration allowed under the law of a State.” This addition clarifies that easements of the maximum duration allowed under the law of a State are considered to be permanent easements.

The definition of “*plant and animal biodiversity*” is added to describe a wide variety of plant and animal species.

The term “Tribal lands” was added to the definition of “private land.” The addition further clarifies that Tribal Lands are also qualify as private lands under GRP.

The definition of “*purchase price*” is added and applies to easement compensation when an eligible entity is

purchasing the easement under the provisions of a cooperative agreement. USDA will pay no more than 50 percent of the purchase price, which is the fair market value of the easement minus the landowner contribution. This definition is consistent with the GRP provisions in the 2008 Act, and ensures that entities have a vested financial interest if they write and hold the easement using GRP dollars, by requiring that their contribution be at least equal to that of the USDA. Adoption of this definition by the USDA also reflects a policy decision to leverage funding through landowner donation to stretch GRP funding further and protect more acres. Eligible entities may receive increased ranking points when they provide a higher percentage of the purchase price.

The rangeland plant example of “crested wheatgrass” is removed from the definition of “*rangeland*.” Crested wheatgrass may out-compete native rangeland plants and is less desirable for the promotion of biodiversity.

The term “agreement” is replaced by “contract” in the definition of “*rental agreement*.” This change incorporates the 2008 Act change from the term “rental agreement” to “rental contract” and is restructured to improve clarity.

The definition of “*restoration*” is revised to clarify that one of the reasons that restoration may be needed is to re-establish the grassland functions and values of grasslands where the land has been degraded or converted to other uses. This addition is consistent with the eligible land definition set forth in the 2008 Act. The definition also adds the phrase “or system of practices” following “conservation practices or activity” to further clarify that an array of conservation practices or activities may be needed in the restoration of eligible land. The definition removes the parenthetical implication that restoration can only be used to restore native and naturalized plant communities. This change is made to implement section 2403 of the 2008 Act, which amends the program’s focus from protecting, conserving, and restoring grassland resources on private lands to assisting owners and operators in protecting grazing uses and related conservation values by restoring and conserving eligible land. These changes are also discussed above in the description of § 1415.1.

The definition of “*restoration agreement*” is revised to add the term “eligible entities” as parties able to enter into agreements with program participants and adds a restoration plan as a component of the restoration agreement. Eligible entities are responsible for developing, holding,

enforcing, and providing cost-share for restoration under the terms of the cooperative agreement in § 1415.17 or the easement transfer to third parties in § 1415.18.

The definition of a “*restoration plan*” is added to establish the portion of the restoration agreement that will include the schedule and conservation practices to restore the functions and values of grasslands and shrublands and to incorporate USDA’s expectation that conservation practices or measures installed with GRP federal cost-share assistance will be operated and maintained by participants for the lifespan of the practice or measure. A more detailed discussion of the restoration plan can be found in the description of changes to § 1415.4(c).

The term “*restored grassland*” is removed. This term is no longer used in this regulation.

The definition of “*right of enforcement*” is added to clarify that a right of enforcement is an interest in land which the United States may exercise under specific circumstances to enforce the terms of the conservation easement. A description of the exercise of this right is included in the discussion of changes to § 1415.17 in this regulation.

The definition of “*Secretary*” is amended to clarify that the term applies to the Secretary of the U.S. Department of Agriculture, or his or her designee.

The definition of “*significant decline*” is modified to specify that species determined to be in significant decline merit conservation priority in the program. The revised language recognizes that the direct actions to conserve species in significant decline are undertaken voluntarily by program participants using program assistance.

The definition of “*similar functions and values*” is removed. This term is no longer used in this regulation.

The definition of “*State Technical Committee*” is changed by deleting the words “Secretary of the United States Department of Agriculture” and replacing them with “Secretary” because the term “Secretary” is already defined to reference the “United States Department of Agriculture”.

The definition of “*Tribal land*” is added and means any land owned by Indian Tribes, which are defined in accordance with section 4(e) of the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450b(e). The addition of this term addresses changes made by the 2008 Act to enrollment options for Tribal land.

The definition of the term “USDA” is expanded to clarify that such term refers to the U.S. Department of Agriculture,

and its Agencies and Offices, as applicable.

#### Section 1415.4 Program Requirements

Section 1415.4(a) describes who may submit applications for easements and rental contracts. It is revised to require applicants for rental contracts to own the property or be able to provide written evidence of control of the property for rental contracts.

Section 1415.4(b) is simplified by removing the phrase “duration of the” to refer to the term of the easement or rental contract.

Section 1415.4(c) removes the term “conservation plan” and substitutes “grazing management plan,” reflecting the 2008 Act requirement for implementation of a grazing management plan. The revisions clarify the requirement for a grazing management plan and specify conditions when a conservation plan may be required. The last sentence is removed because “conservation plan” is now defined in § 1415.3.

USDA is taking this opportunity to explain the differences and relationships between *conservation plans*, *grazing management plans*, and *restoration plans*. The 2008 Act requires the implementation of a grazing management plan for all GRP participants. Although the 2002 Act was silent on planning requirements, the 2006 GRP final rule required participants to implement conservation plans in order to help protect the grassland functions and values. The 2006 GRP final rule defined a conservation plan as a resource management system (RMS) plan, which is the standard level of NRCS conservation planning. This level of planning is more rigorous than the 2008 Act’s requirement for grazing management plan implementation. Because the 2008 Act requires the implementation of a grazing management plan and not a conservation plan, USDA is defining a grazing management plan as a document that describes the implementation of the grazing management system which meets the prescribed grazing standard included in the Field Office Technical Guide. USDA is also removing the requirement that all GRP participants implement a conservation plan. The grazing management plan will also include the permitted and prohibited activities, USDA’s right of ingress and egress, and any associated conservation plans or restoration plans. Although all GRP participants will be required to implement a grazing management plan, conservation plans or restoration plans will only be required to be implemented

under certain circumstances. For example, a conservation plan will be required in cases where ranking points were received for resource concerns not directly related to the grazing system or when a land eligibility criterion was used for enrollment that would not be part of a grazing management system. In these cases, the conservation plan must address the resource concerns associated with the ranking points or land eligibility. Examples of such circumstances where the development and implementation of a conservation plan will be needed are when points are received related to wildlife habitat management or haying and seed production issues, or when land eligibility is based on conditions at § 1415.5(b)(2), such as historical and archeological resources in areas historically dominated by grassland, land that contains forbs, or shrubland. A restoration plan will only be required when a restoration agreement to restore grassland functions and values is developed in conjunction with a GRP rental contract or easement. The grazing management plan will be the primary plan for GRP participants. The NRCS planning process will be used in the development of grazing management plans, conservation plans, and restoration plans.

Section 1415.4(d) replaces “conservation plan” with “grazing management plan.” This change reflects the 2008 Act requirement for the use of a grazing management plan.

Section 1415.4(e) describes requirements of program participants with respect to conveying an easement. This rulemaking modifies this section to add the term “eligible entity” to clarify that these requirements also apply in this case where the easement is being conveyed to an eligible entity. This addition implements changes in the 2008 Act authorizing third parties to purchase and hold GRP-funded conservation easements and also ensures sufficient title interest is acquired when eligible entities holding and enforcing easements under the terms of the cooperative agreement in § 1415.17 and the easement transfer to third parties in § 1415.18. The term “unencumbered” is added before “title” in paragraph (e) to clarify that the title conveyed in the easement must be free from encumbrances.

Section 1415.4(f) requires use of a standard GRP conservation easement deed. The phrase “or developed by an eligible entity and approved by USDA under § 1415.17 of this part” is added after “USDA.” This addition incorporates the 2008 Act change allowing an eligible entity to use the

entity’s own deed when owning an easement pursuant to a GRP cooperative agreement.

Section 1415.4(g) is modified to replace the term “conservation plan” to “grazing management plan” to be consistent with the terminology used in the 2008 Act.

Section 1415.4(h) adds “as outlined in the grazing management plan” to the end of the sentence. This change reflects the 2008 Act requirement for implementation of a grazing management plan and specifies the location of approved activities for GRP easements and rental contracts. Paragraph (h)(1) removes the phrase “native and naturalized grass and shrub species” and adds “grassland, forb, and shrub species common to the locality.” This revision reflects the GRP program purpose as described in the discussion of § 1415.1(b) and required by the 2008 Act. The term “cultural” is struck and replaced with the conservation practice examples that had been used as the definition of the term in § 1415.3. Paragraph (h)(2) is revised to remove cumbersome language and provide clarity related to haying and mowing restrictions during nesting seasons. The term “pre-suppression” is added to paragraph (h)(3) following “fire.” This term is used in the 2008 Act describing an activity in the grazing management plan. The addition is intended to bring further clarification to the activity and comply with the 2008 Act definition. The remaining language in paragraph (h)(3) is broken out into subsequent paragraphs. A new paragraph (h)(4) is added at the beginning phrase “grazing related activities, such as fencing and livestock.” This addition provides clarification that fencing and livestock watering facilities must be grazing related.

Wind power generation was not specifically addressed in the 2006 regulatory text because the Secretary was prohibited by statute from authorizing activities that would disturb the surface of the land. Section 2403 of the 2008 Act removed this prohibition. A new paragraph (h)(5) is added to section 1415.4 to allow for the inclusion of wind power facilities for on farm use as a potential permitted use for the GRP participant’s farming or ranching operation pursuant to the Secretary’s discretionary authority established in the 2008 Act. This regulatory change results from USDA’s interest in assisting producers with their energy conservation efforts.

Although USDA is supportive of wind power generation for on-farm use on GRP lands, the opportunity to place generating stations on easement or

contract acres is not a guaranteed right. The siting of such facilities for on-farm energy generation must be consistent with the protection of the grazing uses and related conservation values promoted by the GRP program. In addition, authorization may only be provided after USDA conducts a site-specific evaluation to determine that there are no negative impacts on threatened, endangered or at-risk species, migratory wildlife, or related natural resources, cultural resources or the human environment. In addition, USDA will follow the guidelines being developed by the U.S. Fish and Wildlife Service, "Guidance on Avoiding and Minimizing Wildlife Impacts from Wind Turbines," and will authorize wind power facilities only when the footprint of the facility would have a minimal impact on the nature of the grazing lands and other conservation values obtained through the contract or easement. These evaluation considerations will be incorporated into the environmental analyses that NRCS conducts pursuant to its National Environmental Policy Act (NEPA) responsibilities. *USDA requests comment on whether wind energy generation activities are compatible with the grazing uses and related conservation values of the GRP program.*

Paragraph 1415.4(i) provided that activities that disturb the surface of the land are prohibited in GRP and listed exceptions in paragraphs (1), (2), and (3). The 2008 Act removed this prohibition on disturbing the land surface, providing USDA with the discretion to permit some surface-disturbing activities if they are carried out in a manner that is consistent with protecting the grazing uses and related conservation values. Section 1415.4(i) is revised to describe the specific activities that are prohibited, as reflected in the 2008 Act, rather than list the exceptions. Paragraph (i)(3) is revised and re-designated as paragraph (h)(6). Given the removal of the soil disturbance prohibition, *USDA requests comments on the nature of potential impacts on grazing uses and related conservation values resulting from activities that disturb the surface of the land.*

Section 1415.4(j) is being amended to add the term "legally" before "incompetent" to reflect a more definitive determination of mental competency.

Section 1415.4(k) is being amended to remove the phrase "the easement is for a longer duration than the rental agreement." This language indirectly refers to 30-year contracts and

easements, which are no longer authorized under the 2008 Act.

Paragraphs (l) and (m) are added to § 1415.4 to require the suspension or elimination of cropland base and allotment history for rental contracts or easements, respectively. These changes are required by the 2008 Act.

#### *Section 1415.5 Land Eligibility*

Section 1415.5(b) describes land eligible for funding consideration. Paragraph (b)(1) removes "native and naturalized" and replaces with "improved," and "for which grazing is the predominant use" is added to the end of the sentence. This revision is a reflection of the change in purpose instituted by the 2008 Act, and is discussed in greater detail in the description of changes to § 1415.1 of this regulation. Paragraph (b)(2) removes language describing the State Conservationist consulting with the State Technical Committee on habitat. This language is unnecessary and was removed for simplification and clarity. Paragraph (b)(2)(i) is amended to be consistent with the statute and to simplify the eligible land description. Paragraph (b)(2)(ii) is replaced with "contains historical or archeological resources." This addition addresses the 2008 Act's requirement that land containing historical or archeological resources and located in an area that has been historically dominated by grassland, forbs or shrublands is eligible for GRP. Paragraph (b)(2)(iii) is added to address issues raised by State, regional, and national conservation priorities. Such priorities could include, for example: The North American Waterfowl Management Plan, the National Fish Habitat Action Plan, the Greater Sage Grouse Conservation Society, the State Comprehensive Wildlife Conservation Strategies (also referred to as the State Wildlife Action Plans), the Northern Bobwhite Conservation Initiative, the Gulf of Hypoxia Action Plan 2008 (and associated annual operating plans), and State forest resource strategies.

Section 1415.5(c) clarifies how the enrollment of incidental land may improve the efficient administration of an easement or rental contract by reducing irregular boundaries.

Section 1415.5(d) of the 2006 GRP final rule required 40 contiguous acres as the minimum acreage eligible for enrollment in GRP. This paragraph is removed in its entirety and subsequent paragraphs are redesignated. The 40-acre minimum enrollment requirement was removed in the 2008 Act.

Section 1415.5(e) prohibits land that is already protected through other

means from enrolling in GRP. Language is added after "existing contract or easement" to include "deed restriction, or of the land already is in ownership by an entity whose purpose is to protect and conserve grassland and related conservation values." This addition seeks to clarify further that land already in fee ownership by an organization, whose purpose is to protect and conserve grassland and related conservation values, is not eligible for GRP.

Section 1415.5(e), as re-designated, replaces the term "prospective GRP participant" with the defined term "applicant."

#### *Section 1415.6 Participant Eligibility*

Section 1415.6 describes participant eligibility. Section 1415.6 is modified to add "except as otherwise described in § 1415.17" to the introductory paragraph. This addition reflects the 2008 Act's addition of allowing cooperative agreements with eligible entities. Section 1415.6(b) is being amended to remove the phrase "the Department deems" because it is redundant of the previous reference to USDA. Section 1415.6(c) is amended to incorporate the exemption from AGI requirements for Indian Tribes as described under part 1400 of this title.

#### *Section 1415.7 Application Procedures*

Section 1415.7(a) describes where and when an application may be submitted. This rulemaking removes the description of an owner or operator and adds "applicant, except as otherwise described under § 1415.17". This change incorporates the 2008 Act change allowing cooperative agreements with eligible entities for the purposes of purchasing, holding, and enforcing easements as described under § 1415.17.

Minor grammatical changes were made to § 1415.7(b).

Section 1415.7(c) is removing the term "30-years" to comport with the 2008 Act change removing the 30-year rental contract and 30-year easement enrollment options.

#### *Section 1415.8 Establishing Priority for Enrollment of Properties*

Section 1415.8(a) describes that national guidelines will be issued for establishing state-specific project selection criteria. The phrase "USDA offices at the state level" is replaced with "the NRCS State Conservationist and FSA State Executive Director" to clarify responsibilities under this section. Other minor changes are made to this paragraph for clarification.

Section 1415.8(b) is being modified to add applications from "eligible entities

under § 1415.17” as an application to be evaluated and ranked under established state level criteria and “NRCS State Conservationist and FSA State Executive Director” to specify the role of the State Conservationist and State Executive Director in establishing State ranking criteria. This addition incorporates the 2008 Act change allowing cooperative agreements with eligible entities for the purchase of conservation easements.

Section 1415.8(c) describes the factors emphasized by the ranking criteria. This paragraph is amended to clarify the ranking criteria and restructure the criteria to ensure consistency with changes made in the 2008 Act. Specifically, paragraph (c)(1) removes the emphasis on preservation of native and naturalized grasslands and shrublands and adds “grazing operations.” This change is explained under the description of changes to § 1415.1(b). Paragraph (c)(2) is revised to add “land that contains forbs, and shrubland at the greatest risk from the threat of conversion to use other than grazing.” This change mirrors the language in the 2008 Act. Paragraph (c)(3) is amended by removing “support for grazing operations” and replace it with “Plant and animal biodiversity” to more accurately reflect the ranking criteria set forth in the 2008 Act. Paragraph (c)(4) is added to provide that ranking parcels offered under cooperative agreements with eligible entities shall consider the leveraging of non-Federal funds and entity contributions of more than 50 percent of the purchase price, respectively.

Section 1415.8(d) is amended to add “including applications from entities under § 1415.17” as an application that may be selected for funding. This addition incorporates the 2008 Act change allowing cooperative agreements with eligible entities. “NRCS State Conservationist and FSA State Executive Director” is also added to specify the proper authority at the state level.

Section 1415.8(e) establishes that States may utilize ranking pools. This paragraph is revised to clarify that the NRCS State Conservationist and FSA State Executive Director have the discretion to establish separate ranking pools to address issues raised by State, regional, and national conservation priorities. This implements the 2008 Act changes to the definition of “eligible land” which allows private lands that address these priority issues to be considered for enrollment.

Minor grammatical changes were made to paragraphs (f) and (g) of § 1415.8. Paragraph (f) is revised by

capitalizing “technical” and “committee” and replacing “USDA” with “NRCS State Conservationist and FSA State Executive Director” to clarify responsibility at the State level. Paragraph (g) is revised by capitalizing “technical” and “committee.”

Section 1415.8(h) allows USDA to fund a lower ranked application when funds are insufficient. This section is revised to clarify that USDA may select a lower-ranked application that can be fully funded if the applicant with the higher-ranked application is unwilling to reduce the acres offered to match the available amount of funding. The term “USDA” is replaced with “NRCS State Conservationist and FSA State Executive Director.” The last sentence of this section is removed because the provision is not related to a landowner’s willingness to change their offer.

Section 1415.8(i) is added to give priority enrollment to expiring CRP acres. The 2008 Act requires the Secretary to give priority for GRP enrollment to land previously enrolled in CRP if the land is eligible land, is of high ecological value, and is under significant threat of conversion to uses other than grazing. USDA will provide CRP participants with eligible expiring CRP acres an opportunity to enroll in GRP for up to 12 months before the CRP contract expiration date. CRP priority enrollment is limited to enrollment in easements and 20-year rental contracts. This enrollment requirement is intended to provide lasting protection for grasslands that are of high ecological value and under significant threat of conversion. By statute, CRP priority enrollment cannot exceed 10 percent of the total acres accepted for enrollment in GRP in any year. Participants with CRP lands accepted for enrollment in GRP will have their GRP enrollment begin upon expiration of the CRP contract.

Section 1415.8(j) is added to clarify that USDA shall use, to the maximum extent practicable, 40 percent of program funding for rental contracts, and 60 percent for easements. The 2008 Act added flexibility to this existing requirement by allowing the limitation to be met “to the maximum extent practicable.”

#### *Section 1415.9 Enrollment of Easements and Rental Contracts*

Section 1415.9 describes how USDA will enroll easements and rental contracts. The section is amended to reflect changes made in the NRCS acquisition business process to expedite the closing process and to reduce the potential of de-obligating funds due to irresolvable issues, such as title issues

and hazardous materials problems. The first change to the business process is the elimination of the use of the letter of intent as the point of enrollment and the establishment of the signing of the option agreement to purchase an easement as the point of obligation and enrollment. The second change is the movement of some activities that previously took place after the signing of the option agreement to purchase an easement to occur before the signing of the option agreement. This section applies to acquisitions by NRCS; the process for easements acquired by eligible entities under a cooperative agreement is described in § 1415.17.

Section 1415.9(a) outlines how NRCS and FSA will notify applicants of their tentative acceptance into GRP. The last two sentences in this section relating to the use of the letter of intent as the point of enrollment are removed as part of streamlining NRCS’ business process. The addition of cooperative agreements reflects a change made by the 2008 Act allowing cooperative agreements with eligible entities. The term “USDA” is replaced with “NRCS and FSA, as appropriate.”

Section 1415.9(b) is changed to include minor editorial changes.

Section 1415.9(c) describes how enrollment offers are made for rental contracts and easements. Paragraph (c)(1) is new and sets forth that the offer of enrollment for an easement is an NRCS option agreement to purchase that has been executed by the owner. An owner signed option is a firm offer. Paragraph (c)(2) is new and describes the offer of enrollment for a rental contract is the rental contract itself and is presented to the applicant by FSA. These new paragraphs are added to provide clarity between easements and rental contracts. The offer of enrollment for both easements and rental contracts will describe the area to be enrolled and the applicable terms and conditions.

Section 1415.9(d) is revised to clarify that for rental contracts, land is considered enrolled in the program after FSA approves the GRP rental contract. This section also clarifies when and under what conditions an offer may be withdrawn.

Section 1415.9(e) describes what actions NRCS will take once the land is enrolled. The paragraph is revised to clarify when land is enrolled in the program and when funds are obligated. Land is enrolled, and funds are obligated, in GRP under the easement option when both the landowner and NRCS execute the option, and NRCS’ acceptance has been relayed to the landowner.

Section 1415.9(f) is revised to describe when and under what circumstances NRCS may withdraw the land from enrollment under the easement option, such as lack of funds or title concerns.

*Section 1415.10 Compensation for Easements and Rental Contracts Acquired by the Secretary.*

Section 1415.10 is re-titled "Compensation for easements and rental contracts acquired by the Secretary" to clarify that the provision applies only to such exchanges involving USDA directly. Compensation for easements purchased through an eligible entity are addressed under § 1415.17.

Section 1415.10(a) sets forth the compensation methodology for easements. This paragraph is amended to reflect the changes made by the 2008 Act regarding easement payments and methods for determination of compensation for easements. A new paragraph (b) is added that specifies the methods through which the fair market value of the land will be determined, as determined by the changes to the 2008 Act. Subsequent paragraphs are redesignated.

Section 1415.10(c), formerly § 1415.10(b), outlines the compensation limitations for rental contracts and is revised as described below. This section is being revised to replace "USDA" with "FSA" to clarify that it is FSA that administers rental contracts under the program. The reference to adjustment of rental contract rates in the existing regulation is removed by this rulemaking because it does not reflect actual FSA practice. The annual payment limit of \$50,000 per year for rental contracts is added as required by statute and according to regulations found in 7 CFR part 1400.

Section 1415.10(c) of the 2006 GRP final rule has been redesignated as § 1415.10(d).

The former § 1415.10(d) allows USDA to complete a programmatic appraisal. The paragraph is removed in its entirety. The reference to a "programmatic appraisal" is a similar requirement (market survey) that is already included in § 1415.10(b)(1)(ii) as part of the method of determination of compensation.

Section 1415.10(f) is a new section added by this rulemaking to clarify that payments will be made as single payments instead of installment payments, unless otherwise requested by the landowner. This method is less burdensome for the landowner and the agency and reduces the long-term unexpended obligations for the agency.

Section 1415.10(g) is a new section implementing USDA's new statutory authority under the 2008 Act to accept and use contributions of non-Federal funds to support the purposes of the program. The statutory language provides that these funds are available to the Secretary without further appropriation and until expended to carry out the program.

Section 1415.10(h) is a new section that establishes that the USDA makes no claim to environmental credits, regardless of the Federal funds invested. Activities performed to obtain environmental credits must align with GRP requirements, the easement deed or rental contract terms, the grazing management plan, and any associated conservation or restoration plan.

*Section 1415.11 Restoration Agreements*

This section sets forth when a restoration agreement will be required and explains the restoration plan component of the restoration agreement, which is designed to meet the natural resource and participant objectives for the enrolled land. The term "measures" is replaced with "activities" consistent with the definition revisions made under § 1415.3.

Section 1415.11(b) describes restoration practices and the restoration plan and provides that the restoration plan component of the restoration agreement is designed to meet both USDA and the participant's objectives. This paragraph is revised slightly from the 2006 GRP final rule to provide flexibility in working with local conservation districts to determine the terms of the restoration plan. The last sentence prohibiting the restoration agreement to extend past the date of a GRP rental contract or easement is removed. Easements are permanent and, therefore, a restoration agreement cannot extend past the date of the easement. The term "restoration practices" is replaced with the terms "conservation practices and activities." This modification is consistent with the modifications made in definitions in § 1415.3.

Section 1415.11(c) establishes cost-share payment limits on restoration practices. Paragraph (c) is revised to lower the cost-share limit from "not more than 90 percent" to "not more than 50 percent," and adds a limit of \$50,000 per year (aggregate) for payments made under one or more restoration agreements to a person or legal entity, directly or indirectly. This revision incorporates changes made by the 2008 Act to payment limits for restoration agreements and cost-share

rates. The differential payment for cultivated and non-cultivated land is removed because it is inconsistent with the statute. The term "restoration practices" is replaced with the terms "conservation practices and activities," consistent with the modifications made in definitions in § 1415.3.

Section 1415.11(d) limited restoration plans to restoring native or naturalized plant communities. The amendments made to the program by the 2008 Act do not constrain USDA assistance to preserving native and naturalized grassland and shrublands. Consequently, the text of § 1415(d) has been deleted and the subsections renumbered, accordingly. The statutory change, upon which this revision is based, is discussed in detail under the description of changes to § 1415.1(b) as well as under the changes to the definition of the term "restoration."

Section 1415.11(e) describes the maintenance of cost-shared practices. This paragraph is now redesignated as paragraph (d) and revised to state that the participant is responsible for the operation and maintenance of conservation practices in accordance with the restoration agreement. This paragraph also removes language describing the lifespan of the practice and penalties for maintenance failure. This is duplicative of what is described in the terms of a restoration agreement.

Existing §§ 1415.11(f) and (g) are redesignated as (e) and (f).

Section 1415.11(g), as re-designated, allows USDA to adjust cost-share payments if the participant is receiving cost-share for the same practice so the total payment does not exceed 100 percent of the cost. This paragraph is revised from receiving cost-share for the same practice from "state and local governments" to "another conservation program." This change is intended to broaden the inclusion to all conservation programs making payments on the same practice rather than payments received from just State and local governments. The term "practice" is replaced with "conservation practices or activities," consistent with the modifications made in definitions in § 1415.3.

Section 1415.11(i) of the 2006 GRP final rule is redesignated as § 1415.11(h).

Section 1415.11(i), as re-designated, identifies that cost-share payments will not be made for conservation practices or activities implemented before approval of the rental contract or easement acquisition unless a waiver is granted. The term "restoration practices" is replaced with the terms "conservation practices and activities,"

consistent with the modifications made in definitions in § 1415.3.

Section 1415.11(k) of the 2006 GRP final rule is redesignated as § 1415.11(j) and the term “restoration practices” is replaced with “conservation practices and activities.” This modification is made for clarity and is consistent with the modifications made in definitions in § 1415.3. The phrase “USDA at the State level” is replaced with “State Conservationist or State Executive Director, as appropriate” to specify the responsible USDA State level representative.

The text of § 1415.11(k) is new and is added to clarify that the responsibility for the cost of restoration when an easement with a restoration agreement is transferred to an eligible entity rests with that entity. This provision implements the requirements of the 2008 Act regarding requirements for transfer or title ownership.

Section 1415.11(l) is a new paragraph added to set forth the responsibility for the cost of restoration rests with the eligible entity when an easement with a restoration agreement is acquired under a cooperative agreement with an eligible entity. This paragraph reflects the requirements for cooperative agreements under the 2008 Act.

#### *Section 1415.12 Modifications to Easements and Rental Contracts*

Section 1415.12 sets forth how a GRP easement may be modified. The exception statement in paragraph (a) and paragraphs (b) through (d) are removed and subsequent paragraphs are redesignated. This change reflects that there is no statutory authority to modify GRP easements.

Section 1415.12(e) of the 2006 GRP final rule outlined how a restoration agreement and conservation plan may be modified. This rulemaking redesignates this paragraph as paragraph (b), amends the provision to include grazing management plans as required by the 2008 Act, and removes reference to rental agreements because the paragraph is referring only to easements.

Section 1415.12(c), as re-designated, allows USDA to approve modifications on rental contracts. The paragraph is clarified to indicate that modifications to the rental contract could create corresponding changes to the grazing management plans, conservation plans, and restoration plans. The requirement had not been articulated in the 2006 GRP final rule.

#### *Section 1415.13 Transfer of Land*

The section is revised to remove “landowner” and add the terms “applicant” or “participant” throughout

the section, where appropriate. This change reflects the addition in the 2008 Act allowing cooperative agreements with eligible entities. The term “USDA” is replaced throughout the section with “the State Conservationist or State Executive Director, as appropriate” to provide clarity. Editorial changes are made to paragraph (d) for clarity. In paragraph (g), “USDA” is changed to “FSA” to appropriately identify that FSA is the responsible agency for the identified task.

#### *Section 1415.14 Misrepresentation and Violations*

Section 1415.14(a) is changed to refer to “rental contract” rather than “contract” to provide clarity. Section 1415.14(b) is being revised to add “deed” following “easement” throughout the paragraph to add precision to the language. The term “USDA” is being replaced with “NRCS” since it is the agency with responsibility for administering easements under the program.

Section 1415.14(c) requires the participant may be required to refund payments or pay liquidated damages if found to be in violation. This paragraph is being amended to remove the language relating to liquidated damages because there is no clear authority to collect liquidated damages. In addition, technical assistance costs, which have traditionally been used in the determination of liquidated damages, are often difficult to consistently quantify.

#### *Section 1415.15 Payments Not Subject to Claims*

A minor editorial change was made to § 1415.15.

#### *Section 1415.16 Assignments*

Section 1415.16(b) describes what happens when a participant dies, becomes incompetent or is unable to receive payments. The phrase “is declared legally” is added before the word “incompetent” to add an accepted standard of determining mental competency.

#### *Section 1415.17 Cooperative Agreements*

A new § 1415.17 regarding cooperative agreements is added and the existing § 1415.17 addressing easements transferred to third parties is redesignated as § 1415.18. The new text of § 1415.17 includes a paragraph for the enrollment and holding of easements by eligible entities, through cooperative agreements with NRCS. Section 2403 of the 2008 Act added authority for the Secretary to enter into cooperative

agreements with eligible entities to own, write, and enforce easements. Cooperative agreements are entered into by NRCS on behalf of the CCC under the authorities of the Commodity Credit Charter Act, 15 U.S.C. 714. NRCS has modeled this section, to the extent possible, after the Farm and Ranch Land Protection Program (FRPP), with which it has extensive experience. The requirements for GRP entity eligibility are patterned after the requirements in the FRPP, to the extent allowed by statutory differences between the programs; this provides consistency in administration for eligible entities and the NRCS. A requirement is added to the GRP eligibility that a non-governmental organization provide evidence of a dedicated account to ensure the long-term, management, monitoring, and enforcement of GRP easements. This requirement is intended as an indicator of an eligibility entity's capacity to acquire, manage, and enforce easements and, therefore, protect the public investment in perpetuity.

This section includes a description of the minimum requirements of a GRP cooperative agreement between NRCS and the eligible entity, including requirements required by statute such as the entity's responsibility for administrative and enforcement costs. This rulemaking clarifies “administrative costs,” includes costs associated with acquisition such as appraisals, land surveys, legal fees, and title insurance.

This section also describes how the Secretary cost-shares with entities on easements, whether or not there is a landowner contribution. USDA has used its discretion to define “purchase price” to mean the fair market value of the easement (as defined in the statute and in § 1415.10(b)) minus the landowner contribution in order to encourage the leveraging of non-Federal funds and achieve the best value for the public dollar spent. The result of this definition is that the Federal share will be no more than 50 percent of the cash purchase price, because, as specified in the statute, the entity shall be required to provide a share of the purchase price at least equivalent to the share provided by NRCS.

This new section also sets forth NRCS's approval process for partnering entities' use of their own deed. NRCS approval of a template deed is required to ensure the entities' deeds meet the long-term objectives of the program and to provide assurances of the long-term commitment to managing and enforcing easements. Once a template deed is approved, the entity will use that template when acquiring conservation

easements with cost-share assistance from the NRCS. Substantive changes to the template deed must be approved by NRCS prior to use by the eligible entity.

This section also describes other deed requirements. For example, under GRP when the title is held by an eligible entity, the Food Security Act of 1985, at Section 1238Q, requires the Secretary to ensure the deed includes a "contingent right of enforcement" for the Department. Because this right is new in the 2008 Act and is not a standard real property term, NRCS has carefully considered its meaning when promulgating this interim final rule. Specifically, NRCS interpreted the plain meaning of the statutory language, considered the legislative history, and consulted with the Office of the General Counsel for the Department.

The purpose of the right is to ensure that the easement is enforced and that the Federal investment is protected. The caption at Section 1238Q(e) requiring the contingent right of enforcement is entitled "Protection of the Federal Investment." The GRP statute requires that the easement deed include a contingent right of enforcement. Given this requirement, the Agency has determined that it is Congress's intent that such a right run with the land for the duration of the easement. Further, such an interest that runs with the land constitutes a real property right. The agency has considered other theories, including contractual and constitutional authority under the Spending Clause, but none provide a sufficient legal justification for the Secretary to enforce the terms of the easement for its duration against subsequent landowners. Consequently, NRCS has determined that the contingent right of enforcement as used in GRP means a vested real property right, which provides the Secretary, on behalf of the United States, the right to enforce the terms of the easement for the duration of the easement. In addition, because the United States has a real property interest in GRP by virtue of this right of enforcement, the easement cannot be condemned, thereby providing further protection of the conservation easement.

Finally, NRCS is interpreting the term "contingent" in "contingent right of enforcement" to mean that the Secretary exercises that right under certain circumstances, not that the right itself is contingent. Consequently, to prevent confusion over the scope of the right, NRCS is referring to its enforcement right as a "right of enforcement." The definition of the "right of enforcement" set forth at § 1415.3 clarifies that the right is only exercised under certain circumstances.

#### *Section 1415.18 Easement Transfer to Eligible Entities*

The numbering of the existing § 1415.17 is redesignated to § 1415.18 to accommodate the insertion of the new § 1415.17, Cooperative Agreements, as explained above. This section is being re-titled "Easement transfer to eligible entities" to avoid confusion with the use of the term "third parties" elsewhere in the regulation in referring to the provision of technical assistance. The term "NRCS" is replacing "USDA" throughout the section, reflecting that NRCS is the USDA agency delegated responsibility for administering easements under the program.

Section 1415.18 outlines the transfer of easements to eligible entities. Paragraph (a) describes who USDA may transfer title of ownership to for an easement. This rulemaking revises this paragraph by adding "eligible entity to hold and enforce an easement if:" following who USDA may transfer the title of ownership to. The remainder of the paragraph is removed and subparagraphs are added to describe under what circumstances USDA may transfer the easement. This change implements amendments made by the 2008 Act as well as to improve readability.

Paragraph (b) specifies NRCS's continued right to conduct inspection and enforce the easement if transferred. The terms "grazing management plan" and "conservation plan" are being added to this paragraph to clarify that the requirements of any applicable plans are enforceable under the terms of transferred GRP easement. The reference to rental agreements is removed because the section only addresses easement transfers to third parties. These changes provide clarity and reflect changes made by the 2008 Act.

Paragraph (c) describes the assumption of costs by an eligible entity. This paragraph is being removed because it is redundant of the requirements set forth in § 1415.17(c)(10) and subsequent paragraphs are redesignated.

Paragraph (c), as redesignated, sets forth where an eligible entity applies to hold a GRP easement.

Section 1415.18(e) is redesignated as (d) and is amended to outline the requirements of an eligible entity. These amendments regarding the conditions under which the NRCS may approve an application and transfer of the easement are intended to provide clarity and reflect the requirements for eligible entities to accept an easement transfer, including the requirement for a dedicated fund for non-governmental

organizations as discussed under the description of changes to § 1415.17.

Section 1415.18(f) of the 2006 GRP final rule described actions USDA could take if the easement holder fails to enforce the terms of the easement. This paragraph is redesignated as (e) by this rulemaking. New paragraph (e) removes language regarding the Secretary's authority to take back title in the name of the United States if the easement holder dissolves or attempts to terminate the easement and adds language to give the Secretary the ability to inspect the easement for violations and enforce the terms of the easement. This amendment implements changes in the 2008 Act relating to the federal right in GRP funded easement.

Paragraph (g), as re-designated, describes the required actions if a transfer occurs under this section. This paragraph is amended to comply with the requirements set forth in § 1415.17 as well as the addition of a grazing management plan. These changes create consistency with changes to other sections and reflect changes made in the 2008 Act. The reference to the NRCS Field Office Technical Guide is also removed because it is already implied by definition in the reference to the grazing management and conservation plan.

Paragraph (h) of the 2006 GRP final rule is redesignated as (g) by this rulemaking.

#### *Section 1415.19 Appeals*

The numbering of the existing § 1415.18 is changed to § 1415.19 to accommodate the insertion of the new § 1415.17, Cooperative Agreements.

Section 1415.19(a) describes how applicants may appeal decisions regarding GRP. The paragraph is being amended to clarify that appeals procedures apply to administrative actions such as eligibility determinations and to correct the citation for the applicable administrative appeal regulations.

Section 1415.19(b) requires that a person must exhaust all administrative appeals procedures before seeking judicial review. The paragraph is revised to clarify that appeals procedures apply to administrative actions and not for other purposes such as easement enforcement actions. This section is also revised to clarify that a decision of the FSA Administrator or a decision of the NRCS Chief constitutes a final agency action under the administrative appeal procedures.

Section 1415.19(c) is added to clarify that appraisals, market analyses, and related information is considered confidential and will not be disclosed.

This new paragraph incorporates language previously located in Confidentiality, § 1415.20 of the 2006 GRP final rule. Section 1415.20, Confidentiality, is removed in its entirety.

This rulemaking is adding a new paragraph (d) to clarify further that enforcement actions taken by NRCS are not subject to review under administrative appeal regulations. This language is consistent with 7 CFR part 614 and Federal real property law.

#### *Section 1415.20 Scheme and Device*

The numbering on the original § 1415.19 is redesignated to § 1415.20 to accommodate the insertion of the new § 1415.17, Cooperative Agreements. The term “Department” is replaced with “USDA” consistent with the modifications made in definitions under 1415.3. The term “rental contract” was added to (b).

#### *Section 1415.21 Confidentiality*

This section is removed in its entirety and the language is incorporated in section 1415.19(c), because the issue is more appropriately included under section on appeals.

#### *Administrative Requirements for Conservation Programs*

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

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

“(1) To monitor compliance with program requirements;

“(2) To measure program performance;

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

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

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

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

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

Monitor compliance with program requirements. NRCS has established application procedures to ensure that participants 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, sec. 1116) and guidance provided by OMB Circular A–11, NRCS has established performance measures for its conservation programs. Program-funded conservation activity is captured through automated field-level business tools and the information is made publicly available at: <http://ias.sc.egov.usda.gov/PRSHOME/>. Program performance also is reported annually to Congress and the public through the annual performance budget,

annual accomplishments report, and the USDA Performance Accountability Report. Related performance measurement and reporting policies are set forth in Agency guidance (GM\_340\_401 and GM\_340\_403 (<http://directives.sc.egov.usda.gov/>)).

The 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, lacking has been a connection between these data and specific conservation programs. In the future, the interagency Conservation Effects Assessment Project (CEAP), which has been underway since 2003, will provide nationally consistent estimates of environmental effects resulting from conservation practices and systems applied. CEAP results will be used in conjunction with performance data gathered through Agency field-level business tools to help produce estimates of environmental

effects accomplished through Agency programs, such as 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 set forth in Agency guidance (GM\_290\_400; GM\_340\_401; GM\_340\_403) (<http://directives.sc.egov.usda.gov/>).

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

*Track participation by crop and livestock type.* NRCS' automated field-level business tools capture participant, land, and operation information. This information is aggregated in the National Conservation Planning database and is used in a variety of program reports. Additional reports will be developed to provide more detailed information on program participation to meet congressional needs. These and related program management procedures supporting program implementation 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 Farm Bill added a provision stating, "Appraisal and inventory of resources, assessment and inventory of conservation needs, evaluation of the effects of conservation practices, and analyses of alternative approaches to existing conservation programs are basic to effective soil, water, and related natural resources conservation."

The program, performance, and natural resource and effects data described previously will serve as a foundation for the next RCA, which will also identify and fill, to the extent possible, data and information gaps. Policy and procedures related to the RCA are set forth in Agency guidance (GM\_290\_400; M\_440\_525; GM\_130\_402) (<http://directives.sc.egov.usda.gov/>).

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

#### List of Subjects in 7 CFR 1415

Administrative practice and procedure, Agriculture, Soil conservation, Grassland, Grassland protection, Grazing land protection.

■ For the reasons stated in the preamble, the Commodity Credit Corporation revises part 1415 of title 7 of the Code of Federal Regulations 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 to protect 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.

(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 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 program outreach materials at the State and local level 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 grazing management plans and restoration agreements;

(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;

(8) With advice from the State Technical Committee, developing 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 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 Chief, NRCS, or the Administrator, FSA 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 shall preclude the Chief, NRCS, or the Administrator, FSA, 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 State Conservationist and 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 grazing 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 the Farm Service Agency (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 the Natural Resources Conservation Service (NRCS) or the person delegated authority to act for the Chief.

*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. The Chief and Administrator are Vice Presidents of CCC. CCC provides the funding for GRP, and FSA and NRCS administer the 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 in cases where ranking points are assigned and land is enrolled on the basis of resource concerns in addition to grazing land uses. The conservation plan will include the schedule of operations for the implementation and maintenance of practices directly related to the additional land eligibility criteria under which the land is enrolled.

*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 standards and specifications.

*Conservation values* means those natural resource attributes that provide ecosystem functions and values of the grassland area, including but not limited to, habitat for grassland- and shrubland-dependent plants and animals, soil erosion control, 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 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* for the purposes of entering into a cooperative agreement under 16 U.S.C. 3838q(d) means an agency of State or local government, an Indian Tribe, or a non-governmental 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 resources, including habitat for declining species of grassland-dependent birds and animals.

*Farm Service Agency (FSA)* is an agency of the United States Department of Agriculture.

*FSA State Executive Director* means the FSA employee authorized to implement the Grasslands Reserve Program 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 grazing 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, and abundance, 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, pasture, and rangeland, and improved pasture and rangeland.

*Grazing 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 Field Office Technical Guide (FOTG). The grazing 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 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* means a resource that is: (1) Listed in the National Register of Historic Places (established under the National Historic Preservation Act (NHPA), 16U.S.C. 470, *et seq.*); (2) Formally determined eligible for listing 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 (25 U. S. C. 450b(e)).

*Landowner* means a person, legal entity, or Indian Tribe having legal ownership of land. 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 non-governmental organizations that qualify as eligible entities are not eligible to participate as eligible landowners.

*Legal entity* means an entity that is 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 (NRCS)* is an agency of the United States Department of Agriculture.

*NRCS State Conservationist* means the NRCS employee authorized to implement the Grasslands Reserve Programs 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 animals (birds and others) build or otherwise find a place of refuge for purposes of reproduction or dormancy.

*Non-governmental organization* means any organization that:

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

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

(3) Is described—

(i) in Section 509(a)(1) or 509(a)(2) of that Code; or

(ii) 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/or cultural treatments, such as tillage, aeration, fertilization, mowing, 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.

*Plant and animal biodiversity* means the existence of a wide variety of plant and animal species in their natural environments, providing for ecological functions and genetic variations.

*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 minus the landowner donation.

*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 the 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 the USDA 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 an interest in the easement that the United States Government may exercise under specific circumstances in order to enforce the terms of the conservation easement.

*Secretary* means the Secretary of the U.S. Department of Agriculture, or his or her designee.

*Shrubland* means land that the dominant plant species is shrubs, which are plants that are persistent, have woody stems, a relatively low growth habitat, and generally produces several basal shoots instead of a single bole.

*Significant decline* means a decrease of a species population to such an extent that it merits conservation priority, as determined by the NRCS

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 lands* means any lands owned by Indian Tribes, which are defined consistent with Section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U. S. C. 450b(e)).

*USDA* means the U.S. 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 grazing management plan approved by NRCS. 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 grazing management plan. Access to rental contract areas is identified in the GRP grazing 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 the 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 grazing 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 grazing 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; 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) Wind power facilities for on-farm use power generation; 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 rights-of-way, where the easement deed allows the landowner to grant rights-of-way when it is determined by NRCS that granting of such rights-of-way are in the public interest and 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.

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

(1) The production of crops (other than hay), fruit trees, vineyards, or other agricultural commodity that is inconsistent with maintaining grazing land.

(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.

(3) Wind power facilities for off-farm power generation.

(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 the USDA. Land cannot be enrolled in both a rental contract option and an easement enrollment option at the same time. The rental contract shall 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 NRCS 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 the 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; and

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

#### § 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 the 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 the 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 a 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 the State Technical Committee, 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 shall 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—

(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 FSA State Executive Director and NRCS State Conservationist, 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 shall 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 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 shall not exceed 10 percent of the total number of acres accepted for 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, no more than 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 no more than 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. Enrollment under cooperative agreements is described under § 1415.17. The letter notifies the applicant of the intent to continue the enrollment process unless otherwise notified by the applicant.

(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 option 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 shall 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 the GRP. NRCS will proceed with the development of the grazing management plan, or conservation or restoration plans 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 the 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 shall 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 shall 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 FSA Administrator and the NRCS Chief 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 shall 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 asserts no direct or indirect interest on environmental credits that may result from GRP-funded conservation practices and activities through a GRP rental contract, easement, or restoration agreement, 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 environmental credit agreement may affect land covered under a GRP rental contract, easement, or restoration agreement, participants are highly encouraged to request a compatibility assessment from USDA 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 objective and the 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 cost-share percentages, not to exceed statutory limits, available under the 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 NRCS Field Office Technical Guide.

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

(h) 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.

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

(j) 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 State Conservationist or State Executive Director, as appropriate, prior to installation of the practice.

(k) Upon transfer of an easement with a restoration agreement to an eligible entity as described in § 1415.18, the entity shall 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 grazing management plan or any associated conservation plan as described in § 1415.4.

(l) Cooperating entities under § 1415.17 shall be responsible for development, administration, and implementation costs of restoration plans. Restoration plans must be consistent with the grazing management plan or any associated conservation plan as described in § 1415.4.

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

(a) After an easement has been recorded, no substantive modification will be made to the easement.

(b) State Conservationists may approve modifications for restoration agreements and grazing 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, grazing 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 shall 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 shall 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.

(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.

(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 shall 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 shall 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 shall 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, ranchland, 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 non-governmental organizations, the existence of a dedicated account 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) An attachment listing the parcels accepted by the State Conservationist, landowners' names, addresses, location map(s), and other relevant information.

(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 grazing 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) If applicable, the ability of an eligible entity to 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 cost to purchase the easement.

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

(13) That 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) That NRCS may provide a share of the purchase price of an easement under the program, and that the eligible entity shall 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 that describes its successors or assigns to 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.

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

(d) Under the cooperative agreement option, a landowner grants an easement to an eligible entity with which NRCS

has entered into a GRP cooperative agreement. The easement shall require that the easement area be maintained in accordance with GRP goals and objectives for the term of the easement. Easements are acquired in perpetuity, except where State law prohibits a permanent 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 shall be submitted to the Chief within 30 days of the signing of the cooperative agreement. The conservation easement deed templates shall 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) Because title to the easement is held by an entity other than the United States, the conveyance document must contain a "right of enforcement." 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. This right is a vested interest in real property and cannot be condemned or terminated by State or local government.

(2) The eligible entity shall 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 shall be provided to NRCS by the eligible entity.

(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 grazing management plan, or conservation plan as applicable, as approved by NRCS.

(b) NRCS has the right to conduct periodic inspections and enforce the easement, which includes the terms and requirements set forth in the grazing 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 shall 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 ranchland, agricultural land, or grassland for grazing and conservation purposes;

(3) Possesses the human and financial resources necessary, as determined by the Chief, NRCS, 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 non-governmental organization; and

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

(e) The Chief, his or her successors and assigns, shall 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 shall continue to apply to the

United States. Upon transfer of the easement, the easement holder shall be responsible for enforcement of the grazing 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, transferred 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 shall be a final agency action except a decision of

the Chief, NRCS 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 shall 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 Court 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 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 shall 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 14th day of January, 2009, in Washington, DC.

**Arlen L. Lancaster,**

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

**Teresa C. Lasseter,**

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

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