

“boom and bust” land speculation and ensure that farm and ranch lands remain viable in communities across the Nation.

Two respondents indicated their support for the program’s name change from the Farmland Protection Program to the Farm and Ranch Lands Protection Program. Another respondent supported the name change as long as east coast farms remained competitive in acquiring FRPP funds. As it always has, FRPP will continue to protect both farm and ranch land from conversion to nonagricultural uses. The reason for the name change is not to shift the Program’s purpose, but rather to distinguish it from the repealed program and to better describe the types of land the Program seeks to protect.

Another respondent raised the concern that farms and ranches located outside of priority areas be protected. FRPP promotes flexibility and local decision making as it relates to parcel protection. Priority area designation is at the discretion of the State Conservationist, with advice from the State Technical Committee.

Section 1491.2 Administration

In this section, the roles and responsibilities of NRCS were identified. Three respondents indicated that FRPP duplicates many processes already in use by various State and local governments and non-governmental organizations. One of these respondents further went on to state that the FRPP provisions “go way beyond the necessary criteria needed for Federal reimbursement of the easement purchase price and challenge the rights of the State, County, or non-governmental organization as Grantee.” For this reason, the respondents requested that NRCS enter into Memoranda of Understandings with existing State and local farmland protection programs under which non-Federal review procedures and selection criteria would suffice for Federal purposes.

The Farm Security and Rural Investment Act of 2002 states:

The Secretary, acting through the Natural Resources Conservation Service, shall establish and carry out a farmland protection program under which the Secretary shall purchase conservation easements or other interests in eligible land that is subject to a pending offer from an eligible entity for the purpose of protecting topsoil by limiting nonagricultural uses of the land.

In accordance with this statutory language, the Farm and Ranch Lands Protection Program is not a grant program, rather it is a land procurement program that acquires an actual Federal

interest in the Property. In the case of FRPP, the interest acquired is a contingent right. In order to carry out the intent of the statute, NRCS has been active in conducting eligibility determinations, ranking parcels based on its own criteria, and reviewing and approving conservation easements.

Moreover, even if FRPP was a grant program, memoranda of understandings (MOUs) or memoranda of agreements (MOAs) are not legally binding instruments. Therefore, the Federal government does not utilize MOUs or MOAs to provide Federal funds to recipients. NRCS understands the fact that a number of State and local farmland protection programs have a longer history of acquiring parcels than FRPP. Many of these State and local governments have well established procedures to acquire parcels. For this reason, NRCS has and will continue to work with established farmland protection programs utilizing the State Technical Committee. In consultation with the State Technical Committee, NRCS:

- Issues Statewide application guidance;
- Develops ranking criteria that meets the objectives of FRPP and the State and local farmland protection programs; and
- Establishes NRCS State policy as it relates to FRPP easement acquisition.

Eighteen respondents asked that NRCS address FRPP’s association with other conservation programs administered by the United States Department of Agriculture (USDA). NRCS encourages landowners to utilize other conservation programs to protect natural resources on FRPP land. Landowners who enroll in FRPP are eligible to participate in USDA’s cost share programs, including the Agricultural Management Assistance Program (AMA), Conservation Reserve Program (CRP), Environmental Quality Incentives Program (EQIP), Wildlife Habitat Incentives Program (WHIP), and the long-term contract options under the Wetlands Reserve Program (WRP) and Conservation Reserve and Enhancement Program (CREP). One respondent suggested that permanently protected lands, such as FRPP, receive priority ranking in other USDA programs. Current policy allows the NRCS State Conservationist to establish ranking criteria at the State level for other conservation programs. The NRCS State Conservationist has the authority to rank FRPP parcels higher than other parcels, if the State Conservationist deems it to be appropriate.

Thirteen respondents asked NRCS to address, as it relates to FRPP implementation, the Partnership and

Cooperation provision that was authorized in the 2002 Farm Bill. Partnerships and Cooperation, as authorized under the Farm Security and Rural Investment Act of 2002 (Title XII, Subtitle E, Section 1243 (f)), offers new opportunities to address pressing conservation and natural resource needs. The provision provides authority for the Secretary of Agriculture to use resources provided under other conservation programs to enter into stewardship agreements with State and local agencies, Indian tribes, and non-governmental organizations. Under this provision, the State Conservationist, with advice from the State Technical Committee, may designate special projects to enhance technical and financial assistance provided to owners, operators, and producers, and to address natural resource issues related to agricultural production. The U.S. Department of Agriculture is presently working to define the operational aspects of Partnerships and Cooperation. The provision is unique among the new Farm Bill authorities in that it builds from seven core programs, including the Farm and Ranch Lands Protection, Wetlands Reserve, Environmental Quality Incentives, Conservation Reserve, Wildlife Habitat Incentives, Grassland Reserve, and Conservation Security Programs. A number of these core programs required rule development or revision, many of which are in various stages of completion. The results of these activities will influence the overall design for Partnerships and Cooperation.

Section 1491.3 Definitions

This section provides and defines the common terms used throughout the FRPP proposed rule.

Agricultural Uses

Two comments were received concerning this definition. One comment suggests that the term “agricultural uses” should include “the construction of on-farm structures necessary for farm operations,” while the other comment suggests that agricultural uses be defined by the State’s Purchase of Development Rights (PDR) Program, or where no PDR program exists, agricultural uses should be defined by the State agricultural use assessment program. NRCS prefers to continue to utilize the flexibility afforded by the proposed rule’s definition, which allows agricultural uses to be defined at the State level; however, NRCS supports the latter comment of making the definition consistent with the PDR or State