

agricultural use assessment programs' definitions. For this reason, the definition of agricultural uses has been modified in the final rule. To ensure that broad State definitions of agricultural uses do not conflict with FRPP's mandate to protect soils, NRCS has chosen to continue to retain the language: "NRCS reserves the right to impose greater deed restrictions on the property than allowable under a State definition of agriculture in order to protect topsoil."

Conservation Easement

Comments were received from one respondent who requested that the term "agricultural conservation easement" should be used instead of the generic term "conservation easement." NRCS has chosen to continue using the term "conservation easement" because it provides a greater flexibility to work with cooperating entities which may use conservation easements that seek to protect not only farm and ranch lands, but also multiple, compatible conservation values, such as open space, scenic, and wildlife values.

Conservation Plan

Ten respondents requested clarification on the scope of a conservation plan. Several were confused because the preamble stated that "all lands enrolled in FRPP must have a conservation plan developed based on the NRCS Field Office Technical Guide specifications and highly erodible land and wetland conservation provisions in accordance with 7 CFR part 12," while the proposed rule defined a conservation plan as a plan that covered only highly erodible cropland. In accordance with the Food Security Act of 1985, as amended, the authorizing FRPP legislation, a conservation plan under the FRPP will cover only highly erodible cropland. Conservation planning on other lands or on other resources is at the discretion of the NRCS State Conservationist and the cooperating entity.

In addition to the comments requesting clarification of the scope of the conservation plan, nineteen respondents requested that all lands enrolled under FRPP have a conservation plan that addresses all natural resources, not only soil erosion. These resources include: water, wildlife, air, and plants. Three sources noted that a conservation plan should address all natural resources as a benefit to the United States taxpayer. Two respondents suggested that resource concerns be addressed within a specified time frame. In addition to the nineteen respondents, several

respondents asked that specific resources or management activities be addressed in the conservation plan. One respondent requested that water quality should be specifically addressed in the conservation plan, while another requested water quality and wildlife habitat be addressed. Another respondent requested that the conservation plan address pest and weed control, while another requested that all forest land have a forest stewardship plan. Nine respondents requested that a conservation plan be required, but the respondents gave no indication as to what level or whether all the land should be covered by a conservation plan.

Two respondents requested that NRCS consider only those lands with highly erodible soils, and that landowners never be required to have a higher level of planning than those mandated at the time of easement signature. One respondent indicated that planning only for highly erodible land was inadequate for their program. Based on these comments, NRCS has chosen an option that one respondent suggested. The rule will be modified to state that any higher level of conservation planning and implementation be at the discretion of the cooperating entity and the NRCS State Conservationist. By doing this, for FRPP purposes, farmers and ranchers would never be held to a higher erosion standard than at the time of easement signature; the conservation plan would only be required on highly erodible soil as legislatively mandated; yet more land and more resources may be addressed under a conservation plan if the NRCS State Conservationist and cooperating entity deem it to be appropriate.

Other respondents requested modifications to the proposed rule's definition of a conservation plan to incorporate greater landowner involvement. Two respondents suggested modifying the definition to read as follows: "A conservation plan meeting the NRCS Field Office Technical Guide will be developed by the landowner with NRCS assistance," while another respondent suggested the definition include the following statement: "technically feasible, based on local resource conditions, cost effective; and not cause undue economic hardship on the landowner." These suggestions echo NRCS' current conservation planning policy, which takes into account the landowner's needs and economic situation, as well as local resource conditions. For this reason, as well as the intent to mirror FRPP's authorizing legislation's conservation plan definition, NRCS has

chosen not to alter the proposed rule's conservation plan definition.

Eligible Land

One respondent requested that NRCS modify its definition of eligible land to include lands that protect drinking water sources, while another respondent requested that NRCS include in its definition the qualifier that "eligible lands must be under active management that fits the definition of agriculture used by the existing State Purchase of Development Rights (PDR) program, where no such program exists, the definition of agriculture used by the State agricultural use assessment program." Another respondent requested that NRCS specify to what degree non-traditional farm, ranch, and forest land are eligible. The purpose of FRPP is to protect agricultural lands from conversion to nonagricultural uses. NRCS believes that the definition of eligible lands, as currently defined in the statute and the final rule, is broad enough to allow the NRCS State Conservationist to protect any farm and ranch land in any geographic area or under any land use that the State Conservationist, with advice from the State Technical Committee, chooses to protect, as long as it meets the program's broad eligibility guidelines. For this reason, NRCS has chosen to retain the proposed rule's eligible land definition.

Fair Market Value

Three respondents suggested that the definition of fair market value be revised. They indicated that the proposed rule's definition only refers to the fee simple value of a property, not the "before" and "after" values needed to determine the value of a conservation easement. NRCS agrees with amending the definition to account for how conservation easement values are derived. For this reason, NRCS amends the definition as follows:

Fair market value is ascertained through standard real property appraisal methods. Fair market value is the amount in cash, for which in all probability the property would have sold on the effective date of the appraisal, after a reasonable exposure of time on the competitive market, from a willing and reasonably knowledgeable seller to a willing and reasonably knowledgeable buyer. Neither the seller nor the buyer act under any compulsion to buy or sell, giving due consideration to all available economic uses of the property at the time of the appraisal. In valuing FRPP easements, the certified general appraiser estimates both the fair market value of the whole property before the easement acquisition and the fair market value of the remainder property after the easement has been imposed. The difference