

lands revegetated naturally or artificially when routine management of that vegetation is accomplished mainly through manipulation of grazing. Rangelands include natural grasslands, savannas, shrublands, most deserts, tundra, alpine communities, coastal marshes, and wet meadows.

NRCS believes that the aforementioned ranch land definition is too broad and that a broad definition of ranch land could lead to the protection of ranch land that does not meet the statute's intent of protecting prime, unique, and important soils. Moreover, such a definition may limit NRCS' flexibility to protect lands not included in this definition. Another respondent generally stated that eligibility criteria for prime, unique farm and ranch land should be broadened. For the aforementioned reasons, NRCS has chosen not to limit the enrollment of farm and ranch land to one single definition, but instead chooses to determine eligible farm and ranch lands through already established procedures. In determining eligible farm and ranch lands, NRCS will continue to use the procedures that identify important farm and ranch lands outlined in 7 CFR part 657. Under this rule, farm and ranch lands not considered prime and unique may be considered Statewide or locally important, if a State agency or local planning body determines the land to be of importance. If determined to be prime, unique, or Statewide or locally important, these soils are then eligible for FRPP assistance. NRCS believes this process provides sufficient flexibility to protect farm and ranch lands that may not meet the prime and unique definition, but at the same time assures that the Congressional intent of protecting land that has "prime, unique, or other productive soil," is maintained. For this reason, NRCS chooses to retain the original eligibility definition and process determining prime, unique, and important soils.

Section 1491.4 Program Requirements

Three respondents directly or indirectly referred to FRPP as a grant program and that NRCS does not need to substitute its judgment for that of State and local farmland protection programs. As explained previously, the Farm and Ranch Lands Protection Program is not a grant program, rather it is a program where the Federal Government acquires an interest in the Property for the purpose of protecting the resource. For this reason, NRCS has been active and will continue to be active in conducting eligibility determinations, ranking parcels based on its own criteria, and reviewing and approving conservation easements in

order to meet the statutory requirements of the Program.

One respondent questioned FRPP's emphasis on topsoil, stating that "Too much emphasis is placed on protecting topsoil and prime and unique farmland, more of an emphasis should be placed on protecting rangeland and watersheds," while two other respondents believed that requiring a pending offer is unrealistic, burdensome, and requires an expense on the part of the partner. As a result, land deals often fall through because a pending offer is required. In response to these comments, NRCS refers to the FRPP authorizing legislation which sets forth FRPP's purpose, "protecting topsoil by limiting nonagricultural uses of the land." The statute further defines eligible land as "farm and ranch land that has prime, unique or other productive soil; or contains historical or archaeological resources; and is subject to a pending offer for purchase from an eligible entity." In order to comply with its authorizing legislation, NRCS has placed a program emphasis on protecting prime, unique, and important farm and ranch land, as well as requiring a pending offer from an eligible entity. One respondent stated that historical and archeological resources and a pending offer should be factors to consider, not essential to eligibility. NRCS, once again refers to FRPP's authorizing legislation which states that "eligible land means land on a farm or ranch that has prime, unique, or other productive soil; or contains historical or archaeological resources; and is subject to a pending offer for purchase from an eligible entity." NRCS is bound by the statute. Consequently, NRCS has determined that land on a farm or ranch must contain historical or archaeological resources or prime, unique, or other productive soil to be eligible. In either case, the land must also have a pending offer to be eligible for FRPP. One respondent stated that the proposed rule adequately reflects the intent of the statute as it relates to historical and archaeological resources, while one respondent questioned whether parts of a farm can be enrolled. NRCS will enroll all or part of a farm or ranch, so long as 50 percent of the farm or ranch land enrolled consists of prime, unique, or important soils, or contains historical and archaeological resources and is subject to a pending offer.

One respondent stated that all FRPP easements should be perpetual. NRCS agrees with this comment; however, in some States, perpetual easements are prohibited. As a result, NRCS has required that "all easements will be in

perpetuity unless prohibited by State law."

Two respondents indicated their support of NRCS' criteria used to evaluate interested entities that wish to receive FRPP funds in 1491.4(c)(1-4). NRCS will continue to use these criteria to evaluate eligible entities, and to ensure the entities have the capacity to hold, manage, and enforce conservation easements.

Several respondents questioned NRCS' policy on only acquiring conservation easements on privately owned land. One respondent thought that State-owned prison farm and ranch land should be eligible for FRPP, while another respondent questioned whether lands temporarily bought in fee simple by the State or local government can be acquired under FRPP. With a vast majority of the Nation's farm and ranch land being privately owned, the demand for the protection of prime, unique, or important farmland on privately owned land exceeds available funds. As a result, NRCS will continue to place emphasis on protecting privately owned farm and ranch land; however, NRCS will assist public entities with protecting lands if the acquisition of land is temporary and the land will later be sold to a private land owner in fee simple. NRCS will not disburse Federal payment to the public entity until the fee simple rights are transferred to a private landowner.

Six respondents raised concerns about the adjusted gross income land eligibility requirement. Two respondents argued that the adjusted gross income limitation should not apply to FRPP since NRCS is getting equal value in the land and oftentimes at a bargain sale; therefore, the FRPP payment should not be considered a benefit, but rather an equal exchange between the landowner and the United States Department of Agriculture. One respondent stated that the sale of land should not be considered in computing the adjusted gross income limitation, while two respondents stated that this will limit high value land often owned by developers or other landowners, who derive a majority of their income from non-farm or ranch enterprises. One respondent requested that the adjusted gross income limitation be subject to regional variation, while another requested that NRCS explain how this affects corporate owners. Another respondent requested that NRCS specify the adjusted gross income limitation requirements in the final rule, while another respondent indicated that this is just another burdensome step in the easement acquisition process. One respondent requested that the