

for program participation. Four respondents objected to the Chief requiring a standard easement, while two respondents suggested that NRCS utilize a standard conservation easement deed, but provide for the local entity to supply other language as needed to comply with their specific requirements. One respondent objected to NRCS' use of a standard easement template, since NRCS was not a Grantee and the Federal Government's right of asserting the use of a standard easement was questionable. Three other respondents suggested that NRCS develop a standard easement template in each State. One respondent further clarified that the standard easement template should be a part of a Memorandum of Understanding that is signed by the cooperating entity and NRCS. NRCS chooses to retain the flexibility to develop conservation easement deed template by retaining the proposed rule language, if it determines it to be appropriate in order to protect the interests of the United States. However, NRCS finds the current process in which NRCS and the Office of General Counsel review and approve conservation easement templates provided by the cooperating entity to be sufficient at this time. As it has previously done, NRCS and the Office of General Counsel will continue to review conservation easement template deeds to ensure that the easement deeds protect the Federal interest and uphold FRPP's policies and objectives. Where an easement sufficiently deviates from the agreed-to template, NRCS and OGC may review the easement deed.

As it relates to specific language within the proposed rule, another respondent inserted that "at the discretion of the Chief, a standard easement, or equivalent legal form which meets the intent of the 2002 Act, will be required as a condition of program participation." Some entities that partner with NRCS use other forms of deeds to convey the acquisition of development rights. For this reason, NRCS has chosen to adopt this suggestion. Section 1491.4(f) has been changed accordingly.

There was one comment on the confidentiality of information related to the agricultural operation as set forth in 1491.4(g). The respondent requested that information related to the agricultural operation, as well as other incidental information be held in confidence by the State or local farmland protection program and NRCS. The respondent further stated that NRCS should require confidentiality from the non-governmental organization as a condition of partnership with

NRCS. Section 1244 of the Food Security Act of 1985, as amended, states that information provided to the Secretary or a contractor of the Secretary for the purpose of providing technical or financial assistance to an owner, operator, or producer with respect to any natural resources conservation program administered by NRCS or FSA shall not be considered to be public information and shall not be released to any person or Federal, State, local agency or Indian tribe outside the Department of Agriculture. The issue of requiring confidentiality from non-governmental organizations and other cooperating entities will be addressed in a regulation pertaining specifically to confidentiality, which is being developed by NRCS in accordance with Section 1244 of the Food Security Act of 1985, as amended.

Another respondent asked about the timing of the development of the conservation plan. The conservation plan will be developed prior to the payment disbursement made by NRCS to the cooperating entity. One respondent requested that NRCS take the lead in monitoring conservation plans and make the initial determination that the landowner is not in compliance, after which the Grantee will be required to take necessary action. As it relates to monitoring the conservation plan on highly erodible land, the respondent's suggestion is current NRCS policy. If the landowner is found out of compliance with a conservation plan on highly erodible land or is violating wetland conservation provisions, NRCS will work with the landowner to assist the landowner in getting back into compliance. If the landowner refuses to comply with the terms of the conservation plan and has been afforded all the appeal and other administrative rights in accordance with 7 CFR part 12, NRCS will report the conservation plan violation to the cooperating entity. At such time, the cooperating entity will consider such noncompliance with the conservation plan to be an easement violation and the cooperating entity will proceed with their administrative or judicial procedures as it relates to easement violations.

Section 1491.5 Application Procedures

This section articulates how interested entities apply for FRPP assistance. One respondent requested that NRCS require from entities a plan showing how the entity plans to spend FRPP money. The respondent also suggested that NRCS review the entity's management strategies, as well as their ability to manage. NRCS believes that

these concerns are addressed during the application review and the ranking and evaluation of parcels as set forth in Section 1491.6. One respondent requested that a consistent date for annual applications be established to allow for coordination between the Federal and State programs. Two factors make the establishment of a fixed application date problematic. Historically, USDA waits until Congress appropriates funds through an appropriation law. Second, because FRPP is funded annually through CCC, the Office of Management and Budget must apportion the funds to NRCS, before NRCS can obligate the funds to eligible entities.

Section 1491.6 Ranking Considerations and Proposal Selection

This section outlines how NRCS will rank and evaluate proposals from eligible entities. It also examines criteria that may be used by the NRCS State Conservationist to evaluate parcels. A number of respondents commented on this section, particularly the criteria that may be used by the NRCS State Conservationist.

As it relates to overall program administration, two respondents requested that memoranda of understandings be signed with State and local programs to determine a mutually acceptable way for non-federal entities to review and select parcels based on FRPP criteria. The memoranda of understandings, between the NRCS State Conservationist and the State or local programs, would outline mutually acceptable criteria to use in evaluating FRPP proposals. Decisions on which parcels to fund would be made by the cooperating State or local program, not NRCS. In the opinion of the two respondents, it would provide the needed flexibility at the State level, while at the same time reduce duplicative efforts in evaluating parcels. One respondent requested that NRCS purchase properties in a geographic area and match FRPP dollars with State program dollars, not choosing actual parcels which to fund, but rather selecting specific geographic areas. A majority of these concerns regarding review and selection of parcels have been addressed in Section 1491.2 Administration. However, NRCS wishes to further clarify that the FRPP authorizing legislation has a specific purpose of protecting prime, unique, and other productive soil from conversion to non-agricultural uses. This purpose is not always the primary purpose of cooperating entities' programs. For these reasons, as well as the practical reason that NRCS has