

parcel because of the implications surrounding that acquisition. One respondent requested that NRCS clarify what is meant by multi-functional benefits, while another respondent requested that historical and archaeological protection be added to the lists of lands that provide multifunctional benefits where NRCS may place a higher priority. NRCS concurs with the second respondent and will add historical and archaeological protection to the list of multi-functional benefits. In response to the initial comment, NRCS believes that multi-functional benefits vary across the nation; therefore, these multi-functional benefits are best determined by the State Conservationist, with advice from the State Technical Committee. Another respondent asked how certain geographical areas will receive high priority. As it relates to multi-functional benefits in a general sense, NRCS believes that multi-functional benefits and geographic priority areas can best be determined at the State level, where local input is provided through the State Technical Committee on State ranking criteria.

Subpart B—Cooperative Agreements and Conservation Easement Deeds

Section 1491.20 Cooperative Agreements

The section outlines the process of how NRCS enters into cooperative agreements with eligible entities and what constitutes a cooperative agreement. One respondent indicated that NRCS must provide oversight of non-governmental organizations participating in FRPP to assure FRPP obligations are met. NRCS believes that the cooperative agreement, the contractual document between NRCS and the cooperating entity, binds the entity to perform duties and tasks in accordance with program policy and standards. NRCS oversight of these cooperative agreements ensures that

NRCS program policy and objectives are met. Other comments received on topics contained within this section were addressed in other sections of the rule.

Section 1491.21 Funding

The Farm Security and Rural Investment Act of 2002 (2002 Act), provided policy direction for cost sharing in three areas:

- First, it specified that the Federal share could not exceed 50 percent of the appraised fair market value of the conservation easement.
- Second, it made it possible for landowner donations to be included as part of the entity's share.
- Third, it limited the amount of the donation that could be used as part of the entity's share to not more than 25 percent of the conservation easement's appraised fair market value.

The 2002 Act did not provide guidance on the minimum cash contribution by the entity. As a result, the proposed rule attempted to set forth cash requirements by the cooperating entity. Based on these three premises, the agency stated in the proposed rule that an entity may:

- (1) Provide in cash, at least 25 percent of the appraised fair market value of the conservation easement, when accompanied by a landowner donation; or
- (2) Provide in cash, at least 50 percent of the conservation easement purchase price. In this situation, the NRCS share cannot exceed the entity's contribution.

This proposal was met with a great deal of opposition primarily from the land trust community. Of the total 296 letters received, 214 objected to NRCS requiring cooperating entities to provide a minimum cash contribution. They maintain that by proposing a minimum cash contribution by the entity, NRCS is discouraging bargain sales by the landowner. While four respondents argued that if a land owner donated 50 percent of the easement's value and the Natural Resources Conservation Service (NRCS) paid 50 percent, the letter of the law could be met without any cash

commitment from the land trust, fifty-five other respondents suggested a contribution provided by the entity but in a lesser degree to what NRCS proposed, stating that the requirement of a cash match will significantly restrict the number of properties that can be protected under FRPP. Forty-one respondents specifically stated that a landowner should be able to donate more than 25 percent of the appraised fair market value, and that the 25 percent contribution of the appraised fair market value limits the contribution by the landowner, while 175 respondents asked that the rules be rewritten to "base the required match for an easement on the price paid for the property not the price it would be on the open market." In response to all of the above comments, NRCS did not intend to mislead readers that a landowner donation be limited to 25 percent. On the contrary, land donations by the landowner are readily accepted, since the easement acquisition cost is less for both NRCS and the cooperating entity. To take advantage of sizeable landowner donations, NRCS clarified the final rule language by inserting the "50 percent of the purchase price" option.

In response to NRCS' proposed rule options, many within the land trust community countered NRCS' proposal by suggesting the elimination of any mention of the 25 percent of the appraised fair market value requirement and several respondents suggested the following or similar language:

"The entity must provide, in cash, an amount at least half of that provided by the NRCS."

The following table summarizes the FRPP and cooperating entity shares given the proposed rule's language and the above-mentioned language suggested by the land trust community. The analysis assumes that the appraised fair market value of the conservation easement is \$100,000.

COMPARISON OF COST SHARING CRITERIA
PROPOSED FRPP RULE AND THE LAND TRUST SUGGESTION
[Dollars]

Land owner donation	Proposed rule		Land trust suggestion	
	Entity cash share	FRPP share	Entity cash share	FRPP share
Zero	\$50,000	\$50,000	\$50,000	\$50,000
10,000	40,000	50,000	40,000	50,000
25,000	25,000	50,000	25,000	50,000
40,000	25,000	35,000	20,000	40,000
55,000	22,500	22,500	15,000	30,000
70,000	15,000	15,000	10,000	20,000