

from government officials at all levels and the public. Through the NEPA process, consultation is done on a routine basis. NRCS established policies that require "pre-disaster planning" be carried out with all affected State and Federal agencies to ensure everyone understands what NRCS will do in the event of a disaster.

Executive Order 12998

This draft rule has been reviewed in accordance with Executive Order 12998. The provisions of this rule are not retroactive. Furthermore, the provisions of this draft rule pre-empt State and local laws to the extent that such laws are inconsistent with this proposed rule. Before an action may be brought in a Federal court of competent jurisdiction, the administrative appeal rights afforded persons at 7 CFR parts 614 and 11 must be exhausted.

Unfunded Mandates Reform Act of 1995

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, Pub. L. 104-4, NRCS assessed the effects of this rulemaking action on State, local, and tribal governments, and the public. This action does not compel the expenditure of \$100 million or more by any State, local, or tribal government, or the private sector; therefore, a statement under Section 202 of the Unfunded Mandates Reform Act of 1995 is not required.

Discussion of the Proposed Changes to 7 CFR Part 624

Overview

The Emergency Watershed Protection (EWP) Program helps remove threats to life and property that remain in the nation's watersheds in the aftermath of natural disasters such as floods, hurricanes, tornadoes, and wildfires. The EWP Program is administered by the U.S. Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS), which provides technical and financial assistance to local sponsoring authorities to preserve life and property threatened by disaster for runoff retardation and soil-erosion prevention. Funding is typically provided through Congressional emergency supplemental appropriations. Threats that the EWP Program addresses are termed watershed impairments. These include, but are not limited to, debris-clogged stream channels, undermined and unstable streambanks, jeopardized water control structures and public infrastructure, wind-borne debris removal, and damaged upland sites

stripped of protective vegetation by fire or drought. If these watershed impairments are not addressed, they would pose a serious threat of injury, loss of life, or devastating property damage should a subsequent event occur.

NRCS is initiating proposed rulemaking to codify existing EWP program implementation and institute programmatic changes that allow the repair of enduring conservation practices, limit repeated site repairs, allow additional easement purchases, address environmental justice issues, and limits treatments on Federal lands. To implement the proposed action, NRCS would incorporate changes in program administration and in project execution dealing with traditional watershed impairments. It would expand the program by providing for floodplain sediment deposition removal, and repair damaged structural conservation practices to the list of watershed impairments EWP currently addresses. Additionally, the proposed changes include allowing for up to 90 percent cost-share for limited resource areas, limit repair to twice in a ten year period, eliminate the single beneficiary requirement, funds will not be used on Federal lands, purchase of easements on non-agricultural lands, and establish one easement category.

The purpose and need for the NRCS proposed action are to provide administrative transparency that ensures that the public is fully informed of program operations. Program delivery improvements are designed to enable NRCS field and State office personnel to provide EWP assistance more effectively and efficiently. NRCS believes that these improvements would more fully, equitably, and consistently meet the needs of people requiring emergency assistance. Program improvements are designed to address environmental, economic, and social concerns and values.

Proposed changes were identified, discussed, and refined in an ongoing comprehensive program review that NRCS initiated. The process included extensive opportunities for public participation and identified substantive ways to improve the environmental, economic, social, and technical soundness of Program activities. NRCS is now initiating the proposed rulemaking needed to implement the changes to the codified EWP regulations. The National EWP Manual (policy), and Handbook (procedures) will also need to be revised to reflect the changes that NRCS has already instituted, and those that will be adopted if the policies proposed in this

rulemaking are adopted in a final rule after the opportunity for public comment.

Section-by-Section Discussion of Proposed Rule Provisions

Section 624.1 Purpose. This proposed section would modify the existing section to clarify the purpose of the EWP Program.

Section 624.2 Objective. This proposed section would modify the existing section to state that NRCS assists sponsors in the implementation of "emergency recovery measures."

Section 624.3 Scope. This proposed section would revise the existing section and combine subparagraphs (a) and (b) in the current regulation.

Section 624.4 Definitions. The proposed section would rename the current section and would modify the section to provide definitions for the EWP program. The ability to provide assistance on Forest Service lands as identified in the existing § 624.4 is being eliminated from the rule to avoid inappropriate augmentation of appropriations for Forest Service restoration activities. Assistance on National Forest System lands or other Federal lands can be provided in situations where appropriate safeguards are followed to avoid such augmentation.

Section 624.5 Coordination. This proposed section would include a discussion of NRCS coordination in both presidentially declared and State conservationist-declared disasters.

Section 624.6 Program administration. This proposed section now describes the NRCS administration of the EWP Program, eligibility, and sponsor responsibilities.

Section 624.6(b)(1) Exigency. This proposed paragraph has been modified to clarify exigency situations. NRCS has encountered various cases where the term "exigency" (previously found in § 624.5(a)(1)(iv)) is applied too liberally and implemented for purposes for which it was not intended. Interpretations of the terms "exigency" and "non-exigency" (previously found in § 624.5(a)(1)(B)) vary widely within NRCS. In some cases, an "exigency" allowed certain contracting procedures to be waived inappropriately; in others, "exigency" was used to fund projects inappropriately; and in still others, "exigency" is used inappropriately to qualify for a U.S. Army Corps of Engineers (USACE) nationwide general permit.

NRCS did not intend these interpretations when the two categories (exigency and non-exigency) were established. Rather, the original intent