

re-creating the topographic diversity, increasing the duration of inundation and saturation, and providing for the re-establishment of native vegetation. The landowner is provided the opportunity to participate in the restoration efforts.

Landowners retain several rights to the property, including the right of quiet enjoyment, the right to control public access, and the right to undeveloped recreational use such as hunting and fishing. At any time, a landowner may obtain authorization from NRCS to engage in other activities if NRCS determines it will be compatible with the protection and enhancement of the easement's floodplain functions and values. These compatible uses may include managed timber harvest, periodic haying, or grazing. NRCS determines the amount, method, timing, intensity, and duration of any compatible use that might be authorized. While a landowner can realize economic returns from an activity allowed for on the easement area, a landowner will not be assured of any specific level or frequency of such use, and the authorization does not vest any right of any kind to the landowner. Cropping would not be authorized as a compatible use, and haying or grazing would not be authorized as a compatible use on lands that are being returned to woody vegetation.

While NRCS currently only purchases floodplain easements on agricultural lands, NRCS is proposing purchasing floodplain easements on non-agricultural lands. NRCS plans to expand the availability of floodplain easements to low population density, non-agricultural lands. Structures within the floodplain easement may be demolished or relocated outside the 100-year floodplain, whichever costs less.

This element of the proposed rule would tend to increase program costs in the short-term, but reduce costs to the Federal government in the long-term, as people and structures in non-agricultural areas are relocated out of the floodplain. In addition, as more acreage is returned to open space, the floodplain would function in a more natural state with increased long-term public benefits.

Section 624.11 Waivers. This section is being proposed to provide NRCS with the opportunity to waive those provisions of the proposed rule that are not prohibited by the law. Situations may arise that could be addressed through the EWP Program but proposed provisions in this proposed regulation may restrict or not allow NRCS to provide EWP assistance. This section is being proposed to avoid these situations

and to allow NRCS to provide assistance for disaster recovery.

List of Subjects in 7 CFR Part 624

Disaster assistance, Floodplain easement, Flooding, Imminent threat, Natural disaster, and Watershed impairment.

Accordingly, for the reasons stated in the preamble, it is proposed that Title 7 of the Code of Federal Regulations be amended by revising Part 624 to read as follows:

PART 624—EMERGENCY WATERSHED PROTECTION

Sec.	Purpose.
624.1	Purpose.
624.2	Objective.
624.3	Scope.
624.4	Definitions.
624.5	Coordination.
624.6	Program administration.
624.7	Cost-sharing.
624.8	Assistance.
624.9	Time limits.
624.10	Floodplain easements.
624.11	Waivers.

Authority: Sec. 216, Pub. L. 81–516, 33 U.S.C. 701b–1; Sec. 403, Pub. L. 95–334, as amended, 16 U.S.C. 2203; 5 U.S.C. 301.

§ 624.1 Purpose.

The Natural Resources Conservation Service (NRCS) is responsible for administering the Emergency Watershed Protection (EWP) Program. This part sets forth the requirements and procedures for Federal assistance, administered by NRCS, under Section 216, Public Law 81–516, 33 U.S.C. 701b–1; and Section 403 of the Agricultural Credit Act of 1978, Public Law 95–334, as amended by Section 382, of the Federal Agriculture Improvement and Reform Act of 1996, Public Law 104–127, 16 U.S.C. 2203.

§ 624.2 Objective.

The objective of the EWP Program is to assist sponsors, landowners, and operators in implementing emergency recovery measures for runoff retardation and erosion prevention to relieve imminent hazards to life and property created by a natural disaster that causes a sudden impairment of a watershed.

§ 624.3 Scope.

EWP technical and financial assistance may be made available to a qualified sponsor, or landowners when a floodplain easement is the selected alternative, upon a qualified sponsor or landowner's request when a Federal emergency is declared by the President or when a local emergency is declared by the NRCS State conservationist. This program is designed for emergency

recovery work, including the purchase of floodplain easements. Emergency watershed protection is authorized in the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa.

§ 624.4 Definitions.

(a) *Defensibility* means the extent to which an alternative action is:

- (1) More beneficial than adverse in the extent and intensity of its environmental and economic effects;
- (2) In compliance with Federal, State, and local laws;
- (3) Acceptable to affected individuals and communities;
- (4) Effective in restoring or protecting the natural resources;
- (5) Complete with all necessary components included; and
- (6) Efficient in achieving the desired outcome.

(b) *Exigency* means those situations that demand immediate action to avoid potential loss of life or property, including situations where a second event may occur shortly thereafter that could compound the impairment, cause new damages or the potential loss of life if action to remedy the situation is not taken immediately.

(c) *Floodplain easement* means a reserved interest easement, which is an interest in land, defined and delineated in a deed whereby the landowner conveys all rights and interest in the property to the grantee, but the landowner retains those rights, title, and interest in the property which are specifically reserved to the landowner in the easement deed.

(d) *Imminent threat* means a substantial natural occurrence that could cause significant damage to property or threaten human life.

(e) *Limited resource area or community* is defined as a unit of government or a group of people within a bounded geographical area who interact within shared institutions, and who possess a common sense of interdependence and belonging where:

- (1) Housing values are less than 75 percent of the State housing value average;
- (2) Per capita income is 75 percent or less than the National per capita income; and
- (3) Unemployment is at least twice the U.S. average over the past 3 years based upon the annual unemployment figures.

NRCS will use the most recent National census information available when determining (1) and (2) above.

(f) *Natural occurrence* includes, but is not limited to, floods, fires, windstorms,