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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1415

Grassland Reserve Program

AGENCY: Commodity Credit Corporation (CCC), United States Department of Agriculture (USDA).

ACTION: Interim final rule with request for comments.

SUMMARY: The Farm Security and Rural Investment Act of 2002 (2002 Farm Bill) amended Chapter 2, Subtitle D, of Title XII of the Food Security Act of 1985, to add Subchapter C authorizing the Grassland Reserve Program (GRP), 16.U.S.C. 3838n - 3838q. The purpose of this program is to assist landowners and others in restoring and protecting eligible grassland and certain other lands through rental agreements and easements. This interim final rule sets forth how the Secretary of Agriculture (the Secretary), using the funds, facilities, and authorities of the Commodity Credit Corporation (CCC), will implement GRP to meet the statutory objectives of the program.

USDA made a determination to issue an Interim Final Rule with request for comments rather than a proposed rule in order to implement the program in fiscal year 2004 pursuant to this rule. USDA believes it is critical to put into place a rule that will guide the Department in implementing the program while at the same time provide the public with notice regarding how the program will be implemented. USDA also gave consideration to the fact that GRP implementation will be modeled after other established conservation programs. USDA is using its experiences from implementing other similar programs to develop operating procedures.

USDA will consider all comments received when promulgating a final GRP rule.

DATES: Comments must be received by [60 days after publication in the FEDERAL REGISTER].

ADDRESSES: Send comments by mail to Easement Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013-2890; or by e-mail: FarmBillRules@usda.gov; attn: Grassland Reserve Program. This rule may also be accessed via Internet through the NRCS homepage at <http://www.nrcs.usda.gov/programs/GRP> by selecting “Farm Bill” from the menu, then “Rules published in the Federal Register,” and then selecting “Grassland Reserve Program.” The rule may also be reviewed and comments submitted via the Federal Government’s centralized rulemaking website at <http://www.regulations.gov>. All comments, including the name and address of each commenter, will become a matter of public record, and may be viewed during normal business hours by contacting NRCS at the address above.

FOR FURTHER INFORMATION CONTACT: Richard Swenson, Director, Easement Division, NRCS, P.O. Box 2890, Washington, D. C. 20013-2890; telephone: (202) 720-1845; fax: (202) 720-4265; e-mail: richard.swenson@usda.gov, Attention: Grassland Reserve Program. Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact the USDA Target Center at (202) 720-2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Regulatory Certifications

Executive Order 12866

The Office of Management and Budget (OMB) determined that this interim final rule is significant and must be reviewed by the Office of Management and Budget under Executive

Order 12866. USDA conducted a cost-benefit analysis of the potential impacts associated with this Interim Final Rule.

Five options for determining State funding levels and their impacts on enrollment are examined. The first two examine alternatives for balancing GRP objectives. These options include: (1) the Selected Option, which balances the amount of grassland, number of livestock operations, biodiversity, and landowner demand, and (2) a continuation of FY2003 procedures, which is like the Selected Option, except for not giving consideration to landowner demand. The three additional options examine the consequences of concentrating on only a single objective, e.g. native grasslands.

The Selected Option allocates State funding as a function of State number of grazing operations, acres of grassland under the threat of conversion, bio-diversity considerations, and State demand for funds, as measured by the number of offers for the GRP. This process is the same used in FY2003, except it includes consideration of interest within a State for demand for funds. This last component addresses high FY2003 participation demand.

Although the Selected Option enrolls fewer grasslands than some other options, the Selected Option distributes funds to States based on the number of grazing operations, the threat of grassland conversion to other uses, and a bio-diversity index, recognizing the implicit equality given the three program objectives by the statute. The demand component was used to capture producer willingness to participate and the quality of offers. Because this option balances the three statutory objectives, no single objective is maximized.

Copies of the analysis may be obtained from Richard Swenson, Director, Easement Division, NRCS, P.O. Box 2890, Washington, D. C. 20013-2890; telephone: (202) 720-1845; fax (202) 720-4265; e-mail: richard.swenson@usda.gov, Attention: Grassland Reserve Program

and electronically at <http://www.nrcs.usda.gov/programs/GRP/>.

Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994

Pursuant to section 304 of the Federal Crop Insurance Reform Act of 1994 (Pub. L. 103-354), USDA classified this rule as non-major. Therefore, a risk analysis was not conducted.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this Interim Final Rule because the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553, or by any other provision of law, to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Small Business Regulatory Enforcement Fairness Act of 1996

This Interim Final Rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This Interim Final Rule will not result in annual effect on the economy of \$100 million or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based companies to compete in domestic and export markets.

Environmental Analysis

An Environmental Assessment (EA) has been prepared to assist in determining whether this Interim Final Rule would have a significant impact on the quality of the human environment such that an Environmental Impact Statement (EIS) should be prepared. Based on the results of the EA, USDA proposes issuing a Finding of No Significant Impact (FONSI) before a final rule is published. Copies of the EA and FONSI may be obtained from Andree DuVarney, National Environmental Specialist, Ecological Sciences Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013-2890. The GRP EA and FONSI will also be available at the following Internet address: <http://www.nrcs.usda.gov/programs/GRP>. Written

comments on the EA and FONSI should be sent to Andree DuVarney, National Environmental Specialist, Ecological Sciences Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013-2890, or submit them via the Internet to andree.duvarney@usda.gov.

Paperwork Reduction Act

Section 2702 of the Farm Security and Rural Investment Act of 2002 requires that the implementation of this provision be carried out without regard to the Paperwork Reduction Act, Chapter 35 of title 44, United States Code. Therefore, USDA is not reporting recordkeeping or estimated paperwork burden associated with this Interim Final Rule.

Civil Rights Impact Analysis

USDA has determined through a Civil Rights Impact Analysis that the issuance of this rule discloses no disproportionately adverse impacts for minorities, women, or persons with disabilities. Copies of the Civil Rights Impact Analysis is available, and may be obtained from Richard Swenson, Director, Easement Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013-2890, and electronically at <http://www.nrcs.usda.gov/programs/GRP>.

Executive Order 12988, Civil Justice Reform

This Interim Final Rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. The rule is not retroactive and preempts State and local laws to the extent that such laws are inconsistent with this 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, 780, and 11 must be exhausted.

Executive Order 13132, Federalism

This Interim Final Rule has been reviewed in accordance with the requirements of Executive Order 13132, Federalism. USDA has determined that the rule conforms to the federalism principles set forth in the Executive Order; would not impose any compliance cost on the States; and would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities on the various levels of government.

Unfunded Mandates Reform Act of 1995

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531-1538, USDA assessed the effects of this rulemaking action of 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 anyone in the private sector; therefore, a statement under section 202 of the Act is not required.

Background

Historically, grassland and shrublands occupied approximately one billion acres, about half the landmass of the 48 contiguous United States (Richard Conner, Texas A&M, June 2001). Roughly 50 percent of these lands have been converted to cropland, urban land, and other land uses. Privately owned grasslands (pastureland and rangeland) cover approximately 526 million acres in this country (1997 National Resource Inventory (NRI)). Grasslands provide both ecological and economic benefits to local residents and society in general. Grassland importance lies not only in the immense area covered, but also in the diversity of benefits they produce. These lands provide water for urban and rural uses, livestock products, flood protection, wildlife habitat, and carbon sequestration. These lands also provide aesthetic value in the form of open space and are vital links in the enhancement of rural social stability and economic vigor, as well

as being part of the Nation's history.

Grassland loss through conversion to other land uses such as cropland, parcels for home sites, invasion of woody or non-native species, and urban development threatens grassland resources. About 24 million acres of grasslands and shrublands were converted to cropland or non-agriculture uses between 1992 through 1997 (1997 National Resource Inventory).

In Fiscal Year (FY) 2003, GRP was implemented through a notice of funds availability published in the Federal Register on June 13, 2003 (See Federal Register Vol. 68, No. 114). The document explained that in FY 2003, CCC intended to use GRP to protect grazing lands from conversion, and support efforts to maintain or enhance biodiversity.

The Secretary has delegated authority to implement GRP jointly to the Administrator, Farm Service Agency (FSA), and the Chief, Natural Resources Conservation Service (NRCS). In addition, limited responsibilities associated with easement management and general program development have been delegated to the Forest Service (FS). Activities identified in this interim rule as being conducted by the USDA or the CCC will be performed by representatives of these three agencies, as appropriate.

The GRP rental agreements and easements are designed for working agricultural lands. Therefore, the program provides incentives to protect grassland resources while enabling agricultural producers to use the forage in their agricultural operation. There are multiple enrollment duration options for both the rental agreements and easements.

In the 2002 Farm Bill Managers' Report, Congress recommended that the GRP enrollment process be modeled after the Conservation Reserve Program (CRP), 16 U.S.C.3835a and the Wetlands Reserve Program (WRP), 16 U.S.C.3837 et seq. Like the CRP Continuous Sign-up and the WRP, applications for program enrollment in GRP can be filed at any time

throughout the year. Application selection is based on ranking and selection criteria developed at the State level, following broad National guidelines. Although the GRP rental agreements are for working lands, the rental agreements are modeled after the CRP long-term rental contracts. Likewise, the easement acquisition process is similar to that used in the WRP. With both GRP easements and rental agreements, participants will have the opportunity to utilize common management practices to maintain the viability of the grassland acreage.

The Secretary evaluated whether the GRP could be administered by partnering with third parties to acquire easements, similar to the Farm and Ranch Lands Protection Program, 16 U.S.C. 3838h and 3838i, and concluded that the GRP statute does not provide authority to do so.

The GRP statute provides broad land eligibility criteria regarding the type of grasslands that can be enrolled in the program. USDA proposes in this regulation to emphasize program implementation to preserve the Nation's most critical grassland resources, both native and natural grasslands, and shrublands.

Discussion of the Program

The Grassland Reserve Program (GRP) is a voluntary program to assist landowners and agriculture operators in restoring and protecting grassland and land that contains forbs and shrublands. The Secretary of Agriculture delegated the authority to administer GRP on behalf of the Commodity Credit Corporation, to the Chief, Natural Resources Conservation Service (NRCS) and the Administrator, Farm Service Agency (FSA). These agency leaders are Vice Presidents of the CCC. NRCS has the lead responsibility on technical issues and easement administration, and FSA has the lead responsibility for rental agreement administration and financial activities. The Secretary also delegated authority to the Forest Service to hold easements at the option of the landowner, on properties adjacent to USDA Forest Service

properties. At the State level, the NRCS State Conservationist and the FSA State Executive Director will determine how best to utilize the human resources of both agencies to deliver the program and implement National policies in an efficient manner.

The program has a statutory enrollment cap of two million acres of restored or improved grasslands. USDA may enroll an excess of two million acres in the program, providing the additional acreage does not require restoration, and the program has sufficient funding. The statute also requires that 40 percent of the program funds be used for 10-year, 15-year, and 20-year rental agreements, and 60 percent of the funds be used for 30-year rental agreements and easements.

As defined in this rule, the term “restoration” not only includes restoring grassland from cropland and other uses, but it also refers to improving lands with existing stands of grasses, forbs, and shrubs. USDA has defined “restoration” as the implementation of any conservation practice (vegetative, management, or structural) that improves the values and functions of grasslands (native and natural plant communities). The term “improves” in this context means taking an existing grassland and moving it toward a higher functioning grassland condition. The definition of restoration is found in section 1415.3 of this rule. This regulation does not define the required restored condition in order to allow for flexibility in making such determinations at the local level in accordance with local conditions and desired outcomes. USDA recognizes that restoration includes the process of establishing practices and managing the land to reach a desired grassland condition. Enrolled lands will require periodic manipulation to maximize wildlife habitat and preserve grassland functions and values over time. The “restored” grassland condition will be determined by the NRCS State Conservationist, with input from the State Technical Committee.

GRP enrollment options include easements with various durations, including 30 years, permanent, or for the maximum duration allowed under State law; or rental agreements with a duration of 10-, 15-, 20-, or 30-years. Participants can enter into a restoration agreement in conjunction with either an easement or rental agreement, at the discretion of the USDA and if desired by the participant, to restore the ecological functions and values of these lands. The GRP statute does not authorize USDA to use restoration agreements as a stand-alone enrollment option.

As set forth in section 1415.5, land is eligible if it is privately owned land, including tribal land, and it is: 1) grassland, land that contains forbs, or shrubs (including rangeland and pastureland); or 2) located in an area that has been historically dominated by grassland, forbs, and shrubs and has potential to provide habitat for animal or plant populations of significant ecological value if the land is retained in the current use of the land or restored to a natural condition. Lands incidental to the above described eligible lands may also be enrolled if the Secretary determines enrollment of such land is necessary for the efficient administration of a rental agreement or easement. Privately owned land does not include land owned by the Federal, State, or local government.

USDA, at the State level, based on national guidance, shall establish criteria to evaluate and rank applications for easements and rental agreements as outlined in this regulation at section 1415.8. As required by statute, emphasis will be placed on supporting grazing operations, plant and animal biodiversity, and grassland and land containing shrubs or forbs under the greatest threat of conversion.

USDA evaluated the following two approaches for allocating funds to projects. One approach is to allocate funds to States using a formula that incorporates factors associated with

the program's areas of emphasis. Under this approach, each NRCS State Conservationist and the FSA State Executive Director would be given the responsibility to develop, within broad national guidelines and with input from State Technical Committees, ranking criteria against which to evaluate and select applications for funding.

Another approach is to develop national criteria and have all applications evaluated and selected nationally. Allocations would not be provided to States. USDA has used both approaches when implementing other conservation programs. Based on its experience with implementing GRP in fiscal year 2003, USDA is adopting the approach of allocating funds to States for selection of projects at the State level. This approach allows USDA to enhance its ability to address State grassland concerns, as well as enable States to use all conservation programs in a coordinated effort to address grassland concerns, giving consideration to the entire ecosystem. USDA recognizes that this approach results in some differences between State ranking criteria, and that it may be more challenging to address specific national priorities. USDA welcomes comments on this decision. State ranking criteria will be available to the public through local USDA service centers or on the NRCS Grassland Reserve Program web site. See www.nrcs.usda.gov. Select "Programs" from the menu, then "Grassland Reserve Program." Anyone having comments on the 2003 State ranking criteria should refer the comments to the respective NRCS State Conservationist or FSA State Executive Director located in the USDA State Office. Addresses for the State offices are available at <http://www.fsa.usda.gov/pas/default.asp>. Select "Your State Office" from the menu bar.

USDA seeks public comment on the criteria and weighting factors that should be used to allocate funds to States, and the national guidance from which States develop their individual ranking criteria. In particular, USDA asks that respondents provide information on credible data

that is national in scope related to grassland plant and animal biodiversity. The current allocation formula, developed by USDA at the national level, includes data from the NRI regarding pasture and rangeland conversion, prime farmland used as range or pasture, and total range and pastureland acreage. From agriculture statistics USDA uses data regarding agriculture operations. USDA also includes information from the U.S. Fish and Wildlife Service about threatened and endangered plant and animal species. The data was categorized as either being a biodiversity, conversion, or grazing operation factor. In addition, now that USDA has collected program demand data from the 2003 signup, there will be a demand factor included in the State allocation formula. Program demand data is expressed in terms of total applications received, total acres offered for enrollment, and total estimated cost of applications received. For fiscal year 2004 and beyond, demand may be reflected in terms of applications received, acreage associated with such applications, funding needs associated with unfunded applications, or a combination of all three. USDA intends to provide equal weight to each area of emphasis (grazing operations, threat of conversion, and biodiversity of plants and animals) and the demand category in the allocation formula.

Once USDA State offices receive their allocation, FSA and NRCS, at the State level, will determine the distribution of funds within the State, with input from the State Technical Committee. FSA and NRCS may allocate funds to regions based on natural resource priority, distribute funds for easements and rental agreements based on landowner interest in the various enrollment options, or establish funding pools. If a State office lacks funds to enroll an entire project, the applicant will be provided the opportunity to reduce the amount of land offered, or change the duration of the enrollment option, providing the ranking score is not lowered below the score of the next application on the ranking list. If the applicant declines adjusting the

offered acreage level, the USDA at the State level can accept the next eligible application on the list of unfunded applicants.

Easements

Section 1415.4 provides that for participation in an easement option, the applicant must be the owner of the eligible land. To grant an easement to the United States, the landowner must possess clear title to the land or be able to provide subordination agreements from third parties with interest in the land, and provide access to the property from a public road. The landowner must comply with the terms of the easement and associated restoration agreement, if one is required.

Easement payments are based on the current market value of the land less the grazing value of the land encumbered by the easement. Under the terms of the easement, in addition to the use of the forage, the landowner retains the right to grassland uses so long as such use is compatible with maintaining the viability of the grassland resources. In addition to grazing, haying, mowing, and seed production, other uses may include hunting, fishing, hiking, camping, bird watching, and other non-motorized recreational activities. Since landowners retain certain rights to grassland resources, for appraisal purposes, grazing value has been defined as grassland value. Land values will be determined through a site-specific appraisal. For 30-year easements, or an easement for the maximum duration allowed under State or tribal law, a landowner receives 30 percent of the appraised value for a permanent easement. Easement payments may be provided in one lump sum payment at the time of closing or participants may elect to receive installment payments. Participants who elect to receive installment payments can receive no more than 10 annual payments of equal or unequal amount, as agreed to by the USDA and the landowner.

USDA has developed a standard conservation deed that the United States will use for all easements purchased under GRP. A copy of the deed may be viewed at <http://www.nrcs.usda.gov>.

Subsurface resource concerns.

In promulgating this rule, USDA considered whether the exploration and development of subsurface resources was compatible with the purpose of GRP. The GRP statute provides that the conduct of any activity that would disturb the surface of the land covered by the GRP easement or rental agreement is prohibited, except for restoration, fire rehabilitation, and construction of fire breaks. Therefore, the extraction of subsurface resources is prohibited on all lands participating in GRP. However, subsurface resource exploration and extraction is permissible when it is accomplished remotely, that is from adjacent land not covered by a GRP easement, and when it does not result in subsidence or any other adverse effects to the surface estate. USDA finds the extraction of certain materials, such as gravel, to be inconsistent with the purposes of the program. USDA contemplated appraising land based on surface rights alone, but determined that this appraisal method prohibits USDA from restricting the disturbance of the surface when such rights are owned by the GRP participation landowner. Therefore, the easement appraisal will consider full market value rather than surface value, in those instances where the applicant owns the rights to the surface and subsurface estate.

For rental agreements, USDA is adopting subsurface resource policy similar to that of the Conservation Reserve Program. If the subsurface resources are severed and the owner of such rights decides to extract the resources, the affected land will be terminated from the rental agreement with no penalty to the participant. If the rights are not severed and the landowner participant exercises such rights, the participant will have to refund to the USDA payments

received on the affected acres.

Rental Agreements

Section 1415.4 provides that landowners and other people who have general control of property may apply for enrollment in rental agreements through GRP. Applicants who are not landowners need to provide evidence of control of the property for the length of the agreement. If rental agreement payments are to be divided between the landowner and other participants or multiple landowners, the rental agreement will need to be signed by all parties, indicating their respective share of the payments.

As required by statute, rental payment amounts will not exceed 75 percent of the grazing value for the length of the agreement. Rental payments will be paid annually after the anniversary date of the agreement. Local grazing values are determined based on a methodology developed for the CRP using estimated forage production by soil type and knowledge of local rental rates. USDA will make administrative adjustments to local rates in areas where there is a dramatic difference between county rates. County rental rates will be posted in USDA Service Centers after being evaluated locally by USDA representatives to determine whether the rates generally reflect local prevailing rental rates. There may be some significant differences within a State due to elevation changes and precipitation variability.

Persons who participate in a rental agreement may offer the land for an easement, providing the duration of the easement exceeds the duration of the rental agreement, the application ranks high enough to be funded, all other eligibility criteria are met, and funds are available to acquire an easement. The easement application will be considered a new offer that will be evaluated with all other new offers. The rental agreement will be terminated upon easement closing. This policy allows USDA to obtain longer term protection on lands

considered valuable for enrollment. This policy will apply to those individuals who signed up for a rental agreement in FY2003 and subsequent years.

Provisions that apply to both Easements and Rental Agreements

Program participants are subject to the Adjusted Gross Income Limitation set forth at 7 CFR Part 1400. In summary, this limitation provides that individuals or entities that have an average adjusted gross income exceeding \$2.5 million for the three tax years immediately preceding the year the contract is approved are not eligible to receive program benefits or payments, unless 75 percent of the adjusted gross income is derived from farming, ranching, or forestry operations. Easement or rental agreement payments received by a participant shall be in addition to any payments that the participant is otherwise eligible to receive under other Federal laws.

As required by statute, easements and rental agreements will:

(1) permit grazing on the land in a manner that is consistent with maintaining the viability of the grassland, shrubs, forbs, and habitat for wildlife species adapted to the locality.

(2) permit haying, mowing, or harvesting for seed production, except during the nesting season for birds in the local area that are in significant decline. When bird species are identified by USDA as needing protection during the nesting season, mowing, haying, and harvesting of grass seed will be permitted as determined by the NRCS State Conservationist in accordance with Federal and State law. In making this determination, NRCS will consult with the State Technical Committee, which includes representation from appropriate State and Federal agencies.

(3) allow for fire rehabilitation and construction of firebreaks, fences, watering facilities, and practices that protect and restore the grasslands functions and values.

(4) prohibit the production of row crops, fruit trees, vineyards, or any other agricultural commodities or activity that requires disturbance of the soil surface, except for those activities permitted above. Grassland and wildlife management practices and restoration activities that require disturbing the soil surface, such as light discing, will be permitted at the discretion of USDA.

Both GRP easements and rental agreements will require that the land is managed to maintain the vitality of the plant community as described in the conservation plan. The plan will take into account management practices necessary for the control of invasive species. At the discretion of USDA and subject to funding availability, landowners may include a restoration agreement with both enrollment options that will provide for: maintaining the viability of the grassland; sufficient ground cover to protect the soil from wind and water erosion; forage production for grazing animals, and wildlife habitat. The grassland restoration plan will be implemented according to the schedule developed by USDA. Restoration agreements will provide cost-share assistance for installing practices that will restore or protect the functions and values of the grassland and shrubland. In addition to reestablishing desirable grass cover, restoration practices may include practices associated with grazing management, or other management activities designed to preserve grassland acreage, such as controlled burns. The GRP statute provides that payments may be made to the participant of not more than 90 percent for the cost of carrying out restoration measures and practices on grassland and shrubland that has never been cultivated, and not more than 75 percent on restored grassland and shrubland that at one time was cultivated. Cost-shared practices shall be maintained by the participant for the life of the practice. The life of the practice is determined by the NRCS State Conservationist, and shall be consistent with other USDA conservation programs. All conservation practices will be

implemented in accordance with the NRCS Field Office Technical Guide.

Summary of Provisions and Request for Comment

USDA welcomes comments on all aspects of this Interim Final Rule. The following describes the specific requirements in each section of the regulation. Activities identified in this regulation as being conducted by USDA or the CCC, will be performed by representatives of either the Farm Service Agency, the Natural Resources Conservation Service, or the U.S. Forest Service. Additionally, USDA fully intends to use the services of third party providers identified in 7 CFR Part 652.

Section 1415.1 Purpose.

This section sets forth the purpose and objectives of the program. In carrying out this program, the Secretary will focus GRP resources on the following:

1. preserving native and natural grasslands and shrublands;
2. protecting grassland and shrubland from the threat of conversion; conversion refers to all threats, including conversion to non agriculture uses, conversion to cropland, and vegetation changes to non-grassland covers;
3. supporting grazing operations; and
4. maintaining and improving plant and animal biodiversity.

The Secretary has determined that it makes sense to focus the program on those grasslands and shrublands that are at greatest risk of being lost. Therefore, the overall program emphasis will be on preserving native and natural species.

After completing the FY 2003 sign-up, USDA received feedback from conservation organizations and Congressional representatives that GRP should focus on restoring and protecting native and natural grasses, shrubs, and forbs. The statute identifies eligible land as

grassland, land that contains forbs, or shrubland. It does not identify whether the program should emphasize native species, nor does it exclude certain types of grassland or shrublands from being enrolled in the program. However, USDA recognizes that grassland and shrublands that are native support an abundant diversity of plant and animal species along with other attributes. Once native grassland or shrubland is converted, it is often impractical, and sometimes impossible, to restore the land with its many attributes back to its original state. In many areas of the country where it is impractical to restore native plant species, other nonnative species have been used to serve similar purposes. Consequently, USDA proposes to emphasize protecting those eligible lands that consist of native and natural species.

Conservation organizations and Congressional representatives also expressed that USDA should use the Farm and Ranch Lands Protection Program (FRPP) to protect land subject to urban conversion pressures, and that GRP should focus on lower cost land subject to other conversion pressures outside of developing urban areas. These concerns primarily result from the high cost of easements in urban areas. The Secretary has the authority through FRPP, not GRP, to leverage Federal funds with non-Federal funds. The GRP statute does not provide the Secretary the flexibility to offer easement applicants amounts lower than the fair market value less the grazing value, nor does the USDA have the authority to share with other third parties the cost of acquiring easements. Therefore, the Secretary has been contemplating how the implementation of these two easement programs should fit together. When considering the scope of eligible lands, the amount of interest expressed by people to participate in GRP (approximately 13,000 applications offering 8.9 million acres received in FY 2003), and the limited GRP funding, the Secretary determined that USDA can preserve far greater grassland resources if GRP focuses on non-urban lands. The Secretary recognizes that in some States the

primary threat to grassland is urban development, and that GRP rental agreement payment rates will provide little incentive to keep the acreage in grass cover. Since easement costs in areas with intense urban pressures tends to be quite high on a per acre basis, and FRPP is able to leverage a large percentage of funds with non-Federal sources while GRP cannot, the Secretary may utilize FRPP easements to the extent practical on lands under extreme threat of conversion to non-agricultural uses. However, the focus of FRPP will remain protecting lands for broad agricultural use, including cropland. The Secretary intends to take a common sense approach to implementing both programs, and where it is more appropriate or strategically advantageous to protect important grassland in urbanizing areas, the USDA may use GRP to purchase easements in those areas. USDA State offices will be provided the flexibility to minimize the enrollment of high cost projects by considering cost in the State ranking criteria.

Section 1415.2 Administration.

This section includes language on general program administration and policy that sets forth the role of the State Technical Committee in the development of criteria for ranking and selecting applications and addressing related technical and policy matters in the implementation of the program.

Section 1415.3 Definitions.

This section defines terms used throughout the proposed rule. Some of the terms in this section such as Administrator, Chief, Commodity Credit Corporation, Cost-share, Department, etc., are not unique to GRP, and the definitions are consistent with definitions in other program regulations. For other terms, such as grassland value, grazing value, restored grassland, restoration etc. this section defines how these terms will be utilized for GRP.

Section 1415.4 Program Requirements.

In this section, USDA identifies the requirements for participation in GRP. Earlier in the preamble section 1415.4(a) was referenced regarding ownership requirements. Section 1415.4(c) requires that participants follow a conservation plan that maintains the viability of the grassland regardless of the grassland use. The Secretary has determined that such a requirement is needed to carryout the purposes of GRP (see 16 U.S.C. 3830o). The level of restoration or management required in a conservation plan is established by the NRCS State Conservationist in each State, with input from the State Technical Committee.

USDA is seeking input regarding GRP project management. Under this rule, USDA is requiring participants to manage the GRP acreage to move toward a certain natural resource condition without requiring that certain species of grasses, shrubs, or forbs be planted. This policy makes sense considering the general purpose of the authorizing statute on land eligibility and the high cost of reestablishing native grasses in some settings. Management requirements may change over the life of the easement or rental agreement based on the natural resource response to such activities. Since the GRP statute is not specific about the types of land that should be enrolled in the program, once land has been accepted into the program USDA seeks input on whether a participant should be able to maintain the current cover even if it contains a monoculture of a less desirable species, or should participants be required to manage the property to move toward a certain natural resource condition? USDA is reluctant to require participants to fully restore project acreage to native species because of the extreme cost, and in some localities, it is impractical to do so. However, in instances where a grassland cover does not exist, participants will be required to establish a grassland cover with either native or natural species to the extent it is practical, as determined by the NRCS State Conservationist.

Section 1415.5 Land Eligibility.

The language in this section identifies eligible land as defined in the GRP statute. The GRP statute does not restrict the amount of acreage a landowner can offer for the program or the maximum payment a person can receive over the life of the contract or otherwise. The statute does provide for a minimum acreage enrollment level.

Section 1415.5(d) provides that 40 contiguous acres is the minimum acreage offer that will be accepted in the program, however, less than 40 acres may be accepted if USDA grants a waiver. USDA recognizes that some grassland habitat is considered irreplaceable and thus has determined to provide States the discretion to determine when the 40 acre minimum requirement will be waived. Decisions associated with this waiver should be granted based on input from the State Technical Committee and local natural resource concerns. USDA policy is to ensure that NRCS State Conservationists make this determination based on all the purposes of GRP as provided for in section 1415.1. State Conservationists may consider establishing separate funding pools based on offer size.

USDA considered providing States greater flexibility to set minimum acreage levels in States where there is a strong interest in preserving very large blocks of grassland and offers below a certain level have virtually no chance of being accepted into the program due to intense competition. However, the statute directs which lands are eligible for consideration under GRP. Accordingly, rather than establish policy that impacts eligibility, USDA determined to address this issue through the ranking criteria at the State level. Allowances shall be made to ensure the ranking criteria does not discriminate against small or limited resource producers. USDA will periodically review the types of projects being enrolled and compare those projects with the applications being submitted for participation to evaluate whether small or limited resource producers are being routinely prohibited from participating in the program.

Section 1415.5(f) makes land ineligible if it is already protected by an easement or contract that requires the GRP applicant to maintain the grassland resources. If the existing easement or agreement is with USDA or with a program funded through USDA, USDA will look to the program rules of the existing contract or the terms of the easement to determine whether such agreement can be canceled in order to enroll the land in GRP. This policy was determined because it is not fiscally responsible to pay someone twice for the same natural resource protection. USDA welcomes comment on this policy, especially as it relates to the relationship between GRP and the Conservation Reserve Program, Environmental Quality Incentives Program and the Wildlife Habitat Incentives Program .

Section 1415(g) of the Interim Final Rule addresses the issue of third party ownership of subsurface mineral rights on land proposed for enrollment under a rental agreement or an easement. Specifically, this rule provides that such lands may be enrolled in GRP. If the third party exercises such rights during the agreement period, the agreement will be terminated without penalty on the affected land. The land may be reoffered for the program at a later date if the grassland resources are restored, subject to eligibility rules and funding at that time. For easement enrollment, such lands may only be offered if the third party subordinates its rights to the resources or if USDA determines that the risk to the grassland resources is minimal if such rights are exercised (i.e., would not undermine the conservation purposes of the easement).

Section 1415.6 Participant Eligibility.

This section sets forth the eligibility for participation in GRP. Only landowners may participate in the easement option, because only landowners have the ability to convey property rights. Both landowners and tenants can participate in the rental agreement enrollment options. However, if a tenant wishes to participate without a landowner, the tenant must provide evidence

of control for the duration of the agreement period.

Since the GRP is a Title XII program, all participants are subject to the conservation compliance requirements found in 7 CFR, part 12.

Section 1415.7 Application Procedures.

This section provides general information about the application process.

Interested applicants can file an application at any time with their local USDA Service Center.

Section 1415.8 Establishing Priority for Enrollment of Properties.

This section sets forth policy for developing the ranking and evaluation criteria. The GRP statute directs the Secretary to emphasize support for grazing operations, plant and animal biodiversity, and the threat of conversion in project selection. It does not give guidance about whether any of these factors should be given greater consideration than the others.

As discussed earlier in the preamble, USDA is placing a priority on protecting native or natural grassland and shrubland in the ranking process to the extent practical, and it is providing States the flexibility to develop ranking criteria that may encourage participants to restore their land back to a natural or native plant community. Land not currently in grass or shrubs that needs to be reseeded back to a grassland or shrubland may be eligible for the program if the applicant agrees to reseed the land back to its historically dominated grassland, shrubland, or forb plant community. However, if it can be demonstrated that reseeded to appropriate introduced plant species has potential to serve as habitat for animal or plant populations of significant ecological value, such land may be enrolled in the program and reseeded can take place through a GRP restoration agreement. Lower enrollment priority may be given to smaller parcels, especially in States where protecting larger grassland parcels is more desirable from an administrative and environmental standpoint. By prioritizing the types of eligible land for

funding, USDA seeks to secure maximum conservation benefits for the Federal dollar expended. USDA is seeking specific comments on this decision.

USDA does provide its offices at the State level, the flexibility to establish one or more ranking pools. Although each pool will use the State established ranking criteria, the projects within one pool will only compete with similar projects. USDA, at the State level, may determine the portion of its funds to direct to each established ranking pool. Ranking pools will be established prior to conducting a signup.

Section 1415.9 Enrollment of Easements and Rental Agreements.

This section describes the process for enrollment in GRP which is similar to that used for the Conservation Reserve Program for rental agreements and the Wetlands Reserve Program for easements. This approach was suggested by Congress in the Managers Report to the authorizing statute. For rental agreement projects, land is considered enrolled when the rental agreement is approved by USDA. For easement projects, land is considered enrolled when a landowner accepts a letter of tentative acceptance by signing documentation that indicates the landowner's intent to continue with the project.

Section 1415.10 Compensation for Easements and Rental Agreements.

This section sets forth the methodology for determining compensation for both easements and rental agreements. For rental agreements, the statute at 16 U.S.C. 3838p requires that USDA pay participants not more than 75 percent of the grazing values. For the FY 2003, signup period grazing values for rental agreements were determined administratively based on compensation rates for the Conservation Reserve Program. Rates were established for each county, rather than on a site specific basis. This process enabled USDA to post compensation rates for public information and minimized the administrative burden at the field level for USDA employees.

The statute provides at 16 U.S.C. 3838p that easement compensation rates be determined based on the fair market value of the land, less the grazing value of the land encumbered by the easement. USDA will use certified land appraisers to develop easement compensation rates on a site specific basis. USDA recognizes that in certain parts of the country, the cost of acquiring easements may be considerable. Therefore, the Secretary evaluated alternatives to minimize the per acre cost of enrolling projects in the program, such as establishing maximum payment rates or contract limits. However, the Secretary determined the statute, by requiring a fair market valuation, does not permit a non-appraisal approach to valuing conservation easements.

Section 1415.11 Restoration Agreements.

This section sets forth the terms and conditions under which USDA will enter into a restoration agreement. GRP does not have the authority to enroll land in restoration agreements as a separate, stand-alone enrollment option. Consequently, USDA will only enter into restoration agreements in conjunction with easements and rental agreements at the discretion of USDA, subject to available funding, and when it is supported by the participant.

Eligible practices include land management, vegetative, and structural practices and measures that will improve the grassland and shrubland ecological functions. Specific practices eligible for payment will be determined by the USDA at the State level with advice from the State Technical Committee. Limitations on cost-share rates set forth in this rule are those provided for in the GRP statute at 16 U.S.C. 3838p.

Section 1415.12 Modifications.

This section describes when easements and rental agreements may be modified. For both easements and rental agreements, modifications may be made to the conservation plan by mutual agreement between the USDA and the participant as changes occur in the participant's operation

and land management strategy. However, any modification must continue to ensure the viability of the grassland, and meet the other objectives of the GRP.

Section 1415.13 Transfer of Land.

This section discusses the impact of transferring ownership or control of land enrolled in GRP.

Section 1415.17 Easement Administrative Delegations to Third Parties.

The GRP statute at 16 U.S.C. 3838q provides that the Secretary may permit a private conservation or land trust organization, or a State agency to hold and enforce an easement, in lieu of the Secretary, subject to the right of the Secretary to conduct periodic inspections and enforce the easement. The Secretary has interpreted the word “hold” in this context to mean “administer.” Prior to permitting an approved third party to hold and enforce an easement, USDA must determine that granting such permission will result in the protection of grassland, land that contains forbs, and shrubland; the owner authorizes the third party to hold and enforce the easement; and the third party agrees to assume the costs incurred in administering and enforcing the easement, including the costs of restoration or rehabilitation of the land as required by the landowner and the third party. The intent is not to have the third party cover the costs of natural resource practices required through GRP. However, the third party must cover costs of practices that it requires above what is required by GRP. The third party must submit its intent to impose these additional requirements to USDA to determine whether they are consistent with the conservation purposes of the easement.

In GRP, the Secretary administers the easement on behalf of the United States, and may delegate the easement administrative responsibilities to a private organization or State agency under certain conditions. However, the GRP statute does not provide authority for the Secretary

to convey property rights acquired under the authority of the GRP statute.

This section provides that certain private organizations, as set forth in the statute, and State agencies interested in managing and enforcing GRP easements, may apply for GRP administration. The criteria and approval process required for participation are set forth below. The application packages must include:

(1) certification that the conservation organization or land trust is an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 that is exempt from taxation under section 501(a) of that Code; or is described in section 509(a)(3), and is controlled by an organization described in section 509(a)(2), of that Code.

(2) certification that the applicant has the human and financial resources necessary to administer and enforce the easements, and that the applicant has relevant experience with easement enforcement activities.

(3) certification that the applicant's charter expresses a commitment to conserving agriculture land, grassland, or rangeland. The application will require a summary of such commitment.

(4) estimates in terms of acreage, number of easements, and funding requirements that the third party is willing to assume on behalf of the Secretary.

(5) description of the human resources available to perform tasks associated with easement management and enforcement, including information about range and grassland management for livestock and wildlife, and realty management expertise.

(6) budgetary information that demonstrates the organization is prepared to assume the Secretary's duties.

State agencies do not have to submit information related to items (1) or (3) above. All

other requested information must be included with State agency applications. Application packages will be reviewed by both the Chief, NRCS, and the Administrator, Farm Service Agency, or their designees, for suitability of the party to administer the GRP easement. This authority may be delegated to NRCS State Conservationists and FSA State Executive Directors. Multiple third party applications may be approved for each State.

Application approval means the private organization or State agency meets the Secretary's requirements for managing and enforcing easements. Since landowners must authorize a third party easement administrator, Secretarial approval does not guarantee that the approved applicant will receive GRP easements to administer. Those agencies and organizations selected to manage easements will be required to submit an annual report to the Secretary.

Sections 1415.14 through 1415.16 and 1415.18 through 1415.20.

These sections are consistent with other conservation programs and contain standard administrative policy associated with contract violations and remedies, payments not subject to claims, assignment of payments, appeals, etc. Nonetheless, USDA welcomes comments regarding this section on land enrolled in GRP.

Other

There has been much discussion within USDA regarding the development of industrial windmills on grassland acreage. USDA is prohibiting industrial windmills on GRP acreage because the structure is unrelated to protecting the viability of the grassland acreage, it requires disturbing the soil surface in a manner that is not permitted in the GRP statute, and it would encourage people wanting to establish other types of towers on GRP acreage. The public is free to comment on this policy decision as well.

List of Subjects in 7 CFR Part 1415

Administrative practice and procedure, Agriculture, Soil conservation, Grassland, Grassland protection, Grazing land protection.

For the reason stated in the preamble, Chapter XIV of 7 CFR is amended by adding a new part 1415 as set forth below:

PART 1415 - GRASSLAND RESERVE PROGRAM

Sec.

- 1415.1 Purpose.
- 1415.2 Administration.
- 1415.3 Definitions.
- 1415.4 Program requirements.
- 1415.5 Land eligibility.
- 1415.6 Participant eligibility.
- 1415.7 Application procedures.
- 1415.8 Establishing priority for enrollment of properties.
- 1415.9 Enrollment of easements and rental agreements.
- 1415.10 Compensation for easements and rental agreements.
- 1415.11 Restoration agreements.
- 1415.12 Modifications.
- 1415.13 Transfer of land.
- 1415.14 Violations and remedies.
- 1415.15 Payments not subject to claims.
- 1415.16 Assignments.
- 1415.17 Delegation to private organizations.

1415.18 Appeals.

1415.19 Scheme and device.

1415.20 Confidentiality.

Authority: 16.U.S.C. 3838n - 3838q.

§ 1415.1 Purpose.

(a) The purpose of the Grassland Reserve Program (GRP) is to assist landowners in protecting, conserving, and restoring grassland resources on private lands through short and long-term rental agreements and easements.

(b) The objectives of GRP are to:

(i) Emphasize preservation of native and natural grasslands and shrublands, first and foremost;

(ii) Protect grasslands and shrublands from the threat of conversion;

(iii) Support grazing operations; and

(iv) Maintain and improve plant and animal biodiversity.

§ 1415.2 Administration.

(a) The regulations in this part set forth policies, procedures, and requirements for program implementation of the GRP as administered by the Natural Resources Conservation Service (NRCS) and the Farm Service Agency (FSA). The regulations in this part will be administered under the general supervision and direction of the NRCS Chief and the FSA Administrator. These two agency leaders will:

(1) Concur in the establishment of program policy and direction; development of the State allocation formula, and development of broad national ranking criteria;

(2) Use a national allocation formula to provide GRP funds to USDA State offices that

emphasizes support for biodiversity of plants and animals, grasslands under the greatest threat of conversion, and grazing operations. The allocation formula will also include a factor representing program demand. The demand factor could be expressed in terms of applications received, acres offered, funding needs for such applications, or a combination of these elements. The allocation formula may be modified periodically to change the emphasis of any factor to reflect information about natural resource concerns. The data in the allocation formula will be updated periodically as new information becomes available.

(3) Ensure the National, State and local level information regarding program implementation is made available to the public.

(4) Consult with USDA leaders at the State level and other Federal agencies with the appropriate expertise and information when evaluating program policies and direction.

(5) Authorize NRCS State Conservationists and FSA State Executive Directors to determine how funds will be used and how the program will be implemented at the State level.

(b) At the State level, the NRCS State Conservationist and the FSA State Executive Director are jointly responsible to:

(1) Identify State priorities for project selection, based on input from the State Technical Committee;

(2) Identify, as appropriate, USDA employees at the field level responsible for implementing the program, and the implementation process considering the nature and extent of natural resource concerns throughout the State and the availability of human resources to assist with activities related to program enrollment.

(3) Develop program outreach materials at the State and local level to ensure landowners, operators, and tenants of eligible land are aware and informed that they may be

eligible for the program.

(4) Develop conservation practice cost-share rates.

(5) Administer and enforce the terms of easements and rental agreements unless this responsibility is delegated to a third party as provided in section 1415.17.

(6) With advice from the State Technical Committee, develop criteria for ranking eligible land, consistent with national criteria and program objectives and address related policy matters regarding program direction for GRP in the applicable State. USDA, at the State level, has the authority to accept or reject the State Technical Committee recommendations; however, USDA will give consideration to the State Technical Committee's recommendations.

(c) The funds, facilities, and authorities of the Commodity Credit Corporation are available to NRCS and FSA to implement GRP.

(d) Subject to funding availability, the program may be implemented in any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(e) The Secretary may modify or waive a provision of this part if he or she deems the application of that provision to a particular limited situation to be inappropriate and inconsistent with the environmental and cost-efficiency goals of GRP. This authority cannot be further delegated. No provision of this part which is required by applicable law may be waived.

(f) No delegation in this part to lower organizational levels shall preclude the Chief, NRCS, or the Administrator, FSA, from determining any issue arising under this part or from reversing or modifying any determination arising from this part.

(g) The Chief, NRCS, may delegate at any time Federal easement administration and enforcement responsibilities to approved State Agencies, or approved private conservation or

land trust organizations with the consent or at the request of the participating landowner. The USDA Forest Service may hold easements on properties adjacent to USDA Forest Service land, with the consent of the landowner.

(h) Program participation is voluntary.

(i) Applications for participation will be accepted on a continual basis at local USDA Service Centers. NRCS and FSA at the State level will establish cut-off periods to rank and select applications. These cut-off periods will be available in program outreach material provided by the local USDA Service Center. Once funding levels have been exhausted, eligible applications will remain on file until additional funding becomes available or the applicant chooses to be removed from consideration.

(j) The services of other third parties as provided for in 7 CFR Part 652 may be used to provide technical services to participants.

§ 1415.3 Definitions.

Administrator means the Administrator of the Farm Service Agency (FSA) or the person delegated authority to act for the Administrator.

Chief means the Chief of the Natural Resources Conservation Service (NRCS) or the person delegated authority to act for the Chief.

Commodity Credit Corporation (CCC) is a Government-owned and operated entity that was created to stabilize, support, and protect farm income and prices. CCC is managed by a Board of Directors, subject to the general supervision and direction of the Secretary of Agriculture, who is an ex-officio director and chairperson of the Board. The Chief and Administrator are Vice Presidents of CCC. CCC provides the funding for GRP, and FSA and NRCS administer the GRP on its behalf.

Conservation District means any district or unit of State, tribal, or local government formed under State, tribal, or territorial law for the express purpose of developing and carrying out a local soil and water conservation program. Such district or unit of government may be referred to as a “conservation district,” “soil conservation district,” “resource conservation district,” “land conservation committee,” or similar name.

Conservation plan means a record of the client's decisions and supporting information, for treatment of a land unit or water as a result of the planning process, that meets NRCS Field Office Technical Guide quality criteria for each natural resource (soil, water, air, plants, and animals) and takes into account economic and social considerations. The plan describes the schedule of operations and activities needed to solve identified natural resource problems and take advantage of opportunities at a conservation management system level. The needs of the client, the resources, Federal, state, and local requirements will be met by carrying out the plan.

Conservation practice means a specified treatment, such as a structural or land management practice, that is planned and applied according to NRCS standards and specifications.

Cost-share agreement means the document that specifies the obligations and the rights of any person who has been accepted for participation in the program.

Department means United States Department of Agriculture.

Easement means a conservation easement, which is an interest in land defined and delineated in a deed whereby the landowner conveys certain rights, title, and interests in a property to the United States for the purpose of protecting the grassland and other conservation values of the property. Under GRP, the property rights are conveyed in a “conservation easement deed.”

Easement area means the land encumbered by an easement.

Easement payment means the consideration paid to a landowner for an easement conveyed to the United States under the Grassland Reserve Program.

Field office technical guide means the official local NRCS source of resource information and interpretations of guidelines, criteria, and standards for planning and applying conservation treatments and conservation management systems. It contains detailed information for the conservation of soil, water, air, plant, and animal resources applicable to the local area for which it is prepared.

Forb means any herbaceous plant other than those in the grass family.

Grantor is the term used for the landowner that is transferring land rights to the United States through an easement.

Grazing value means the value assigned to the grassland cover by USDA.

Grassland means land on which the vegetation is dominated by grasses, grass-like plants, shrubs, and forbs. The definition of grassland as used in the context of this rule includes shrubland, land that contains forbs, pastureland, and rangeland.

Improved pasture means grazing land permanently producing natural forage species that receives varying degrees of periodic cultural treatment to enhance forage quality and yields and is primarily harvested by grazing animals.

Landowner means a person or persons holding fee title to the land.

Native means a species that is a part of the original fauna or flora of the area.

Natural means a native or an introduced species that is adapted to the ecological site and can perpetuate itself in the community without cultural treatment. For the purposes of this regulation the term “natural” does not include noxious weeds.

Participant means a landowner, operator, or tenant who is a party to a GRP agreement. The term “agreement” in this context refers to GRP rental agreements and option to purchase agreements for easements. Landowners of land subject to a GRP easement are also considered participants regardless of whether such landowner initiated the sale of the easement to the Federal Government.

Pastureland means a land cover/use category of land managed primarily for the production of introduced forage plants for grazing animals. Pastureland cover may consist of a single species in a pure stand, a grass mixture, or a grass-legume mixture. Management usually consists of cultural treatments: fertilization, weed control, reseeding or renovation, and control of grazing.

Permanent easement means an easement that lasts in perpetuity.

Private land means land that is not owned by a governmental entity.

Rangeland means a land cover/use category on which the climax or potential plant cover is composed principally of native grasses, grasslike plants, forbs, or shrubs suitable for grazing and browsing, and introduced forage species that are managed like rangeland. Rangeland includes lands re-vegetated naturally or artificially when routine management of that vegetation is accomplished mainly through manipulation of grazing. This term would include areas where introduced hardy and persistent grasses, such as crested wheatgrass, are planted and such practices as deferred grazing, burning, chaining, and rotational grazing are used, with little or no chemicals or fertilizer being applied. Grasslands, savannas, many wetlands, some deserts, and tundra are considered to be rangeland. Certain communities of low forbs and shrubs, such as mesquite, chaparral, mountain shrub, and pinyon-juniper, are also included as rangeland.

Rental agreement means an agreement where the participant will be paid annual rental

payments for the length of the agreement to maintain and/or restore grassland functions and values under the Grassland Reserve Program.

Restoration means implementing any conservation practice (vegetative, management, or structural) that improves the values and functions of grassland (native and natural plant communities).

Restoration agreement means an agreement between the program participant and the United States Department of Agriculture to restore or improve the functions and values of grassland and shrubland.

Restored grassland means land that is to be converted back to grassland or shrubland.

Secretary means the Secretary of Agriculture.

Shrubland means land that the dominant plant species is shrubs, which are plants that are persistent, have woody stems, a relatively low growth habitat, and generally produces several basal shoots instead of a single bole.

Significant decline means a decrease of a species population to such an extent that it merits direct intervention to halt further decline, as determined by the NRCS State Conservationist in consultation with the State Technical Committee.

Similar function and value means plants that are alike in growth habitat, environmental requirements, and provide substantially the same ecological benefits.

State Technical Committee means a committee established by the Secretary of the United States Department of Agriculture in a State pursuant to 16 U.S.C. 3861.

USDA means the Chief, NRCS, in consultation with the Administrator, FSA or the NRCS State Conservationist in consultation with the FSA State Executive Director.

§ 1415.4 Program requirements.

(a) Only landowners may submit applications for easements. For rental agreements, the applicant must provide evidence of control of the property for the duration of the rental agreement.

(b) The easement and rental agreement shall require that the area be maintained in accordance with GRP goals and objectives for the duration of the term of the easement or rental agreement, including the conservation, protection, and restoration of the grassland functions and values.

(c) All participants in GRP will be required to implement a conservation plan approved by USDA to preserve the viability of the grassland enrolled into the program. The conservation plan will document the conservation values, characteristics, current and future use of the land, practices that may need to be applied along with a schedule for application, and a management plan.

(d) The easement and rental agreement shall grant USDA or its representatives a right of access to the easement and rental agreement area.

(e) Easement participants are required to convey title that is acceptable to the United States and provide consent or subordination agreements from each holder of a security or other interest in the land. The landowner shall warrant that the easement granted the United States is superior to the rights of all others, except for exceptions to the title that are deemed acceptable by the USDA.

(f) Easement participants are required to use a standard GRP easement developed by the Department. The easement shall grant all development rights, title, and interest in the easement area in order to protect grassland and other conservation values.

(g) The program participant must comply with the terms of the easement or rental

agreement and comply with all terms and conditions of any associated restoration agreement.

(h) Easements and rental agreements will allow the following activities:

(1) Common grazing practices on the land in a manner that are consistent with maintaining the viability of natural grass and shrub species;

(2) Haying, mowing, or haying for seed production, except that such uses shall have certain restrictions determined appropriate by the NRCS State Conservationist to protect, during the nesting season, birds in the local area that are in significant decline or are conserved in accordance with Federal or State law; and

(3) Fire rehabilitation and construction of firebreaks, fences (excluding corrals), watering facilities, seedbed preparation and seeding, and any other facilitating practices, as determined by the USDA to protect and restore the grassland functions and values.

(i) Any activity that would disturb the surface of the land covered by the easement is prohibited except for common grazing management practices carried out in a manner consistent with maintaining the functions and values of grassland common to the local area, including fire rehabilitation and construction of firebreaks, construction of fences, and restoration practices.

(j) Contracts may be canceled without penalty or refund if the original participant dies, becomes incompetent, or is otherwise unavailable during the contract period.

(k) Participants may be able to convert rental agreements to an easement, providing the easement is for a longer duration than the rental agreement, funds are available, and the project meets conditions established by the USDA. Land cannot be enrolled in both a rental agreement option and an easement enrollment option at the same time. The rental agreement shall be deemed terminated the date the easement is recorded in the local land records office.

§ 1415.5 Land eligibility.

(a) GRP is available on privately owned lands, which include private and Tribal land. Publicly-owned land is not eligible.

(b) Land shall be eligible for funding consideration if the NRCS State Conservationist determines that the land is:

(1) Grassland, land that contains forbs, or shrubs (including rangeland and pastureland);
or

(2) The land is located in an area that has been historically dominated by grassland, forbs, or shrubs; and has potential to provide habitat for animal or plant populations of significant ecological value, as determined by the State Conservationist in consultation with the State Technical Committee and FSA, if the land is;

(i) Retained in the current use of the land; or

(ii) Restored to a natural condition.

(c) Incidental lands, in conjunction with eligible land, may also be considered for enrollment to allow for the efficient administration of an easement or rental agreement.

(d) Forty contiguous acres is the minimum acreage that will be accepted in the program. However, less than 40 acres may be accepted if the USDA, with advice from the State Technical Committee, determines that the enrollment of acreage meets the purposes of the program and grants a waiver. USDA, at the State level, may also establish a higher minimum acreage level. USDA will review any minimum acreage requirement to ensure, to the extent permitted by law, that this requirement does not unfairly discriminate against small farmers.

(e) Land will not be enrolled if the functions and values of the grassland are protected under an existing contract or easement. The land would become eligible when the existing contract expires or is terminated, and the grassland values and functions are no longer protected.

(f) Land on which gas, oil, earth, or other mineral rights exploration has been leased or is owned by someone other than the GRP applicant may be offered for participation in the program. However, if an applicant submits an offer for an easement project, USDA will assess the potential impact that the third party rights may have upon the grassland resources. USDA reserves the right to deny funding for any application where there are exceptions to clear title on any property.

§ 1415.6 Participant Eligibility.

To be eligible to participate in GRP an applicant:

(a) Must be a landowner for easement participation or be a landowner or have general control of the eligible acreage being offered for rental agreement participation;

(b) Agree to provide such information to USDA that the Department deems necessary or desirable to assist in its determination of eligibility for program benefits and for other program implementation purposes;

(c) Meet the Adjusted Gross Income requirements in 7 CFR Part 1400; and

(d) Meet the conservation compliance requirements found in 7 CFR Part 12.

§ 1415.7 Application procedures.

(a) Any owner or operator or tenant of eligible land that meets the criteria set forth in § 1415.6 of this part may submit an application through a USDA Service Center for participation in the GRP. Applications are accepted throughout the year.

(b) By filing an Application for Participation, the applicant consents to a USDA representative entering upon the land offered for enrollment for purposes of assessing the grassland functions and values, and for other activities that are necessary for the USDA to make an offer of enrollment. The applicant will be notified prior to a USDA representative entering

upon their property.

(c) Applicants submit applications that identify the duration of the easement or rental agreement. Rental agreements may be for 10-years, 15-years, 20-years, or 30-years; easements may be for 30-years, permanent, or for the maximum duration authorized by State law.

§ 1415.8 Establishing priority for enrollment of properties.

(a) USDA, at the National level, will provide to USDA offices at the State level, broad national guidelines for establishing State specific project selection criteria.

(b) USDA, at the State level, with advice from the State Technical Committee, shall establish criteria to evaluate and rank applications for easement and rental agreement enrollment following the guidance established in paragraph (a) of this section.

(c) Ranking criteria will emphasize support for:

- (i) Native and natural grassland;
- (ii) Protection of grassland from the threat of conversion;
- (iii) Support for grazing operations; and
- (iv) Maintain and improve plant and animal biodiversity.

(d) When funding is available, USDA at the State level will periodically select for funding the highest ranked applications based on applicant and land eligibility and the State-developed ranking criteria.

(e) States may utilize one or more ranking pools, including a pool for special project consideration such as establishing a pool for projects that receive restoration funding from non-USDA sources.

(f) The USDA, with advice from the State Technical Committee, may emphasize enrollment of unique grasslands or specific geographic areas of the State.

(g) The FSA State Executive Director and NRCS State Conservationist, with advice from the State Technical Committee will select applications for funding.

(h) If available funds are insufficient to accept the highest ranked application, and the applicant is not interested in reducing the acres offered to match available funding, USDA may select a lower ranked application that can be fully funded. Applicants may choose to change the duration of the easement or agreement or reduce acreage amount offered if the application ranking score is not reduced below that of the score of the next available application on the ranking list.

§ 1415.9 Enrollment of easements and rental agreements.

(a) Based on the priority ranking, USDA will notify applicants in writing of their tentative acceptance into the program for either rental agreement or conservation easement options. The participant has fifteen calendar days from the date of notification to sign and submit a letter of intent to continue. A letter of intent to continue from the applicant authorizes USDA to proceed with the enrollment process.

(b) An offer of tentative acceptance into the program does not bind the USDA to acquire an easement or enter into a rental agreement, nor does it bind the participant to convey an easement, enter into a rental agreement, or agree to restoration activities.

(c) For easement projects, land is considered enrolled after the landowner signs the intent to continue. For rental agreements, land is considered enrolled after a GRP contract is approved by USDA.

(d) USDA will present a contract to the participant, which will describe the easement or rental area; the easement terms, or rental terms and conditions; and other terms and conditions for participation that may be required by CCC.

(e) For easements, after the contract is executed by USDA and participant, USDA will proceed with development of the conservation plan and various acquisition activities, which may include conducting a survey of the easement, securing necessary subordination agreements, procuring title insurance, developing a baseline data report, and conducting other activities necessary to record the easement.

(f) Prior to execution by USDA and the participant of the contract, the USDA may withdraw its offer anytime due to lack of available funds, title concerns for easements, or other reasons. The offer to the participant shall be void if not executed by the participant within the time specified in an option to purchase agreement.

§ 1415.10 Compensation for easements and rental agreements.

(a) Compensation for easements will be based upon:

(1) The fair market value of the land less the grassland value of the land for permanent easements; and

(2) Thirty percent of the value determined in paragraph (a)(1) for 30-year easements or for an easement for the maximum duration permitted under State law.

(b) For 10-, 15-, 20-, and 30-year rental agreements, the participant will receive not more than 75 percent of the grazing value in an annual payment for the length of the agreement.

(c) In order to provide for better uniformity among States, the FSA Administrator and NRCS Chief may review and adjust, as appropriate, State or other geographically based payment rates for rental agreements. NRCS State Conservationists may establish easement payment amounts on a site specific or geographic area basis.

(d) Easement or rental agreement payments received by participant shall be in addition to, and not affect, the total amount of payments that the participant is otherwise eligible to

receive under other Federal laws.

(e) For easements, to minimize expenditures on individual appraisals and expedite program delivery, USDA may complete a programmatic appraisal to establish regional average market values and grazing values. The programmatic appraisals would remove the need to conduct appraisals on each parcel selected for funding.

§ 1415.11 Restoration agreements.

(a) Restoration agreements are only authorized to be used in conjunction with easements and rental agreements. NRCS, in consultation with the program participant, will determine if the grassland resources are adequate to meet the participant's objectives and the purposes of the program, or if a restoration agreement is needed. Such a determination will also be subject to the availability of funding. NRCS may condition participation in the program upon the execution of a restoration agreement depending on the condition of the grassland resources. When the functions and values of the grassland are determined adequate by NRCS, a restoration agreement will not be required. However, if a restoration agreement is required, NRCS will set the terms of the restoration agreement. The restoration agreement will identify conservation practices and measures necessary to improve the functions and values of the grassland. If the functions and values of the grassland decline while the land is subject to a GRP easement or rental agreement through no fault of the participant, the participant may enter into a restoration agreement at that time to improve the functions and values with USDA approval and fund availability.

(b) Eligible restoration practices include land management, vegetative, and structural practices and measures that will improve the grassland ecological functions and values on native and natural, and introduced plant communities. The NRCS State Conservationist, with advice from the State Technical Committee and in consultation with FSA, will determine the

conservation practices, measures, payment rates, and cost-share percentages, not to exceed statutory limits, that will be available for restoration. A list of eligible practices will be available to the public. NRCS working through the local conservation district with the program participant will determine the terms of the restoration agreement. The conservation district may assist with determining eligible practices and approving restoration agreements. Restoration agreements will not extend past the date of a rental agreement or easement.

(c) All restoration practices and measures are eligible for cost sharing. Payments under GRP may be made to the participant of not more than 90 percent for the cost of carrying out conservation practices and measures on grassland and shrubland that has never been cultivated, and not more than 75 percent on restored grassland and shrubland on land that at one time was cultivated.

(d) Restoration activities are applicable to native and natural plant communities. When seeding is determined necessary for restoration, USDA will give priority to using native seed. However, when native seed is not available, or returning the land to native conditions is determined impractical by USDA, plant propagation using species that provide similar functions and values may be utilized.

(e) Cost-shared practices shall be maintained by the participant for the life of the practice. The life of the practice shall be consistent with other USDA cost shared or easement programs. Failure to maintain the practice will be dealt with under the terms of the restoration agreement and may involve repayment of the Federal cost-share.

(f) All conservation practices will be implemented in accordance with the NRCS Field Office Technical Guide.

(g) Technical assistance will be provided by NRCS, or an approved third party, as

needed by the participant.

(h) Federal cost sharing shall be adjusted so that the combined cost share by Federal and State government or subdivision of a State government shall not exceed 100 percent of the total actual cost of the restoration. The participant cannot receive cost-share from more than one Federal cost-share program for the same conservation practice.

(i) Cost-share payments may be made only upon a determination by a qualified individual approved by the NRCS State Conservationist that an eligible practice has been established in compliance with appropriate standards and specifications.

(j) Identified practices may be implemented by the participant or other designee. Payments will not be made for practices applied prior to submitting an application to participate in the program.

(k) Cost-share payments will not be made for practices implemented or initiated prior to the approval of a rental agreement or easement acquisition unless a written waiver is granted by USDA at the State level prior to installation of the practice.

§ 1415.12 Modifications to easements and rental agreements.

(a) After an easement has been recorded, no modification will be made to the easement except by mutual agreement with Chief, NRCS, and the landowner.

(b) Easement modifications may only be made by the Chief, NRCS, after consulting with the Office of General Counsel. Minor modifications may be made by the NRCS State Conservationist in consultation with Office of General Counsel. Minor modifications are those that do not affect the substance of the conservation easement deed. Such modifications include, typographical errors, minor changes in legal descriptions as a result of survey or mapping errors, and address changes.

(c) Approved modifications will be made only in an amendment to an easement which is duly prepared and recorded in conformity with standard real estate practices, including requirements for title approval, subordination of liens, and recordation.

(d) The Chief, NRCS, may approve modifications on easements to facilitate the practical administration and management of the enrolled area so long as the modification will not adversely affect the grassland functions and values for which the land was acquired or other terms of the easement.

(e) NRCS State Conservationists may approve modifications for restoration agreements and conservation plans as long as the modifications do not affect the provisions of the easement or rental agreement and meets GRP program objectives.

(f) USDA may approve modifications on rental agreements to facilitate the practical administration and management of the enrolled area so long as the modification will not adversely affect the grassland functions and values for which the land was enrolled.

§ 1415.13 Transfer of land.

(a) Any transfer of the property prior to the participant's acceptance into the program shall void the offer of enrollment, unless at the option of the NRCS State Conservationist, in consultation with the FSA State Executive Director, an offer is extended to the new participant and the new participant agrees to the same easement or rental agreement terms and conditions.

(b) After acreage is accepted in the program, for easements with multiple payments, any remaining easement payments will be made to the original landowner unless USDA receives an assignment of proceeds.

(c) Future annual rental payments will be made to the successor participant.

(d) The new landowner or contract successor shall be held responsible for complying

with the terms of the recorded easement or rental agreement and for assuring completion of all measures and practices required by the associated restoration agreement. Eligible cost-share payments shall be made to the new participant upon presentation that the successor assumed the costs of establishing the practices.

(e) With respect to any and all payments owed to landowners, the United States shall bear no responsibility for any full payments or partial distributions of funds between the original landowner and the landowner's successor. In the event of a dispute or claim on the distribution of cost-share payments, USDA may withhold payments without the accrual of interest pending an agreement or adjudication on the rights to the funds.

(f) The rights granted to the United States in an easement shall apply to any of its agents, successors, or assigns. All obligations of the Landowner under an easement deed shall also bind the landowner's heirs, successors, agents, assigns, lessees, and any other person claiming under them.

(g) Rental agreements may be transferred to another landowner, operator or tenant that acquires an interest in the land enrolled in GRP. The transferee must be determined by USDA to be eligible to participate in GRP and must assume full responsibility under the agreement. USDA may require a participant to refund all or a portion of any financial assistance awarded under GRP if the participant sells or loses control of the land under a GRP rental agreement and the new owner or controller is not eligible to participate in the program or refuses to assume responsibility under the agreement.

§ 1415.14 Misrepresentation and violations.

(a) Contract violations:

(1) Contract violations, determinations, and appeals will be handled in accordance with

the terms of the program contract or agreement and attachments thereto.

(2) A participant who is determined to have erroneously represented any fact affecting a program determination made in accordance with this part shall not be entitled to contract payments and must refund to USDA all payments, plus interest in accordance with 7 CFR Part 1403.

(3) In the event of a violation of a rental agreement or any contract directly involving the participant, the participant shall be given notice and an opportunity to voluntarily correct the violation within 30- days of the date of the notice, or such additional time as CCC may allow.

(b) Easement violations: Easement violations are handled under the terms of the easement. Upon notification of the participant, the USDA reserves the right to enter upon the easement area at any time to remedy deficiencies or violations. Such entry may be made when USDA deems such action necessary to protect important grassland and shrubland functions and values or other rights of the United States under the easement. The participant shall be liable for any costs incurred by the United States as a result of the participant's negligence or failure to comply with easement, rental agreement, or contractual obligations.

(c) USDA may require the participant to refund all or part of any payments received by the participant or pay liquidated damages as may be required under the program contract or agreement.

(d) In addition to any and all legal and equitable remedies available to the United States under applicable law, USDA may withhold any easement payment, and cost-share payments owing to the participant at any time there is a material breach of the easement covenants, rental agreement, or any contract. Such withheld funds may be used to offset costs incurred by the United States in any remedial actions or retained as damages pursuant to court order or

settlement agreement.

(e) Under an easement, the United States shall be entitled to recover any and all administrative and legal costs, including attorney's fees or expenses, associated with any enforcement or remedial action.

§ 1415.15 Payments not subject to claims.

Any cost-share, rental payment, or easement payment or portion thereof due any person under this part shall be allowed without regard to any claim or lien in favor of any creditor, except agencies of the United States Government.

§ 1415.16 Assignments.

(a) Any person entitled to any cash payment under this program may assign the right to receive such cash payments, in whole or in part.

(b) If a participant that is entitled to a payment dies, becomes incompetent, or is otherwise unable to receive the payment, or is succeeded by another person who renders or completes the required performance, others may be eligible to receive payment in such a manner as USDA determines is fair and reasonable in light of all the circumstances.

§ 1415.17 Delegation to third parties.

(a) USDA may permit an approved private conservation or land trust organization, State or other Federal agency to administer an easement with the consent or written request of the landowner. Rental agreements will not be delegated to private organizations, State, or other Federal agencies.

(b) USDA will have the right to conduct periodic inspections and enforce the easement and associated restoration agreement for any easements administered pursuant to this section.

(c) The private organization, State, or other Federal agency shall assume the costs

incurred in administering and enforcing the easement, including the costs of restoration or rehabilitation of the land to the extent that such restoration or rehabilitation is above and beyond that required by the GRP conservation plan and restoration agreement. Any additional restoration must be consistent with the purposes of the easement.

(d) A private organization, State, or other Federal agency that seeks to administer and enforce an easement shall apply to the NRCS State Conservationist for approval. The State Conservationist shall consult with FSA State Executive Director prior to approval.

(e) For a private organization to administer and enforce an easement, the private organization must be organized as required by 28 U.S.C. 501(c)(3) of the Internal Revenue Code of 1986 or be controlled by an organization described in section 28 U.S.C. 509(a)(2) of that code. In addition, the private organization must provide evidence to USDA that it has:

- (1) Relevant experience necessary to administer grassland and shrubland easements;
- (2) A charter that describes the commitment of the private organization to conserving ranchland, agricultural land, or grassland for grazing and conservation purposes;
- (3) The human and financial resources necessary, as determined by the Chief, NRCS, to effectuate the purposes of the charter; and
- (4) Sufficient financial resources to carry out easement administrative and enforcement activities.

(f) If a private organization is terminated, withdraws from the agreement to administer the easement, or the landowner submits a request in writing to terminate such agreement, the USDA will assume the responsibility upon receiving such formal notice from the organization or the landowner. Subsequent agreements for easement management with other approved private, nonprofit organizations could be entered into at the request of the landowner with

approval from the NRCS State Conservationist. If the owner and the new organization fail to notify the NRCS State Conservationist of the reassignment within 30 days of termination, the easement shall revert to the control of NRCS.

§ 1415.18 Appeals.

(a) Applicants or participants may appeal decisions regarding this program in accordance with part 7 CFR part 614 and parts 11 and 780 of this Title.

(b) Before a person may seek judicial review of any action taken under this part, the person must exhaust all administrative appeal procedures set forth in paragraph (a) of this section.

§ 1415.19 Scheme or device.

(a) If it is determined by the Department that a participant has employed a scheme or device to defeat the purposes of this part, any part of any program payment otherwise due or paid such participant during the applicable period may be withheld or be required to be refunded with interest thereon, as determined appropriate by the Department.

(b) A scheme or device includes, but is not limited to, coercion, fraud, misrepresentation, depriving any other person of payments for cost-share practices or easements for the purpose of obtaining a payment to which a person would otherwise not be entitled.

(c) A participant who succeeds to the responsibilities under this part shall report in writing to the Department any interest of any kind in enrolled land that is held by a predecessor or any lender. A failure of full disclosure will be considered a scheme or device under this section.

§ 1415.20 Confidentiality.

Appraisals are considered confidential information and are not distributed. These

regulations provide that any appraisals, market analysis, or supporting documentation that may be used by USDA in determining property value are considered confidential information, and shall only be disclosed as determined at the sole discretion of FSA and NRCS in accordance with applicable law.

Signed at Washington, D.C. on _____, 2004

BRUCE I. KNIGHT

Executive Vice President

Commodity Credit Corporation and

Chief

Natural Resources Conservation Service

JAMES R. LITTLE

Executive Vice President

Commodity Credit Corporation and

Administrator

Farm Service Agency