

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

#### 7 CFR Part 1415

RIN 0578-AA38

#### Grassland Reserve Program

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

**ACTION:** Final rule.

**SUMMARY:** The United States Department of Agriculture (USDA or the Department) is publishing a final rule implementing the Grassland Reserve Program (GRP). The GRP assists landowners and others in restoring and conserving eligible grassland and certain other lands through rental agreements and easements. This 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.

**DATES:** *Effective date:* March 6, 2006.

**FOR FURTHER INFORMATION CONTACT:** Floyd Wood, National Program Manager, Easement Programs Division, NRCS, P.O. Box 2890, Washington, DC 20013-2890; telephone: (202) 720-0242; fax: (202) 720-9689; e-mail: [floyd.wood@wdc.usda.gov](mailto:floyd.wood@wdc.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:** USDA promulgated the GRP interim final rule in the **Federal Register** on May 21, 2004 (69 FR 29173). The GRP is authorized under the Food Security Act of 1985, as amended, 16 U.S.C. 3838n-3838q. The Farm Security and Rural Investment Act

of 2002 (2002 Farm Bill) amended Subchapter C to Chapter 2, Subtitle D, of Title XII of the Food Security Act of 1985 to authorize GRP. GRP is a voluntary program to assist landowners and agriculture operators in restoring and conserving eligible private grassland and land that contains forbs and shrublands through rental agreements and easements.

The interim final rulemaking provided a 60-day comment period that ended July 20, 2004. USDA received comments from thirty-nine entities. USDA addresses the comments received, including any changes to the final rule made as a result of the comments. Some of the comments received by the Department addressed the GRP template conservation easement deed even though the deed was not a part of the rule making. These comments may be of general interest, and the Department has decided to address those comments in the preamble as well. USDA notes, however, that it may make future changes to the easement deed without notice and comment rulemaking. Since the interim final rule was published, the statutory authority for GRP was amended by the Consolidated Appropriations Act of 2005, Pub. L. 108-447. The final rule addresses and implements this statutory change as well.

#### Background

Historically, grassland and shrublands occupied approximately 1 billion acres, about half the landmass of the 48 contiguous United States. 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. Grasslands provide 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 rural home sites, invasive species, woody vegetation, and suburban 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.

As noted above, GRP is a voluntary program to assist landowners and agriculture operators in restoring and protecting eligible grassland and land that contains forbs and shrublands through rental agreements and easements. The 2002 Farm Bill provided that \$254 million would be made available through FY 2007 to enroll no more than 2 million acres of restored or improved grassland, rangeland, shrubland and pastureland. USDA will consider all enrolled native and naturalized grasslands, both restored and existing, towards the 2 million acre cap. The statute 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.

The Secretary of Agriculture delegated the authority to administer GRP on behalf of the CCC, to the Chief, Natural Resources Conservation Service (NRCS), who is CCC Vice President, and the Administrator, Farm Service Agency (FSA), who is the CCC Executive Vice President. NRCS has the lead responsibility on regulatory matters, technical issues, and easement administration, and FSA has the lead responsibility for rental agreement administration and financial activities. The agencies will consult on regulatory and policy matters pertaining to both rental agreements and easements. 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 lands. 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 given the general responsibilities of each agency.

This final rule describes the various enrollment options through rental agreements and easements, the

compensation rates for each, the manner in which USDA establishes criteria to evaluate and rank applications at the State level, and the various protections and enhancements that rental agreements and easements would provide to grassland resources.

#### Summary of Comments

Approximately, one-half of all comments received in response to the interim final rule were from livestock organizations, another one-third from State wildlife and agriculture agencies and non-governmental wildlife organizations, and the remainder from private landowners. The responses to the comments on the interim final rule are set forth below. USDA also received comments on the GRP template easement deed even though the deed was not the subject of notice and comment rule making. Those comments may be of general interest, and USDA has decided to address those comments in the preamble under a separate subsection entitled "GRP Easement Deed." In addition to responding to the comments, USDA made nonsubstantive changes to the text of the final rule for purpose of clarity and improved organization. In the subsequent section, USDA provides a section-by-section description of the substantive changes.

#### State Allocations

Under § 1415.2 of the interim final rule, USDA used a national allocation formula to provide GRP funds to USDA State offices with the direction to emphasize support for biodiversity of plants and animals, protection of grasslands under the greatest threat of conversion, and support for grazing operations. The interim final rule at § 1415.2 also identified that the allocation formula would include a factor representing program "demand" which could be expressed in terms of applications received, acres offered, funding needs, or a combination of these elements.

USDA received eight comments from entities which asserted that allocations to States should be based on grassland resource needs and not program demand. These commenters were concerned that the "demand" factor could result in less funding for States with the most critical grassland protection needs. USDA received an almost equal number of comments supporting the use of an allocation formula based partially on program demand.

USDA did not intend for a demand factor to interfere with the ability to fund the most critical grassland resource needs. To avoid any misinterpretation,

USDA has not included the language in the final rule concerning a program demand factor. The remaining provisions of the regulations provide for the allocation of funds consistent with meeting the most critical grassland resource needs and additional factors related to improving program implementation. For example, the regulations provide for allocations based on emphasis for "support of biodiversity of plants and animals, grasslands under the greatest threat of conversion, and grazing operations."

#### Conservation Plan

The interim final rule required that participants in GRP implement a conservation plan approved by USDA to preserve, and if necessary restore and enhance, the viability of the grassland enrolled in the GRP. USDA received comments from entities both supporting and opposing requirements for landowners to establish a conservation plan. A conservation plan is designed to document the present and planned grassland characteristics and other conservation values, current and future land practices for the property, and the specific conservation requirements that would apply to the landowner's property based on the implementation of the provisions of the regulations. USDA believes a conservation plan is necessary to ensure that the landowner fully understands how the provisions of the final rule apply to their particular property enrolled in the GRP. In order to clarify USDA policy and terminology regarding GRP conservation plans, the Department has included in the final rule definitions for "conservation values" and "enhancement," and has modified the definition of "conservation plan," "restoration" and "restored grassland." USDA made no changes in the final rule related to conservation plan requirements.

#### Right of Access

The regulations at § 1415.4(d) provide that the easement or rental agreement shall grant USDA or its representatives a right of access to the easement or rental agreement area. Commenters asserted that USDA should be allowed to enter such property only after prior notification to landowners. To address this comment, USDA will strive to provide prior notice, except when it believes that there has been a violation of the terms of the easement deed or rental agreement. USDA determined that an exception to the notification requirement is warranted in cases where the Department believes that there is an easement or rental agreement violation,

in order to ensure protection of the resource.

#### Industrial Windmills

16 U.S.C. 3838o provides that an easement or rental agreement shall prohibit activities, other than common grazing and cultural practices, including those necessary to restore or maintain grasslands, which would disturb the surface of the land covered by the easement or rental agreement. Based on this authority, in the interim final rule, USDA prohibited the installation of industrial windmills for commercial energy use on GRP enrolled lands. Eight entities opposed this action while six entities supported it. The entities in opposition questioned why GRP policy was different than CRP regarding the installation of windmills, while the entities in support asserted the prohibition was necessary to protect grassland-dependent bird populations.

USDA adopted a different policy in GRP than CRP, because the CRP statute specifically authorized the installation of industrial-like windmills under particular circumstances while the GRP statute does not provide for such authority. Without explicit authority similar to CRP, and given the general prohibition against disturbing the soil surface, USDA has determined that the installation of industrial windmills on lands enrolled in GRP should be prohibited. Consequently, USDA made no changes in this rule to allow the installation of industrial windmills.

#### Hay, Mow, or Harvest for Seed

The interim final regulations at § 1415.4(h)(2) provided for the State Conservationist to establish certain restrictions on haying, mowing, or harvesting for seed production as necessary to protect nesting habitat for grassland-dependent bird populations that are in significant decline or are conserved in accordance with Federal or State law. Commenters asserted that the State Conservationist should consult with local work groups and appropriate State and Federal agencies when establishing such restrictions. We made no changes to the final rule based on these comments because this type of expertise is already being provided to the State Conservationist through consultation with the State technical committees.

#### New Livestock Facilities

16 U.S.C. 3838o(b) provides that an easement or rental agreement shall permit common grazing practices, including necessary cultural practices, but prohibit activities, other than those necessary to restore or maintain

grasslands, that would disturb the surface of the land covered by the easement or rental agreement. Based on its original interpretation of this authority, USDA prohibited the installation of new livestock facilities on GRP enrolled land under the interim final rule at § 1415.4(i). Commenters asserted that the installation of new facilities may often be essential for conducting necessary livestock operations.

In promulgating this final rule, USDA has reconsidered its interpretation of the statute and agrees with commenters that new livestock facilities, including corrals, watering troughs and tanks, barns or other minor infrastructure necessary to conduct common grazing practices and operations, may be authorized. Specifically, the common meaning given to the word “cultural” includes fostering animal growth, and production of forage and seed. In order to foster animal growth such as cattle and the related production of forage and seed, the infrastructure related to feeding, watering, shelter, and storage of hay, seed, and feed is necessary. As previously indicated, USDA believes that conditions must be placed on their installation to ensure that the facilities are “consistent with maintaining the viability of grassland, forb, and shrub species common to that locality” as required by 16 U.S.C. 3838o(b)(1), and to minimize adverse impacts to biodiversity and other conservation values associated with the conservation easement or rental agreement. Accordingly, USDA has modified §§ 1415.4(h) and (i) of this final rule to incorporate this new, limited flexibility for the installation of corrals and other new livestock facilities. As a related matter, the Department has included in the final rule definitions of both common grazing practices and cultural practices in order to clarify the USDA’s policy on permitted infrastructure.

#### **Establishing Priority for Enrollment of Properties**

The interim final rule at § 1415.8, provided that USDA at the State-level, with advice from the State technical committee, establishes criteria to evaluate and rank applications for easement and rental agreements based upon, among other things, threat of conversion to non-grassland uses. When developing ranking criteria for prioritizing applications, commenters asserted that State-level decision makers should also consider additional factors which emphasize enrollment of grasslands that:

- Are located outside urban areas,

- Contain (or will be restored to) native plant communities,
- Provide the greatest support for plant and animal biodiversity,
- Are most subject to conversion to cropland—especially lands classified as prime farmland,
- Are threatened by encroachment from invasive species,
- Will be protected for the longest duration,
- Are the “most-likely to be converted” from any source, and
- Are recognized as having high potential for conversion to industrial wind mills.

USDA at the State-level may include, but is not limited to, consideration of all these factors when developing State ranking criteria for GRP. Accordingly, USDA did not make any changes from the interim final rule to this section.

#### **Native Versus Natural Grasses**

With respect to establishing ranking criteria to be used for funding priorities, 16 U.S.C. 3838o(c)(2) states that USDA “shall emphasize support for (A) Grazing operations; (B) plant and animal biodiversity; and (C) grassland, land that contains forbs, and shrubland under the greatest threat of conversion.” Consistent with this authority, the regulations at § 1415.8 state that ranking criteria will emphasize support, among other things, for “native and natural grassland” and activities that will “maintain and improve plant and animal diversity.”

USDA received comments asserting that only native grasslands and lands to be restored to native species should be eligible for enrollment, or require that lands containing native species receive priority enrollment over lands with non-natives species, consistent with the Conservation Reserve Program. Commenters also asserted that USDA should require funds to be used first for protection of rare and declining native plant communities.

The provisions of 16 U.S.C. 3838n(c)(1) allow for the enrollment of improved rangeland and pastureland. The State-level ranking criteria may prioritize enrollment of native grassland over non-native grassland. However, the recommendation for establishing funding priorities based solely for protection of rare and declining native plant communities would be inconsistent with the statutory direction for program emphasis.

USDA made no changes to this rule based on these comments.

#### **Calculation of Easement Values**

16 U.S.C. 3838p requires that an easement payment for a permanent

easement will be an amount equal to the fair market value of the land, less the grazing value of the land encumbered by the easement. USDA implemented this statutory formula in the interim final rule at § 1415.10 by using the term “grassland value” instead of “grazing value.” However, in the final rule, USDA has changed the term “grassland value” to “grazing value” to more accurately state the statutory formula. As used in the context of determining easement value, “grazing value” is ascertained through the appraisal process. This is different from the usage of the term “grazing value” in the rental context as discussed below.

USDA received comments from entities who responded to the provision regarding easement compensation rates. These commenters expressed concern that the current appraisal procedures for calculating grazing values result in not adequately compensating landowners for restrictions placed upon their exercise of ranching and recreational activities. These commenters asserted that, unless compensation was provided for the restrictions placed on these activities, landowners in rural areas where the fair market value is typically comprised largely of grazing and recreational values, would be discouraged from participating in the easement option.

First, the USDA notes that those non-developed recreational activities that are consistent with maintaining the conservation values are still permitted on GRP enrolled lands and that the statutory method of computing compensation essentially results in the purchasing of development rights. To the extent a property is not under development pressure, the rights purchased will not result in nearly as high a compensation amount as those rights purchased on property that is in an area that is impacted by sprawl or that is urbanizing. Even so, USDA reviews its GRP appraisal instructions to ensure that the Department provides adequate compensation when it purchases conservation easements, consistent with the GRP statutory formula.

The interim final rule at § 1415.10(e) stated that “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.” Paragraph (e) further stated that “The programmatic appraisals would remove the need to conduct appraisals on each parcel selected for funding.” Commenters asserted that programmatic appraisals should not be utilized

because they might result in lower compensation rates. USDA made no changes based on these comments. USDA will only use the programmatic appraisals in those instances where the grazing value would not vary significantly from one parcel to the next, and therefore, would result in an accurate appraisal of each parcel. In any event, the Department believes that use of this alternative appraisal methodology will be limited.

#### Rental Agreement Rates

16 U.S.C. 3838p(b)(2) requires that annual payments under a rental agreement be not more than 75 percent of the grazing value of the land covered by the rental agreement. This is also reflected in the regulations at § 1415.10. For the purpose of determining rental agreement rates only, USDA determines grazing values administratively based on compensation rates for the Conservation Reserve Program (authorized at 7 CFR part 1410) for each county. In fiscal years 2003, 2004, and 2005, USDA utilized a 75 percent grazing value for rental agreements of all durations.

USDA received comments regarding the utilization of grazing values for rental agreements. These commenters recommended that rental agreements with longer duration should receive higher payment rates than those with shorter-term duration. For example, a 30-year rental agreement would receive 75 percent of the grazing value in an annual payment while perhaps a 10-year rental agreement would receive only 50 percent of the grazing value in an annual payment.

USDA agrees with the commenters and believes that it should have flexibility to adjust rental agreement rates, not to exceed the statutory limits, to provide an incentive for longer-term protection of grassland resources. Grasslands protected for longer durations of time typically provide for significantly greater gains in biodiversity. Therefore, USDA has modified § 1415.10(b) to allow USDA to adjust rental agreement rates based on duration of agreement.

Commenters also recommended that USDA increase the rental rates for irrigated lands compared to non-irrigated lands and increase the rental rates as appropriate because of restrictions on haying and grazing land. USDA will endeavor to make the rental agreement rates reflect local prevailing rates based on consideration of all relevant factors that could affect the rate.

#### Title to GRP Easements

16 U.S.C. 3838q provides that the Secretary may allow a private conservation or land trust organization to "hold and enforce an easement" entered into under GRP. Commenters argued that USDA incorrectly interpreted this statutory provision in § 1415.17 of the interim final rule, because the Department interpreted the statute as only permitting third parties to manage and enforce, but not hold title to, GRP easements. The commenters interpreted the statute to provide that third parties could actually take title to GRP easements and that landowners would be more receptive to participation if land trusts could assume legal ownership.

Since the interim final rule was published, section 797 of the *Consolidated Appropriations Act of 2005*, Pub. L. 108-447, was passed which amended section 3838q (a) and (d) of the GRP statute to clearly provide for the Secretary to "transfer title of ownership" of easements to third parties. In addition, the new statutory language provided that if entities holding such easements dissolve or fail to enforce the terms of the easement, the easement shall revert to the Secretary. Accordingly, USDA has modified § 1415.17 in this final rule to provide for qualified third parties to own title of easements and to remove the provisions providing for easement management that was set forth in the interim final rule. This change effectively addresses the commenters' concerns.

Commenters also asserted that third parties should be compensated for holding easements based on the conclusion that third parties would have no incentive to hold and administer easements without compensation. USDA has determined that there is no authority for paying compensation to third parties for voluntarily administering such easements. USDA has also determined that there is no authority for compensation where USDA transfers title of easement ownership to third parties. Therefore, USDA made no changes in response to these comments.

#### Statutory Matters

Commenters asserted that information provided by applicants and program participants should be held confidential. USDA made no changes based on these comments because information submitted to USDA concerning the GRP program is already subject to the confidentiality provisions of 16 U.S.C. 3844.

Commenters stated that State-owned land should be eligible for GRP. USDA made no changes based on these comments. The provisions of 16 U.S.C. 3838n(c) clearly limit GRP to private lands.

Commenters asserted that improved pastureland should not be eligible for GRP. We made no changes based on these comments. The provisions of 16 U.S.C. 3838n(c) specifically state that improved pastureland is eligible for GRP.

Commenters asserted that 99-year easements should be treated as permanent easements and compensated similarly. USDA made no changes based on these comments because the clear meaning of the statutory provisions in 16 U.S.C. 3838p makes a distinction between permanent easements and term easements.

Commenters asserted that the 40-acre minimum for GRP should be changed to a 10-acre minimum. USDA made no changes based on these comments because the statute at 16 U.S.C. 3838n already addresses this matter by providing that 40 contiguous acres is the minimum enrollment size unless the Secretary grants a waiver.

Commenters also asserted that the regulations should delete or limit the ability of USDA to waive the 40-acre minimum for eligibility in GRP. Because this waiver process is provided by statute at 16 U.S.C. § 3838n., USDA does not have the authority to waive or delete such a provision.

#### Conservation Easement Deed

##### Water Rights

Comments were received on the deed arguing that the prohibitions in the deed regarding the transfer of water rights might usurp State water law. Although a conservation easement might encumber the ability of a landowner to sell the water rights associated with the property, the provisions of the easement deed are not contrary to State water laws. However, USDA recognizes that retention of all water rights associated with a particular property may not be necessary to protect the conservation purposes for which it acquired the easement. Therefore, USDA changed the easement deed to provide greater flexibility for landowners relating to water rights where appropriate.

##### Hay, Mow, or Harvest for Seed

The easement deed provided that the landowner shall not hay, mow, or harvest for seed during certain nesting seasons for birds whose populations that USDA determines are in significant decline. Commenters asserted that these

provisions were too onerous. USDA made no changes to the conservation easement deed based on these comments. The provisions in the deed merely reflect statutory requirements at 16 U.S.C. § 3838o.

#### *Routine Activities*

Commenters asserted that certain prohibitions in the conservation easement deed placed onerous restrictions on a landowner's rights to conduct routine activities, such as the installation of new underground utilities and other activities that result in minimal disturbances to the surface of the land. Based upon these comments, USDA has reconsidered its interpretation of the provision in the statute prohibiting disturbing of the soil surface, and has determined that this provision was not meant to impede the practical administration of enrolled lands where no significant harm would result to the grassland values. Accordingly, USDA has modified the deed and final rule (*see* § 1415.4(i)(3)) to allow for certain activities that disturb the surface of the land when such disturbances are only temporary in nature, and USDA determines that the manner, number, intensity, location, operation, and other features associated with the activity will not adversely affect the grassland resources protected under an easement or rental agreement. By "temporary in nature," the Department means a limited extent of time, typically not to exceed a short-term period, ordinarily necessary to complete a specific activity, as determined by USDA. In addition, the nature of the disturbance must be such that the area affected is limited in scope and impact and is capable of being (and is) completely restored to its requisite grassland functions and values, as determined by NRCS.

#### *Section by Section Description of Changes*

Changes to the sections from the interim final rule are as follows:

##### Section 1415.1 Purpose

This section sets forth the purpose and objectives of the program. In the interim final rule, USDA used the term "natural" grasslands to include grasslands that are dominated by introduced, desirable forage species that are ecologically adapted to the site and can sustain itself in the vegetative community without frequent cultural treatment. Without changing the meaning, USDA has changed this term to "naturalized" to avoid confusion with the term "native."

##### Section 1415.2 Administration

This section includes language on general program administration and policy that relates to 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. USDA amended this section from the interim final rule to remove the demand factor, as described earlier in the preamble. USDA also amended this section to clarify that USDA is responsible for approving the conservation practices that are eligible for cost-share. USDA also added the term "unfunded" to paragraph (i) of this section to clarify the applications that would remain on file until funding became available.

##### Section 1415.3 Definitions

This section defines terms used throughout the rule. Without changing the substance of this regulation, USDA replaced the term "natural" with "naturalized." USDA also substituted the term "naturalized" for the term "natural" wherever it appeared in the interim final rule.

##### Section 1415.4 Program Requirements

In this section, USDA identifies the requirements for participation in GRP. USDA modified paragraphs (h) and (i) of this section to clarify, among other things, that facilities and land use activities that are common grazing practices, including maintenance and necessary cultural practices, are permissible.

##### Section 1415.5 Land Eligibility

The language in this section identifies eligible land as defined in the GRP statute. USDA made editorial changes to clarify the language in paragraph (b).

##### Section 1415.6 Participant Eligibility

This section sets forth the eligibility for participation in GRP. USDA made no changes to this provision from the interim final rule.

##### Section 1415.7 Application Procedures

This section provides general information about the application process. USDA made no changes to this provision from the interim final rule.

##### Section 1415.8 Establishing Priority for Enrollment of Properties

This section sets forth policy for developing the ranking and evaluation criteria. USDA made no changes to this provision from the interim final rule.

##### Section 1415.9 Enrollment of Easements and Rental Agreements

This section describes the process for enrollment in GRP and makes reference to a number of documents. USDA clarified the language in paragraphs (d), (e), and (f) to ensure that the reader would not confuse one of these documents for another.

##### Section 1415.10 Compensation for Easements and Rental Agreements

This section sets forth the methodology for determining compensation for both easements and rental agreements. As discussed above under the heading "compensation for easements," USDA changed the term "grassland value" to "grazing value" in paragraph (a) to more accurately state the statutory formula for determining easement values. As discussed above under the heading "Rental Agreement Rates," USDA changed paragraph (c) to allow the adjustment of the rental agreement rates based on the duration of the agreements.

##### Section 1415.11 Restoration Agreements

This section sets forth the terms and conditions under which USDA will enter into a restoration agreement. USDA modified paragraphs (b), (c), and (d) to clarify that only those practices and measures that it has determined eligible and approved for cost share will be eligible to receive reimbursement under GRP.

##### Section 1415.12 Modifications

This section describes when easements and rental agreements may be modified. USDA did not make any changes to this section from the interim final rule.

##### Section 1415.13 Transfer of Land

This section discusses the impact of transferring ownership or control of land enrolled in GRP. USDA modified paragraph (f) by adding the adjective "GRP conservation" to the term easement to clarify which easement would be binding upon a landowner and any person claiming under the landowner.

##### Sections 1415.14 Through 1415.20

These sections contain standard administrative policy associated with contract violations and remedies, payments not subject to claims, assignment of payments, and appeals. Section 1415.17 contained the provision regarding transferring easement title to third parties. USDA made changes to § 1415.17 to comport with the amendments to the GRP authorizing

statute, which provide authority for USDA to transfer title to GRP easements to qualified third parties. USDA did not make any substantive changes to these sections from the interim final rule, except for those required by statute.

#### **Executive Order 12866**

The Office of Management and Budget (OMB) determined that this 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 final rule. Copies of the analysis may be obtained from Skip Hyberg, Agricultural Economist, Economic Analysis Staff, Farm Service Agency, Room 2745, Mail Stop 0519, 1400 Independence Ave., SW., Washington, DC 20250-0519; telephone: (202) 720-9222; fax: (202) 720-4265; e-mail: [skip.hyberg@usda.gov](mailto:skip.hyberg@usda.gov), Attention: Grassland Reserve Program. The analysis is also available at the following Internet address: <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 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.

#### **Environmental Analysis**

An Environmental Assessment (EA) has been prepared to assist in determining whether this 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 is issuing a Finding of No Significant Impact (FONSI). 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 are also available at the following Internet address: <http://www.nrcs.usda.gov/programs/GRP>.

#### **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 final rule.

#### **Government Paperwork Elimination Act**

CCC is committed to compliance with the Government Paperwork Elimination Act (GPEA) and the Freedom to E-File Act, which require government agencies to provide, to the maximum extent possible, the public with the option of submitting information or transacting business electronically.

#### **Civil Rights Impact Analysis**

USDA has determined through a Civil Rights Impact Analysis that the issuance of this rule will not result in adverse impacts for minorities, women, or persons with disabilities. Copies of the Civil Rights Impact Analysis may be obtained from Floyd Wood, National Program Manager, Easement Programs 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 final rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. The rule is not retroactive. To the extent State and local laws are inconsistent with this rule, this rule preempts such provisions. 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 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.

#### **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 revising part 1415 to read as follows:

#### **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 to easements and rental agreements.
  - 1415.13 Transfer of land.
  - 1415.14 Misrepresentations and violations.
  - 1415.15 Payments not subject to claims.
  - 1415.16 Assignments.
  - 1415.17 Easement transfer to third parties.
  - 1415.18 Appeals.
  - 1415.19 Scheme or 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:

- (1) Emphasize preservation of native and naturalized grasslands and shrublands;
- (2) Protect grasslands and shrublands from the threat of conversion;
- (3) Support grazing operations; and
- (4) 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 GRP, as administered by the Natural Resources Conservation Service (NRCS) and the Farm Service Agency (FSA). The regulations in this part are administered under the general supervision and direction of the NRCS Chief and the FSA Administrator. These two agency leaders:

(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 national allocation formula may also include additional factors related to improving program implementation, as determined by the NRCS Chief and the FSA Administrator. The allocation formula may be modified periodically to change the emphasis of any factor(s) in order to address a particular natural resource concern, such as the precipitous decline of a population(s) of a grassland-dependent bird(s) or animal(s).

(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 for:

(1) Identifying State priorities for project selection, based on input from the State technical committee;

(2) Identifying USDA employees at the field level responsible for implementing the program by 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) Developing program outreach materials at the State and local level to help ensure landowners, operators, and tenants of eligible land are aware and

informed that they may be eligible for the program.

(4) Approving conservation practices eligible for cost-share and cost-share rates.

(5) Developing conservation plans and restoration agreements.

(6) Administering and enforcing the terms of easements and rental agreements unless this responsibility is transferred to a third party as provided in § 1415.17.

(7) With advice from the State technical committee, developing criteria for ranking eligible land, consistent with national criteria and program objectives and State priorities. 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 conservation purposes and sound administration of GRP. This authority cannot be further delegated. No provision of this part which is required by 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 USDA Forest Service may hold GRP 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, unfunded, 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.

*Common grazing practices* means those grazing practices, including those related to forage and seed production common to the area of the subject ranching or farming operation, and the application of routine management activities necessary to maintain the viability of forage resources, that are common to the locale of the subject ranching or farming operation.

*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 GRP participants' decisions and supporting information for protection and treatment of a land unit or water as a result of the planning process, that meets NRCS Field Office Technical Guide criteria for each natural resource concern (soil, water, air, plants, and animals) and takes into account economic and social considerations. The plan describes the conservation values of the grassland and schedule of operations and activities required to solve identified natural resource problems and take advantage of opportunities at a conservation management system level. The needs of the participant, 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.

*Conservation values* means those natural resource attributes identified by USDA as having significant importance to maintaining the natural functions and values of the grassland area, including but not limited to, habitat for declining species of grassland-dependent birds and animals.

*Cultural practice* means those practices such as the installation of fences, watering, feeding, and sheltering facilities necessary for the raising of livestock, including related forage and seed production.

*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 GRP.

*Enhancement* means to increase or improve the viability of grassland resources, including habitat for declining species of grassland-dependent birds and animals.

*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 who is transferring land rights to the United States through an easement.

*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.

*Grazing value* is a term used in the calculation of compensation for both rental agreements and easements. For easements, this value is determined through an appraisal process. For rental agreements, USDA determines the grazing value based upon an administrative process.

*Improved grassland, pasture, or rangeland* means grazing land permanently producing naturalized 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.

*Naturalized* means an introduced, desirable forage species that is ecologically adapted to the site and can perpetuate itself in the community without cultural treatment. For the purposes of this regulation, the term "naturalized" 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 agreements to purchase easements. Landowners of land subject to a GRP easement are also considered participants regardless of whether such landowner conveyed the easement to the Federal Government.

*Pastureland* means a land cover/use category of land managed primarily for the production of desirable, introduced, perennial 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, 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, grass-like 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 restores functions and values of grassland and shrubland (native and naturalized 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 reestablished through vegetative, management, or structural practices, to grassland and shrubland, according to criteria in the NRCS Field Office Technical Guide.

*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 habit, 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 habit, 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, and the Administrator, FSA.

#### § 1415.4 Program requirements.

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

(b) The easement and rental agreement will 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, enhancement, and, if necessary, restoration of the grassland functions and values.

(c) All participants in GRP are required to implement a conservation plan approved by USDA to conserve, protect, enhance, and, if necessary, restore the viability of the grassland enrolled into the program. The conservation plan documents the conservation values, characteristics, current and future use of the land, and practices that need to be applied along with a schedule for application.

(d) The easement and rental agreement must grant USDA or its representatives a right of ingress and egress to the easement and rental agreement area. For easements, this access is legally described by the conservation easement deed. Access to rental agreement areas is identified in the GRP conservation plan.

(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 must 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 conservation easement deed developed by USDA. The easement grants 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 the conservation plan and any associated restoration agreement.

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

(1) Common grazing practices, including maintenance and cultural practices on the land in a manner that is consistent with maintaining the viability of native and naturalized grass and shrub species;

(2) Haying, mowing, or harvesting for seed production, except that such uses shall have certain restrictions as determined by the NRCS State Conservationist, in consultation with the State technical committee, in order 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, corrals, watering facilities, seedbed preparation and seeding, and any other related facilitating practices, as determined by USDA, needed 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:

(1) Common grazing management practices which are 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,

(2) Maintenance and necessary cultural practices associated with common grazing practices, and

(3) Other activities that result in only a temporary disturbance to the surface of the land where USDA determines that the manner, number, intensity, location, operation, and other features associated with the activity will not adversely affect the grassland resources protected under an easement or rental agreement. Such a temporary disturbance, being of a short duration and, not to exceed the extent of time ordinarily necessary for completing an activity, as determined by USDA.

(j) Rental agreement contracts may be terminated by USDA without penalty or refund if the original participant dies, becomes incompetent, or is otherwise unavailable during the contract period.

(k) Participants, with the agreement of USDA, may convert rental agreements to an easement, provided that 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 is eligible for funding consideration if the NRCS State Conservationist determines that the land is:

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

(2) The land is located in an area that has been historically dominated by grassland, forbs, or shrubs, and the State Conservationist, with advice from the State technical committee, determines that it has potential to provide habitat for animal or plant populations of significant ecological value, if the land is—

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

(ii) Restored to a native or naturalized grassland conditions.

(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 eligible for enrollment in GRP. 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 other than the statutory baseline level of 40 acres 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 already protected under an existing contract or easement. This land becomes eligible for enrollment in GRP 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 prospective GRP participant 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. Generally, 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 for which they seek to enroll their land. 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, establishes 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:

(1) Native and naturalized grassland;

(2) Protection of grassland from the threat of conversion;

(3) Support for grazing operations; and

(4) Maintenance and improvement of 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 15 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 and evidences a good faith intent on the part of the applicant to participate in the program.

(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 and signed by the participant.

(d) USDA provides the applicant with a description of 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 land is enrolled, USDA will proceed with the development of the conservation plan and obtain an appraisal. If the landowner accepts the appraisal offer from USDA, the landowner signs an option agreement to purchase for the

appraisal amount. USDA will then proceed with other easement acquisition activities, which include 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 rental agreement or easement, USDA may withdraw its offer anytime due to lack of available funds, title concerns for easements, or other reasons. For easements, the appraisal offer to the participant shall be void if the easement is not executed by the participant within the time specified in the option agreement to purchase.

#### **§ 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 grazing value encumbered by the easement as determined by an appraisal for permanent easements; and

(2) Thirty percent of the value determined in paragraph (a)(1) of this section 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, as determined by USDA. USDA may adjust rental agreement rates, not to exceed the statutory limits, based on duration of agreement, inflation, and other economic considerations associated with grazing lands.

(c) In order to provide for better uniformity among States, the FSA Administrator and the NRCS Chief may review and adjust, as appropriate, State or other geographically based payment rates for rental agreements.

(d) For easements, to minimize expenditures on individual appraisals and to expedite program implementation, USDA may complete a programmatic appraisal to establish regional average market values and grazing values if acceptable under federally recognized real property valuation standards.

(e) 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 USDA programs.

#### **§ 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, determines 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 is also subject to the availability of funding. USDA 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 is not required. However, if a restoration agreement is required, NRCS will set the terms of the restoration agreement. The restoration agreement identifies conservation practices and measures necessary to restore or 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 when funds are available.

(b) Restoration practices are those land management, vegetative, and structural conservation practices and measures that will restore or improve the grassland ecological functions and values on native and naturalized plant communities. The NRCS State Conservationist, with advice from the State technical committee and in consultation with FSA, determines the conservation practices, measures, payment rates, and cost-share percentages, not to exceed statutory limits, available under GRP. A list of restoration practices approved for cost-share assistance under GRP restoration plans is available to the public through the local USDA Service Center. NRCS, working through the local conservation district with the program participant, determines the terms of the restoration agreement. The conservation district may assist NRCS with determining eligible restoration practices and approving restoration agreements. Restoration agreements do not extend past the date of a GRP rental agreement or easement.

(c) Only NRCS approved restoration practices and measures are eligible for cost sharing. Payments under GRP restoration agreements 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 plans are entered into for restoring either native or naturalized plant communities. When seeding is determined necessary for restoration, USDA gives 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 must be maintained by the participant for the life of the practice, as identified in the restoration agreement. The life of the practice must be consistent with other USDA cost shared or easement programs. Failure to maintain the practice is dealt with under the terms of the restoration agreement and may involve repayment of the Federal cost share plus interest.

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

(g) Technical assistance is provided by NRCS, or an approved third party.

(h) If the participant is receiving cost share for the same practice from State or local government, NRCS will adjust the GRP cost share rate so that the combined cost share received by the participant does not exceed 100 percent of the total actual cost of the restoration. In addition, the participant cannot receive cost-share from more than one USDA 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 restoration practice has been established in compliance with appropriate standards and specifications.

(j) Restoration practices identified in the restoration plan may be implemented by the participant or other designee. Cost-share 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 by the Chief, NRCS, and the landowner.

(b) Easement modifications may only be made by the Chief, NRCS, after consulting with the Office of the General Counsel. Minor modifications may be made by the NRCS State Conservationist in consultation with Office of the 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 USDA at the State level, 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 is 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 will 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 bears 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 or assigns. All obligations of the landowner under the GRP conservation easement deed also binds 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 successor 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, plus interest, 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 declines to assume responsibility under the agreement.

#### **§ 1415.14 Misrepresentation and violations.**

(a) Contract violations:

(1) Contract violations, determinations, and appeals are 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 is not entitled to contract payments and must refund to CCC all payments, plus interest in accordance with 7 CFR part 1403.

(3) In the event of a violation of a rental agreement, the participant will 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. Failure to correct the violation may

result in termination of the rental agreement.

(b) Easement violations: Easement violations are handled under the terms of the easement. Upon notification of the participant, USDA has the right to enter upon the easement area at any time to monitor compliance with the terms of the GRP conservation easement or remedy deficiencies or violations. When USDA believes there may be a violation of the terms of the GRP conservation easement, USDA may enter the property without prior notice. 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.

(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, rental payment, or 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 a GRP conservation 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, such a participant 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 Easement transfer to third parties.**

(a) USDA may transfer title of ownership to an easement to an approved private conservation or land trust organization or State agency with the consent or written request of the landowner and upon a determination by the Secretary, or his or her designee, that granting permission will promote protection of grassland. Such entities must be a qualified organization under 16 U.S.C. § 3838q that the Secretary determines has the appropriate authority, expertise, and resources necessary to assume title ownership of the easement. Rental agreements will not be transferred.

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

(c) The private organization, State, or other Federal agency must 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 or State agency that seeks to hold title to a GRP easement must apply to the NRCS State Conservationist for approval. The State Conservationist shall consult with FSA State Executive Director prior to rendering its determination.

(e) For a private organization to be qualified to be an easement holder, 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). 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 rangeland, 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) In the event that the easement holder fails to enforce the terms of the easement, as determined in the discretion of the Secretary, the Secretary, his or her successors and assigns, shall have the right to enforce the terms of this easement through any and all authorities available under Federal or State law or, at the option of the Secretary, to have all right, title, or interest in this easement revert to the United States of America. Further, in the event the easement holder dissolves or attempts to terminate the easement, then all right, title, and interest shall revert to the United States of America.

(g) Should this easement be transferred pursuant to this section, all warranties and indemnifications provided for in this Deed shall continue to apply to the United States. Subsequent to the transfer of this easement, the easement holder shall be responsible for conservation planning and implementation and will adhere to the NRCS Field Office Technical Guide for maintaining the viability of grassland and other conservation values.

(h) Due to the Federal interest in the GRP easement, the easement interest cannot be condemned.

#### § 1415.18 Appeals.

(a) Applicants or participants may appeal decisions regarding this program in accordance with part 7 CFR part 614, 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.

The release of appraisal information shall be disclosed at the discretion of USDA in accordance with applicable law.

Signed in Washington, DC on February 21, 2006.

**Bruce I. Knight,**

*Vice President, Commodity Credit Corporation, and Chief, Natural Resources Conservation Service.*

**Teresa C. Lasseter,**

*Executive Vice President, Commodity Credit Corporation, and Administrator, Farm Service Agency.*

[FR Doc. 06-2091 Filed 3-3-06; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2005-20856; Directorate Identifier 2004-NE-25-AD; Amendment 39-14502; AD 2006-05-05]

**RIN 2120-AA64**

#### Airworthiness Directives; MT-Propeller Entwicklung GmbH Propellers

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for certain MT-Propeller Entwicklung GmbH variable pitch and fixed pitch propellers with serial numbers (SNs) below 95000, which have not been overhauled since April 1994. This AD requires overhauling the propeller blades of these propellers within 30 days after the effective date of the AD. This AD also requires performing initial and repetitive visual inspections of affected propeller blades. This AD also requires removing all propeller blades from service with damaged erosion sheath bonding or loose erosion sheaths and installing any missing or damaged polyurethane protective strips. This AD results from reports of stainless steel leading edge erosion sheaths separating from propeller blades and reports of propeller blades with damaged or missing polyurethane protective strips (PU-protection tape) due to insufficient inspection procedures in older MT-Propeller Entwicklung GmbH Operation & Installation Manuals. We are issuing this AD to prevent erosion sheath separation leading to damage of the airplane.

**DATES:** This AD becomes effective April 10, 2006.

**ADDRESSES:** You can get the service information identified in this AD from MT-Propeller USA, Inc., 1180 Airport Terminal Drive, Deland, FL 32724; telephone (386) 736-7762, fax (386) 736-7696 or visit <http://www.mt-propeller.com>.

You may examine the AD docket on the Internet at <http://dms.dot.gov> or in Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Frank Walsh, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (781) 238-7158, fax (781) 238-7170.

**SUPPLEMENTARY INFORMATION:** The FAA proposed to amend 14 CFR part 39 with a proposed AD. The proposed AD applies to certain MT-Propeller Entwicklung GmbH variable pitch and fixed pitch propellers with serial numbers (SNs) below 95000, which have not been overhauled since April 1994. We published the proposed AD in the **Federal Register** on April 6, 2005 (70 FR 17359). That action proposed to require overhaul of the propeller blades on these propellers by December 31, 2005. That action also proposed to require performing initial and repetitive visual inspections of those propeller blades. That action also proposed to require removing all propeller blades from service with damaged erosion sheath bonding or loose erosion sheaths and to install any missing or damaged polyurethane protective strips.

#### Examining the AD Docket

You may examine the docket that contains the AD, any comments received, and any final disposition in person at the Docket Management Facility Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647-5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES**. Comments will be available in the AD docket shortly after the DMS receives them.

#### Comments

We provided the public the opportunity to participate in the development of this AD. We received no comments on the proposal or on the determination of the cost to the public.