Rules and Regulations

Federal Register
Vol. 70, No. 63
Monday, April 4, 2005

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

7 CFR Part 624

Emergency Watershed Protection Program

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Final rule.

SUMMARY: The United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) is issuing a final rule for the Emergency Watershed Protection (EWP) Program to improve the effectiveness of its response to natural disasters. This final rule establishes the process by which NRCS will administer the EWP Program, responds to comments on the proposed rule received from the public during the 60-day comment period, and incorporates modifications and clarifications to improve implementation of the program.

DATES: *Effective Date:* May 4, 2005.

ADDRESSES: This final rule may be accessed via the Internet. Users can access the Natural Resources Conservation Service (NRCS) homepage at *http://www.nrcs.usda.gov/programs/ewp/.* Select the EWP rule link listed on the EWP program page.

FOR FURTHER INFORMATION CONTACT: Victor Cole, (202) 690–0793, fax (202) 720–4265, *victor.cole@usda.gov,* Financial Assistance Programs Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013–2890 or for information regarding EWP floodplain easements, contact Leslie Deavers (202) 720–1062, fax (202) 720–6697, *leslie.deavers@usda.gov,* Easement Programs Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013–2890. For information regarding administration of the EWP program by the United States Department of Agriculture Forest Service, contact Meredith Webster, (202) 205–0804, fax (202) 205–1096, mmwebster@fs.fed.us, USDA Forest Service, 201 14th Street SW., 3 South Yates Building, Mail Stop 1121, Washington, DC 20024

SUPPLEMENTARY INFORMATION:

Background

The Secretary of Agriculture cooperates with other Federal, State, and local agencies in the recovery from natural disasters such as hurricanes, tornadoes, fires, drought, and floods through implementation of the EWP Program (authorized by Section 216 of the Flood Control Act of 1950, Public Law 81–516, 33 U.S.C. 701b–1; and Section 403 of the Agricultural Credit Act of 1978, Public Law 95–334, as amended by Section 382, of the Federal Agriculture Improvement and Reform Act of 1996, Public Law 104–127, 16 U.S.C. 2203). EWP, through local sponsors, provides emergency measures for run-off retardation and erosion control to areas where a sudden impairment of a watershed threatens life or property. The Secretary of Agriculture has delegated the administration of EWP to the Chief of NRCS on state, tribal, and private lands, and Chief of USDA Forest Service (FS) on National Forest System lands, including any other lands that are administered under a formal agreement with the FS. The FS administers the EWP Program in accordance with Forest Service Manuals 1950 and 3540, and the Forest Service Handbook 1909.15. This rule only provides direction to the NRCS on administering the EWP Program.

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this final rule is a ''significant action'' for the purposes of Executive Order 12866. Pursuant to Section 6(a)(3) of Executive Order 12866, NRCS has conducted an economic analysis of the potential impacts associated with this final rule as compared to the existing program. The economic analysis concluded that changes to the program implemented by this rule may save up to $1.4 million each year. These changes include: Setting EWP priorities, pre-disaster readiness, limiting repairs to 2 times in 10 years, and discontinuing the practice of providing EWP funds on Federal lands. However, some of this expected reduction may be offset by increased cost-share for limited resource counties and the use of EWP in the repair of conservation practices on agricultural lands. A copy of this cost-benefit analysis is available upon request from the address listed above.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule because neither the Secretary of Agriculture nor NRCS are required by 5 U.S.C 553 or any other law to publish a notice of proposed rulemaking for the subject matter of this rule.

Environmental Evaluation

A Programmatic Environmental Impact Statement (PEIS) and Record of Decision (ROD) were prepared as a part of this rulemaking. NRCS considered both the comments received on the draft PEIS and the proposed rule in formulation of the final regulation. Copies of the final PEIS and ROD may be obtained from the Financial Assistance Programs Division, Natural Resources Conservation Service, USDA, P.O. Box 2890, Washington, DC 20013–2890. The final PEIS and ROD may be accessed via the Internet. Users can access the NRCS homepage at *http://www.nrcs.usda.gov/programs/ewp/.* Select the PEIS link listed on the EWP program page.

Paperwork Reduction Act

This final rule will not alter the collection of information previously approved by the Office of Management and Budget and assigned number 0578–0030.

Government Paperwork Elimination Act

NRCS is committed to compliance with the Government Paperwork Elimination Act, which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. To better commodate public access, NRCS is proposing to develop an online application and information system for public use.

Executive Order 13132

This final rule has been reviewed in accordance with requirements of Executive Order 13132, Federalism. NRCS 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.

Executive Order 12998

This final rule has been reviewed in accordance with Executive Order 12998. The provisions of this rule are not retroactive. Furthermore, the provisions of this final rule pre-empt State and local laws to the extent that such laws are inconsistent with this final rule. Before an action may be brought in a Federal court of competent jurisdiction, the administrative appeal rights afforded persons at 7 CFR parts 614 and 11 must be exhausted. For EWP recovery measures, an individual landowner is not an EWP participant nor is the legal substantive status of land affected by an NRCS decision regarding the eligibility of a measure for EWP assistance. Therefore, an individual landowner is not entitled to appeal an EWP recovery measure determination under 7 CFR parts 614 and 11.

Executive Order 13175

NRCS has taken measures to ensure tribal officials are aware of the EWP Program and are provided opportunities to receive assistance in compliance with the Executive Order. NRCS established field offices within some reservations and tribal liaison staff to promote outreach and coordination with tribal officials. The result of this effort has been increased participation in the EWP Program by tribes. Additionally, NRCS has included a waiver provision in this regulation which complies with the flexibility requirement of the Executive Order.

Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

This regulation is not a major rule under 5 U.S.C. 801 *et. seq*. the Small Business Regulatory Enforcement Fairness Act:

(a) This regulation would not produce an annual economic effect of $100 million. The changes to the program are expected to yield cost savings of up to $1.4 million per year.

(b) This regulation would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) This regulation would not have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act of 1995

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

Overview

The EWP Program helps remove threats to life and property that remain in the nation's watersheds in the aftermath of natural disasters including, but is not limited to, floods, fires, windstorms, ice storms, hurricanes, typhoons, tornadoes, earthquakes, volcanic actions, slides, and drought. The EWP Program is administered by NRCS, on state, tribal, and private lands by providing technical and financial assistance to local sponsoring authorities to preserve life and property threatened by disaster for runoff retardation and soil-erosion prevention. Funding is typically provided through Congressional emergency supplemental appropriations. Threats that the EWP Program addresses are termed watershed impairments. These include, but are not limited to, debris-clogged stream channels, undermined and unstable streambanks, jeopardized water control structures and public infrastructure, wind-borne debris removal, and damaged upland sites stripped of protective vegetation by fire or drought. If these watershed impairments are not addressed, they would pose a serious threat of injury, loss of life, or devastating property damage should a subsequent event occur.

On November 19, 2003 (**Federal Register** Vol. 68, No. 223 pages 65202–65210) NRCS initiated rulemaking by publishing a proposed rule with request for comments to modify the existing regulation at 7 CFR part 624 to make programmatic changes that allow the repair of enduring conservation practices, limit repeated site repairs, allow additional easement purchases, address environmental justice issues, and limit treatments on federal lands. In this rulemaking, NRCS has incorporated changes in program administration and in project execution dealing with traditional watershed impairments. This final rule expands the program by providing for removal of sediment in the floodplain and repair of damaged structural conservation practices to the list of watershed impairments for which EWP Program funds may be used. Additionally, the regulatory changes include: Allowing for up to 90 percent cost-share for limited resource areas; limit repair to twice in a ten year period; eliminate the single beneficiary requirement; purchase of easements on non-agricultural lands; establish one easement category; and funding projects on Federal lands only when such funding is not an inappropriate funding augmentation of the land management agency appropriations.

Program delivery improvements contained in this final rule are designed to enable NRCS field and state office personnel to provide EWP assistance more effectively and efficiently. NRCS believes that these improvements will more fully, equitably, and consistently meet the needs of people requiring emergency assistance. Program improvements are designed to address environmental, economic, and social concerns and values.

The changes adopted in this final rule were identified, discussed, and refined in an ongoing comprehensive program review that NRCS initiated and then issued in the proposed rule. The process included extensive opportunities for public participation and identified substantive ways to improve the environmental, economic, social, and technical soundness of program activities.

In response to the proposed rulemaking, seven separate responses from the public containing about 25 specific comments were received during the 60-day comment period: 1 response from an individual, 2 from conservation districts and related groups, and 4 from State agencies.

Additional responses were received from a Federal agency and NRCS employees; their comments are not included in the following analysis of public comments. These responses were treated as inter and intra-agency comments and considered in the drafting of the final rule along with the public comments where appropriate.

All comments received are available for review in Room 6019, South Agriculture Building, 14th and

Independence Ave., SW., Washington, DC, during regular business hours (8 a.m. to 5 p.m.) Monday through Friday.

Analysis of Public Comment

Overall, the comments received were favorable and supported the proposed changes to the EWP Program. Some commentors offered suggestions for improving or clarifying specific sections of the proposed rule which resulted in the agency making changes to the proposed rule as identified in the section-by-section discussion of comments.

The comments focused on a wide variety of issues in the proposed rule. Editorial and other language clarification changes were suggested; these comments are not included in the following analysis but all were considered and many of the minor technical changes were included in the final rule. For the sections not listed in this preamble, the agency has adopted the language described in the proposed rule with the exception of non-substantive editorial and other language clarifications.

Several comments were related to funding and suggested that the EWP Program should be funded as a line item in NRCS' fiscal year appropriations since there is sometimes a significant delay from the date of the natural disaster until funding is provided. Funding for the EWP Program is typically provided through emergency supplemental appropriations and it would require Congressional action to include EWP funding as a line item.

Section-By-Section Discussion of Comments Received on the Proposed Rule Provisions

Section 624.4 (b) Exigency. Several comments were received supporting the clarification of the term ''exigency'' and elimination of the term ''non-exigency''.

NRCS acknowledges this support and consequently is adopting the proposed language without changes. The changes were proposed because the agency had previously encountered various cases where the term ''exigency'' was applied too liberally and implemented for purposes for which it was not intended. Interpretations of the terms ''exigency'' and ''non-exigency'' varied widely within NRCS. NRCS's intent when establishing these two categories (exigency and non-exigency) in the previous rulemaking (46 FR 65677, Nov. 17, 1981) was to allow NRCS to respond quickly to only those situations that needed immediate attention.

In addition, the previous regulation tied cost-sharing to this designation, although NRCS has not applied the higher cost-sharing rate, originally set for exigencies, for the past 11 years. Instead, NRCS has applied a single cost-share rate of 75 percent to exigent situations. However, NRCS recognizes there may be unique situations that require a waiver from this cost-sharing rate. The agency added *Section 624.11 Waivers* which allows the NRCS Deputy Chief for Programs to waive any provision of these regulations to the extent allowed by law. An example may include allowing up to 100 percent cost-sharing for a limited resource area.

Based upon past experience, NRCS reconsidered the 5-day exigency time frame and has lengthened the time frame to accomplish exigency measures from 5 days to 10 days. This additional time will aid sponsors in their effort to secure their cost-share. Additionally, many EWP exigency situations involve permitting or other legal requirements resulting in additional time. The additional five days should provide time for the sponsors to secure necessary ''emergency'' permits and for NRCS and sponsors to comply with any applicable Federal law or regulation.

Section 624.6(b)(2)(i). Two comments were received that express support for limiting of repair of the same site to only twice within a ten year period in order to avoid repetitive Federal funding, which could in turn perpetuate activities that are not best suited for the areas prone to impacts from natural disasters. Two comments also expressed concern regarding whether the limitation was applicable to the removal of debris within the same site. Consequently, NRCS has modified the language to reflect that the limitation refers to structural measures only. NRCS recognizes that in most areas of the country there is no practical means to effectively prevent debris from entering and accumulating in the watershed as a result of repetitive natural disasters. Therefore, NRCS does not intend to limit the number of times debris can be removed within the same location due to a natural or constructed (*e.g.*, road crossing) restriction within a waterway. Rather, NRCS would limit repairs under EWP to twice within a 10-year period for the same cause (*i.e.*, flooding) at the same site for structural measures. If structural measures have been installed/repaired or protected twice with EWP assistance and less than 10 years has elapsed between the disaster that triggered the first repair and the disaster triggering a third repair, the only option available under EWP would be to place a floodplain easement on the damaged site.

For example, if a home was protected from destruction twice using EWP assistance for two separate events, regardless of the structural measure used to protect the home or the location along the waterway of the protection efforts, EWP funds would not be available for a third protection effort of the home within the 10-year period for the same cause. For repairs of dikes, levees, berms, and similar structures, because these structures can run contiguously for miles, a specific location on a structure is considered one EWP site to determine whether future impacts to this site on the structure are eligible for EWP funds. Thus, repairs can be made repetitively so long as the same location is not repetitively repaired more than twice within 10 years.

Section 624.6(b)(2)(iv). Two comments were received that supported the language change to clarify that NRCS can only provide EWP assistance on Federal lands in situations where safeguards are followed to avoid inappropriate augmentation of appropriations, therefore, NRCS is adopting the proposal without changes. One comment recommended that exigency situations should be funded on Federal lands.

NRCS and the FS have been delegated the authority to administer the EWP program. NRCS administers the program on state, tribal, and private lands while the FS administers the program on National Forest System lands, including lands under an official management agreement with the FS. NRCS is the lead USDA agency, responsible for developing EWP regulations and policy for both agencies and through a 1998 Memorandum of Understanding with the FS, NRCS also manages the funding for both agencies. However, recent Congressional appropriations have designated the funding for NRCS, which does not authorize NRCS to transfer funding to the FS for EWP measures on lands it manages. The existing language of 7 CFR 624.4 language was changed to reflect that NRCS will transfer funding to the FS only when it is appropriate *e.g.*, when the EWP funding is provided to the Secretary of Agriculture with discretion to provide the funding to both agencies. For Federal lands, it is the Federal land management department or agency that is responsible for securing funding to undertake emergency repair activities within lands under its control.

In response to the commentor that recommended that exigency situations should be funded on Federal lands, the FS is responsible for determining whether exigency situations exist on

lands it manages in accordance with regulations and policy established by NRCS. Funding EWP activities on Federal lands other than those under FS management may be an inappropriate augmentation of another Federal agency's budget. If USDA is Congressionally authorized, funding EWP activities on Federal lands may be appropriate. NRCS has adopted, without changes, the proposal defined in section 624.6(b)(2)(iv) which limits the use of EWP funding on Federal lands except when authorized by Congress or adequate safeguards are followed.

Section 624.6(b)(3). Several comments were received that supported including eligibility for structural, enduring, and long-life conservation practices. Additionally, several comments expressed concern that the program should not overlap with Emergency Conservation Program (ECP) administered by the Farm Service Agency (FSA).

As stated in the preamble of the proposed rule, NRCS does not intend to overlap the EWP program with ECP. EWP assistance would only be applicable when the emergency measures are not eligible for assistance under ECP. EWP differs significantly from ECP because a sponsor is required for EWP recovery work; EWP recovery assistance does not provide financial assistance directly to individuals but rather to eligible sponsors.

NRCS can provide EWP assistance toward upgrading damaged or undersized practices for structural, enduring, and long-life conservation practices when technology advances or construction techniques warrant. Such modifications will be cost shared in accordance with Section 624.7. All structural, enduring, and long-life conservation practices for which the sponsor is required to obtain a permit issued by a Federal, State, or local entity shall be designed and installed to meet the permit requirements or NRCS standards, whichever is greater. If a structure has to be upgraded to meet federal permitting or other requirements, such modifications will be cost shared in accordance with Section 624.7 NRCS has adopted the proposal for structural, enduring, and long-life conservation practices and has modified the language in the final rule to clarify that EWP assistance is not available when ECP is applicable.

Section 624.6(c). Several comments were received that supported expansion of eligible work to include assistance for areas impacted that are beyond the immediate area of the waterway.

NRCS acknowledges this support and recognizes that agricultural productivity, public health and safety, and the environment are often threatened in the aftermath of disasters that occur outside the immediate limits of a waterway. Therefore, NRCS has expanded the EWP Program assistance described in the proposed rule and adopted here in the final rule to include all recovery measures within watersheds (*see* Section 624.6 (c) Eligible practices) on all state, tribal, and private lands otherwise meeting the EWP eligibility requirements. NRCS may provide EWP assistance for the removal of sediment and other debris from agricultural land (croplands, orchards, vineyards, and pastures) and windblown debris. This provision of the proposed regulation also provides for EWP assistance for drought recovery activities.

The expansion of eligible recovery measures is primarily associated with deposits of large quantities of sediments and other debris on floodplains usually occur from major flooding, and tornadoes and hurricanes. The sediments are usually coarse and infertile, and frequently destroy or smother plants and impair normal agricultural use. This is a normal occurrence in the dynamics of floodplain systems, but it can jeopardize the productivity of agricultural lands and adversely affect structures and property within urban areas. As set forth in the final rule, NRCS will now consider alternative practices to address the type of damage such as:

- Removing and disposing the sediment and other debris
- Incorporating the sediment into the underlying soil
- Offering to purchase a floodplain easement (see Section 624.10)

Whether these sites qualify for EWP assistance and what the most effective alternative treatment is for eligible sites depends upon many factors: size of the particles, depth of material deposited, lateral extent of the sediment and debris, soil type of the underlying material, and land use and value of the land. Floodplain easements (see Section 624.10) may be used if there is too much debris to incorporate or haul off-site, or otherwise disposed.

Most debris that is deposited on upland areas is carried from winds of hurricanes or tornadoes. Such debris may cover portions of several watersheds and normally consists of downed trees, utility poles, and fence posts; livestock and poultry carcasses; or building materials, such as insulation, shingles, metal roofing, metal siding, and similar non-biodegradable materials. Similarly, ice storms may result in debris deposition and cause the death of livestock and poultry. Debris removal will typically be associated with the removal of debris upstream of bridges and culverts, or in the upland portion of a watershed where debris would readily be moved through runoff and deposited during a subsequent storm event in a waterway which could cause blockages in the waterway, flooding homes and other structures.

The practice components adopted to address upland debris deposition may include, but are not limited to:

- Creating access when needed to move trucks and heavy equipment to a debris site
- Using chain saws, other power tools, winches, and other machinery and heavy equipment to gather and process the debris for onsite disposal or removal
- Disposing of debris in accordance with local rules and regulations on-site by burial, chipping, or burning
- Loading on trucks for removal and disposal off-site in approved sites or landfills, based upon the composition of the material
- Obtaining special technical assistance and personnel to handle hazardous materials such as asbestos, petroleum products, propane, or other compressed gas containers, or other potentially hazardous or toxic compounds or materials
- Grading, shaping, and revegetating, by seeding or planting, any portion of the area affected by the debris removal operation

Section 624.6(c) Eligible practices. Comments were received regarding drought emergencies suggesting the allowance of permanent drought measures such as drilling water wells, and also requested a timeframe for how long hay or water should be provided during a drought emergency.

Under the EWP Program drought recovery practices are generally temporary in nature and are intended to reduce the consequences of a drought. The EWP program provides for the repair or restoration to pre-disaster conditions. Drilling wells for livestock watering would be considered a ''betterment'' above that which existed prior to the drought and as such not eligible for EWP assistance. Additionally, the FSA may provide funding to drill wells for livestock watering under ECP during drought conditions. EWP assistance typically includes soil erosion prevention measures, prescribed grazing, or reseeding, which allows rangeland to recover more rapidly. As set forth in the proposed rule, NRCS believes that EWP assistance should not be used during

drought situations to install permanent practices or structures, including water wells, irrigation systems, or purchase of portable equipment (*i.e.*, water pumps) and has maintained this limitation in the final rule. NRCS has removed the provision in section 624.6(c)(4) of the proposed rule that allowed for providing temporary water for livestock and purchasing and transporting hay. The proposal to provide temporary water would be duplicative of eligible measures under the ECP administered by FSA. The proposal to purchase and transport hay was also eliminated since this activity may not achieve the results necessary for runoff retardation and soil erosion prevention since livestock would still be allowed to graze within the drought-impacted watershed area. Additionally, EWP practices during drought situations should not be conducted at the expense of another natural resource, such as pumping or releasing water from a water body to an extent that is environmentally detrimental.

Section 624.6(e) Implementation. Two comments were received that recommended NRCS consider the ''buy out'' of structures, primarily houses, rather than repairing the waterway to protect the houses. NRCS believes there is sufficient flexibility in this regulation to purchase and remove houses or other structures in cases where the removal meets the eligibility requirements of EWP, it is the least costly alternative, and the buy out is voluntary, and does not involve a leasee or rentor. Consequently, the proposed language has been adopted without change in the final rule.

Section 624.7 Cost share assistance. One comment recommended authorizing 100 percent for exigency situations since sponsors may not be able to secure funding within time frame required to complete exigency EWP measures.

NRCS has adopted in the final rule *Section 624.11 Waivers* which allows the NRCS Deputy Chief for Programs to waive any provision of these regulations to the extent allowed by law when the agency makes a written determination that such waiver is in the best interest of the Federal government. An example may include allowing up to 100 percent cost-sharing for a sponsor when the sponsor demonstrates they have insufficient resources or finances to contribute the 25 percent cost-share in an exigency situation. All exigency situations do not warrant 100 percent Federal cost-share. However, through the waiver provision of the final rule, the agency recognizes that there may be situations were 100 percent cost-share is warranted.

Section 624.7(b) (c). Several comments supported the definition set forth in the proposed rule at Section 624.4(e) and cost-share rate for limited resource areas. One commenter requested clarification as to whether all of the criteria must be met.

The definition of a limited-resource area is a county where average housing values are less than 75 percent of the State average, per capita income is less than 75 percent of the national per capita income, and unemployment during the preceding 3 years is at least twice the U.S. average. To respond to the comments and, to clarify NRCS' intent, the definition set forth in the proposed rule is being modified such that all three criteria have to be met to qualify for the 90 percent cost-share. NRCS would use the most recent U.S. census and unemployment data to make this determination. NRCS is not adopting the provision in the proposed rule which provided the NRCS State Conservationist with the authority to document the limited-resource status of an area within a non-limited resource county by applying National census data for the three factors mentioned above and approving the 90 percent cost-share rate for that area. After further review, NRCS recognizes that making this determination within a non-limited-resource county may be difficult since specific U.S. census and unemployment data may not be available. In situations where the NRCS State Conservationist believes the 90 percent cost-share is warranted, a waiver can be requested in accordance with Section 624.11 Waivers which allows the NRCS Deputy Chief for Programs to waive any provision of these regulations to the extent allowed by law when the agency makes a written determination that such waiver is in the best interest of the Federal government.

Section 624.8 Assistance. NRCS did not receive any comments on this provision and is adopting the change in the proposed rule which eliminated Section 624.8 Environment in the previous rulemaking (46 FR 65677, Nov. 17, 1981) since the information is duplicative of other USDA and NRCS regulations and policy (see 7 CFR part 1b; 7 CFR part 650; NRCS General Manual Title 190, Part 410; and NRCS National Environmental Compliance Handbook). In the proposed rule, NRCS did not identify the regulations and policies and has done so here to ensure that the public is aware of USDA and NRCS' environmental compliance regulations and policies that are applicable for the EWP Program.

Section 624.8(c)(3) Funding Priorities. One comment requested that floodplain easement acquisition should be included in the list of EWP priorities.

Funding for floodplain easement acquisition has been managed separately from EWP funding for recovery measures. This is due to Congressional language as part of the EWP funding appropriation which has designated the amount of funding that could be used to purchase floodplain easements. When NRCS receives funding for acquisition of floodplain easements, NRCS State Conservationist will establish ranking or priority watersheds to acquire floodplain easements. This proposed provision is adopted in the final rule with clarification that the funding priorities apply to EWP recovery measures.

Section 624.9 Time limits. One comment recommended extending the length of time by which recovery work must be completed beyond 220 days due to the length of time necessary in some cases for sponsors to obtain permits.

NRCS believes that in most cases emergency recovery measures should be completed within the 220-day time frame. However, *Section 624.11 Waivers* provides authority for the NRCS Deputy Chief for Programs to waive any provision of these regulations to the extent allowed by law which could include situations where permitting, endangered and threatened species compliance, cultural resources, or other legal requirements result in additional time to complete recovery work funded under the EWP Program. Accordingly, this proposed provision is adopted in the final rule without change.

Section 624.10 Floodplain easement. One comment requested that floodplain easements should focus on wetland and wildlife habitat restoration.

Under the floodplain easement option, a landowner offers to sell to NRCS a permanent easement that provides NRCS with the full rights to restore and enhance the floodplain's functions and values which include consideration of wetland and wildlife habitat restoration. The program is not a substitute for the Wetlands Reserve Program, also administered by NRCS, since many other floodplain restoration factors must be considered, and may be the focus, when restoring floodplain functions within a site. Floodplain easements restore, protect, maintain, and enhance the functions of wetlands and riparian areas; conserve natural values including fish and wildlife habitat, water quality, flood water retention, ground water recharge, and open space; and safeguard lives and

property from floods, drought, and the products of erosion. The agency has adopted the proposed provision in the final rule without change.

Section 624.10(b)(2)(ii). Comments were received that supported the acquisition of non-agricultural lands when purchasing floodplain easements.

Under the proposed rule, NRCS expanded the potential acquisition of floodplain easements to include non-agricultural lands. Structures within the floodplain easement may be demolished or relocated outside the 100-year floodplain, whichever costs less. This element of the proposed rule would tend to increase program costs in the short-term, but reduce costs to the Federal government in the long-term, as people and structures in non-agricultural areas are relocated out of the floodplain. In addition, as more acreage is returned to open space, the floodplain would function in a more natural state with increased long-term public benefits. The agency has adopted the proposed provision in the final rule without change.

Section 624.10(b)(4). Section 624.10(b)(4) sets forth the compensation that NRCS will pay a landowner for the purchase of a floodplain easement. The floodplain easement program is the successor program to the Emergency Wetlands Reserve Program (EWRP) that NRCS administered with EWP funds to address the 1993 and 1995 Midwest Flood events. As a component of the Wetlands Reserve Program, landowners received agricultural value for an EWRP easement. In the proposed rule, NRCS indicated that it would pay a landowner for a floodplain easement the lesser of the three following values as an easement payment: (1) A geographic rate established by the NRCS State conservationist, if one has been established; (2) A value based on a market appraisal analysis for agricultural uses or assessment for agricultural land; or (3) the landowner's offer, if one has been made.

NRCS is making a few adjustments to the compensation section of the final rule in response to recent changes made to the Department of Transportation's regulations to implement the Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs, 49 CFR Part 24, 7 CFR Part 21. In particular, NRCS relied upon an exemption for voluntary transactions in the former Department of Transportation regulations for its valuation methodology under the floodplain easement component of EWP. The Department of Transportation published its new regulations on January 4, 2005 (70 FR 590). The new Department of Transportation regulations have removed the voluntary transaction exemption, and therefore, NRCS modified the final rule to reflect that NRCS will follow applicable regulation and other law in its determination of easement compensation.

Section 624.10(c). Although no comments were received on this section, NRCS changed the language in this final regulation to accurately identify its policy related to easement modifications and terminations. The agency does not have the authority for either action. NRCS does have the authority under (7 U.S.C. 428a), in limited situations, to accept land exchanges.

Section 624.11 Waivers. Although no public comments were received on this section, NRCS is clarifying in the final rule that the NRCS Deputy Chief for Programs has the authority to waive any provision of these regulations to the extent allowed by law when the agency makes a written determination that such waiver is in the best interest of the Federal government. NRCS clarified that the determination must be in writing and in the best interest of the Federal government. NRCS will, upon request, make waivers available to the public in accordance with the Freedom of Information Act and 16 U.S.C. 3844(b).

List of Subjects in 7 CFR Part 624

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

■ Accordingly, for the reasons stated in the preamble, Part 624 of Title 7 of the Code of Federal Regulations is revised to read as follows:

PART 624—EMERGENCY WATERSHED PROTECTION

Sec.

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

Authority: Sec. 216, P.L. 81–516, 33 U.S.C. 70lb–1; Sec. 403, P.L. 95–334, as amended, 16 U.S.C. 2203; 5 U.S.C. 301.

§ 624.1 Purpose.

The Natural Resources Conservation Service (NRCS) and United States Forest Service (FS) are responsible for administering the Emergency Watershed Protection (EWP) Program. This part sets forth the requirements and procedures for Federal assistance, administered by NRCS, under Section 216, Public Law 81–516, 33 U.S.C. 701b–1; and Section 403 of the Agricultural Credit Act of 1978, Public Law 95–334, as amended by Section 382, of the Federal Agriculture Improvement and Reform Act of 1996, Public Law 104–127, 16 U.S.C. 2203. The Secretary of Agriculture has delegated the administration of the EWP Program to the Chief of NRCS on state, tribal, and private lands, and Chief of FS on National Forest Systems lands, including any other lands that are administered under a formal agreement with the FS. The FS administers the EWP Program in accordance with the Forest Service Manuals 1950 and 3540, and the Forest Service Handbook 1909.15

§ 624.2 Objective.

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

§ 624.3 Scope.

EWP Program technical and financial assistance may be made available to a qualified sponsor, or landowners when a floodplain easement is the selected alternative by the Secretary of Agriculture, upon a qualified sponsor or landowner's request when a Federal emergency is declared by the President or when a local emergency is declared by the NRCS State Conservationist. The EWP Program is designed for emergency recovery work, including the purchase of floodplain easements. Emergency watershed protection is authorized in the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa.

§ 624.4 Definitions.

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

(1) More beneficial than adverse in the extent and intensity of its environmental and economic effects;

(2) In compliance with Federal, State, and local laws;

(3) Acceptable to affected individuals and communities;

(4) Effective in restoring or protecting the natural resources;

(5) Complete with all necessary components included; and

(6) Efficient in achieving the desired outcome.

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

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

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

(e)(1) *Limited resource area* is defined as a county where:

(i) Housing values are less than 75 percent of the State housing value average; and

(ii) Per capita income is 75 percent or less than the National per capita income; and

(iii) Unemployment is at least twice the U.S. average over the past 3 years based upon the annual unemployment figures.

(2) NRCS will use the most recent National census information available when determining paragraphs (e)(1)(i) and (ii) of this section.

(f) *Natural occurrence* includes, but is not limited to, floods, fires, windstorms, ice storms, hurricanes, typhoons, tornadoes, earthquakes, volcanic actions, slides, and drought.

(g) *Project sponsor* means a State government or a State agency or a legal subdivision thereof, local unit of government, or any Native American tribe or tribal organization as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b), with a legal interest in or responsibility for the values threatened by a watershed emergency; is capable of obtaining necessary land rights; and is capable of carrying out any operation and maintenance responsibilities that may be required.

(h) *Watershed emergency* means adverse impacts to resources exist when a natural occurrence causes a sudden impairment of a watershed and creates an imminent threat to life or property.

(i) *Watershed impairment* means the situation that exists when the ability of a watershed to carry out its natural functions is reduced to the point where an imminent threat to health, life, or property is created. This impairment can also include sediment and debris deposition in floodplains and upland portions of the watershed.

§ 624.5 Coordination.

(a) If the President declares an area to be a major disaster area, NRCS will provide assistance which will be coordinated with the Federal Emergency Management Agency (FEMA) or its designee. FEMA is the lead federal agency for Presidentially-declared natural disasters.

(b) When an NRCS State Conservationist determines that a watershed impairment exists, but the President does not declare an area to be a major disaster area, FEMA does not coordinate assistance. In this situation, NRCS will assume the lead, provide assistance, and coordinate work with the appropriate State office of emergency preparedness and other Federal, tribal, or local agencies involved with emergency activities, as appropriate.

(c) In the case where the watershed impairment exists solely on FS System lands, the FS will determine the existence of the impairment, assume the lead, provide assistance and coordinate work with the appropriate State office of emergency preparedness and other Federal, tribal, or local agencies involved with emergency activities, as appropriate.

§ 624.6 Program administration.

(a) *Sponsors.* (1) When the State Conservationist declares that a watershed impairment exists, NRCS may, upon request, make assistance available to a sponsor which must be a State or political subdivision thereof, qualified Indian tribe or tribal organization, or unit of local government. Private entities or individuals may receive assistance only through the sponsorship of a governmental entity.

(2) Sponsors must:

(i) Contribute their share of the project costs, as determined by NRCS, by providing funds or certain services necessary to undertake the activity. Contributions that may be applied towards the sponsor's applicable cost-share of construction costs include:

(A) Cash;

(B) In-kind services such as labor, equipment, design, surveys, contract administration and construction inspection, and other services as determined by the State Conservationist; or

(C) A combination of cash and in-kind services;

(ii) Obtain any necessary real property rights, water rights, and regulatory permits; and

(iii) Agree to provide for any required operation and maintenance of the completed emergency measures.

(b) *Eligibility.* NRCS will provide assistance based upon the NRCS State Conservationist's determination that the current condition of the land or watershed impairment poses a threat to health, life, or property. This assistance includes EWP practices associated with the removal of public health and safety threats, and restoration of the natural environment after disasters, including acquisition of floodplain easements.

(1) Priority EWP assistance is available to alleviate exigency situations. NRCS may approve assistance for temporary correction practices to relieve an exigency situation until a more acceptable solution can be designed and implemented.

(2) *Limitations.* (i) In cases where the same type of natural event occurs within a 10-year period and a structural measure has been installed or repaired twice within that period using EWP assistance, then EWP assistance is limited to those sites eligible for the purchase of a floodplain easement as described in § 624.10 of this part.

(ii) EWP assistance will not be used to perform operation or maintenance, such as the periodic work that is necessary to maintain the efficiency and effectiveness of a measure to perform as originally designed and installed.

(iii) EWP assistance will not be used to repair, rebuild, or maintain private or public transportation facilities, public utilities, or similar facilities.

(iv) EWP assistance, funded by NRCS, will not be provided on any Federal lands if such assistance is found to augment the appropriations of other Federal agencies.

(v) EWP assistance is not available for repair or rehabilitation of nonstructural management practices, such as conservation tillage and other similar practices.

(3) *Repair of structural, enduring, and long-life conservation practices.* (i) Sponsors may receive EWP assistance for structural, enduring, and long-life conservation practices including, but not limited to, grassed waterways, terraces, embankment ponds, diversions, and water conservation systems, except where the recovery measures are eligible for assistance under the Emergency Conservation Program administered by the Farm Service Agency.

(ii) EWP assistance may be available for the repair of certain structural

practices (*i.e.*, dams and channels) originally constructed under Public Law 83–566; Public Law 78–534; Subtitle H of Title XV of the Agriculture and Food Act of 1981 (16 U.S.C. 3451 *et seq.*, commonly known as the Resource Conservation and Development Program); and the Pilot Watershed Program of the Department of Agriculture Appropriation Act of 1954 (Pub. L. 83–156; 67 Stat. 214). EWP assistance may not be used to perform operation and maintenance activities specified in the agreement for the covered structure project entered into with the eligible local organization responsible for the works of improvement.

(iii) NRCS may authorize EWP assistance for modifying damaged practices when technology advances or construction techniques warrant modifications, including when modifications are the result of federal permitting or other requirements necessary to implement the recovery measure, and will be cost-shared as described in § 624.7.

(iv) EWP assistance is only available when public or private landowners, land managers, land users, or others document they have exhausted or have insufficient funding or other resources available to provide adequate relief from applicable hazards.

(4) Increased level of protection. In cases other than those described in paragraph (b)(3)(iii) of this section, if the sponsor desires to increase the level of protection that would be provided by the EWP practice, the sponsor will be responsible for paying 100 percent of the costs of the upgrade or additional work.

(c) *Eligible practices*. NRCS will only provide assistance for measures that:

(1) Provide protection from additional flooding or soil erosion; and,

(2) Reduce threats to life or property from a watershed impairment, including sediment and debris removal in floodplains and uplands; and

(3) Restore the hydraulic capacity to the natural environment to the maximum extent practical; and

(4) Are economically and environmentally defensible and technically sound.

(d) *Documentation*. NRCS will document the economic rationale of proposed practices in appropriate detail before the allocation of emergency funding, including projects under consideration for floodplain easements in § 624.10. Generally, the expected value of the property restored should exceed the cost of emergency measures, including taking into consideration environmental benefits. Documentation will include, but is not limited to:

(1) Number of locations and extent of damage, including environmental and cultural resources at risk, because of the watershed impairment;

(2) Estimated damages to the values at risk if the threat is imminent but not yet realized;

(3) Events that must occur for any imminent threat to be realized and the estimated probability of their occurrence both individually and collectively;

(4) Estimates of the nature, extent, and costs of the emergency practices to be constructed to recover from an actual threat or relieve an imminent threat;

(5) Thorough description of the beneficial and adverse effects on environmental resources, including fish and wildlife habitat;

(6) Description of water quality and water conservation impacts, as appropriate;

(7) Analysis of effects on downstream water rights; and

(8) Other information deemed appropriate by NRCS to describe adequately the environmental impacts to comply with the National Environmental Policy Act, Endangered Species Act, National Historic Preservation Act, and related requirements.

(e) *Implementation*. When planning emergency recovery practices, NRCS will emphasize measures that are the most economical and are to be accomplished by using the least damaging practical construction techniques and equipment that retain as much of the existing characteristics of the landscape and habitat as possible. Construction of emergency practices may include, but are not limited to, timing of the construction to avoid impacting fish spawning, clearing of right-of-ways, reshaping spoil, debris removal, use of bioengineering techniques, and revegetation of disturbed areas. Mitigation actions needed to offset potential adverse impacts of the EWP Program practices should be planned for installation before, or concurrent with, the installation of the EWP Program practices. In rare occurrences where mitigation cannot be installed concurrently, plans will require mitigation be accomplished as soon as practical.

(f) NRCS may determine that a measure is not eligible for assistance for any reason, including economic and environmental factors or technical feasibility.

§ 624.7 Cost-sharing.

(a) Except as provided in paragraph (b) of this section, the Federal contribution toward the implementation of emergency measures may not exceed 75 percent of the construction cost of such emergency measures, including work done to offset or mitigate adverse impacts as a result of the emergency measures.

(b) If NRCS determines that an area qualifies as a limited resource area, the Federal contribution toward the implementation of emergency measures may not exceed 90 percent of the construction cost of such emergency measures.

§ 624.8 Assistance.

(a) Sponsors must submit a formal request to the State Conservationist for assistance within 60 days of the natural disaster occurrence, or 60 days from the date when access to the sites becomes available. Requests must include a statement that the sponsors understand their responsibilities and are willing to pay its cost-shared percentage as well as information pertaining to the natural disaster, including the nature, location, and scope of the problems and the assistance needed.

(b) On receipt of a formal request for EWP assistance, the State Conservationist or designee shall immediately investigate the emergency situation to determine whether EWP is applicable and to prepare an initial cost estimation for submission to the NRCS Chief or designee. The cost estimation will be submitted no later than 60 days from receipt of the formal request from the sponsor. The State Conservationist will take into account the funding priorities identified in paragraph (c) (3) of this section. The State Conservationist will forward the damage survey report, which provides the information pertaining to proposed EWP practice(s) and indicates the amount of funds necessary to undertake the Federal portion, to the NRCS Chief or designee. This information will be submitted no later that 60 days from receipt of the formal request from the sponsor, or no later than 60 days from the date funding is made available to the State Conservationist, whichever is later. NRCS may not commit funds until notified by the Chief, or designee, of the availability of funds.

(c) Before the release of financial assistance, NRCS will enter into a Cooperative Agreement with a sponsor that specifies the responsibilities of the sponsor under this part, including any required operation and maintenance responsibilities. NRCS will not provide funding for activities undertaken by a

sponsor prior to the signing of the agreement between NRCS and the sponsor.

(1) NRCS will only provide funding for work that is necessary to reduce applicable threats.

(2) Efforts must be made to avoid or minimize adverse environmental impacts associated with the implementation of emergency measures, to the extent practicable, giving special attention to protecting cultural resources and fish and wildlife habitat.

(3) Funding priorities for recovery measures. NRCS will provide EWP assistance based on the following criteria, which are ranked in the order of importance:

(i) Exigency situations;

(ii) Sites where there is a serious, but not immediate threat to human life;

(iii) Sites where buildings, utilities, or other important infrastructure components are threatened;

(iv) When reviewing paragraphs (c)(3)(i) through (iii) of this section, NRCS will take into account the following resources as they may affect the priority, including, but not limited to:

(A) Sites inhabited by federally listed threatened and endangered species or containing federally designated critical habitat where the species or the critical habitat could be jeopardized, destroyed, or adversely modified without the EWP practice;

(B) Sites that contain or are in the proximity to cultural sites listed on the National Register of Historic Places where the listed resource would be jeopardized if the EWP practice were not installed;

(C) Sites where prime farmland supporting high value crops is threatened;

(D) Sites containing wetlands that would be damaged or destroyed without the EWP practice;

(E) Sites that have a major effect on water quality; and

(F) Sites containing unique habitat, including but not limited to, areas inhabited by State-listed threatened and endangered species, fish and wildlife management areas, or State-identified sensitive habitats; and

(v) Other funding priorities established by the Chief of NRCS.

§ 624.9 Time limits.

Funds must be obligated by the State Conservationist and construction completed within 220 calendar days after the date funds are committed to the State Conservationist, except for exigency situations in which case the construction must be completed within 10 days after the date the funds are committed.

§ 624.10 Floodplain easements.

(a) *General*. NRCS may purchase floodplain easements as an emergency measure. NRCS will only purchase easements from landowners on a voluntary basis.

(b) *Floodplain easements*. (1) Floodplain easements established under this part will be:

(i) Held by the United States, through the Secretary of Agriculture;

(ii) Administered by NRCS or its designee; and

(iii) Perpetual in duration;

(2) *Eligible land*. NRCS may determine land is eligible under this section if:

(i) The floodplain lands were damaged by flooding at least once within the previous calendar year or have been subject to flood damage at least twice within the previous 10 years; or

(ii) Other lands within the floodplain would contribute to the restoration of the flood storage and flow, erosion control, or that would improve the practical management of the easement; or

(iii) Lands would be inundated or adversely impacted as a result of a dam breach.

(3) *Ineligible land*. NRCS may determine that land is ineligible under this section if:

(i) Implementation of restoration practices would be futile due to ''on-site'' or ''off-site'' conditions;

(ii) The land is subject to an existing easement or deed restriction that provides sufficient protection or restoration, as determined by the Chief of NRCS, of the floodplain's functions and values; or

(iii) The purchase of an easement would not meet the purposes of this part.

(4) *Compensation for easements*. NRCS will determine easement compensation in accordance with applicable regulation and other law.

(5) NRCS will not acquire any easement unless the landowner accepts the amount of the easement payment that is offered by NRCS. NRCS reserves the right not to purchase an easement if the easement compensation for a particular easement would be too expensive, as determined by NRCS.

(6) NRCS may provide up to 100 percent of the restoration and enhancement costs of the easement. NRCS may enter into an agreement with the landowner or another third party to ensure that identified practices are implemented. NRCS, the landowner, or other designee may implement identified practices. Restoration and enhancement efforts may include both structural and non-structural practices. An easement acquired under this part shall provide NRCS with the full authority to restore, protect, manage, maintain, and enhance the functions and values of the floodplain.

(7) The landowner must:

(i) Comply with the terms of the easement;

(ii) Comply with all terms and conditions of any associated agreement; and

(iii) Convey title to the easement that is acceptable to NRCS and warrant that the easement is superior to the rights of all others, except for exceptions to the title that are deemed acceptable by NRCS.

(8) Structures, including buildings, within the floodplain easement may be demolished and removed, or relocated outside the 100-year floodplain or dam breach inundation area.

(c) Easements acquired under this part may not be modified or terminated. However, in limited situations, as determined by the Chief of NRCS and when in the best interest of the Government, land exchanges may be authorized pursuant to (7 U.S.C. 428a) and other applicable authorities.

(d) *Enforcement*. (1) In the event of a violation of an easement, the violator will be given reasonable notice and an opportunity to correct the violation within 30 days of the date of the notice, or such additional time as NRCS may allow.

(2) NRCS reserves the right to enter upon the easement area at any time to remedy deficiencies or easement violations. Such entry may be made at the discretion of NRCS when such actions are deemed necessary to protect important floodplain functions and values or other rights of the United States under the easement. The landowner will be liable for any costs incurred by the United States as a result of the landowner's negligence or failure to comply with easement or agreement obligations.

(3) In addition to any and all legal and equitable remedies as may be available to the United States under applicable law, NRCS may withhold any easement and cost-share payments owing to landowners at any time there is a material breach of the easement covenants or any associated agreements. 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.

(4) NRCS will be entitled to recover any and all administrative and legal costs, including attorney's fees or

expenses, associated with any enforcement or remedial action.

(5) On the violation of the terms or conditions of the easement or related agreement, the easement shall remain in force, and NRCS may require the landowner to refund all or part of any payments received by the landowner under this Part, together with interest thereon as determined appropriate by NRCS.

(6) All the general penal statutes relating to crimes and offenses against the United States shall apply in the administration of floodplain easements acquired under this part.

§ 624.11 Waivers.

To the extent allowed by law, the NRCS Deputy Chief for Programs may waive any provision of these regulations when the agency makes a written determination that such waiver is in the best interest of the Federal government.

Signed in Washington, DC, on March 21, 2005.

Bruce I. Knight,

Chief, Natural Resources Conservation Service.

[FR Doc. 05–6098 Filed 4–1–05; 8:45 am]

BILLING CODE 3410–16–U

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1738

RIN 0572–AB81

Rural Broadband Access Loans and Loan Guarantees

AGENCY: Rural Utilities Service, USDA.

ACTION: Direct final rule.

SUMMARY: The Rural Utilities Service (RUS), an agency delivering the U.S. Department of Agriculture's Rural Development Utilities Programs, is amending its regulations to revise the definition for ''eligible rural community'' as it relates to the rural access broadband loans and loan guarantees program.

DATES: This rule will become effective May 19, 2005, unless we receive written adverse comments or a written notice of intent to submit adverse comments on or before May 4, 2005. If we receive such comments or notice, we will publish a timely document in the **Federal Register** withdrawing the rule. Comments received will be considered under the proposed rule published in this edition of the **Federal Register** in the proposed rule section. A second public comment period will not be held. Written comments must be received by RUS or carry a postmark or equivalent no later than May 4, 2005.

ADDRESSES: Submit adverse comments or notice of intent to submit adverse comments by any of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- Agency Web Site: *http://www.usda.gov/rus/index2/Comments.htm*. Follow the instructions for submitting comments.
- E-mail: *RUSComments@usda.gov*. Include in the subject line of the message ''Broadband Loans and Loan Guarantees''.
- Mail: Addressed to Richard Annan, Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 1522, Washington, DC 20250–1522.
- Hand Delivery/Courier: Addressed to Richard Annan, Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 5168 South Building, Washington, DC 20250–1522.

Instructions: All submissions received must include that agency name and the subject heading ''Broadband Loans and Loan Guarantees''. All comments received must identify the name of the individual (and the name of the entity, if applicable) who is submitting the comment. All comments received will be posted without change to *http://www.usda.gov/rus/index2/Comments.htm*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Jonathan Claffey, Acting Assistant Administrator, Telecommunications Program, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 1590, Room 4056, Washington, DC 20250–1590. Telephone number (202) 720–9554, Facsimile (202) 720–0810.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this rule meets the applicable standards provided in section 3 of that Executive Order. In addition, all State and local laws and regulations that are in conflict with this rule will be preempted. No retroactive effect will be given to the rule and, in accordance with section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)), administrative appeal procedures must be exhausted before an action against the Department or its agencies may be initiated.

Regulatory Flexibility Act Certification

RUS certifies that this rule will not have significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The RUS broadband program provides loans to borrowers at interest rates and terms that are more favorable than those generally available from the private sector. RUS borrowers, as a result of obtaining Federal financing, receive economic benefits that exceed any direct cost associated with complying with RUS regulations and requirements.

Information Collection and Recordkeeping Requirements

The reporting and recordkeeping requirements contained in the rule has been approved by the Office of Management and Budget (OMB) under OMB Control Number 0572–0130, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

Catalog of Federal Domestic Assistance

The program described by this rule is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.851, Rural Telephone Loans and Loan Guarantees; No. 10.852, Rural Telephone Bank Loans; and No. 10.857, Rural Broadband Access Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402. Telephone: (202) 512–1800.

Executive Order 12372

This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. See the final rule related notice entitled ''Department Programs and Activities Excluded from Executive Order 12372,'' (50 FR 47034).

Executive Order 13132, Federalism

The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the National Government and the States, or