

Section of OMB guidance	Section in this part where supplemented	What the supplementation clarifies
(3) 2 CFR 182.500 .....	§ 3186.500	Who in the IMLS is authorized to determine that a recipient other than an individual is in violation of the requirements of 2 CFR part 182, as implemented by this part.
(4) 2 CFR 182.505 .....	§ 3186.505	Who in the IMLS is authorized to determine that a recipient who is an individual is in violation of the requirements of 2 CFR part 182, as implemented by this part.

(c) *Sections of the OMB guidance that this part does not supplement.* For any section of OMB guidance in Subparts A through F of 2 CFR part 182 that is not listed in paragraph (b) of this section, IMLS policies and procedures are the same as those in the OMB guidance.

#### Subpart A—Purpose and Coverage [Reserved]

#### Subpart B—Requirements for Recipients Other Than Individuals

##### § 3186.225 Whom in the IMLS does a recipient other than an individual notify about a criminal drug conviction?

A recipient other than an individual that is required under 2 CFR 182.225(a) to notify Federal agencies about an employee's conviction for a criminal drug offense must notify each IMLS office from which it currently has an award.

#### Subpart C—Requirements for Recipients Who Are Individuals

##### § 3186.300 Whom in the IMLS does a recipient who is an individual notify about a criminal drug conviction?

A recipient who is an individual and is required under 2 CFR 182.300(b) to notify Federal agencies about a conviction for a criminal drug offense must notify each IMLS office from which it currently has an award.

#### Subpart D—Responsibilities of Agency Awarding Officials

##### § 3186.400 What method do I use as an agency awarding official to obtain a recipient's agreement to comply with the OMB guidance?

To obtain a recipient's agreement to comply with applicable requirements in the OMB guidance at 2 CFR part 182, you must include the following term or condition in the award:

Drug-free workplace. You as the recipient must comply with drug-free workplace requirements in Subpart B (or Subpart C, if the recipient is an individual) of 2 CFR part 3186, which adopts the Governmentwide implementation (2 CFR part 182) of sec. 5152–5158 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701–707).

#### Subpart E—Violations of this Part and Consequences

##### § 3186.500 Who in the IMLS determines that a recipient other than an individual violated the requirements of this part?

The IMLS Chief Financial Officer is the official authorized to make the determination under 2 CFR 182.500.

##### § 3186.505 Who in the IMLS determines that a recipient who is an individual violated the requirements of this part?

The IMLS Chief Financial Officer is the official authorized to make the determination under 2 CFR 182.505.

#### Title 45—Public Welfare

#### Chapter XI—National Foundation on the Arts and the Humanities

##### ■ 2. Remove Part 1186.

Calvin D. Trowbridge III,  
Deputy General Counsel.

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#### DEPARTMENT OF AGRICULTURE

#### Commodity Credit Corporation

#### 7 CFR Part 1455

RIN 0560–AH98

#### Voluntary Public Access and Habitat Incentive Program

**AGENCY:** Farm Service Agency and Commodity Credit Corporation, USDA.

**ACTION:** Interim rule.

**SUMMARY:** This rule establishes the Commodity Credit Corporation (CCC) regulations for the Voluntary Public Access and Habitat Incentive Program (VPA–HIP). This is a new program authorized by the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill). The purpose of VPA–HIP is to provide grants to State and tribal governments to encourage owners and operators of privately-held farm, ranch, and forest land to voluntarily make that land available for access by the public for wildlife-dependent recreation, including hunting, fishing, and other compatible recreation and to improve fish and wildlife habitat on their land,

under programs administered by State or tribal governments.

**DATES:** *Effective Date:* This interim rule is effective July 8, 2010.

*Comment Date:* We will consider comments that we receive by September 7, 2010.

**ADDRESSES:** We invite you to submit comments on this interim rule. In your comment, include the volume, date, and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods, however, we strongly encourage using the first address to submit your comment through <http://www.regulations.gov>:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Mail:* Director, Conservation and Environmental Programs Division (CEPD), U.S. Department of Agriculture (USDA) FSA CEPD, STOP 0513, 1400 Independence Avenue, SW., Washington, DC 20250–0513.

- *Hand Delivery or Courier:* Deliver comments to the above address.

Comments may be inspected at the mail address listed above between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. A copy of this interim rule is available through the Farm Service Agency (FSA) home page at <http://www.fsa.usda.gov/>.

#### FOR FURTHER INFORMATION CONTACT:

Robert Stephenson, Director, CEPD; telephone 202–720–6221; e-mail: [cepdmail@wdc.usda.gov](mailto:cepdmail@wdc.usda.gov). 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:

##### Background

Section 2606 (16 U.S.C. 3839bb–5) of the 2008 Farm Bill (Pub. L. 110–246) authorizes a new VPA–HIP. VPA–HIP provides a new opportunity for State and tribal governments to apply for grants to encourage owners and operators of privately-held farm, ranch, and forest land to voluntarily make that land available for access by the public for wildlife-dependent recreation, including hunting, fishing, and other

compatible recreation and to improve fish and wildlife habitat on their land under programs administered by State or tribal governments.

Only State and tribal governments are eligible for VPA–HIP. Grants will be awarded through a competitive Request for Applications (RFA) process. State and tribal governments may propose to use VPA–HIP grant funding to expand existing public access programs or create new public access programs, or provide incentives to improve habitat on enrolled program lands. As specified in the 2008 Farm Bill, funding priority will be given to applications that will use the grant money in a public access program to address the following program objectives:

- (1) Maximize participation by landowners;
- (2) Ensure that land enrolled in the program has appropriate wildlife habitat;
- (3) Provide incentives to strengthen wildlife habitat improvement efforts on Conservation Reserve Enhancement Program (CREP) land;
- (4) Supplement funding and services from other Federal, State, tribal government, or private resources that is provided in the form of cash or in-kind services; and
- (5) Provide information to the public about the location of public access land.

CCC will evaluate how applications enhance fish and wildlife habitat on lands and waters made available for public access and use additional evaluation criteria, as specified in this rule and in the RFA, to select the applications that best support these program goals. The 2008 Farm Bill authorizes \$50 million for VPA–HIP through 2012. We anticipate that more applications will be received than available funding, so this will be a competitive grant program.

Currently, 26 States have public access programs for hunting, fishing, and other related activities. These programs provide rental payments and other incentives, such as technical or conservation services to landowners who allow the public to hunt, fish or otherwise appropriately recreate on their land. An unknown number of tribal governments have similar public access programs. The majority of the existing programs have limited scope and budgets; most existing programs have an annual budget of under a million dollars per year. The goals of these existing programs include providing access for wildlife-associated recreation, wildlife management, helping local economies that depend on revenue from hunters, and encouraging conservation. The funding provided by

VPA–HIP will help State and tribal governments address many issues that can greatly increase access and recreational experiences. Grant recipients will be able to use the funding to provide higher rental payments, provide technical and conservation services to landowners, and increase acreage enrolled for public access while fulfilling grant requirements under VPA–HIP. VPA–HIP will specifically give priority to applications that will use the funds to maximize landowner participation and public use, and make information about public access land widely available. Provisions requiring appropriate wildlife habitat will address concerns about limited wildlife population associated with poor or inadequate wildlife habitat. Nothing in VPA–HIP or regulation preempts liability laws that may apply to activities on any property related to grants made in this program.

#### Terms Used in This Rule

The 2008 Farm Bill uses the term “farm, ranch, or forest land” and only provides that the grants allowed by VPA–HIP be directed at access to “privately-held” lands. In implementing VPA–HIP, for consistency with other USDA programs, the “farmland” definition in this rule draws on the definition used in general for Farm Programs that is in 7 CFR 718.2 and which basically encompasses all land on any property that includes cropland including forest land used for the production of timber. There is no need for a separate definition for “ranch land” and hence the “ranch land” definition will simply refer back to the “farmland” definition. In this rule, the term “forest land” is given the same meaning that the USDA Forest Service uses in its Forest Inventory and Analysis Program. This definition is documented in the Forest Service General Technical Report WO–78, “Forest Resources of the United States, 2007.” We are adding the definition into 7 CFR 1455.2(b). These definitions should be broad enough to cover within them all properties that are within the intended scope of the 2008 Farm Bill and of this rule. In turn, this rule defines “privately-held” land to mean land owned or operated by an individual or entity that is not a government or Tribe or subdivision or agency of a government or Tribe. For example, State and tribal governments cannot use funding from VPA–HIP to encourage public access on local government land, State-owned forest land, or land owned by a public university.

The terms “State” and “State government” as used in this rule mean

any State or local government, including, but not limited to State, city, town, or county government, State Universities, and other units of State government. This is consistent with the way the term “State government” is used in other CCC programs.

The term “tribal government” refers to Federally-recognized tribes as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)). This definition is consistent with other CCC and FSA regulations.

The term “wildlife-dependent recreation” refers to activities such as hunting, fishing, wildlife observation, photography, and environmental education and interpretation.

#### Eligibility, Application Process

Only State and tribal governments may apply for grants under VPA–HIP.

On behalf of CCC, FSA will publish periodic VPA–HIP RFA’s via <http://www.grants.gov>. Applications will be evaluated and selections made using the criteria specified in this rule and in the RFA.

The result of a successful application will be a grant for up to 3 years, consistent with the time limits in the 2008 Farm Bill and the terms of the grant. Successful applicants will be required to sign a grant agreement with CCC. The grant agreement will include reporting and recordkeeping requirements that are consistent with other FSA and CCC programs. Under the 2008 Farm Bill CCC is, to the maximum extent practicable, to make \$50 million of CCC funds available under VPA–HIP through the 2012 fiscal year (which ends in September 30, 2012). This is not, however, an entitlement program, and it is possible that not all of the funds will be expended should there not be sufficient desirable applications offered. All projects are subject to the approval of CCC and the regulation reserves CCC’s right to reject any and all projects for any reason deemed sufficient to the agency.

#### Application Selection Criteria

As discussed earlier, the 2008 Farm Bill requires that CCC give priority to applications that address five program objectives. These program objectives were used to develop the criteria that will be used to evaluate applications and select grant recipients. This section describes those evaluation criteria.

The first program objective required by the 2008 Farm Bill is that CCC give priority to applications that “maximize participation by offering a program the terms of which are likely to meet with widespread acceptance among

landowners.” Maximizing voluntary participation and achieving widespread acceptance can include activities and performance goals which may include but are not limited to:

- Increasing the number of acres made available for access by the public,
- Increasing the number of acres of appropriate fish and wildlife habitat,
- Increasing the number of landowners participating in the in the State and tribal government programs.

Measuring or assessing impact of program delivery can be done by activities such as participation surveys, the number of acres enrolled, and the amount and nature of inquiry correspondence. A successful application should describe how the program will address maintaining and enhancing wildlife habitat, any foreseen enrollment barriers, as well as describing any financial incentives the program may provide to landowners. As discussed earlier, the landowners incentivized by this program must be private land owners. Incentives may include, but are not limited to compensation for public access to land, and technical and conservation services provided.

A second program objective required by the 2008 Farm Bill that will be used as an evaluation criterion is “to ensure that the land enrolled under the State or tribal government program has appropriate wildlife habitat.” State and tribal governments with existing wildlife-dependent public access programs such as walk-in hunting, open fields, bird watching access, or similar programs must ensure that land enrolled in these programs have appropriate habitat for the wildlife. The application should describe how the grantee will ensure that the habitat for the wildlife on land already enrolled in the program will be maintained throughout the duration of the grant. State and tribal governments that are initiating new wildlife-dependent public access programs should demonstrate that they have the expertise to ensure that they can successfully carry out the objectives of VPA–HIP.

State and Tribal, as applicable, Wildlife Action Plans may help States and Tribes to identify likely opportunities. Congress charged each State with developing a Statewide wildlife action plan to make the best use of the Federal funds provided through certain Federal programs. These plans should provide vital information to help conserve wildlife and vital natural areas before they become more rare and more costly to protect. State fish and wildlife agencies developed these strategic action plans by working with a broad

array of partners, including scientists, sportsmen, conservationists and members of the community.

The wildlife action plans were required to assess the condition of each State’s wildlife and habitats, identify the problems they face, and outline the actions that are needed to be conserve them over the long term. The wildlife action plans identify a variety of actions aimed at preventing wildlife from declining to the point of becoming endangered. By focusing on conserving the natural lands and clean waters that provide habitat for wildlife, the plans have important benefits for wildlife and people.

In addition to specific conservation projects and actions, the plans describe many ways we can educate the public and private landowners about effective conservation practices. Finally, the plans also identify the information needed to improve knowledge about what kinds of wildlife are in trouble so we can decide what action to take.

A third program objective required by the 2008 Farm Bill that will be used as an evaluation criteria is “to strengthen wildlife habitat improvement efforts” on land enrolled in CREP. CREP is a CCC program that supports the Conservation Reserve Program (CRP) in some States with additional funding for specific environmental activities. Under CREP, CCC enters into an agreement with State officials who commit financial and other resources to target areas of important environmental need. Currently, 31 States have CREP agreements with CCC. VPA–HIP applications that explain in detail how their application will strengthen wildlife habitat improvement efforts on land enrolled according to a CREP agreement will, all else being equal, receive priority over applications that do not provide such detailed explanation where CREP agreements are in place. States and Tribes without CREP agreements will not be able to address this objective, but will still be eligible to apply for and receive grants based on other applicable evaluation criteria.

State and tribal governments that choose to integrate CREP with public access should describe how increased public access for the purposes of wildlife dependent recreation will benefit both VPA–HIP and CREP. Integrations of conservation activities with hunting, fishing, and wildlife viewing may allow for land management that balances game species population growth and fosters a higher quality of habitat conditions. State and tribal governments should cite the specific activities and conservation

practices that they intend to target, such as increasing and improving CREP wildlife food plots, nesting areas, shallow water areas for wildlife, and wildlife habitat corridors.

Activities and practices described in the application should provide support for the healthy development and maintenance of appropriate wildlife habitat. State or tribal governments must ensure that their VPA–HIP application is consistent with the purposes and provisions of CRP and CREP when the enrolled acres coincide. State or tribal governments that consider using VPA–HIP funding as a “cost-share” as opposed to an incentive or other form of payment, need to be aware that the CRP legislative authority and the implementing regulations in 7 CFR 1410.40 require that a CRP participant refund USDA’s CRP or CREP cost-share assistance if it receives any other Federal cost-share assistance. Funding provided through VPA–HIP as a cost-share would, for the purposes of 7 CFR 1410.40, be considered to be such other Federal cost-share assistance.

A fourth program objective required by the 2008 Farm Bill that will be used as an evaluation criterion is the extent to which the proposed program will “use additional Federal, State, tribal government, or private resources in carrying out the program.” The application should specify how those resources will be used for various activities and planning that strengthen the feasibility of program success and help achieve intended benefits. Many programs have similar goals and intended benefits that complement the VPA–HIP goals. Applications that include combining VPA–HIP funds with other program resources that have similar goals, such as State public access programs, Natural Resource Conservation Service’s Wildlife Habitat Incentive Program, wildlife and conservation non-government organizations, will, all else being equal, be given a priority over applications that do not.

These other program resources may be either monetary or in-kind services. In-kind services can aid program delivery and planning and must be quantified in units such as hours of staff time (labor value), office space (rental value), technical or conservation services (service value), equipment (product value), or the like.

For State and tribal governments that choose to include additional State or local funds in their application, commitments must be documented by an appropriate authority that will be supplying those resources.

The fifth program objective required by the 2008 Farm Bill that will be used as an evaluation criterion is "to make available to the public the location of land enrolled." A common barrier to participation in existing State public access programs is a lack of detailed information on where such land is and how to legally access it. For State and Tribal VPA-HIP programs, public disclosure of private lands enrolled in VPA-HIP may be conveyed through a variety of media including, but not limited to, Web site listings, printed listings or map books, online access maps, and recorded telephone information.

#### **Process for Evaluation of Applications and Award of Grants**

After State and tribal governments submit applications, FSA, on behalf of CCC, will conduct an initial screening of all applications to determine whether the applicant is eligible and whether the application is complete and sufficiently responsive to the requirements specified in the RFA so as to allow for an informed review. Incomplete applications will not be evaluated further. CCC will notify applicants of the status of their initial screening, if time allows. Applicants may revise their applications and re-submit them prior to the published deadline if there is sufficient time to do so. FSA will appoint an inter-agency review panel to evaluate the applications. State and tribal government applications will be considered using the same selection criteria.

If the amount requested in the applications exceeds the available funding, FSA may use additional criteria for selection which could include, but not be limited to:

- The distribution of funds between State and tribal governments;
- The distribution of funds between new programs and existing programs; and
- The need to target funding to address specific types of wildlife dependent recreation and public access.

We expect interest in VPA-HIP to exceed the available funding. Through VPA-HIP, grants to any individual State or Tribe will be no more than \$2 million per year and no less than \$75,000 per year.

We considered allocating the funding equally across all eligible applicants, or providing funding only to applicants that already have public access programs, but decided that it would be more effective to have a fully competitive RFA process. Since the 2008 Farm Bill requires that we give "priority" to applicants that address

certain VPA-HIP goals, we decided that providing funding on a competitive basis to applicants that best meet those objectives would be appropriate.

The evaluation criteria will be carefully constructed to fairly consider expected benefits from both existing and new programs so as not to favor existing programs over applications for new programs. For example, an existing program might score high on a feasibility criterion and have specific methods in place to demonstrate wildlife habitat monitoring, but a new program might be able to demonstrate greater expected benefits, since that program would be starting from a baseline of zero benefits.

#### **Responsibilities of Participants**

Successful applicants will be required to sign an agreement with CCC and provide detailed budget and schedule information. The agreement will require periodic financial and program achievement reports.

The agreement will also require compliance with other USDA regulations that apply to grants, including civil rights, restrictions on lobbying, and drug-free workplace. Grantees will be required to comply with audit requirements in 7 CFR part 3052.

During the term of the grant, the grantee will be required to obtain prior approval for any changes to the scope, objectives, or funding allocation of the approved agreement. Failure to obtain prior approval of such changes may be considered a violation and in such case the grantee may be required to return all grant funds. Funds cannot be used to pay for buildings or fixed equipment. The list of prohibited grant funding uses is specified in the rule and will be specified in the agreement.

#### **Reductions for Inconsistent Migratory Bird Hunting Opening Dates**

The 2008 Farm Bill requires that, before a grant may be awarded, FSA examine migratory bird hunting season dates for an applicant who is a State government. If a State government has different opening dates for migratory bird hunting for residents versus non-residents, the grant amount will be reduced by 25 percent. Inconsistent migratory bird hunting opening dates will not be an evaluation factor in selecting applications; it will be taken into account only after applications are selected. This reduction will not be applied to applications made by tribal governments, as specified in the 2008 Farm Bill.

This reduction will apply to all applications by State governments, even

for applications when the purpose of the grant is not related to migratory bird hunting in a State. Opening dates must remain consistent throughout the term of the grant. If opening dates for migratory bird hunting are changed by a State during the term of the grant such that the dates are inconsistent for residents and non-residents, 25 percent of the grant funding must be refunded.

#### **Relationship to Other Laws**

The 2008 Farm Bill provides that VPA-HIP does not preempt a State or tribal government law including any State or tribal liability law.

The government-wide debarment and suspension (non procurement) provisions of the Federal Acquisition Regulations (FAR), as adopted in 7 CFR 3017, will apply only to contractors and subcontractors. If a grantee chooses to use grant awards to contract or sub-contract with a person or company, then that person or company must not have been suspended or debarred under the FAR prior to or during contracting.

#### **Miscellaneous**

The appeals provisions in 7 CFR parts 11 and 780 will apply to VPA-HIP. Highly erodible land and wetland conservation provisions in 7 CFR part 12 will apply to VPA-HIP. Any State or tribal government that violates highly erodible land and wetland conservation provisions will be ineligible for program benefits; if it is determined after a payment is issued for VPA-HIP that a violation occurred, then repayment of the benefit plus interest would be required.

#### **Outreach to Tribal Governments**

As part of implementing VPA-HIP, FSA will conduct outreach efforts to inform the Tribal Governments of federally-recognized tribes about VPA-HIP. Two primary mechanisms for initiating the outreach efforts will include the National Congress of American Indians (NCAI) and the contact lists of federally recognized tribes.

#### **Notice and Comment**

CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule. CCC is authorized by section 2904 of the 2008 Farm Bill to issue an interim rule effective on publication with an opportunity for comment.

#### **Executive Order 12866**

This rule has been determined to be significant and was reviewed by the Office of Management and Budget

(OMB) under Executive Order 12866. The cost benefit analysis is summarized below and is available from the contact information listed above.

#### Summary of Economic Impacts

The 2008 Farm Bill provides CCC funds through VPA–HIP for fiscal years 2009 through 2012; total available funding is \$50 million. Based on the current number of States (at least 15) that could meet all five evaluation criteria with existing public access programs, we expect to receive applications for more than the full amount of available funding.

The benefits from a public access program stem from the value placed on hunting, fishing, and other outdoor recreation activities are a function of the number of times these activities are undertaken and the satisfaction from these opportunities. The benefits will be where landowners permit access. VPA–HIP benefits are the sum of:

- Value from increased access to hunting, fishing, and outdoor recreation opportunities;
- Savings from reduced transaction costs between landowners and outdoor recreationists;
- Enhanced wildlife populations from expanded and improved wildlife habitat; and
- Expanded economic activity such as equipment sales, and increased restaurant and motel expenditures.

VPA–HIP is expected to provide \$50 million, the total authorized funding, to States and tribal governments. The expected benefits to hunters and other users of public access land due to the resulting expansions and improvements to State and tribal government public access programs are expected to exceed \$51 million.

#### Regulatory Flexibility Act

This rule is not subject to the Regulatory Flexibility Act since CCC is not required to publish a notice of proposed rulemaking for this rule. CCC is authorized by section 2904 of the 2008 Farm Bill to issue an interim rule effective on publication with an opportunity for comment.

#### Environmental Review

The State or Tribal government applying for VPA–HIP funds will be required to prepare a Programmatic Environmental Assessment (PEA) in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and FSA regulations for compliance with NEPA (7 CFR part

799). The PEA must assess the current public access program, if one exists, and the proposed alternative policies for implementation of the current or proposed public access program if funding is received from FSA. The purpose of the PEA is to evaluate the impacts of expanding public access, including but not limited to, those associated with general ranch maintenance, conservation efforts, weed control, fire protection, roads, fences, and parking area maintenance. Consistent with 40 CFR 1501.4(c), the PEA will be used to determine if the receipt of Federal funds will constitute a major Federal action significantly affecting the quality of the human environment and if an Environmental Impact Statement needs to be prepared.

#### Executive Order 12372

This program is not subject to Executive Order 12372, which requires consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published in the **Federal Register** on June 24, 1983 (48 FR 29115).

#### Executive Order 12988

This interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule does not preempt State and or local laws, and regulations, or policies unless they present an irreconcilable conflict with this rule. Before any judicial action may be brought concerning the provisions of this rule, appeal provisions of 7 CFR parts 11 and 780 must be exhausted. As specified in the 2008 Farm Bill, this interim rule does not preempt a State or tribal government law, including any State or tribal government liability law.

#### Executive Order 13132

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 on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

#### Executive Order 13175

The policies contained in this rule do not impose substantial unreimbursed direct compliance costs on Indian tribal governments or have tribal implications that preempt tribal law.

USDA will undertake, within 6 months after this rule becomes effective, a series of at least six regulation Tribal consultation sessions to gain input by

Tribal officials concerning the impact of VPA–HIP on Tribal governments, communities, and individuals. These sessions will establish a baseline of consultation for future actions, should any become necessary, regarding the VPA–HIP regulations. Reports from these sessions for consultation will be made part of the USDA annual reporting on Tribal Consultation and Collaboration. USDA will respond in a timely and meaningful manner to all Tribal government requests for consultation concerning the VPA–HIP regulation and will provide additional venues, such as webinars and teleconferences, to periodically host collaborative conversations with Tribal leaders and their representatives concerning ways to improve VPA–HIP in Indian country.

Tribal governments will be notified of VPA–HIP by direct notification of the Tribal elected official via regular mail; by e-mail notification to the Tribal elected official; and by notifying the National Congress of American Indians and other intertribal organizations relevant to VPA–HIP. Additional notification will be given to key intertribal organizations working with individual Indian farmers and through outreach to nonprofit and community based organizations known to work the Tribal producers. FSA will also ensure that review panel membership described in this rule has appropriate representation reflecting Tribal governments and intertribal organizations knowledgeable of recreational use on Tribally-owned lands.

#### Unfunded Mandates

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandate Reform Act of 1995 (UMRA, Pub. L. 104–4). In addition, CCC is not required to publish a notice of proposed rulemaking for this rule. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

#### Federal Assistance Program

The title and number of the Federal assistance program in the Catalog of Federal Domestic Assistance, to which this rule applies, is the Voluntary Public Access and Wildlife Habitat Incentive Program—10.093.

#### Paperwork Reduction Act

The regulations in this rule are exempt from the requirements of the Paperwork Reduction Act (44 U.S.C. chapter 35), as specified in section 2904 of the 2008 Farm Bill, which provides that these regulations be promulgated

and the programs administered without regard to the Paperwork Reduction Act.

### E-Government Act Compliance

CCC is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

### List of Subjects in 7 CFR Part 1455

Agriculture, Animals, Environmental protection, Fishing, Forests and forest products, Grant programs, Hunting, Indians, Indians-lands, Natural resources, Recreation and recreation areas, Rural areas, State and local governments, Wildlife.

■ For the reasons discussed above, this rule adds 7 CFR part 1455 as follows:

### PART 1455—VOLUNTARY PUBLIC ACCESS AND HABITAT INCENTIVE PROGRAM

- § 1455.1 Purpose and administration.
- § 1455.2 Definitions.
- § 1455.10 Eligible grant applicants.
- § 1455.11 Application procedure.
- § 1455.20 Criteria for grant selection.
- § 1455.21 Responsibilities of grantee.
- § 1455.30 Reporting requirements.
- §§ 1455.31 Miscellaneous.

**Authority:** 15 U.S.C. 714b and 714c; 16 U.S.C. 3839.

#### § 1455.1 Purpose and administration.

(a) The purpose of this part is to specify requirements and definitions for the Voluntary Public Access and Habitat Incentive Program (VPA-HIP).

(b) VPA-HIP provides, within funding limits, grants to State and tribal governments to encourage owners and operators of privately-held farm, ranch, and forest land to voluntarily make that land available for access by the public for wildlife-dependent recreation, including hunting and fishing under programs administered by State and tribal governments. VPA-HIP is not an entitlement program and no grant will be made unless the application is acceptable to the Commodity Credit Corporation (CCC). CCC may reject a application for any reason deemed sufficient by CCC.

(c) The regulations in this part are administered under the general supervision and direction of the Executive Vice President, CCC, or a designee, or the Deputy Administrator, Farm Programs (Deputy Administrator), Farm Service Agency (FSA).

#### § 1455.2 Definitions.

(a) The definitions in part 718 of this chapter apply to this part and all

documents issued in accordance with this part, except as otherwise provided in this section.

(b) The following definitions apply to this part:

*Appropriate wildlife habitat* means habitat that is suitable or proper, as determined by the applicable State or tribal government, to support fish and wildlife populations in the area.

*Farm land* means the land that meets definition of “farmland” in § 718.2 of this title.

*Forest land* means land at least 120 feet wide and 1 acre in size with at least 10 percent cover (or equivalent stocking) by live trees of any size, including land that formerly had such tree cover and that will be naturally or artificially regenerated. Forest land includes transition zones, such as areas between forest and nonforest lands that have at least 10 percent cover (or equivalent stocking) with live trees and forest areas adjacent to urban and built-up lands. Roadside, streamside, and shelterbelt strips of trees must have a crown width of at least 120 feet and continuous length of at least 363 feet to qualify as forest land. Unimproved roads and trails, streams, and clearings in forest areas are classified as forest if they are less than 120 feet wide or an acre in size. Tree-covered areas in agricultural production settings, such as fruit orchards, or tree-covered areas in urban settings, such as city parks, are not considered forest land.

*Privately-held land* means farm, ranch, or forest land that is owned or operated by an individual or entity that is not an entity of any government unit or Tribe.

*Ranch land* means land that meets the definition of “farmland.”

*State or State government* means any State or local government, including State, city, town, or county government.

*Tribal government* means any Federally-recognized Indian tribe, band, nation, or other organized group, or community, including pueblos, rancherias, colonies and any Alaska Native Village, or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601–1629h), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

*Wildlife-dependent recreation* means a land use involving hunting, fishing, wildlife-observation, photography, environmental education and interpretation, or other activities as determined by CCC.

#### § 1455.10 Eligible grant applicants.

(a) A State or Tribal government may apply for a VPA-HIP grant.

(b) Any applications received by an individual or entity that is not a State or tribal government will not be considered.

#### § 1455.11 Application procedure.

(a) *Request for applications (RFA)*. CCC will issue periodic RFAs for VPA-HIP on [www.grants.gov](http://www.grants.gov), subject to available funding. Unless otherwise specified in the applicable RFA, applicants must file an original and one hard copy of the required forms and an application.

(b) *Single application*. A State or tribal government must include all proposed activity under a single application per RFA review period. Multiple applications from an applicant during a single RFA period will not be considered. The applicant is the individual State or Tribe; any application from any unit of the State or tribal government must be coordinated for a single submission of one application from the State or Tribe.

(c) *Incomplete applications*. Incomplete applications will not be considered for funding. However, incomplete applications may be returned, and may be resubmitted, if time permits.

(d) *Providing data*. Data furnished by grant applicants will be used to determine eligibility for the VPA-HIP benefits. Furnishing the data is voluntary; however, the failure to provide data could result in program benefits being withheld or denied.

(e) *Required forms*. The following forms must be completed, signed, and submitted as part of the application; other forms may be required, as specified in the applicable RFA:

- (1) Application for Federal Assistance;
- (2) Budget Information—Non-Construction Programs; and
- (3) Assurances—Non-Construction Programs.

(f) *Application*. Each application must contain the following elements; additional required elements may be specified in the applicable RFA:

- (1) Title page;
- (2) Table of contents;
- (3) Executive summary, which includes;

(i) *Activities*. Provide a summary of the application that briefly describes activities proposed to be funded under the grant.

(ii) *Objectives, funding, performance, and other resources*. Include objectives and tasks to be accomplished, the amount of funding requested, how the

work will be performed, whether organizational staff, consultants or contractors will be used, and whether other resources will be used;

(4) Eligibility certification that certifies that the applicant is a State or tribal government and the individual submitting the application is acting in a representative capacity on behalf of the State or tribal government;

(5) Application narrative that must include, but is not limited to, the following:

(i) *Project Title*. The title of the proposed project must be brief (not to exceed 75 characters) yet describe the essentials of the project.

(ii) *Information sheet*. A separate one-page information sheet listing each of the evaluation criteria referenced in the RFA, followed by the page numbers of all relevant material and documentation contained in the application that address or support the criteria.

(iii) *Objectives of the project*. This section must include the following:

(A) A description of how the VPA–HIP funding will be used to encourage public access to private farm, ranch, and forest land for hunting, fishing, and other recreational purposes;

(B) A description of the methods that will be used to achieve the provisions of paragraph (f)(5)(iii)(A) of this section;

(C) A description of how and to what extent the proposed program will meet with widespread acceptance among landowners;

(D) A detailed description of how and to what extent the land enrolled will have appropriate wildlife habitat and how program funds may be used to improve those habitats;

(E) A detailed description of how and to what extent public hunting and other recreational access will be increased on land enrolled under a Conservation Reserve Enhancement Program as specified under § 1410.50 of this chapter, or if Conservation Reserve Enhancement Program land is not available, specify that there is no impact;

(F) A detailed description of how any additional Federal, State, tribal government, or private resources will be used to carry out grant activities; and

(G) A detailed description of how the public will be made aware of the location of the land enrolled.

(iv) *Work plan*. Applications must discuss the specific tasks to be completed using grant and matching funds. The work plan should show how customers will be identified, key personnel to be involved with administration of the grant, and the evaluation methods to be used to determine the success of specific tasks

and overall objectives of a VPA–HIP grant. The budget must present a breakdown of the estimated costs associated with VPA–HIP activities and allocate these costs to each of the tasks to be undertaken. Additional funds from Federal, State, tribal government, or private resources as well as grant funds and resources provided in kind must be accounted for in the budget.

(v) *Performance evaluation criteria*. Applications should discuss how the State or tribal government will evaluate whether the program for which the grant is being sought will meet the stated goals for the State or tribal program, including but not limited to landowner and recreationist participation, outreach, and cost-effectiveness.

(vi) *Other similar efforts*. The applicant must describe its previous accomplishments and outcomes in public access activities, if any.

(vii) *Qualifications of personnel*. Applicants must describe the qualifications of personnel expected to perform key tasks, and whether these personnel are to be full- or part-time employees or contract personnel.

#### **§ 1455.20 Criteria for grant selection.**

(a) Incomplete or non-responsive applications will not be evaluated. Applicants may revise their applications and re-submit them prior to the published deadline if there is sufficient time to do so.

(b) After all applications have been evaluated using the evaluation criteria and scored in accordance with the point allocation specified in the RFA, a list of all applications in ranked order, together with funding level recommendations, will be submitted to the Deputy Administrator, FSA.

(c) Unless supplemented in a RFA, applications for grants for VPA–HIP will be evaluated using the criteria listed in this section. The distribution of points to be awarded per criterion will be identified in the RFA.

(1) *Benefits*. The application will be evaluated to determine whether and to what extent the project's anticipated outcomes promote improvement of public access for wildlife-dependent recreation and intended environmental benefits.

(2) *Project description and feasibility*. The application will be evaluated on the extent and quality to which the applicant demonstrates a reasonable approach to the project, sufficient resources to complete the project, and a capability to complete the project in a timely manner.

(3) *Widespread acceptance and maximizing participation of landowners*. The application will be

evaluated based on the applicant's plan for encouraging the participation of owners and operators of privately-held farm, ranch, and forest land, and for engaging the public users. Additionally, the extent to which the applicant has identified and established relationships with the partners necessary to achieve the project's goals will be evaluated.

(4) *Appropriate wildlife habitat*. The application will be evaluated to determine whether the applicant demonstrates expertise in providing technical assistance with respect to establishing and maintaining appropriate wildlife habitat on public access land.

(5) *Strengthening wildlife habitat for lands under the Conservation Reserve Enhancement Program (CREP)*. The application will be evaluated to determine whether the project proposes to provide incentives to increase public hunting and other recreational access on land enrolled under CREP as authorized by § 1410.50.

(6) *Additional private, Federal, State, or tribal government resources*. The application will be evaluated to determine the extent to which the support letters provided by other organizations involved with the project demonstrate specific and quantified commitments to the project.

Applications that demonstrate additional resources will receive more points, all else being equal, than those that do not.

(7) *Making available the location of enrolled land*. The application will be evaluated to determine how the project proposes to make available to the public the location of the land enrolled.

(8) *Performance evaluation criteria*. The application will be evaluated to determine whether the applicant has included outcome-based performance measures.

(9) *Administrative capabilities*. The application will be evaluated to determine whether the grant applicant has a track record of administering the project or, in the absence of a track record, the capacity to administer the project. Applicants that have demonstrated capable financial systems and audit controls, personnel and program administration performance measures, and clear rules of governance will receive more points than those not evidencing this capacity.

(10) *Delivery*. The application will be evaluated to determine whether the applicant has a track record in implementing public access or similar programs or, in the absence of an actual track record, the capacity to implement a public access program. The applicant's potential for delivering an effective



public access program and the expected effects of that program will also be assessed.

(11) *Work plan and budget.* The work plan will be reviewed for detailed actions and an accompanying timetable for implementing the components of the application. Clear, logical, realistic, and efficient plans will result in a higher score. Budgets will be reviewed for completeness and whether and to what extent additional resources were committed by Federal, State, or tribal government, and private resources.

(12) *Qualifications of those performing the tasks.* The application will be reviewed to determine if key personnel have appropriate knowledge, skills, and abilities with respect to wildlife-dependent recreation including hunting or fishing on privately-held farm, ranch, and forest land, funds control, grants management, performance monitoring and evaluation, or other activities relevant to the success of the proposed public access program.

#### **§ 1455.21 Additional Responsibilities of Grantee.**

(a) Before receiving grant funding, the grantee will be required to sign an agreement similar in form and substance to the form of agreement published within or as an appendix to the RFA. The agreement will require the grantee to commit to do all of the following:

(1) Take all practicable steps to develop continuing sources of financial support from other Federal, State, tribal government, or private resources;

(2) Make arrangements for the monitoring and evaluation of the activities related to implementation of the public access program of the owners or operators that enroll farm, ranch, and forest land; and

(3) Provide an accounting for the money received by the grantee under this subpart.

(b) Grantees will be required to monitor funds or services as specified in paragraph (c) of this section, and must agree to that monitoring before grant funds are awarded.

(c) The grantee must certify that the grant funds and services will not be used for ineligible purposes. Specifically, grant funds and services may not be used to:

(1) Duplicate or replace current services; however, grant funds may be used to expand the level of effort or service beyond what is currently being provided;

(2) Pay costs of preparing the application for funding under VPA–HIP;

(3) Pay costs of the project incurred prior to the date of grant approval;

(4) Fund political activities;

(5) Pay any judgment or debt owed to the United States;

(6) Pay for the design, repair, rehabilitation, acquisition, or construction of a building or facility (including a processing facility);

(7) Purchase, rent or pay for the installation of fixed equipment, other than property identification signs;

(8) Pay for the repair of privately owned vehicles; or

(9) Pay for research and development not directly related to quantifying the performance of VPA–HIP lands enrolled with funding from VPA–HIP.

(d) Grant agreements under this part will be for a term of up to 3 years.

(e) Grantees that are States will have the grant amount reduced by 25 percent if opening dates for migratory bird hunting in the State are not consistent for residents and non-residents. This paragraph does not apply to grantees that are Tribal governments.

(f) Failure of the grantee to execute a grant agreement in a timely fashion, as determined by the CCC, will be construed to be a withdrawal from VPA–HIP.

#### **§ 1455.30 Reporting requirements.**

(a) Grantees must provide the following to FSA:

(1) A “Financial Status Report” listing expenditures according to agreed upon budget categories, on a periodic basis as specified in the grant document.

(2) Annual performance reports that compare accomplishments to the objectives stated in the application, and that also:

(i) Identify all tasks completed to date and provide documentation supporting the reported results;

(ii) If the original schedule provided in the work plan is not being met, the report must discuss the problems or delays that may affect completion of the project;

(iii) List objectives for the next reporting period; and

(iv) Discuss compliance with any special conditions on the use of award funds. Reports are due as provided in paragraph (a)(1) of this section.

(3) Final project performance reports, inclusive of supporting documentation. The final performance report is due within 90 days of the completion of the project.

(b) All reports submitted to the Agency will be held in confidence to the extent permitted by law.

#### **§ 1455.31 Miscellaneous.**

(a) *Inspection.* Grantees must permit periodic inspection of the program operations by a CCC representative, as determined by CCC.

(b) *Performance evaluation.* CCC will incorporate performance criteria in grant award documentation and will regularly evaluate the progress and performance of grant awardees.

(c) *Suspend, terminate, or require refund.* CCC may elect to suspend or terminate a grant in all or part, or funding of a particular workplan activity, and require refund of part or all of the grant, with interest, where CCC has determined:

(1) That the grantee or subrecipient of grant funds has demonstrated insufficient progress in complying with the terms of the grant agreement;

(2) The opening dates for migratory bird hunting in a State have been changed so as to be not consistent for residents and non-residents during the term of the grant;

(3) There is reasonable evidence that shows joint funding has not been or will not be forthcoming on a timely basis; or

(4) Such other cause as CCC identifies in writing to the grantee based on reasonable evidence (including but not limited to the use of Federal grant funds for ineligible purposes).

(d) *Advance or reimbursement.* Grantees must use the request for advance or reimbursement form, which will be provided by CCC, to request advances or reimbursements;

(e) *Appeals.* Appeals will be handled according to 7 CFR parts 11 and 780.

(f) *Environmental review.* All grants made under this subpart are subject to the requirements of 7 CFR part 799.

Applicants for grant funds must consider and document within their plans the important environmental factors within the planning area and the potential environmental impacts of the plan on the planning area, as well as the alternative planning strategies that were reviewed.

(g) *Civil rights.* CCC prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or a part of an individual's income is derived from any public assistance program. VPA–HIP will also be administered in accordance with all other applicable civil rights law.

(h) *Other USDA regulations.* The grant program under this part is subject to the provisions of the following regulations, as applicable:

(1) 7 CFR part 3015, Uniform Federal Assistance Regulations;

(2) 7 CFR part 3016, Uniform Administrative Requirements for Grants



and Cooperative Agreements to State and Local Governments;

(3) 7 CFR part 3017, Governmentwide Debarment and Suspension (nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants);

(4) 7 CFR part 3018, New Restrictions on Lobbying;

(5) 7 CFR part 3019, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-profit Organizations; and

(6) 7 CFR part 3052, Audits of States, Local Governments and Non-profit Organizations.

(i) *Audit.* Grantees must comply with the audit requirements of 7 CFR part 3052. The audit requirements apply to the years in which grant funds are received and years in which work is accomplished using grant funds.

(j) *Change in scope or objectives.* The Grantee must obtain prior approval from FSA for any change to the scope or objectives of the approved project. Failure to obtain prior approval of changes to the scope of work or budget may result in suspension, termination, or recovery of grant funds.

(k) *Exceptions.* CCC may, in individual cases, make an exception to any requirement or provision of this part, provided that any such exception is not inconsistent with any applicable law or opinion of the Comptroller General, and provided further, that CCC determines that the application of the requirement or provision would adversely affect the Federal Government's interest.

(l) *Enforcement and refunds; liens and schemes or devices.* Grantees must comply with all conditions of the grant and any monies not spent or improperly spent must be returned immediately with interest to run at the normal rate for CCC obligations. Interest charges will be computed from the date of the CCC disbursement. Grantees must insure that parties that receive funds from the grantee comply with the grantee's application and return funds made available by the grantee where there is no such compliance. Any scheme or device to avoid any limits of this part will be considered to be a program violation with respect to any grant to which that scheme or device is related. Grant funds will be made available to the States or Tribes that are grantees under this part without regard to the claims of others, unless CCC determines otherwise.

Signed at Washington, DC, on June 30, 2010.

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

[FR Doc. 2010-16656 Filed 7-7-10; 8:45 am]

**BILLING CODE 3410-05-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2010-0565; Directorate Identifier 2010-SW-034-AD; Amendment 39-16357; AD 2010-14-12]

RIN 2120-AA64

**Airworthiness Directives; Arrow Falcon Exporters, Inc. (previously Utah State University); AST, Inc. (previously Firefly Aviation Helicopter Services, and Erickson Air-Crane); Rotorcraft Development Corporation (previously Garlick Helicopters, Inc.); Global Helicopter Technology, Inc.; Hagglund Helicopters, LLC (previously Western International Aviation, Inc.); International Helicopters, Inc.; Northwest Rotorcraft, LLC (previously Precision Helicopters, LLC); Robinson Air Crane, Inc.; San Joaquin Helicopters (previously Hawkins & Powers Aviation); S.M. & T. Aircraft (previously US Helicopter Inc., UNC Helicopters, Inc., Southern Aero Corporation, and Wilco Aviation); Smith Helicopters; Southern Helicopter, Inc.; Southwest Florida Aviation International, Inc. (previously Mr. Jamie R. Hill and Southwest Florida Aviation, Inc.); Tamarack Helicopters, Inc. (previously Ranger Helicopter Services, Inc.); US Helicopter, Inc. (previously Williams Helicopter Tech., Southern Aero Corp., Oregon Helicopters and Lenair Corp); West Coast Fabrications; and Overseas Aircraft Support Inc. (previously Williams Helicopter Corporation, Scott Paper Company and Offshores Construction) Model AH-1G, AH-1S, HH-1K, TH-1F, TH-1L, UH-1A, UH-1B, UH-1E, UH-1F, UH-1H, UH-1L, and UH-1P Helicopters; and Southwest Florida Aviation Model UH-1B (SW204 and SW204HP) and UH-1H (SW205) Helicopters**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) for the

Aeronautical Accessories, Inc. (AAI) Low Skid Landing Gear Forward Crosstube (crosstube) installed on the specified helicopters. This action requires replacing certain AAI serial-numbered crosstubes installed on these model helicopters. This amendment is prompted by the discovery of a defect in the raw material used in manufacturing certain crosstubes. The actions specified in this AD are intended to prevent failure of a crosstube and subsequent collapse of the landing gear.

**DATES:** Effective July 23, 2010.

Comments for inclusion in the Rules Docket must be received on or before September 7, 2010.

**ADDRESSES:** Use one of the following addresses to submit comments on this AD:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* 202-493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may get the service information identified in this AD from Aeronautical Accessories, Inc., P. O. Box 3689, Bristol, Tennessee 37625-3689, telephone (423) 538-5151 or 1-800-251-7094, fax (423) 538-8469.

*Examining the Docket:* You may examine the docket that contains the AD, any comments, and other information on the Internet at <http://www.regulations.gov>, or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647-5527) is located in Room W12-140 on the ground floor of the West Building at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** DOT/FAA Southwest Region, Martin R. Crane, ASW-170, Aviation Safety Engineer, Rotorcraft Directorate, Rotorcraft Certification Office, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222-5170, fax (817) 222-5783.

**SUPPLEMENTARY INFORMATION:** This amendment adopts a new AD for the specified AAI crosstubes installed on