

DEPARTMENT OF AGRICULTURE**Commodity Credit Corporation****7 CFR Part 1410**

RIN 0560-AG74

2002 Farm Bill—Conservation Reserve Program—Long-Term Policy**AGENCY:** Commodity Credit Corporation, USDA.**ACTION:** Interim rule.

SUMMARY: The Commodity Credit Corporation (CCC) amends the Conservation Reserve Program (CRP) regulations to set forth the terms and conditions of enrolling acreage in the CRP, update program eligibility requirements, eliminate unnecessary regulations and improve the remaining regulations. This action is being taken to cost-effectively target the CRP to more environmentally sensitive acreage and to comply with amendments made by the Farm Security and Rural Investment Act of 2002 (2002 Act).

DATES: This rule is effective May 5, 2003. Comments must be received on or before July 7, 2003 to be assured of consideration.

ADDRESSES: Comments should be directed to Matt Ponish at Mangi Environmental Group, 7915 Jones Branch Drive, Suite 2300 McLean, Virginia 22102, by calling 800-760-1421, by faxing at 703-760-4899, or by e-mail at crprulecomment@mangi.com.

FOR FURTHER INFORMATION CONTACT: Beverly J. Preston, CRP Program Manager, at USDA/FSA/CEPD/STOP 0513, 1400 Independence Avenue SW., Washington, DC 20250-0513; telephone 202-720-9563; e-mail: Beverly.Preston@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 ADD).

SUPPLEMENTARY INFORMATION:**Executive Order 12866**

This rule has been determined to be economically significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. A Cost/Benefit Analysis was completed and is summarized following the Background section.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this interim rule because the Commodity Credit Corporation (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 2702 of the 2002 Act to issue an interim rule.

Environmental Evaluation

The environmental impacts of this rule have been considered in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*; the regulations of the Council on Environmental Quality (40 CFR parts 1500-1508); and FSA's regulations for compliance with NEPA at 7 CFR part 799. It was determined that this rule constitutes a major Federal action. Therefore, FSA completed a final Environmental Impact Statement, which is on file and available to the public in the Administrative Record at the address specified in the **ADDRESSES** section. It is also available electronically at: <http://www.fsa.usda.gov/dafp/cepd/epb/NEPA.htm>.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions that impose "Federal Mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or the private sector, of \$100 million or more in any one year. This rule contains no Federal mandates as defined by Title II of UMRA. Therefore, this rule is not subject to sections 202 and 205 of the UMRA.

Federal Domestic Assistance Program

The title and number of the Federal Domestic Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies, is the Conservation Reserve Program—10.069.

Paperwork Reduction Act

The 2002 Act specified that the issuance of regulations promulgated pursuant to this new authority would be made without regard to chapter 35 of title 44, U.S. Code (commonly known as the "Paperwork Reduction Act").

Executive Order 12778

This interim rule has been reviewed under Executive Order 12778. The provisions of this rule are not retroactive and preempt State and local laws that are inconsistent with this rule. Before any judicial action may be brought concerning this rule, appeal rights afforded program participants at 7 CFR parts 11, 624, and 780 must be exhausted.

Government Paperwork Elimination Act

FSA is working to comply with the Government Paperwork Elimination Act (GPEA) and the Freedom to E-File Act, which require Government agencies in general and FSA in particular to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. The forms and other information collection activities required for participation in the program are not yet fully implemented for the public to conduct business with FSA electronically.

Currently, four CRP forms are available electronically through the USDA eForms Web site at www.sc.egov.usda.gov for downloading and regulations are available on the Internet at www.fsa.usda.gov/dafp/cepd. Offers may be submitted at FSA county offices, by mail, or by FAX. At this time, electronic submission is not available, but full implementation of electronic submission is underway.

Background

This rule revises the regulations of the Conservation Reserve Program (CRP) at 7 CFR part 1410 to improve the overall administration of the program and to implement statutory changes to the CRP. The CRP was first authorized by the Food Security Act of 1985 (1985 Act), which was recently amended by the Farm Security and Rural Investment Act of 2002, Public Law 107-171 (2002 Act), which, among other things, provided the Secretary of Agriculture (Secretary) the authority to maintain up to 39.2 million acres in the CRP. The purpose of the CRP continues to be cost-effectively assisting producers in conserving and improving soil, water, and wildlife resources by converting highly erodible and other environmentally-sensitive acreage generally devoted to the production of agricultural commodities to a long-term vegetative cover. CRP participants enroll land under contracts for 10 to 15 years in exchange for annual rental payments and financial assistance to install certain conservation practices and to

maintain approved vegetative or tree covers.

Native seed and vegetation species that are suited to the soil and climatic conditions of a site provide high wildlife benefits. Accordingly, FSA encourages the use of native vegetation whenever suitable. The CRP application selection criteria (*i.e.*, the Environmental Benefits Index (EBI)) gives greater weight to contract offers that devote acreage to native seeds and plantings that are consistent with the ecosystem (discussed below). In some cases, however, critical area planting (*e.g.*, land that is severely sloped or has high potential for erosion) may require the use of introduced vegetation species because they can stabilize the soil more quickly in order to protect the soil and water resources. In addition, introduced species may be easier to establish and provide more cost-effective conservation covers.

In determining the amount of annual rental payments to be paid, CCC considers, among other things, the amount necessary to encourage owners or operators of eligible land to participate in the CRP. The maximum rental payment CCC will pay reflects site-based soil productivity, prevailing local cash-equivalent rental rates, and maintenance costs. Offers to participate in the CRP are submitted in such a manner as the Secretary prescribes. Requests for rental payments greater than the amount that CCC determines to be reasonable for the area and soil type are automatically rejected. In order to maximize the environmental and conservation benefit of the funds to be expended, conservation practices and the land for which offers may be accepted may vary as conditions change.

CCC conducts periodic, competitive general signups in which all offers are ranked competitively based on their environmental benefits considering the cost of the contract. The acceptability of such offers is determined by a formula based upon a number of environmental factors and benefits. Along with the cost of enrolling the acreage, these factors are used to construct an EBI to compare offers.

CCC scores general signup offers using the EBI, which measures the anticipated environmental benefits from several factors and costs. The Department has used an EBI to prioritize and rank CRP offers since the tenth signup in March 1991. It was developed to comply with the section 1234(c) of the 1985 Act. The goal of the EBI is to provide a relative rank order of submitted offers based on environmental factors and cost in a

uniform and consistent manner for all offers. In addition, the EBI provides incentives to increase cost-effectiveness. Ultimately, the EBI is used to rank the anticipated environmental benefits from each CRP offer.

The EBI considers a number of environment factors, including water quality, soil erosion, air quality, and enduring benefits. In addition to these factors, wildlife and the quality of vegetation for wildlife habitat are factors in the ranking criteria. Because native grasses generally offer better habitat than introduced grasses, the FSA has revised the EBI selection criteria to give greater weight to the use of native seed and vegetation species. This provides incentives for producers to offer and use native species in their CRP contracts.

The effect of the greater EBI weight given for using species can be seen by examining the change in the proportion of CRP enrolled acres planted in native grasses. In 1993, when there were nearly 30 million acres of grass in the CRP, only 28 percent of these acres were planted in native grasses. Since 1998, 67 percent of the grasses established under new CRP contracts used native grasses.

Since 1996, between 70,000 and 280,000 offers were received during each four- to six-week signup period. Environmental data were collected for each of the EBI ranking factors and subfactors. Each offer was assigned a point score based upon the relative environmental indices scores. All offers were ranked in comparison to all other offers and the selections were made from that ranking.

CCC also conducts continuous, non-competitive signup of certain acreage. Under the CRP continuous signup process implemented in September 1996 and the Conservation Reserve Enhancement Program (CREP) signup process implemented in February 1997, only those practices determined to have relatively high environmental benefits are eligible. Acreage determined to be eligible for the continuous CRP or CREP signup is automatically accepted if all other eligibility requirements are met. Continuous signup affords farmers and ranchers the management flexibility in implementing certain working lands conservation practices on cropland such as filter strips, riparian buffers, shelterbelts, field windbreaks, living snow fences, grass waterways, shallow water areas for wildlife, salt-tolerant vegetation and practices to protect certain approved public wellhead protection areas. These practices are designed to achieve significant environmental benefits, giving participants a flexible option to enroll acres on a continuous basis to help

protect and enhance wildlife habitat, improve air quality, and improve the condition of streams, rivers, and permanent water bodies. While acreage is accepted on a non-competitive basis, the practices provide environmental benefits that likely would consistently exceed the highest EBI score making this acreage acceptable for enrollment under a general signup.

Further, CCC may enter into a CREP agreement with States, Tribes, local governments, or private entities to use the CRP to cost-effectively address specific conservation and environmental issues of the State and the nation. Proposals, developed locally and submitted for approval by the Secretary, must address resource concerns, provide for cooperation with the CREP partners, present clear program goals with measurable objectives, and detail non-federal financial contributions.

The 2001 Agricultural Appropriations Act amended the 1985 Act and authorized a Farmable Wetlands Pilot Program (FWP) to enroll in the States of Iowa, Minnesota, Montana, Nebraska, North Dakota, and South Dakota certain wetlands and buffer acreage on a pilot basis. Enrollment under this pilot could not exceed 500,000 acres for all States and 150,000 acres in any State. The maximum enrollment for both the wetland and buffer acreage could not exceed 40 acres per tract. Also, wetlands could not exceed five acres in size to be eligible for enrollment. Acreage enrolled must be cropland that has a cropping history in at least three of the most recent ten years. Acreage offered under this pilot uses the CRP's continuous signup procedures.

On December 6, 2001, CCC published a proposed rule (66 FR 63339) that proposed a series of amendments that, if adopted, would make certain orchard lands, vineyards, berry lands, and hay lands eligible for enrollment, provide for acquisition of private sector technical assistance and make minor technical and clerical adjustments to the regulations. This action was taken to allow producers greater flexibility in enrolling in the CRP and enhance the environmental benefits under the CRP. CCC proposed that for the continuous signups held for the CRP and for enrollments in the CREP, certain orchard lands, vineyards, berry fields, and hay land be permitted to be enrolled. The 2002 Farm Bill broadened land eligibility to include hay lands if the land is otherwise cropland that has been devoted to a conserving use and expanded authority for the use of private-sector and other technical service providers. These provisions are

included in this interim rule. Fourteen comments supported the inclusion of certain orchard lands, vineyards, or berry lands as proposed. There were no comments opposed to the proposed inclusion. Therefore, the interim rule also makes certain orchard lands, vineyards, or berry lands eligible for enrollment under the continuous CRP and CREP.

Discussion of the Interim Rule

Based on the 2002 Act and FSA discretion, changes have been made to cropping history requirements, eligible land, the EBI, the FWP, managed haying and grazing authorities, and providers of technical assistance.

Generally, by statute, CRP land enrolled in the program must be cropland, but the rules for the program provide that the crop history must generally be a history of production of tillable crops. That limitation provides for focusing the CRP on the conversion of land with the most intensive uses to a cover crop. Also, this focus emphasizes the "reserve" nature of the program and can provide a greater amount of public benefit by producing savings in other programs as recompense for the funds spent on this program.

This rule, at 7 CFR part 1410.6(a)(3)(b)(13), makes certain orchard lands, vineyards and berry lands eligible for the continuous sign-ups held for the CRP and for enrollments in the CREP. FSA has determined that these lands could provide significant environmental benefits in these signups which involve certain geographical practices such as conservation buffers along stream banks. Such an expansion of the eligibility criteria for the program was requested by a number of State governments involved in CREP agreements.

Cropping History Requirements

This rule, at 7 CFR part 1410.6(a), changes the cropping history requirements required for certain land to be eligible. Before, by rule, land must have been cropped in two of the five years preceding enrollment to be eligible. However, the 2002 Act changed that requirement so that cropland, to be eligible, must be planted or considered planted for four of the six years preceding the date of enactment of the 2002 Act on May 13, 2002. Also, in 7 CFR part 1410.6, this rule provides that land may be eligible if it was devoted to a conserving use under section 1231(c) of the 1985 Act. For CRP purposes, conserving use means, during 1996 through 2001, any planted alfalfa and planted other multi-year grasses and

legumes and summer fallow in a rotation with agricultural commodities are defined as conserving uses for CRP purposes.

Other Changes in Land Eligibility Requirements

The 2002 Act amendments to the 1985 Act expanded eligibility authority for marginal pasture land from riparian buffers "devoted to trees" to "devoted to appropriate vegetation, including trees," in or near riparian areas. Thus, under 7 CFR part 1410.6, CCC has made marginal pasture land acreage eligible if it is devoted to a riparian buffer practice, a new wetland practice, or a new wildlife habitat buffer practice. This enhancement will allow riparian buffers, wetlands, and wildlife habitat practices intrinsically valuable in addressing Federal and State environmental and wildlife issues near streams, rivers, or other water bodies to be established where tree plantings are not practical or appropriate. These practices improve water quality, reduce flood and storm event damage, help control soil erosion, and provide important fish and wildlife habitat. Certain wetlands are also valuable in providing filtering functions because of their location between land and water.

The 2002 Act amendments also extends eligibility to cropland when enrollment would facilitate a net savings in groundwater or surface water resources of the agricultural operation of the producer. To implement this new provision, CCC has added to the list of eligible conservation practices in 7 CFR part 1410.6 a practice that has water savings as its primary function. Water savings will advance the goal of providing the nation and States with adequate water to meet farming and ranching needs as well as the needs of an increasing population.

Another new land eligibility provision in the 2002 Act amendments provides that the remainder of cropland in a field that is not enrolled as a "buffer" may be enrolled if it is less than 50 percent of the cropland in that field, is infeasible to farm, and is enrolled at regular enrollment rates. For this provision, at 7 CFR part 1410.6 provides that a "buffer" will be considered to be riparian buffers, filter strips, or areas buffering wellhead protection areas. "Infeasible to farm" is defined as areas that are too small or isolated to be economically farmed, as determined by the FSA.

The 2002 Act also made land enrolled in the CRP but nearing contract completion eligible for new enrollment. Accordingly, any acreage currently in the CRP will be basically eligible to be

offered for continued enrollment if the current contract is scheduled to expire the day before a new contract would become effective. However, land will be ineligible for enrollment if it is subject to a CRP useful life easement that extends beyond the current contract term. The interim rule provides that re-enrollment of currently enrolled acreage will be based on the same criteria as for enrolling new acreage.

The EBI has been modified after extensive negotiations with resource professionals from the Forest Service, Natural Resource Conservation Service (NRCS), U.S. Environmental Protection Agency, U.S. and Wildlife Service (FWS), U.S. Geological Survey (USGS) and others and from public scoping and public comments submitted during development of the programmatic environmental impact statement.

The 2002 Act made no changes to the EBI authority. However, the EBI has been re-engineered to continue to encourage the restoration of plantings consistent with the ecosystem where the land is offered. The EBI has also been simplified to enable producers to run different scenarios independently, reduce error rates, improve customer service by significantly reducing the time needed for a producer to submit an offer, and reduce resources needed to process an offer.

The index may include consideration of soil erosion, water quality, wildlife habitat, enduring benefits, air quality, and cost while also including consideration of other technical factors such as recommendations of the State technical committee, conservation priority areas, permanent wildlife habitat, and tree plantings.

Farmable Wetlands Program (FWP)

Under the 2002 Act amendments, the FWP, at 7 CFR part 1410.11, was expanded from a six-State pilot to all States and may include up to a total of 1 million acres. In general, up to 100,000 acres may be enrolled in any State, except that enrollment of a State may be increased to 150,000 acres after 3 years. The 2002 Act amendments also changed the maximum size of any wetland enrolled under the FWP from five to ten contiguous acres, of which not more than five acres shall be eligible for payment. No more than 40 acres from a tract may be enrolled under the FWP. All acres, including acres ineligible for payment, must be maintained according to an approved conservation plan.

Managed Haying and Grazing

Before the 2002 Act amendments, the 1985 Act generally provided that no

commercial use could be made of land enrolled in CRP but permitted haying or grazing during droughts or similar weather-related emergencies. The 2002 Act amended that provision by adding an exception for managed harvesting and grazing, including the managed harvesting of biomass and the installation of wind turbines.

Wind turbines generally have a limited impact on the environment due to their small footprint of approximately one-tenth acre. They are non-polluting sources of energy and generally have a limited impact on wildlife. Wind turbines will be installed according to standards and in such numbers as determined appropriate by FSA.

Managed haying and grazing is anticipated to be a useful tool to manage CRP stands and to assist CRP participants in managing their operation. Allowing non-emergency managed haying and grazing, conducted in accordance with a conservation plan, will increase the amount of cover disturbance that will occur. Managed disturbance of vegetative covers (*i.e.*, a disturbance cycle) established on CRP land generally increases diversity and quality of vegetative covers and improves wildlife habitat benefits. Based on surveys of CRP participants, these managed haying uses could potentially affect about 25 percent of eligible CRP grassland acreage. Haying and grazing will be limited to no more than once every 3 years, depending on conservation plan guidelines, with additional restrictions in environmentally sensitive areas or practices.

All haying and grazing activities will be conducted only after a detailed conservation plan is developed for haying or grazing management according to the NRCS Field Office Technical Guide (FOTG) haying and grazing standards. The conservation plan will ensure the long-term viability of the stand while protecting and enhancing the soil, water, wildlife and other natural resources of the CRP acreage. The conservation plan will require the control of noxious weeds and other weeds, insects, and pests. All haying and grazing activities must be conducted consistent with the terms and conditions of the haying and grazing management plan. USDA will conduct compliance reviews to ensure compliance.

In November 2001, a panel of grassland ecologists with special expertise in grassland bird ecology representing academia, Government and non-profit organizations developed a number of consensus recommendations for guidance regarding haying and

grazing of CRP as well as long-term protection of existing grasslands.

The panel's consensus view was "to establish a general rule favoring grazing 1 in 3 years on one-third of the enrolled CRP lands." Other species-specific haying and grazing requirements were also recommended. However, FSA was advised that the specific recommendations assumed a monoculture for a particular species (*e.g.*, short-grass prairie) and did not take into account the landscape's natural diversity. Therefore, FSA adopted the NRCS FOTG haying and grazing standard to augment the panel's consensus view.

FSA determined that managed haying and grazing of CRP acreage once every 3 years as recommended by the grassland ecologist panel was the appropriate disturbance cycle. State committees will not be establishing disturbance cycles more frequently than the 1-in-3 year cycle. Less frequent disturbance cycles may be established by State committees with State Technical Committee consultation. The year 2003 will be considered year 1 of the management cycle for all CRP contracts in effect. For all new CRP contracts, the disturbance cycle will begin when the cover is established.

For contracts where all eligible acreage is already established, year 1 of the disturbance cycle will begin during the first managed haying and grazing period after the CRP contract is approved. For contract acreage where an acceptable cover may need to be established, year 1 will begin during the managed haying and grazing period 12 months after the applicable cover is fully established. This will ensure that the applicable acreage will be capable of withstanding the applied haying or grazing pressure without failing to recover.

Farm Service Agency State committees, in consultation with State technical committees, will determine the beginning of the primary nesting and brood rearing season during which managed haying and grazing will not be performed. The ending dates were established by FSA, in consultation with the FWS, in the 1990's and are not intended to be changed. The appropriate managed haying and grazing period, which may not overlap with the primary nesting and brood-rearing season, will be determined by the FSA State committee in consultation with the NRCS State technical committee.

Managed haying and grazing will interact with emergency authorizations of haying and grazing by including acres hayed or grazed under the emergency authority into the managed haying and

grazing disturbance cycle. Thus, any acreage hayed or grazed under emergency authority would not be eligible to be hayed or grazed under managed haying or grazing provisions the following 2 years. Managed haying or grazing of CRP does not affect the eligibility of CRP acreage for emergency haying or grazing.

Emergency Haying and Grazing

Under existing emergency authority, any eligible CRP acreage may be hayed or grazed each year the county is approved. Under the new rule, any CRP acreage eligible for emergency haying or grazing within the county may be hayed or grazed within the emergency authorization regardless of whether it was hayed or grazed in previous years under managed provisions or emergency authority. This would remain consistent with current emergency authority. However, any eligible acreage hayed or grazed under either managed or emergency provisions would not be eligible for managed haying or grazing for the next two years.

Providers of Technical Assistance

The CRP is carried out by CCC through FSA using FSA State and county offices. The Farm Service Agency supplements its staff by using providers of technical assistance including, for example, NRCS, FS State foresters, individuals, private-sector entities, and public agencies certified under the regulations at 7 CFR part 652.

Conservation Priority Areas (CPA's)

Land designated as either a State or National CPA is considered eligible to be offered for enrollment in the CRP (provided it meets the cropping history and physically and legally capable of being cropped standards). Although land is considered eligible for enrollment, the offer is not automatically acceptable. CPA's are designated based on entire counties or hydrologic unit codes (HUC's). All CPA's must have a primary purpose of wildlife, water quality, or air quality. State and National CPA's may have a designated zone associated with the CPA. The zone must be designated as either a wildlife, water quality, or air quality zone. Acreage offered for enrollment in the CRP that is designated as a CPA and is located within the applicable zone is awarded EBI points.

The 2002 Act re-authorized the watershed areas of the Chesapeake Bay Region, the Great Lakes Region, the Long Island Sound Region, and other areas of special environmental sensitivity to be designated as conservation priority areas for a period

of 5 years, subject to re-designation. The purpose of the conservation priority area designation is to enhance the CRP by better addressing conservation and environmental issues in a planned and coordinated manner within a State. In addition to the national priority areas provided in the 1985 Act, CCC re-authorized two other national conservation priority areas: the Prairie Pothole and Longleaf Pine Regions with certain adjustments, as explained later. CCC will continue national conservation priority areas after reviewing and revising them, as appropriate, to conform to HUC's or county boundaries.

CCC also re-authorized State conservation priority areas. Prior to the 2002 Act, State conservation priority areas were limited to no more than 10 percent of the cropland (net of any national conservation priority area) in the State. When requesting conservation priority area designation, FSA State committees were required to develop an evaluation and monitoring system to determine the effectiveness of designating a particular area as a priority. Designations are valid for 5 years and many of these areas are approaching the expiration of their 5-year designation.

The regulations at 7 CFR part 1410.8 authorize FSA State committees to designate State conservation priority areas after consulting with the NRCS State technical committee. Conservation priority areas make cropland basically eligible for enrollment. Other qualifications including the physically and legally capable of being cropped standards at 7 CFR part 1410.6 and ownership eligibility at 7 CFR part 1410.5 continue to apply. This rule, in 7 CFR part 1410.8, changes the total area in a State eligible to be designated as a State conservation priority area from no more than 10 percent to no more than 33 percent of the cropland in the State. This change increases local flexibility in enrolling eligible land into the program and provide local natural resource managers increased flexibility in achieving environmental improvement and in achieving water quality objectives under the Clean Water Act. The increase from 10 percent to 33 percent will assist USDA in addressing certain water quality issues and is consistent with water quality areas designated for certain environmental benefit ranking factors.

Mid-Contract Cover Management

USDA will require that all new covers under new contract to be maintained and managed in a manner that will maximize wildlife benefits while ensuring soil, water, and other resources

are protected. Eligible management activities incorporating native seeds and planting will be developed by FSA State committees based on recommendations from State technical committees with input from resource professionals with knowledge of wildlife, forestry, hydrology and other appropriate disciplines. Other management activities could include light disking and burning. Mid-cover management shall be conducted according to an approved conservation plan as part of the CRP contractual obligation that will maximize wildlife benefits while ensuring soil, water, and other resources are protected as determined by FSA.

Request for Comment

The regulations at 7 CFR part 1410.30 provide for enrollment methods that generally include periodic competitive signup periods and, for certain environmental practices, continuous non-competitive enrollments. Since 1996 when continuous signup was authorized, FSA has expanded the kinds of environmental practices to meet legislative and other needs. The added practices include contour grass strips on terraces, two farmable wetland practices and the marginal pasture land practices. Further, USDA recently announced the intention to include certain hardwoods under continuous signup.

We request comments on environmental and other criteria that should be used to qualify practices for a continuous signup and to distinguish the non-competitive from the competitive general signup.

Cost-Benefit Assessment (CBA)

The CBA analyzes the environmental, economic, and budgetary impacts of enrolling additional land in CRP under provisions of the accompanying rule. Principal issues analyzed are land eligibility changes and extension of authority to enroll new lands in CRP. Two enrollment options are considered: (1) Enrollment of additional acres under general signup provisions to reach the statutory maximum enrollment of 39.2 million acres and (2) enrollment of additional acreage under general signup provisions up to the pre-existing 36.4 million-acre cap. The first scenario is the selected option. It corresponds to enrollment levels included in the Office of Management and Budget's Fiscal Year (FY) 2003 Mid-Session Review budget baseline, and includes enrollment of an additional 2.8 million acres compared with option 2. Other issues analyzed include basic cropland and resource-based eligibility criteria, FWP expansion, eligibility of infeasible-to-farm field remainders, and management

of enrolled fields to maintain and improve vegetative vigor and diversity.

Cropland eligibility will be based on crop history during 1996 through 2001. To be eligible, land must have been cropped, considered cropped, or in conserving uses in at least 4 of the 6 years. Land planted to an agricultural commodity at least 4 of the 6 years is estimated to total 310 million acres. Allowing land in crop/fallow rotations adds about 28.3 million acres, primarily in the Northern Plains and Mountain regions where wheat/fallow rotations are common. Including land in hay/crop rotations (25.2 million acres) brings total land meeting crop history requirements to 363.5 million acres, a 1.9 million-acre (0.5 percent) increase from estimated eligibility under prior provisions.

About 268 million acres, or 74 percent, of land meeting crop history requirements are estimated to meet one or more resource-based eligibility criteria, including 104 million acres of highly erodible cropland, 116 million acres in national conservation priority areas, and up to 94 million acres in State conservation priority areas. Because CRP enrollment in a county is limited to 25 percent of cropland in the county, only about 106 million of these acres are potentially enrollable.

Allowing non-emergency managed haying or grazing, conducted in accordance with a conservation plan, will increase the amount of cover disturbance that will occur. Managed disturbance of vegetative covers established on CRP land generally increases diversity and quality of vegetative covers, improving wildlife habitat benefits. Based on surveys of CRP participants, these managed uses could potentially affect about 25 percent of eligible CRP grassland acreage. Haying and grazing will be limited to no more than once every 3 years, depending on conservation plan guidelines, with additional restrictions in environmentally sensitive areas or practices. Thus, around 2 to 3 million acres could be hayed or grazed in any year, improving wildlife habitat benefits on a total of about 7 million acres. If the current 25-percent payment reduction is applied and there is equitable regional distribution of participation, CRP outlays could be reduced by \$20 million to \$25 million per year.

Establishing long-term vegetative cover on the additional 2.8 million acres of cropland enrolled under the selected option (option 1) will provide numerous environmental benefits. Soil productivity is enhanced because erosion is essentially ceased during the 10- to 15-year contract period. CRP enrollment reduces sheet and rill (water

driven) soil erosion, and the quantity of agricultural pollutants available to reach water bodies and impair water uses. Reduced wind erosion provides air quality benefits. The additional 2.8 million acres will reduce estimated annual erosion 21 million tons compared with 1997 erosion rates: sheet and rill and wind erosion will be reduced by about 10 million tons and 11 million tons, respectively. Carbon sequestration, the storage of carbon in soils and vegetation, will increase by an estimated 1.3 million metric tons per year.

While comprehensive estimates of changes in wildlife populations are not generally available, expanded and enhanced wildlife habitat should result in substantial increases in the abundance of game and non-game species. Many CRP practices are specifically or primarily directed toward improving wildlife habitat. Almost 10 million acres are currently enrolled in conservation priority areas, selected for wildlife habitat enhancement purposes. Over 3 million acres of specific wildlife practices, including wildlife corridors, shallow water areas for wildlife, riparian buffers, and wetland restoration, currently provide critical wildlife habitat benefits. In addition, 1.4 million flood-prone and riparian area acres and 3.4 million cropped wetland and wetland complex acres are currently enrolled. Wildlife benefits are further enhanced by establishment of 374,000 acres of rare and declining habitats, 2.3 million acres of permanent wildlife habitat, and enrollment of 92,000 acres of former water bank land. Many of these wildlife-enhancing practices will be included in the 2.8 million acres enrolled under the selected option.

Comprehensive measures of environmental benefit values obtained from enrolling environmentally sensitive land in CRP do not currently exist. Published estimates of CRP benefits, based on currently and previously enrolled acreage, using indirect measures or secondary sources generally provide regional estimates of benefits per acre enrolled or per ton erosion reduction. Using these derived estimates enrolling the additional 2.8 million acres is estimated to provide environmental benefits of \$129 million per year. These benefits include: \$11 million from improved soil productivity, \$19 million from improved surface water quality, \$41 million from enhanced wildlife viewing opportunities, \$57 million in small game and migratory waterfowl hunting benefits, and \$2 million in air quality benefits. Many major benefit categories

are not yet quantified, including benefits from numerous recreational activities, big game hunting, flood-control, wetland restoration, groundwater quality, improved human health from improved water and air quality, fishing, and carbon sequestration.

With about 350 million acres typically in crop production annually, idling an additional 2.8 million acres under CRP (less than 1 percent of plantings) will have minimal impacts on crop production, crop prices, and farm income. Net crop sector income is estimated to increase \$307 million per year (1 percent) during the 2003–2012 crop years, due to the additional CRP enrollment. This increase is a result of larger estimated market-based net returns (\$349 million per year), decreased commodity program payments (\$186 million per year), and increased net CRP payments (\$144 million per year) over the 10-year period. Underlying these changes is a 900,000 acre estimated decline in combined wheat, feed grains, and soybean plantings per year over the period. As a result of these reduced plantings, crop prices are estimated to increase on average \$0.02 per bushel for wheat, \$0.02 for corn, \$0.01 to \$0.02 for other feed grains, and \$0.06 for soybeans per year.

Total CRP outlays are estimated to increase \$1.5 billion, while commodity program outlays are estimated to decline about \$1.7 billion during FY 2003 through 2012, primarily due to a \$1.5 billion counter-cyclical payment decline. The additional 2.8 million-acre enrollment is estimated to decrease combined CRP and commodity program outlays by \$208 million annually during the 10-year period.

Total estimated impacts for the additional CRP enrollment, including \$326 million annual economic losses due to higher crop prices and reduced crop supplies (buyers' loss) and estimated average annual economic benefits (increased farm incomes and environmental benefits), results in estimated net economic benefits of \$131 million per year. This amount probably understates the net impacts to society because many of the environmental benefits are not included.

List of Subjects in 7 CFR Part 1410

Administrative practices and procedures, Agriculture, Conservation plan, Contracts, Environmental protection, Natural resources, Soil conservation, Water resources, and Wildlife.

■ Accordingly, 7 CFR part 1410 is revised to read as follows:

PART 1410—CONSERVATION RESERVE PROGRAM

Sec.

- 1410.1 Administration.
- 1410.2 Definitions.
- 1410.3 General description.
- 1410.4 Maximum county acreage.
- 1410.5 Eligible persons.
- 1410.6 Eligible land.
- 1410.7 Duration of contracts.
- 1410.8 Conservation priority areas.
- 1410.9 Conversion to trees.
- 1410.10 Restoration of wetlands.
- 1410.11 Farmable Wetlands Program.
- 1410.12–1410.19 [Reserved]
- 1410.20 Obligations of participant.
- 1410.21 Obligations of the Commodity Credit Corporation.
- 1410.22 CRP Conservation Plan.
- 1410.23 Eligible practices.
- 1410.24–1410.29 [Reserved]
- 1410.30 Signup.
- 1410.31 Acceptability of offers.
- 1410.32 CRP contract.
- 1410.33 Contract modifications.
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- 1410.40 Cost-share payments.
- 1410.41 Levels and rates for cost-share payments.
- 1410.42 Annual rental payments.
- 1410.43 Method of payment.
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- 1410.50 Enhancement programs.
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- 1410.53 Executed CRP contract not in conformity with regulations.
- 1410.54 Performance based upon advice or action of the Department.
- 1410.55 Access to land under contract.
- 1410.56 Division of payments and provisions about tenants and sharecroppers.
- 1410.57 Payments not subject to claims.
- 1410.58 Assignments.
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- 1410.60 Scheme or device.
- 1410.61 Filing of false claims.
- 1410.62 Miscellaneous.
- 1410.63 Permissive uses.

Authority: 15 U.S.C. 714b and 714c; 16 U.S.C. 3801–3847.

§ 1410.1 Administration.

(a) The regulations in this part will be implemented under the general supervision and direction of the Executive Vice President, Commodity Credit Corporation (CCC), the Administrator, Farm Service Agency (FSA), or a designee, or the Deputy Administrator, FSA. In the field, the regulations in this part will be implemented by the FSA State and county committees ("State committees" and "county committees," respectively).

(b) State executive directors, county executive directors, and State and county committees do not have the authority to modify or waive any of the provisions in this part unless

specifically authorized by the Deputy Administrator.

(c) The State committee may take any action authorized or required by this part to be taken by the county committee, but which has not been taken by such committee, such as:

(1) Correct or require a county committee to correct any action taken by such county committee that is not in accordance with this part; or

(2) Require a county committee to withhold taking any action that is not in accordance with this part.

(d) No delegation of authority herein to a State or county committee shall preclude the Executive Vice President, CCC, the Administrator, FSA, or a designee, or the Deputy Administrator, from determining any question arising under this part or from reversing or modifying any determination made by a State or county committee.

(e) Data furnished by prospective participants will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, the failure to provide data could result in program benefits being withheld or denied.

(f) Notwithstanding other provisions of this section, the Erodibility Index (EI), suitability of land for permanent vegetative or water cover, factors for determining the likelihood of improved water quality, and adequacy of the planned practice to achieve desired objectives shall be determined by the Natural Resource Conservation Service (NRCS) or other sources approved by CCC, in accordance with the Field Office Technical Guide (FOTG) of NRCS or other guidelines deemed appropriate by NRCS. In no case shall such determination compel CCC to execute a contract that CCC does not believe will serve the purposes of the program established by this part. Any approved technical authority shall utilize CRP guidelines established by CCC.

(g) CCC may consult with the Forest Service (FS), a State forestry agency, or other organizations as determined by CCC to be necessary for developing and implementing conservation plans that include tree planting as the appropriate practice or as a component of a practice.

(h) CCC may consult with the Cooperative State Research, Education, and Extension Service to coordinate a related information and education program as deemed appropriate to implement the Conservation Reserve Program (CRP).

(i) CCC may consult with the National Marine Fisheries Service, U.S. Fish and Wildlife Service (FWS), or State wildlife agencies for such assistance as is

determined necessary by CCC to implement the CRP.

(j) The regulations governing the CRP as of May 12, 2002, shall continue to govern contracts in effect as of that date (see 7 CFR part 1410 contained in the edition of 7 CFR Parts 1200 to 1599 revised as of January 1, 2003). This part shall apply to contracts executed on or after May 13, 2002

§ 1410.2 Definitions.

(a) The definitions in part 718 of this chapter shall be applicable to this part and all documents issued in accordance with this part, except as otherwise provided in this section.

(b) The following definitions shall be applicable to this part:

Agricultural commodity means any crop planted and produced:

(1) By annual tilling of the soil;

(2) On an annual basis by one-trip planters; or

(3) Sugarcane planted or produced in a State.

Annual rental payment means, unless the context indicates otherwise, the annual payment specified in the CRP contract that, subject to the availability of funds, is made to a participant to compensate a participant for placing eligible land in the CRP.

Conservation district means a political subdivision of a State, Indian Tribe, or territory, organized pursuant to the State or territorial soil conservation district law, or Tribal law. The subdivision may be a conservation district, soil conservation district, soil and water conservation district, resource conservation district, natural resource district, land conservation committee, or similar legally constituted body.

Conservation plan means a record of the participant's decisions and supporting information for treatment of a unit of land or water, and includes a schedule of operations, activities, and estimated expenditures needed to solve identified natural resource problems by devoting eligible land to permanent vegetative cover, trees, water, or other comparable measures.

Conservation priority area means an area designated with actual and adverse water quality, wildlife habitat, air quality, or other natural resource impacts related to agricultural production activities or to assist agricultural producers to comply with Federal and State environmental laws or to meet other conservation needs, such as for air quality, as determined by the Deputy Administrator.

Conserving use means any alfalfa, other multi-year grasses and legumes planted during 1996 through 2001, and

any summer fallow during 1996 through 2001.

Considered planted means: land devoted to a conserving use or land enrolled in the WBP during the crop year or during any of the 2 years preceding the crop year if the contract expired or will expire during calendar year 2000, 2001, or 2002; cropland enrolled in CRP; or land for which the producer received insurance indemnity payment for prevented planting.

Contour grass strip means a vegetation area that follows the contour of the land that complies with the FOTG and a conservation plan developed under this part.

Contract period means the term of the contract which is not less than 10, nor more than 15 years.

Cost-share payment means the payment made by CCC to assist program participants in establishing the practices required in a contract.

Cropland means land defined as cropland in part 718 of this title, except for land in terraces that are no longer capable of being cropped.

Cropped wetlands means farmed wetlands and wetlands farmed under natural conditions.

Deputy Administrator means the Deputy Administrator for Farm Programs, FSA, the CRP Program Manager, or a designee.

Erodibility Index (EI) is, as prescribed by CCC, used to determine the inherent erodibility (water or wind) of a soil.

Farmed wetlands means land defined as farmed wetlands in part 12 of this title.

Federally-owned land means land owned by the Federal Government or any department, instrumentality, bureau, or agency thereof, or any corporation whose stock is wholly owned by the Federal Government.

Field means a part of a farm that is separated from the balance of the farm by permanent boundaries such as fences, roads, permanent waterways, woodlands, other similar features, or crop-lines, as determined by CCC.

Field Office Technical Guide (FOTG) means the official USDA guidelines, criteria, and standards for planning and applying conservation treatments and conservation management systems. It contains detailed information on the conservation of soil, water, air, plant, animal resources, and cultural resources applicable to the local area for which it is prepared.

Field windbreak, shelterbelt, and/or living snowfence mean a vegetative barrier with a linear configuration composed of trees, shrubs, or other vegetation, as determined by CCC, that are designated as such in a conservation

plan and that are planted for the purpose of reducing wind erosion, controlling snow, improving wildlife habitat, or conserving energy.

Filter strip means a strip or area of vegetation adjacent to a body of water the purpose of which is to remove nutrients, sediment, organic matter, pesticides, and other pollutants from surface runoff and subsurface flow by deposition, absorption, plant uptake, and other processes, thereby reducing pollution and protecting surface water and subsurface water quality and of a width determined appropriate for the purpose by the Deputy Administrator.

Highly Erodible Land (HEL) means land determined to have an EI equal to or greater than 8 on the acreage offered.

Infeasible to farm means an area that is too small or isolated to be economically farmed, as determined by the Deputy Administrator.

Landlord means a person who rents or leases acreage to another person.

Local FSA office means the FSA office serving the area in which the FSA records are located for the farm or ranch.

Offer means, unless the context indicates otherwise, if required by CCC, the per-acre rental payment requested by the owner or operator in such owner's or operator's request to participate in the CRP.

Offeror means an eligible person as determined by CCC who submits an offer of eligible acreage for enrollment into the CRP to enter into a CRP contract.

Operator means a person who is in general control of the farming operation on the farm, as determined by CCC.

Payment period means the 10- to 15-year contract period for which the participant receives an annual rental payment.

Perennial crop means an agricultural commodity that is produced from the same root structure for two or more years, as determined by CCC.

Permanent vegetative cover means perennial stands of approved combinations of certain grasses, legumes, forbs, shrubs and trees with a life span of 10 or more years.

Permanent wildlife habitat means a vegetative cover with the specific purpose of providing habitat, food, or cover for wildlife and protecting other environmental concerns for the life of the contract.

Practice means a conservation, wildlife habitat, or water quality measure with appropriate operations and management as agreed to in the conservation plan to accomplish the desired program objectives according to CRP and FOTG standards and

specifications as a part of a conservation management system.

Riparian buffer means a strip or area of vegetation adjacent to a river or stream of sufficient width as determined by the Deputy Administrator to remove nutrients, sediment, organic matter, pesticides, and other pollutants from surface runoff and subsurface flow by deposition, absorption, plant uptake, and other processes, thereby reducing pollution and protecting surface water and subsurface water quality, which are also intended to provide shade to reduce water temperature for improved habitat for aquatic organisms and supply large woody debris for aquatic organisms and habitat for wildlife.

Soil loss tolerance (T) means the maximum average annual erosion rate specified in the FOTG that will not adversely impact the long-term productivity of the soil.

State means State agencies, departments, districts, county or city governments, municipalities or any other State or local government of the State.

State Technical Committee means a committee established pursuant to part 610 of this chapter to provide information, analysis, and recommendations to the U.S. Department of Agriculture.

State water quality priority areas means any area so designated by the State committee, in consultation with the State Technical Committee, where agricultural pollutants contribute to water degradation or create the potential for failure to meet applicable water quality standards or the goals and requirements of Federal or State water quality laws. These areas may include areas designated under section 319 of the Federal Water Pollution Control Act (33 U.S.C. 1329) as water quality protection areas, sole source aquifers or other designated areas that result from agricultural nonpoint sources of pollution. Acreage in these areas may be determined eligible as conservation priority areas.

Technical assistance means the assistance provided in connection with the CRP to owners or operators as approved by CCC, for developing conservation and/or tree planting plans, determining the eligibility of land and practices, implementing and certifying practices, and ensuring contract performance.

Violation means an act by the participant, either intentional or unintentional, that would cause the participant to no longer be eligible for all or a portion of cost-share, incentive, or annual contract payments.

Water Bank Program (WBP) means the program authorized by the Water Bank Act of 1970, as amended, in which eligible persons enter into 10-year agreements to preserve, restore, and improve wetlands.

Water cover means flooding of land by water either to develop or restore shallow water areas for wildlife or wetlands, or as a result of a natural disaster.

Wellhead protection area means the area designated by EPA or the appropriate State agency with an Environmental Protection Agency approved Wellhead Protection Program for water being drawn for public use, as defined for public use by the Safe Drinking Water Act, as amended.

Wetland means land defined as wetland in accordance with provisions of part 12 of this title.

Wetlands farmed under natural conditions means land defined as wetlands farmed under natural conditions in accordance with provisions of part 12 of this title.

Wetlands Reserve Program (WRP) means the program authorized by part 1467 of this chapter in which eligible persons enter into long-term agreements to restore and protect wetlands.

§1410.3 General description.

(a) Under the CRP, CCC will enter into contracts with eligible participants to convert eligible land to a conserving use during the contract period in return for financial and technical assistance.

(b) A participant must obtain and adhere to a conservation plan prepared in accordance with CRP guidelines, as established and determined by CCC. A conservation plan for eligible acreage must be obtained by a participant and must be approved by the conservation district in which the lands are located unless the conservation district declines to review the plan, in which case the provider of technical assistance may take such further action as is needed to account for lack of such review.

(c) The objectives of the CRP are to cost-effectively reduce water and wind erosion, protect the Nation's long-term capability to produce food and fiber, reduce sedimentation, improve water quality, create and enhance wildlife habitat, and other objectives including encouraging more permanent conservation practices and tree planting.

(d) Except as otherwise provided, a participant may, in addition to any payments under this part, receive cost-share assistance, rental or easement payments, tax benefits, or other payments from a State or a private organization in return for enrolling lands in CRP. However, a participant

may not receive or retain CRP cost-share assistance if other Federal cost-share assistance is provided for such acreage under any law, as determined by the Deputy Administrator. Further, under no circumstances may the cost-share payments received under this part, or otherwise, exceed the cost of the practice, as determined by CCC.

§ 1410.4 Maximum county acreage.

(a) Except as provided in paragraph (b) of this section, the maximum acreage that may be placed in the CRP and the WRP may not exceed 25 percent of the total cropland in the county; further, no more than 10 percent of the cropland may be subject, in the aggregate, to a CRP or WRP easement.

(b) The restrictions in paragraph (a) of this section may be waived by CCC if CCC determines that such action would not adversely affect the local economy of the county and that operators in the county are having difficulties complying with conservation plans implemented under part 12 of this title.

(c) These restrictions on participation shall be in addition to any other restriction imposed by law.

§ 1410.5 Eligible persons.

(a) In order to be eligible to enter into a CRP contract in accordance with this part, a person must be an owner, operator, or tenant of eligible land and:

(1) If an operator of eligible land, seeking to participate without the owner, must have operated such land for at least 12 months prior to the close of the applicable signup period and must provide satisfactory evidence that such operator will be in control of such eligible land for the full term of the CRP contract period;

(2) If an owner of eligible land, must have owned such land for at least 12 months prior to the close of the applicable signup period, unless:

(i) The new owner acquired such land by will or succession as a result of the death of the previous owner;

(ii) The only ownership change in the 12-month period occurred due to foreclosure on the land and the owner of the land, immediately before the foreclosure, exercises a timely right of redemption from the mortgage holder in accordance with State law; or

(iii) As determined by the Deputy Administrator, the circumstances of the acquisition are such that present adequate assurance that the new owner of such eligible land did not acquire such land for the purpose of placing it in the CRP; or

(3) If a tenant, the tenant is a participant with an eligible owner or operator.

(b) Notwithstanding paragraph (a) of this section, under continuous signup provisions authorized by § 1410.30, an otherwise eligible person must have owned or operated, as appropriate, the eligible land for at least 12 months before submitting the offer.

§ 1410.6 Eligible land.

(a) In order to be eligible to be placed in the CRP, land must be one of the following:

(1) Cropland that is subject to a conservation plan and has been annually planted or considered planted, as defined in § 1410.2, to an agricultural commodity in 4 of the 6 crop years from 1996 through 2001, as determined by the Deputy Administrator, provided further that field margins that are incidental to the planting of crops may also be considered qualifying cropland to the extent determined appropriate by the Deputy Administrator; and is physically and legally capable of being planted in a normal manner to an agricultural commodity, as determined by the Deputy Administrator; or

(2) marginal pasture land, as determined by the Deputy Administrator, that:

(i) is enrolled in the crop year or has been enrolled during any of the 2 years preceding the crop year in the WBP; and

(A) The WBP contract of the owner or operator of the cropland expired or will expire in calendar year 2000, 2001, or 2002; and

(B) The acreage is not classified as naturally occurring type 3 through 7 wetlands, as determined by the Deputy Administrator, regardless of whether the acreage is or is not protected by a Federal agency easement or mortgage restriction (types 3 through 7 wetlands that are normally artificially flooded shall not be precluded from eligibility), and;

(C) Enrollment in CRP would enhance the environmental benefits of the site, as determined by Deputy Administrator; or

(ii) Is determined to be suitable for use as a riparian buffer. A field or portion of a field of marginal pasture land may be considered to be suitable for use as a riparian buffer only if, as determined by CCC, it:

(A) Is located adjacent to permanent stream corridors excluding corridors that are considered gullies or sod waterways; and

(B) Is capable, when permanent grass, forbs, shrubs, or trees, are grown, or when planted with appropriate vegetation for the area, including vegetation suitable for wetland restoration or wildlife habitat, as determined appropriate by the Deputy Administrator, of substantially reducing

sediment and/or nutrient runoff that otherwise would be delivered to the adjacent stream or waterbody or for water quality purposes; or

(3) Must be acreage enrolled in the CRP during the final year of the CRP contract provided the scheduled expiration date of the current CRP contract is before the effective date the new CRP contract, as determined by the Deputy Administrator.

(b) Land qualifying under paragraphs (a)(1) or (a) (2) of this section must also meet one of the following criteria, to be eligible for a contract:

(1) Be a field or portion of a field determined to be suitable for use, as determined by the Deputy Administrator, as a permanent wildlife habitat, filter strip, riparian buffer, contour grass strip, grass waterway, field windbreak, shelterbelt, living snowfence, other uses as determined by the Deputy Administrator, land devoted to vegetation on salinity producing areas, including any applicable recharge area, or any area determined eligible for CRP based on wetland or wellhead protection area criteria. A field or portion of a field may be considered to be suitable for use as a filter strip or riparian buffer only if it, as determined by CCC:

(i) Is located adjacent to a stream, other waterbody of a permanent nature (such as a lake, pond, or sinkhole), or wetland; excluding such areas as gullies or sod waterways; and

(ii) Is capable, when permanent grass, forbs, shrubs or trees are grown, of substantially reducing sediment or nutrient runoff that otherwise would be delivered to the adjacent stream or waterbody;

(2) Be a field that has evidence of scour erosion caused by out-of-bank flows of water, as determined by CCC:

(i) In addition, such land must:

(A) Be expected to flood a minimum of once every 10 years; and

(B) Have evidence of scour erosion as a result of such flooding.

(ii) To the extent practicable, be the actual affected cropland areas of a field; however, the entire cropland area of an eligible field may be enrolled if:

(A) The size of the field is 9 acres or less; or

(B) More than one third of the cropland in the field is land that lies between the water source and the inland limit of the scour erosion.

(iii) Or, if the full field is not eligible for enrollment under this paragraph, be the cropland between the waterbody and inland limit of the scour erosion together with, as determined by the Deputy Administrator, additional areas that would otherwise be unmanageable

and would be isolated by the eligible areas.

(iv) Be planted to an appropriate tree species according to the FOTG, unless tree planting is determined to be inappropriate by NRCS, in consultation with the Forest Service, in which case the eligible cropland shall be devoted to another acceptable permanent vegetative cover in accordance with the FOTG;

(3) Be cropland that would facilitate a net savings in groundwater or surface water of the agricultural operation of the producer as determined by CCC;

(4) Be cropland in a portion of a field not enrolled in the CRP, if more than 50 percent of the remainder of the field is enrolled as a buffer practice, if the portion of the field not enrolled in the CRP will be enrolled as part of the buffer practice, and if as determined by CCC:

(i) The remainder of the field is infeasible to farm; and

(ii) The remainder of the field is enrolled at an annual payment rate not to exceed the maximum annual calculated soil rental rate;

(5) Be contributing to the degradation of water quality or posing an on-site or off-site environmental threat to water quality if such land remains in production;

(6) Be devoted to certain covers, as determined by the Deputy Administrator, that are established and maintained according to the FOTG, provided such acreage is not required to be maintained as such under any life-span obligations, as determined by the Deputy Administrator;

(7) Be non-irrigated or irrigated cropland that produces or serves as the recharge area, as determined by the Deputy Administrator, for saline seeps, or acreage that is functionally related to such saline seeps, or where a rising water table contributes to increased levels of salinity at or near the ground surface;

(8) Have an EI of greater than or equal to 8 calculated by using the weighted average of the EI's of soil map units within the field;

(9) Be within a public wellhead protection area;

(10) Be within a designated conservation priority area;

(11) Be designated as a cropped wetland and appropriate associated acreage, as determined by the Deputy Administrator;

(12) Be cropland that, as determined by the Deputy Administrator, is associated with noncropped wetlands and would provide significant environmental benefits; or

(13) Notwithstanding paragraph (a)(1) of this section, be cropland devoted to a perennial crop, as determined by CCC; such cropland will only be eligible for continuous signup practices authorized by § 1410.30 and CREP practices authorized by § 1410.50(b).

(c) Notwithstanding paragraphs (a) and (b) of this section, land shall be ineligible for enrollment if, as determined by the Deputy Administrator, land is:

(1) Federally-owned land unless the applicant has a lease for the contract period;

(2) Land on which the use of the land is restricted through deed or other restriction prior to enrollment in CRP prohibiting the production of agricultural commodities during any part of the contract term except for eligible land under paragraph (a)(2) and (3) of this section, as determined by CCC; or

(3) Land already enrolled in the CRP unless authorized by § 1410.6(a)(3), as determined by the Deputy Administrator.

§ 1410.7 Duration of contracts.

(a) Except as provided in paragraphs (b) or (c) of this section, contracts under this part shall be for a term of 10 years.

(b) In the case of land devoted to riparian buffers, filter strips, restoration of wetlands, hardwood trees, shelterbelts, windbreaks, wildlife corridors, or other practices deemed appropriate by CCC under the original terms of a contract subject to this part or for land devoted to eligible practices under a contract modified under § 1410.10, the participant may specify the duration of the contract between 10 years and 15 years in length.

(c) All contracts shall expire on September 30 of the appropriate year.

§ 1410.8 Conservation priority areas.

(a) CCC may designate National conservation priority areas according to paragraph (c) of this section.

(b) Subject to CCC review, State FSA committees, in consultation with NRCS and the State Technical Committee, may designate conservation priority areas within guidelines established by the Deputy Administrator. Such designation must clearly define conservation and environmental objectives and provide analysis of how CRP can cost-effectively address such objectives. Generally, the total acreage of all conservation priority areas, in aggregate, shall not total more than 33 percent of the cropland in a State unless there are identified and documented extraordinary environmental needs, as determined by the Deputy Administrator.

(c) As determined by the Deputy Administrator, a region shall be eligible for designation as a priority area only if the region has actual significant adverse water quality, air quality, wildlife habitat, or other natural resource impacts related to activities of agricultural production, or if the designation helps agricultural producers to comply with Federal and State environmental laws.

(d) Conservation priority area designations shall expire after 5 years unless re-designated, except they may be withdrawn:

(1) At the request of the appropriate State water quality agency; or

(2) By the Deputy Administrator.

(e) In those areas designated as conservation priority areas, under this section, cropland is considered eligible for enrollment according to § 1410.6(b)(10) based on identified environmental concerns. These concerns may include water quality, such as assisting agricultural producers to comply with nonpoint source pollution requirements, air quality, or wildlife habitat (especially for threatened and endangered species or those species that may become threatened and endangered), as determined by the Deputy Administrator.

§ 1410.9 Conversion to trees.

An owner or operator who has entered into a CRP contract prior to November 28, 1990, may elect to convert areas of highly erodible cropland, subject to such contract, that is devoted to permanent vegetative cover, from such cover to hardwood trees, (including alley cropping and riparian buffers of hardwood trees, where permitted by CCC), windbreaks, shelterbelts, or wildlife corridors.

(a) For any contract modified under this section, the participant may elect to extend such contract in accordance with the provisions of § 1410.7(b).

(b) For any contract modified under this section in which such areas are converted to windbreaks, shelterbelts, or wildlife corridors, the owner must agree to maintain such plantings for a time period established by the Deputy Administrator at the time of the contract modification.

(c) CCC shall, as it determines appropriate, pay up to 50 percent of the eligible cost of establishing new conservation measures authorized under this section, except that the total cost-share paid under such contract, including cost-share assistance paid when the original cover was established, may not exceed the amount by which CCC would have paid had such land

been originally devoted to such new conservation measures.

(d) For any contract modified under this section, the participant must participate in the Forest Stewardship Program (16 U.S.C. 2103a).

§ 1410.10 Restoration of wetlands.

(a) An owner or operator who entered into a CRP contract on land that is suitable for restoration to wetlands or that was restored to wetlands while under such contract, may, if approved by CCC, subject to any restrictions as may be imposed by law, apply to transfer such eligible acres subject to such contract that are devoted to an approved cover from the CRP to the WRP. Transferred acreage shall be terminated from the CRP effective the day a WRP easement is filed.

Participants will receive a prorated CRP annual payment for that part of the year the acreage was enrolled in the CRP according to § 1410.42. Refunds of cost-share payments or applicable incentive payments need not be refunded unless specified by the Deputy Administrator.

(b) An owner or operator who has enrolled acreage in the CRP may, as determined and approved by CCC, restore suitable acres to wetlands with cost-share assistance provided that Federal cost-share assistance has not been received for wetland restoration on the same land. In addition to the cost-share limitation in § 1410.41, an additional one-time financial incentive may be provided to encourage restoration of the hydrology of the site.

§ 1410.11 Farmable Wetlands Program.

(a) In addition to other allowable enrollments, land may be enrolled in this program through the Farmable Wetlands Program within the overall Conservation Reserve Program provided for in this part.

(b) As determined by the Deputy Administrator, owners and/or operators may enroll cropland that has been planted or considered planted to an agricultural commodity, as defined in § 1410.2 in three of the ten most recent crop years, provided that the cropland:

(1) Is a wetland, including a converted wetland, as determined by CCC, that does not exceed the size limitations of this section; and

(2) Subject to other provisions of this section, is buffer acreage that provides protection for and is contiguous to the wetland.

(c) An owner or operator may not enroll in this program any wetland, or land in a flood plain, that:

(1) Is located adjacent to a perennial riverine system wetland as identified on the final national wetland inventory

map of the Department of the Interior; or

(2) Is located adjacent to a perennial stream identified on a 1–24,000 scale map of the United States Geological Survey, when the area is not delineated on a final national wetland inventory map.

(d) Total enrollment in the CRP under this section shall not exceed 1 million acres.

(e) The maximum size of a wetland enrolled under this section shall be 10 contiguous acres of which only the first 5 acres shall be eligible for payments.

(f) The maximum size of any buffer acreage described in paragraph (b)(2)(ii) of this section shall be the greater of:

(1) An area three times the size of the wetland described in paragraph (b)(1) of this section; or

(2) An area that continues no more than 150 feet from the edge of the wetland.

(g) The maximum total acreage enrolled in the CRP under this section, including any wetland and buffer acreage described in paragraph (b)(2) of this section, in a tract, as determined by the Deputy Administrator, of an owner or operator, is 40 acres.

(h) All participants subject to a CRP contract under this section must agree to restore the hydrology of the wetland described in paragraph (b)(1) of this section to the maximum extent possible, as determined by the Deputy Administrator, in accordance with the FOTG.

(i) Offers for contracts under this section shall be submitted under continuous signup provisions as authorized in § 1410.30.

(j) Except as otherwise determined by the Deputy Administrator, all other requirements of this part shall apply to enrollments under this section, and the Deputy Administrator by contract or otherwise may add such other requirements or conditions as are deemed necessary. Such additional conditions include but are not limited to payment limitations, adjusted gross income limitations, and limitations on the amount of acreage that can be enrolled in any one county.

§§ 1410.12–§§ 1410.19 [Reserved]

§ 1410.20 Obligations of participant.

(a) All participants subject to a CRP contract must agree to:

(1) Carry out the terms and conditions of such CRP contract;

(2) Implement the conservation plan, which is part of such contract, in accordance with the schedule of dates included in such conservation plan unless the Deputy Administrator

determines that the participant cannot fully implement the conservation plan for reasons beyond the participant's control, and CCC agrees to a modified plan. However, a contract will not be terminated for failure to establish an approved vegetative or water cover on the land if, as determined by the Deputy Administrator:

(i) The failure to plant or establish such cover was due to excessive rainfall, flooding, or drought;

(ii) The land subject to the contract on which the participant could practicably plant or establish to such cover is planted or established to such cover; and

(iii) The land on which the participant was unable to plant or establish such cover is planted or established to such cover after the wet or drought conditions that prevented the planting or establishment subside;

(3) Establish temporary vegetative cover either when required by the conservation plan or, as determined by the Deputy Administrator, if the permanent vegetative cover cannot be timely established;

(4) Comply with part 12 of this title;

(5) Not allow grazing, harvesting, or other commercial use of any crop from the cropland subject to such contract except for those periods of time approved in accordance with instructions issued by the Deputy Administrator;

(6) Establish and maintain the required vegetative or water cover and the required practices on the land subject to such contract and take other actions that may be required by CCC to achieve the desired environmental benefits and to maintain the productive capability of the soil throughout the contract period;

(7) Comply with noxious weed laws of the applicable State or local jurisdiction on such land;

(8) Control on land subject to such contract all weeds, insects, pests and other undesirable species to the extent necessary to ensure that the establishment and maintenance of the approved cover as necessary or may be specified in the CRP conservation plan and to avoid an adverse impact on surrounding land, taking into consideration water quality, wildlife, and other needs, as determined by the Deputy Administrator; and

(9) Be jointly and severally responsible, if the participant has a share of the payment greater than zero, with the other contract participants in compliance with the provisions of such contract and the provisions of this part and for any refunds or payment adjustments that may be required for

violations of any of the terms and conditions of the CRP contract and this part.

§ 1410.21 Obligations of the Commodity Credit Corporation.

CCC shall, subject to the availability of funds:

(a) Share up to 50 percent of the cost with participants of establishing eligible practices specified in the conservation plan at the levels and rates of cost-sharing determined in accordance with the provisions of this part; and

(b) Pay to the participant for a period of years not in excess of the contract period an annual rental payment, including applicable incentive payments, in such amounts as may be specified in the CRP contract.

§ 1410.22 CRP conservation plan.

(a) The producer shall obtain a CRP conservation plan that complies with CCC guidelines and is approved by the conservation district for the land to be entered in the CRP. If the conservation district declines to review the CRP conservation plan, or disapproves the conservation plan, such approval may be waived by CCC.

(b) The practices included in the CRP conservation plan and agreed to by the participant must cost-effectively reduce erosion necessary to maintain the productive capability of the soil, improve water quality, protect wildlife or wetlands, protect a public well head, or achieve other environmental benefits as applicable.

(c) If applicable, a tree planting plan shall be developed and included in the CRP conservation plan. Such tree planting plan may allow up to 3 years to complete plantings if 10 or more acres of hardwood trees are to be established.

(d) If applicable, the CRP conservation plan shall address the goals included in the conservation priority area designation authorized under § 1410.8.

(e) All CRP conservation plans and revisions of such plans shall be subject to the approval of CCC.

(f) Mid-cover management shall be conducted according to an approved conservation plan as part of the CRP contractual obligation such as light discing and burning as determined by the Deputy Administrator.

§ 1410.23 Eligible practices.

(a) Eligible practices are those practices specified in the conservation plan that meet all standards needed to cost-effectively:

(1) Establish permanent vegetative or water cover, including introduced or native species of grasses and legumes,

forest trees, and permanent wildlife habitat;

(2) Meet other environmental benefits, as applicable, for the contract period; and

(3) Accomplish other purposes of the program.

(b) Water cover is eligible cover for purposes of paragraph (a) of this section only if approved by the Deputy Administrator for purposes such as the enhancement of wildlife or the improvement of water quality. Such water cover shall not include ponds for the purpose of watering livestock, irrigating crops, or raising aquaculture for commercial purposes.

§§ 1410.24–1410.29 [Reserved]

§ 1410.30 Signup.

Offers for contracts shall be submitted only during signup periods as announced periodically by the Deputy Administrator, except that CCC may hold a continuous signup for land to be devoted to particular uses, as CCC deems necessary. Generally, continuous signup is limited to those offers that would otherwise rank highly under § 1410.31(b) and may include high priority practices such as filter strips, riparian buffers, shelterbelts, field windbreaks, and living snow fences, grass waterways, shallow water areas for wildlife, salt-tolerant vegetation, and practices to benefit certain approved public wellhead protection areas.

§ 1410.31 Acceptability of offers.

(a) Except as provided in paragraph (c) of this section, producers may submit offers for the amounts they are willing to accept as rental payments to enroll their acreage in the CRP. The offers may, to the extent practicable, be evaluated on a competitive basis in which the offers selected will be those where the greatest environmental benefits relative to cost are generated, and provided that the offer is not in excess of the maximum acceptable payment rate established by the Deputy Administrator for the for the area offered. Acceptance or rejection of any offer, however, shall be in the sole discretion of the CCC and offers may be rejected for any reason as determined needed to accomplish the goals of the program.

(b) In evaluating contract offers, different factors, as determined by CCC, may be considered from time to time for priority purposes to accomplish the goals of the program. Such factors may include, but are not limited to:

(1) Soil erosion;
(2) Water quality (both surface and ground water);

(3) Wildlife benefits;

(4) Soil productivity;

(5) Likelihood that enrolled land will remain in non-agriculture use beyond the contract period, considering, for example, tree planting, permanent wildlife habitat, or commitments by a participant to a State or other entity to extend the conservation plan;

(6) Air quality; and

(7) Cost of enrolling acreage in the program.

(c) Acreage determined eligible for continuous signup, as provided in § 1410.30, may be automatically accepted in the program if the:

(1) Land is eligible under § 1410.6, as determined by the Deputy Administrator;

(2) A producer is eligible under § 1410.5; and

(3) A producer accepts either the maximum payment rate CCC is willing to offer to enroll the acreage in the program or a lesser rate.

§ 1410.32 CRP contract.

(a) In order to enroll land in the CRP, the participant must enter into a contract with CCC.

(b) The CRP contract is comprised of:

(1) The terms and conditions for participation in the CRP;

(2) The CRP conservation plan; and

(3) Any other materials or agreements determined necessary by CCC.

(c)(1) In order to enter into a CRP contract, the producer must submit an offer to participate as provided in § 1410.30;

(2) An offer to enroll land in the CRP shall be irrevocable for such period as is determined and announced by CCC. The producer shall be liable to CCC for liquidated damages if the applicant revokes an offer during the period in which the offer is irrevocable as determined by the Deputy Administrator. CCC may waive payment of such liquidated damages if CCC determines that the assessment of such damages, in a particular case, is not in the best interest of CCC and the program.

(d) The CRP contract must, within the dates established by CCC, be signed by:

(1) The producer; and

(2) The owners of the cropland to be placed in the CRP and other eligible participants, if applicable.

(e) The Deputy Administrator is authorized to approve CRP contracts on behalf of CCC.

(f) CRP contracts may be terminated by CCC before the full term of the contract has expired if:

(1) The owner loses control of or transfers all or part of the acreage under contract and the new owner does not wish to continue the contract;

(2) The participant voluntarily requests in writing to terminate the contract and obtains the approval of CCC according to terms and conditions as determined by CCC;

(3) The participant is not in compliance with the terms and conditions of the contract;

(4) Acreage is enrolled in another Federal, State or local conservation program;

(5) The CRP practice fails or is not established after a certain time period, as determined by the Deputy Administrator, and the cost of restoring the practice outweighs the benefits received from the restoration;

(6) The CRP contract was approved based on erroneous eligibility determinations; or

(7) CCC determines that such a termination is needed in the public interest.

(g)(1) Contracts for land enrolled in CRP before January 1, 1995, that have been continuously in effect may be unilaterally terminated by all CRP participants on a contract except for contract acreage:

(i) Located within a certain distance determined appropriate by the applicable FOTG of a perennial stream, or other permanent waterbody to reduce pollution and to protect surface and subsurface water quality;

(ii) On which a CRP easement is filed;

(iii) That is considered to be a wetland by USDA according to part 12 of this title;

(iv) Located within a wellhead protection area;

(v) That is subject to frequent flooding, as determined by the Deputy Administrator;

(vi) That may be required to serve as a wetland buffer according to the FOTG to protect the functions and values of a wetland; or

(vii) On which there exist one or more of the following practices, installed or developed as a result of participation in the CRP or as otherwise required by the conservation plan:

(A) Grass waterways;

(B) Filter strips;

(C) Shallow water areas for wildlife;

(D) Bottom land timber established on wetlands;

(E) Field windbreaks; and

(F) Shelterbelts.

(2) With respect to terminations under this paragraph:

(i) Any land for which an early termination is sought by the participant must have an EI of 15 or less;

(ii) The termination shall become effective 60 days from the date the participant submits notification to CCC of the participant's desire to terminate the contract;

(iii) Acreage terminated under this provision is eligible to be re-offered for CRP during future signup periods, provided that the acreage otherwise meets the current eligibility criteria; and

(iv) Participants must meet conservation compliance requirements of part 12 of this title to the extent applicable to other land.

(h) Except as allowed and approved by CCC where the new owner of land enrolled in CRP is a Federal agency that agrees to abide by the terms and conditions of the terminated contract, the participant in a contract that has been terminated must refund all or part of the payments made with respect to the contract plus interest thereon, as determined by CCC, and shall pay liquidated damages as provided for in the contract. CCC may permit the amount to be repaid to be reduced to the extent that such a reduction will not impair the purposes of the program. Further, a refund of all payments need not be required from a participant who is otherwise in full compliance with the CRP contract when the land is purchased by or for the United States, as determined by CCC.

§ 1410.33 Contract modifications.

(a) As agreed between CCC and the participant, a CRP contract may be modified in order to:

(1) Decrease acreage in the CRP;

(2) Permit the production of an agricultural commodity under extraordinary circumstances during a crop year on all or part of the land subject to the CRP contract as determined by the Deputy Administrator;

(3) Facilitate the practical administration of the CRP; or

(4) Accomplish the goals and objectives of the CRP, as determined by the Deputy Administrator.

(b) CCC may modify CRP contracts to add, delete, or substitute practices when, as determined by the Deputy Administrator:

(1) The installed practice failed to adequately provide for the desired environmental benefit through no fault of the participant; or

(2) The installed measure deteriorated because of conditions beyond the control of the participant; and

(3) Another practice will achieve at least the same level of environmental benefit.

(c) Offers to extend contracts may be made as allowed by law.

(d) CCC may terminate a CRP contract if the participant agrees to such termination and CCC determines such termination to be in the public interest.

§§ 1410.34–1410.39 [Reserved]

§ 1410.40 Cost-share payments.

(a) Cost-share payments shall be made available upon a determination by CCC that an eligible practice, or an identifiable unit thereof, has been established in compliance with the appropriate standards and specifications.

(b) Except as otherwise provided for in this part, cost-share payments may be made only for the cost-effective establishment or installation of an eligible practice, as determined by CCC.

(c) Except as provided in paragraph (d) of this section, cost-share payments shall not be made to the same owner or operator on the same acreage for any eligible practices that have been previously established, or for which such owner or operator has received cost-share assistance from any Federal agency.

(d) Except as provided for under § 1410.9(c), cost-share payments may be authorized for the replacement or restoration of practices for which cost-share assistance has been previously allowed under the CRP, only if:

(1) Replacement or restoration of the practice is needed to achieve adequate erosion control, enhance water quality, wildlife habitat, or increase protection of public wellheads; and

(2) The failure of the original practice was due to reasons beyond the control of the participant.

(e) The cost-share payment made to a participant shall not exceed the participant's actual contribution to the cost of establishing the practice and the amount of the cost-share may not be an amount that, when added to such assistance from other sources, exceeds the cost of the practices.

(f) CCC shall not make cost-share payments with respect to a CRP contract if any other Federal cost-share assistance has been, or is being, made with respect to the establishment of the cover crop on land subject to such contract.

§ 1410.41 Levels and rates for cost-share payments.

(a) As determined by the Deputy Administrator, CCC shall not pay more than 50 percent of the actual or average cost of establishing eligible practices specified in the conservation plan. CCC may allow cost-share payments for maintenance costs, consistent with the provisions of § 1410.40 and CCC may determine the period and amount of such cost-share payments.

(b) The average cost of performing a practice may be determined by CCC based on recommendations from the

State Technical Committee. Such cost may be the average cost in a State, a county, or a part of a State or county, as determined by the Deputy Administrator.

(c) Except as otherwise provided, a participant may, in addition to any payment under this part, receive cost-share assistance, rental payments, or tax benefits from a State or a private organization in return for enrolling lands in CRP. However, as provided under § 1410.40(f), a participant may not receive or retain CRP cost-share assistance if other Federal cost-share assistance is provided for such acreage, as determined by the Deputy Administrator. Further, under no circumstances may the cost-share payments received under this part, or otherwise, exceed the cost of the practice, as determined by CCC.

§ 1410.42 Annual rental payments.

(a) Subject to the availability of funds, annual rental payments shall be made in such amount and in accordance with such time schedule as may be agreed upon and specified in the CRP contract.

(b) Annual rental payments, except for land accepted that was formerly enrolled under the WBP, include a payment based on a weighted average soil rental rate or marginal pastureland rental rate, as appropriate, and an incentive payment as a portion of the annual payment of certain practices, as determined by the Deputy Administrator. Payments for land accepted that was formerly enrolled under the WBP are limited to annual rental payments received under the WBP.

(c) The annual rental payment shall be divided among the participants on a single contract as agreed to in such contract.

(d) The maximum amount of rental payments that a person may receive under the CRP for any fiscal year shall not exceed \$50,000. The regulations set forth at part 1400 of this chapter shall be applicable in making eligibility and "person" determinations as they apply to payment limitations under this part.

(e) In the case of a contract succession, annual rental payments shall be divided between the predecessor and the successor participants as agreed to among the participants and approved by CCC. If there is no agreement among the participants, annual rental payments shall be divided in such manner deemed appropriate by the Deputy Administrator and such distribution may be prorated based on the actual days of ownership of the property by each party.

(f) CCC shall, when appropriate, prepare a schedule for each county that shows the maximum soil rental rate CCC may pay which may be supplemented to reflect special contract requirements. As determined by the Deputy Administrator, such schedule will be calculated based on the relative productivity of soils within the county using NRCS data and local FSA average cash rental estimates. The schedule will be available in the local FSA office and, as determined by the Deputy Administrator, shall indicate, when appropriate, that:

(1) Offers of contracts by producers who request rental payments greater than the schedule for their soil(s) will be rejected;

(2) Offers of contracts submitted under continuous signup authorized at § 1410.30 may be accepted without further evaluation when the requested rental rate is less than or equal to the calculated weighted soil rental rate, based on the three predominant soils listed; and

(3) Otherwise qualifying offers shall be ranked competitively based on factors established under § 1410.31 of this part in order to provide the most cost-effective environmental benefits, as determined by the Deputy Administrator.

(g) Additional financial incentives may be provided to producers who offer contracts expected to provide especially high environmental benefits, as determined by the Deputy Administrator.

§ 1410.43 Method of payment.

Except as provided in § 1410.50, payments made by CCC under this part may be made in cash or other methods of payment in accordance with part 1401 of this chapter, unless otherwise specified by CCC.

§ 1410.44 Adjusted Gross Income.

Benefits under this part shall not be available to persons whose adjusted gross income exceeds 2.5 million dollars annually as determined under the standards set out in part 1400 of this chapter which shall be applicable in making adjusted gross income determinations as they apply to the CRP.

§§ 1410.45–1410.49 [Reserved]

§ 1410.50 Enhancement programs.

(a) For contracts to which a State, political subdivision, or agency thereof, has succeeded in connection with an approved conservation reserve state enhancement program, payments shall be made in the form of cash only. The provisions that limit the amount of

payments per year that a person may receive under this part shall not be applicable to payments received by such State, political subdivision, or agency thereof in connection with agreements entered into under such enhancement programs carried out by such State, political subdivision, or agency thereof that has been approved for that purpose by CCC.

(b) CCC may enter into other conservation reserve enhancement program agreements in accordance with terms deemed appropriate by CCC, with a State, political subdivision, or agency thereof, to use the CRP to cost-effectively further specific conservation and environmental objectives of that State and the nation.

§ 1410.51 Transfer of land.

(a)(1) If a new owner or operator purchases or obtains the right and interest in, or right to occupancy of, the land subject to a CRP contract, as determined by the Deputy Administrator, such new owner or operator, upon the approval of CCC, may become a participant to a new CRP contract with CCC for the transferred land.

(2) For the transferred land, if the new owner or operator becomes a successor to the existing CRP contract, the new owner or operator shall assume all obligations of the CRP contract of the previous participant.

(3) If the new owner or operator is approved as a successor to a CRP contract with CCC, then, except as otherwise determined appropriate by the Deputy Administrator:

(i) Cost-share payments shall be made to the past or present participant who established the practice; and

(ii) Annual rental payments to be paid during the fiscal year when the land was transferred shall be divided between the new participant and the previous participant in the manner specified in § 1410.42.

(b) If a participant transfers all or part of the right and interest in, or right to occupancy of, land subject to a CRP contract and the new owner or operator does not become a successor to such contract within 60 days, or such other time as the Deputy Administrator determines to be appropriate, of such transfer, such contract shall be terminated with respect to the affected portion of such land and the original participant:

(1) Forfeits all rights to any future payments for that acreage;

(2) Shall refund all previous payments received under the contract by the participant or prior participants, plus interest, except as otherwise specified

by the Deputy Administrator. The provisions of § 1410.32(h) shall apply.

(c) Federal agencies acquiring property, by foreclosure or otherwise, that contains CRP contract acreage cannot be a party to the contract by succession. However, through an addendum to the CRP contract, if the current operator of the property is one of the contract participants, such operator may, as permitted by CCC, continue to receive payments under such contract if:

(1) The property is maintained in accordance with the terms of the contract;

(2) Such operator continues to be the operator of the property; and

(3) Ownership of the property remains with such federal agency.

§ 1410.52 Violations.

(a)(1) If a participant fails to carry out the terms and conditions of a CRP contract, CCC may terminate the CRP contract.

(2) If the CRP contract is terminated by CCC in accordance with this paragraph:

(i) The participant shall forfeit all rights to further payments under such contract and refund all payments previously received together, plus interest; and

(ii) Pay liquidated damages to CCC in an amount as specified in the contract.

(b) If the Deputy Administrator determines such failure does not warrant termination of such contract, the Deputy Administrator may authorize relief as the Deputy Administrator deems appropriate.

(c) CCC may reduce a demand for a refund under this section to the extent CCC determines that such relief would be appropriate and will not deter the accomplishment of the goals of the program.

§ 1410.53 Executed CRP contract not in conformity with regulations.

If, after a CRP contract is approved by CCC, it is discovered that such CRP contract is not in conformity with this part, these regulations shall prevail, and CCC may, at its sole discretion, terminate or modify the CRP contract, effective immediately or at a later date as CCC determines appropriate.

§ 1410.54 Performance based upon advice or action of the Department.

The provisions of § 718.8 of this chapter relating to performance based upon the action or advice of an authorized representative of the Department shall be applicable to this part, and may be considered as a basis to provide relief to persons subject to

sanctions under this part to the extent that relief is otherwise required by this part.

§ 1410.55 Access to land under contract.

(a) Any representative of the U.S. Department of Agriculture, or designee thereof, shall, for purposes related to this program, be provided by the offeror or participant as the case may be, with access to land that is:

(1) The subject of an application for a contract under this part; or

(2) Under contract or otherwise subject to this part.

(b) For land identified in paragraph (a) of this section, the participant or producer shall provide such representatives with access to examine records for the land to determine land classification, erosion rates, or other purposes and to determine whether it is in compliance with the terms and conditions of the CRP contract.

§ 1410.56 Division of payments and provisions about tenants and sharecroppers.

(a) Payments received under this part shall be divided as specified in the applicable contract and CCC shall ensure that producers who would have an interest in acreage being offered receive treatment that is equitable, as determined by the Deputy Administrator. CCC may refuse to enter into a contract when there is a disagreement among persons seeking enrollment as to a person's eligibility to participate in the contract as a tenant and there is insufficient evidence to indicate whether the person seeking participation as a tenant does or does not have an interest in the acreage offered for enrollment in the CRP.

(b) CCC may remove an operator or tenant from a CRP contract when:

(1) The operator or tenant requests in writing to be removed from the CRP contract;

(2) The operator or tenant files for bankruptcy and the trustee or debtor in possession fails to affirm the contract, to the extent permitted by applicable bankruptcy laws;

(3) The operator or tenant dies during the contract period and the administrator of the estate fails to succeed to the contract within a period of time determined by the Deputy Administrator; or

(4) A court of competent jurisdiction orders the removal from the CRP contract of the operator or tenant and such order is received by FSA, as determined by the Deputy Administrator.

(c) In addition to paragraph (b) of this section, tenants shall maintain their

tenancy throughout the contract period in order to remain on a contract.

Tenants who fail to maintain tenancy on the acreage under contract, including failure to comply with applicable State law, may be removed from a contract by CCC. CCC shall assume the tenancy is being maintained unless notified otherwise by a party to contract.

§ 1410.57 Payments not subject to claims.

Subject to part 1403 of this chapter, any cost-share or annual payment or portion thereof due any person under this part shall be allowed without regard to questions of title under State law, and without regard to any claim or lien in favor of any creditor, except agencies of the United States Government.

§ 1410.58 Assignments.

Participants may assign the right to receive such cash payments, in whole or in part, as provided in part 1404 of this chapter.

§ 1410.59 Appeals.

(a) Except as provided in paragraph (b) of this section, a participant or person seeking participation may appeal or request reconsideration of an adverse determination in accordance with the administrative appeal regulations at parts 11 and 780 of this title.

(b) Determinations by NRCS assigned to make such determination for the Deputy Administrator may be appealed in accordance with procedures established under part 614 of this title or otherwise established by NRCS.

§ 1410.60 Scheme or device.

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

(b) A scheme or device includes, but is not limited to, coercion, fraud, misrepresentation, depriving any other person of cost-share assistance or annual rental payments, or obtaining a payment that otherwise would not be payable.

(c) A new owner or operator or tenant of land subject to this part who succeeds to the contract responsibilities shall report in writing to CCC any interest of any kind in the land subject to this part that is retained by a previous participant. Such interest shall include a present, future, or conditional interest, reversionary interest, or any option, future or present, on such land, and any interest of any lender in such land where the lender has, will, or can

legally obtain, a right of occupancy to such land or an interest in the equity in such land other than an interest in the appreciation in the value of such land occurring after the loan was made. Failure to fully disclose such interest shall be considered a scheme or device under this section.

§ 1410.61 Filing of false claims.

If CCC determines that any participant has knowingly supplied false information or has knowingly filed a false claim, such participant shall be ineligible for payments under this part with respect to the program year in which the false information or claim was filed and the contract may be terminated, in which case a full refund of all prior payments may be demanded. False information or false claims include, but are not limited to, claims for payment for practices that do not comply with the conservation plan. Any amounts paid under these circumstances shall be refunded, together plus with interest as determined by CCC, and any amounts otherwise due to the participant shall be withheld. The remedies provided for in this section shall be in addition to any and all other remedies, criminal and/or civil, that may apply.

§ 1410.62 Miscellaneous.

(a) Except as otherwise provided in this part, in the case of death, incompetency, or disappearance of any participant, any payments due under this part shall be paid to the participant's successor(s) under part 707 of this title.

(b) Unless otherwise specified in this part, payments under this part shall be subject to the requirements of part 12 of this title concerning highly erodible land and wetland conservation and payments.

(c) Any remedies permitted CCC under this part shall be in addition to any other remedy, including, but not limited to, criminal remedies, or actions for damages in favor of CCC, or the United States, as may be permitted by law; provided further the Deputy Administrator may add to the contract such additional terms as needed to enforce these regulations that shall be binding on the parties and may be

enforced to the same degree as provisions of these regulations.

(d) Absent a scheme or device to defeat the purpose of the program, when an owner loses control of CRP acreage due to foreclosure and the new owner chooses not to continue the contract in accordance with § 1410.51, refunds shall not be required from any participant on the contract to the extent that the Deputy Administrator determines that forgiving such repayment is appropriate in order to provide fair and equitable treatment.

(e) Cropland enrolled in CRP shall be classified as cropland for the time period enrolled in CRP and, after the time period of enrollment, may be removed from such classification upon a determination by the county committee that such land no longer meets the definition in part 718 of this title.

(f) Research projects may be submitted by the State committee and authorized by the Deputy Administrator to further the purposes of CRP. The research projects must include objectives that are consistent with this part, provide economic and environmental information, not adversely affect local agricultural markets, and be conducted and monitored by a bona fide research entity, as determined by the Deputy Administrator.

§ 1410.63 Permissive uses.

(a) Unless otherwise specified by the Deputy Administrator, no uses of any kind are authorized on designated CRP acreage during the contract period.

(b) Commercial shooting preserves may be operated on CRP acreage provided:

(1) The commercial shooting preserve is licensed by a State agency such as the State fish and wildlife agency or State department of natural resources;

(2) The commercial shooting preserve is operated in a manner consistent with the applicable State agency rules governing commercial shooting preserves;

(3) CRP cover is maintained according to the conservation plan; and

(4) No barrier fencing or boundary limitations exist that prohibit wildlife access to or from the CRP acreage unless required by State law.

(c) The following activities may be permitted on CRP enrolled land:

(1) Managed haying and grazing, including the harvest of biomass:

(i) In exchange for a reduction of the annual payment in an amount determined by the Deputy Administrator;

(ii) Not to exceed once every three years after the CRP vegetative cover has been established; and

(iii) According to an approved CRP conservation plan consistent with the conservation of soil, water quality, and wildlife habitat (including habitat during nesting and brood rearing seasons) and in accordance with FOTG standards.

(2) Managed grazing that is incidental to the gleaning of crop residue, but only in exchange for a reduction in the annual rental payment, as determined appropriate by the Deputy Administrator.

(3) Wind turbines on CRP land installed in numbers and locations as determined appropriate by the Deputy Administrator considering the location, size, and other physical characteristics of the land, the extent to which the land contains wildlife, wildlife habitat, and the purposes of the CRP.

(4) Spot grazing, if necessary for control of weed infestation, not to exceed a 30-day period according to an approved conservation plan, but only in exchange for a payment reduction determined by the Deputy Administrator.

(5) Forestry maintenance such as pruning, thinning, and timber stand improvement on lands converted to forestry use only in accordance with a conservation plan and in exchange for an applicable reduction in the annual rental payment as determined by the Deputy Administrator.

(6) The sale of carbon, water quality, or other environmental credits, as determined by the Deputy Administrator.

Signed at Washington, DC, on May 2, 2003.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

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