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## 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:** Final rule.

**SUMMARY:** This final rule adopts as final an interim final rule for the Conservation Reserve Program published on May 8, 2003. The interim rule set out the existing program regulations in their entirety, including revisions conforming to new legislation. Those revisions included, among others, a change to the definition of “conserving use.”

**DATES:** This rule is effective May 13, 2004.

**FOR FURTHER INFORMATION CONTACT:** Charles Chadwell, Program Manager, at USDA/FSA/CEPD/STOP 0513, 1400 Independence Avenue SW., Washington, DC 20250-0513; telephone 202-720-7674; e-mail: [Charles\\_Chadwell@wdc.usda.gov](mailto:Charles_Chadwell@wdc.usda.gov). Persons with disabilities who require alternative means for communication (braille, large print, audiotape, etc.) should contact the USDA Target Center at 202-720-2600 (voice and TDD).

#### SUPPLEMENTARY INFORMATION:

##### Background

The interim rule amended the regulations of the Commodity Credit Corporation (CCC) at 7 CFR part 1410 that govern the Conservation Reserve Program (CRP). The amendment was published 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 (Pub. L. 107-171) (2002 Act), by:

- Setting forth the terms and conditions of enrolling acreage in the CRP;
- Updating program eligibility requirements; and
- Eliminating unnecessary regulations and improving the remaining regulations.

The CRP was authorized by the Food Security Act of 1985 (Pub. L. 99-198)(1985 Act), which was recently amended by the 2002 Act. The 2002 Act provided the Secretary of Agriculture (Secretary) the authority to maintain up to 39.2 million acres in the CRP. The CRP is intended to cost-effectively assist producers in conserving and improving soil, water, and wildlife resources by converting highly erodible and other environmentally-sensitive acreage 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.

Based on 2002 Act amendments, an interim rule was published on May 8, 2003 (68 FR 24830) which asked for comment on the rule changes and other policy issues. The agency will continue to consider policy comments as appropriate, and in this notice restricts the discussion, for the most part, to whether any further amendment of the program regulations is needed at this time.

##### Summary of Comments

CCC received 800 comments concerning the interim rule. Entities responding included: individuals, State government agencies, State conservation organizations, State and national commodity organizations, conservation organizations, Federal Government agencies, and a national environmental organization. Comments came from Alabama, Arkansas, California, Colorado, District of Columbia, Georgia, Iowa, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Minnesota, Missouri, Mississippi, Montana, North Carolina, North Dakota, Nebraska, New Jersey, Ohio, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, and Wisconsin. The Midwest, Southeast, and Northern

Great Plains were represented on the regional level as well.

There were 135 comments that were not directed to the interim rule itself, but to related matters such as payment rates, other eligible land provisions, internal guidance and procedures, acreage allocation scenarios among the different programs within CRP, and primary nesting season jurisdiction. Also, 51 comments were not considered because they were unclear on the point they intended to make or were not submitted timely. The comments not directed to the interim rule itself and the late comments may be considered in future policy development.

##### General Comments

###### *Overall Support for the Program*

There were 45 comments in support of the interim rule or in support of the CRP as a whole. This category accounted for the second largest number of comments on the interim rule behind those about managed haying and grazing, followed by comments regarding the Environmental Benefits Index (EBI), conserving use, and continuous practices. These comments ranged from overall programmatic support for CRP to supportive comments regarding various aspects of the program and specific sections of the rule.

Most supportive comments stated that the CRP has been one of the most significant conservation programs in history by reducing soil erosion, improving water quality, and enhancing wildlife habitat for many species. One respondent complimented FSA for utilizing the EBI as a tool to encourage enrollment of lands which will result in a program that provides the greatest amount of environmental benefits per dollar expended. Others indicated the development of the EBI has had a positive impact on the effectiveness of CRP.

One comment was received concerning the cost share for installation of conservation buffers; however, concern was expressed over the confusion from the program's differential incentives for various eligible buffer practices. The comment did not recommend a specific change. The interim rule was written so as to limit confusion as much as possible and provide flexibility to the agency to address new situations as they arise. No

change in the regulations was found to be warranted with respect to these comments.

#### *Support for Environmental Benefits of the Program*

Two comments suggested that FSA take advantage of this program in order to get the maximum environmental benefit out of the new authority, while also doing the most it can to help producers meet the many environmental goals expected of them through an incentive-based approach. The comments did not make specific recommendations. In any event, no rule change would be needed to take these concerns into account.

#### *Program Administration*

There were 19 comments concerning the administration of CRP. The comments concerned the way the program was being administered and the need for the program to be more locally flexible.

Some respondents recommended an increased role for the Natural Resource Conservation Service (NRCS) and the Forest Service, acting through State government foresters. These respondents were also concerned about whether Technical Service Providers are qualified to give advice, the implementation of Technical Service Providers and the potential for a conflict of interest with local Technical Service Providers. One comment supported the way the CRP was administered, but made a non-specific comment that program implementation and efficiency could be improved. To the extent that specific comments were made in this regard, no rule change was found needed as the rule is flexible enough to allow changes as may be warranted. Further, the rule provides considerable involvement of FSA State and county committees in making determinations, resulting in substantial local influence and control. Thus, no changes were made in the final rule as a result of these comments.

The interim rule's provisions clarifying continuous sign-up and its role within the CRP program received comments. Another comment felt that the program should emphasize conservation treatments for upland areas associated with CRP acres and offer more compensation for land removed from production to protect water quality. These suggestions are possible without a rule change, and no rule change is needed. Additional comments specific to administration dealt with § 1410.1 and are addressed under the heading for comments on that section below.

#### *Opposition to Economic Impacts of the Program*

Comments expressed concern that CRP supports conservation, but asserted that it hurts the economy of rural communities. One respondent stated that the current CRP, while supporting conservation, is emptying rural communities of agriculture-focused economic opportunity and people. A cost-benefit analysis examined the environmental, economic, and budgetary impacts of enrolling land in CRP. The FSA analysis estimated that the new provisions of the CRP will not only continue benefitting soil, water, and wildlife resources, but will also produce a net benefit to the economy of approximately \$131 million per year. In addition, there is a clear statutory intent and expectation that the CRP will continue to operate and limitations are included in the statute to address the concerns expressed by the respondent. Further, a study that describes the economic and social effects on rural communities resulting from the CRP was required by section 2101(b) of the 2002 Act. The USDA's Economic Research Service published the study in January, 2004, which indicated that the concerns of the respondents are addressed within the limits and requirements within the CRP regulations. Thus, the comments did not result in any change in the final rule.

#### **Comments on Specific Sections of the Interim Rule**

##### *Section 1410.1 Administration*

Seven comments addressed the wildlife objectives of CRP requesting clarification of the program's wildlife objectives versus the landowner's wildlife objectives. A comment supported what CRP has accomplished for wetlands and associated wildlife. The CRP uses the wildlife benefit standards from the Field Office Technical Guide (FOTG) of NRCS and the program is intended to encourage wildlife benefits. Still, the CRP is a voluntary program, and if the landowner has objectives that differ from those used by FSA, they may decline to participate. Because wildlife objectives are addressed in the NRCS FOTG, this comment was not adopted in the final rule.

##### *Section 1410.2 Definitions*

There were 25 comments concerning several technical terms defined in the new rule, and their clarity and consistency. Some respondents felt that "marginal pastureland," "local ecotype," and "native" should be defined in the regulations. A majority of the

respondents felt the intent of the 2002 Act was to make conserving use lands eligible for CRP and they did not agree with the CCC definition of that term in the interim rule. These comments were considered with other conserving use comments submitted under the land eligibility section at § 1410.6.

One respondent suggested that the definition of an agricultural commodity as it pertains to a perennial crop be amended to specify that a perennial crop must be from the same root structure for two or more years. The definition used in the interim rule is consistent with this comment; however, because a perennial crop may involve vegetation that is not considered an "agricultural commodity" within the meaning of the program regulations, "agricultural commodity" is removed from the definition of a perennial crop and an adjustment to that definition has been made in this final rule.

One respondent was concerned that the definition of "conserving use" for cropland eligibility purposes in the interim rule excluded expired CRP contracts with trees planted. Under section 2131(c) of the 1985 Act, as amended, land that is in a "conserving use" can be considered to be planted to an "agricultural commodity." This definition is consistent with requirements for enrollments based on erodibility under section 1231(b)(1), which requires that such land have been cropped 4 out of the 6 years preceding the 2002 Act. Under the customary CRP practices, cropping history must generally be for the kinds of enrollments originally provided for in the 1985 Act. Those enrollments were from lands committed to "agricultural commodities" which, because of a special definition in the 1985 Act, means crops that are annually tilled, plus sugar cane. Other enrollments do not have these strict ties to "agricultural commodities," although, there are still inconsistencies in the statute's references to "agricultural commodities". For example, of the enrollments not tied to "agricultural commodities," section 1231(b)(2) is explicitly directed at enrollments of marginal pastureland, which clearly do not involve land that was annually planted. Also, section 1231(g) provides that alfalfa and other multi-years grasses and legumes in a rotation practice approved by the Secretary shall be considered to be "agricultural commodities." As to the question of trees, land planted to trees is no longer considered "cropland," which is one of the essential criteria of section 1231(b)(1) enrollments where "conserving use" comes into play. Also,

such use is not considered to be a "conserving use" within the meaning of the statute, because trees involve, ultimately, a planting undertaken for a commercial purpose.

A respondent suggested conserving use should include alfalfa, other multi-year grasses and legumes and summer fallow during 1996 through 2001. The respondent indicated that hay land, regardless of the year planted, is a conserving use and that requiring hay land to have been planted between 1996–2001 will make many lands in the eastern U.S. ineligible for CRP. The interim rule provided that, for conserving use credit, cropland must have been planted during the year 1996 through 2001 with alfalfa and planted to other multi-year grasses and legumes and summer fallow in a rotation. Such land would only be considered fallow if the plantings were in a rotation with agricultural commodities. This is made more explicit in this final rule. The rule is amended to require that such rotation must be approved by FSA as needed to assure the integrity of the program. Nonetheless, the 2002 Act requires a cropping history during the period from 1996–2001. Land that was planted beyond this period, regardless of whether it was in rotation with other crops, cannot be considered. Therefore, no rule change was warranted to address this comment.

A number of comments were received suggesting the conserving use definition be expanded to include cropland in CRP with a grass cover, under contract which went to full term, and which remains in grass cover. Effectively, this land has continued to be maintained as if it was still in CRP, and making it eligible is similar to making land eligible at the end of the contract period automatically, as the 2002 Act provides. Therefore, this comment is adopted in the final rule under the § 1410.2 definition of conserving use making eligible lands under contract that expired during the period 1996 through 2001, if the cover continues to be maintained as though under contract. Moreover, unlike with trees, it is presumed that a grass cover is there, not for commercial purposes, but for compliance with the CRP contract, as the land was moved out of the production. Also, under traditional definitions, such land would remain as cropland.

A respondent recommended a definition should be added for "marginal pastureland" due to its importance in terms of eligibility, practice requirements, and rental rates. Consistent with new legislation, the interim rule expanded eligibility for

marginal pastureland devoted to a riparian buffer, a new wetland practice, or a new wildlife habitat buffer to provide wildlife habitat where tree plantings are not practical near water bodies. The agency feels that marginal pastureland is adequately defined in context as well as the FOTG, and promulgating a definition would reduce flexibility. Thus, CCC did not adopt this comment.

Seven comments addressed lands classified as "infeasible to farm." One respondent stated that the interim rule did not clearly define "infeasible to farm" and how it will be determined. Section 1410.2 defines "infeasible to farm" as an area that is too small or isolated to be economically farmed. The local qualifying land characteristics as to whether it is infeasible to farm will be determined at the county level by FSA. "Infeasible to farm" acreage is properly determined at the local level where all relevant factors can be considered. The agency does not feel that this limitation will be arbitrarily applied; thus, this comment was not adopted.

A respondent recommended that FSA should allow its State offices, with the advice of State wildlife agencies, to enroll up to one-half of a percent of their cropland in mapped areas of value to critical wildlife needs. The respondent feels that this will help achieve critical wildlife objectives of the CRP. As suggested by the respondent, FSA emphasizes wildlife habitat in the EBI and its practice standards for wildlife habitat applicable to the area. Further, a unique conservation plan is developed for individual contracts based on the site conditions and the NRCS FOTG, which include wildlife needs. Therefore, the respondents' suggestions on allocating acreage are already addressed by the interim rule and further changes were not made.

#### *Section 1410.4 Maximum County Acreage*

Ten comments were received regarding the currently imposed 25-percent county acreage enrollment limit for the CRP and Wetland Reserve Program (WRP). Six of the comments opposed counting continuous lands in the 25 percent cap. One respondent indicated that the CRP acreage cap should be determined at the watershed scale, not the county level. We understand the respondent's rationale; however, the 1985 Act provides that CRP acreage enrollment is to be calculated on a county basis. Therefore, this and similar comments were not considered further.

One respondent recommended that limits on participation should be included to protect the economic stability of individual counties or regions. CCC is committed to addressing conservation issues of the nation and providing an opportunity for producers to offer eligible lands through a variety of conservation programs consistent with statutory authority. Before waiving the cropland limit, CCC, by statute, must determine that enrollment of additional land would have no adverse economic impact and producers are having difficulty complying with their highly erodible land conservation plan. Thus, the respondent's concerns are addressed under current regulations, consistent with law, and no changes are made in the final rule to further limit participation.

#### *Section 1410.5 Eligible Persons*

Two comments concerned the relationship between renters (or tenants) and landlords. An individual commented that a renter needs immediate notice if a landlord goes to FSA and starts the process of sign-up. One respondent recommended that landowners not be required to own or have operated the land for the previous 12 months to be eligible to enroll in the continuous CRP or Conservation Reserve Enhancement Program (CREP).

FSA encourages landlords and tenants to work closely when enrolling land in the CRP. Further, all operators, owners, and tenants who have an interest in the acreage being offered are required to sign the CRP contract. Also, producers can withdraw an offer anytime before a contract is approved. As for the time an applicant must have operated the land, the law that authorized the CRP requires landowners and tenants to have owned or operated the land for the previous 12 months. However, the statute allows CCC to consider, on a case-by-case basis, both a landowner or tenant eligible when the land was not acquired for the purpose of enrolling it in the CRP. Thus, current regulations are sufficient to address the comments, and no rule change was warranted.

#### *Section 1410.6 Eligible Land*

Over 150 comments were received regarding land eligibility. The majority of these comments focused on the role of what the agency considered to be a "conserving use" and the impact of that term on an eligibility determination. These comments were addressed with the comments regarding § 1410.2 above.

Twenty comments focused on the interim rule's requirements for cropping history. A few comments fully supported the new 4-out-of-6 year

cropping history requirements, although most criticized the new rule and suggested FSA revert to the original 2-out-of-5 year cropping history requirement. However, the 4-out-of-6 year cropping history is a statutory requirement. Therefore, these comments were not considered further and were not adopted.

Four comments requested clarification regarding the eligibility of permanent crops for CRP programs. The remaining comments criticized current regulations for the type of agriculture allowed in the CRP and its shortcomings in California. The respondent suggested that CRP requirements resulted in land being used to produce grain and row crops using conventional tillage when that land may be better suited for grazing or forage production. The comments were not clear on what change in the regulations would allay their concerns, and they made no specific recommendations. Furthermore, from the start, the CRP has focused, at least in part, on directing active cropland into conserving uses. Rather than encouraging environmentally damaging uses of land as suggested by the respondent, the CRP has resulted in many acres of marginal land that were being used to produce row crops in the past being shifted into a much more ecologically sound practice. Therefore, the comments were not further considered and no change in the regulations has been made.

Five comments on re-enrollment were received. Three respondents supported the provision required by the 2002 Act, and included in § 1410.6(a)(3), that there be an option for CRP participants to offer a new contract into the program when their contracts expire. Two other respondents questioned why tree-planted CRP contracts expiring in 2001 are not eligible for renewal, based upon the expiration, while similar contracts expiring in 2002 and 2003 are being renewed. This is because this provision in the regulations follows section 1231(i) of the 2002 Act, which provided for eligibility for future expirations prospectively only. Hence, no change in the regulations was warranted.

Six comments were received in support of the continuous enrollment provisions included in § 1410.6 of the interim rule. A few respondents suggested expansion of the CRP to benefit wildlife by enrolling high value practices that restore and protect rare and declining species.

As discussed above, the interim rule expanded CRP eligibility for marginal pastureland devoted to a riparian buffer practice, a new wetland practice, or a new wildlife habitat buffer practice.

Wildlife habitat may now be established where tree plantings are not practical or appropriate. This change will be valuable in addressing Federal and State wildlife issues near streams, rivers, or other water bodies. Furthermore, CCC has added continuous sign-up eligibility for practices involving wetland restoration and bottomland hardwood trees.

In riparian areas where the climax vegetation for the site is shrub, forb, grass, or a wetland complex, the current rule provided for the establishment of conservation practices that are best suited for the site. This rule will further permit development of conservation practices that provide water-quality benefits such as wetland restoration, on marginal pastureland which, at § 1410.6(a)(2)(ii), will be limited to enrollments under CREP agreements with State governments. This will ensure implementation of conservation practices on the most environmentally-desirable lands to improve water quality.

Some respondents expressed concern about removing cover and suggested that farmland previously enrolled in the CRP program and planted to approved grasses must be plowed and re-seeded in order to be eligible for a future sign-up. Other comments pertaining to this section concerned buffer guidelines, and consistency between their application by other USDA agencies and programs to native prairies and marginal pastureland. One respondent suggested allowing the use of continuous sign-up and CREP to meet the producer's buffer requirements under State and local mandatory setback laws. Because FSA already allows otherwise eligible land to be offered, provided the producer has not been specifically designated out-of-compliance with a State and/or local setback law, these comments were not considered further and can be addressed within existing rules if further action is needed.

Three comments regarding land eligibility and general sign-up touted the need to protect fragile lands and utilize native vegetation in order to achieve the highest public benefit and enhance biodiversity. The 2002 Act made no changes to the EBI. However, in an effort to maximize environmental benefits and implement plantings consistent with local ecosystems, CCC has structured the EBI to give more weight to contract offers that devote acreage to native plantings. CCC recognizes that in certain critical planting areas the use of introduced vegetative species may be required to stabilize the soil faster, be easier to establish, or provide a more cost-

effective conservation effort. The agency agrees with the comment; however, current rule language is sufficient to accomplish the desired result, and no change in the regulations is warranted.

#### *Section 1410.8 Conservation Priority Areas*

A total of 11 comments were received on this section of the rule. The majority of the comments suggested that State agencies be provided flexibility to revise wildlife and water quality Conservation Priority Areas (CPA) between general sign-ups. Because the interim rule does not preclude revisions of CPA's between sign-ups, no rule change is needed to implement the suggested change.

#### *Section 1410.9 Conversion to Trees*

There were 14 comments pertaining to the planting of CRP acreage to trees. Comments were received from State government agencies and national conservation organizations. A respondent suggested this practice be limited to areas where trees existed historically, because planting trees in historically prairie areas created a number of problems such as habitat and refuge for predators, ecological traps for nesting birds, and nuisance exotic species.

All 14 respondents were concerned with the effects of converting permanent vegetative grass covers under CRP contracts from prior to 1990 to hardwood trees when the ecosystem did not historically support hardwood trees. This rule encourages planting native species suited to the environment. Further, the EBI is designed to encourage planting of native species. Thus, no rule change is needed to address the concerns of the respondent.

#### *Section 1410.11 Farmable Wetlands Program*

There were six comments concerning the Farmable Wetlands Program, including eligibility requirements, payment methods, and the methods for delineating wetland. Also, there was one comment on the size of contiguous wetland acres being accepted into the program regarding the basis for enrolling 10 contiguous acres when the owner/operator will only be paid for the first 5 acres. The comments did not address specific rule provisions that caused these concerns or how they may be mitigated. The agency determines wetlands using the FOTG and guidance from NRCS, and has no plans to promulgate how wetlands are delineated. As for the acreage limitation, it is imposed by the 2002 Act. Thus, these comments were not considered further and no change was warranted.

### *Section 1410.20 Obligations of Participants*

There were 28 comments received on the obligations of participants, a majority of which suggested stricter requirements for keeping noxious weeds off CRP lands. Comments on noxious weeds fell into two general groups. The first group suggested mandatory control of noxious weeds as an essential component of managing CRP lands. The second group recommended that weed control be limited to official Federal or State recognized noxious weeds, since most so-called weeds provide extremely high quality wildlife habitat. As a condition of enrollment, a CRP participant must establish and maintain certain covers for the benefit of soil erosion, water quality, and wildlife habitat. On an individual contract basis, a conservation plan is developed according to the NRCS FOTG outlining the requirements to establish and maintain those covers including any necessary weed, insect, and pest control measures. As to noxious weed matters, State governments enforce noxious weed laws and CCC takes appropriate action when notified by State authorities of violations. When CCC becomes aware of a contract violation, it pursues appropriate remedies, including contract termination. The weed control provisions of the program as articulated in the conservation plan developed on a contract-by-contract basis according to NRCS FOTG standards assure the protection of the cover.

The remainder of the comments on this section dealt with maintenance payments and the use of burning as a maintenance tool. Four respondents felt that the landowners were not receiving sufficient rental incentives to pay maintenance costs. Of those, one felt that rental payments should meet a level-of-effort standard, and that landowners who agree to do more maintenance should receive higher rental payments. Two individuals were concerned that some participants receive rental incentives for maintenance for doing nothing, while two others suggested that FSA hold payments until maintenance was completed. One suggested that these incentive payments be made only when maintenance is needed, and, finally, one suggested that holistic grazing be added as eligible for such incentives.

Maintenance incentive rental payments are paid to ensure proper cover of the CRP acreage. What constitutes maintenance and proper coverage varies by geography, topography, and other factors. Consequently, it is difficult to

promulgate these amounts and practices at a national level. Thus, what is eligible for maintenance incentive payments and the amount to be paid is determined at the local level based on local conditions. If practices are not carried out as agreed to by the program participant, then payments are not made or are required to be refunded when CCC becomes aware through an informant or a spot-check that an enforcement action is necessary.

A comment stressed the importance of including fire protection plans and annual controlled burns as a maintenance tool and advocated that the landowner and tenant should not be penalized for such maintenance related burns.

The respondent's concerns are addressed by FSA operating procedures and are not included in the regulation. CRP participants must have an approved conservation plan developed locally and for the unique site conditions. Where appropriate, a conservation plan will include a fire protection plan, which may include controlled burns as a maintenance measure. These plans are prepared according to the NRCS FOTG and may incorporate the advice of other experts. Thus, the interim rule already addresses the respondent's concerns, and no changes are made in the final rule.

### *Section 1410.22 CRP Conservation Plan*

A total of 15 comments were received concerning conservation plans and, more specifically, mid-contract management. Six comments fully supported mid-contract management for its role in maintaining and maximizing wildlife benefits of the program. A comment recommended that the practices to be employed and the timing of application for mid-contract management should be determined at the State level to account for variability in climate and cover development. The interim rule requires CRP participants to follow a local technical standard which provides the greatest protection of the State's soil, water, and wildlife resources, improves and preserves water quality, and enhances fish and wildlife habitat. Because the program already incorporates local technical standards, as appropriate, it would not serve the program well to abandon those and adopt State standards. Therefore, this comment was not adopted.

One respondent suggested that the rule be clarified concerning when renewed contracts are considered "new" and whether previously enrolled acres will now be subject to mid-contract cover management. Mid-

contract cover management applies to contracts entered into after the interim rule's effective date of May 8, 2003, and applies to all contracts, including renewal contracts, approved after May 8, 2003. Terms of the contracts will, moreover, be specified in the contracts.

An individual suggested clarification of how cost-share for mid-contract management practices would be provided, primarily for tree thinning. Consistent with the authorizing legislation, CRP participants must thin trees under their CRP contract without cost-share and receive an annual payment reduction on acreage thinned. Therefore, the comment was not considered and no rule change was needed.

Three comments recommended that all State wildlife agencies be engaged to develop criteria for mid-cover management. FSA has consulted with the U.S. Fish and Wildlife Service and other agencies on these matters. Because the rule already allows consultation other agencies with expertise, the rule is sufficient as written.

### *Section 1410.30 Sign-Up*

There were 23 comments received regarding this section. Some respondents suggested expanding the uses of targeted CRP through continuous enrollment and CREP to meet more environmental needs. Environmentally-desirable land devoted to certain conservation practices may be enrolled in CRP at any time under continuous sign-up. These practices are usually filter strips, riparian buffers, certain wetlands, grass waterways, and other practices the enrollment of which provide substantial environmental benefits meeting the conservation goals of the program including soil erosion, water quality, and wildlife habitat. CCC will annually publish in the **Federal Register** to the extent practicable conservation practices and lands made eligible for continuous sign-up after September 30, 2004.

A majority of respondents stated that practices installed under the continuous sign-up have insufficiently utilized vegetative cover with high wildlife values. They recommended that continuous sign-up be limited to the use of 40- or 50-point EBI vegetative cover types to achieve the highest environmental benefits.

CCC currently utilizes the FOTG of the NRCS and issues other Agency guidance on this subject. Wildlife considerations are a major consideration in the practice requirements for most continuous sign-up practices. The agency feels that wildlife is being addressed properly under the provisions

of the interim rule and increased emphasis on vegetation for wildlife is unnecessary.

#### *Section 1410.31 Acceptability of Offers*

About 60 comments were received regarding the acceptability of offers. Comment categories ranged from local eco-type and native vegetation consistency, to whole-farm enrollment, to the EBI. The vast majority of comments expressed concern that conservation practices implementing native vegetation should be more highly considered than non-native vegetation, and that the vegetation used in conservation practices should be vegetation that is of local eco-type seed. CRP policy regulations and the EBI already emphasize planting native vegetation. In any event, no rule prohibits the results sought by the respondent. Another comment recommended the EBI be included in the regulation to protect the EBI against legal challenge. The agency understands the respondent's concerns that the acceptability of offers be more strictly determined by regulations. The weighing of factors in the EBI can change over time and over enrollments based on changing conditions, changing needs, and based on the nature of the land achieved in previous enrollments. Incorporating the EBI into the rules could harden the index in a way that would be harmful to the achievement of the goals of the program because of the time that would otherwise be needed to change the index. Further, competition in all cases is a set formula for enrollments, so as to not allow the agency to assign special merit to especially attractive offers. Therefore, this comment was not adopted. However, CCC will consider this comment further but, should CCC adopt the suggestion, it would be best to do so as a separate action from this rulemaking with a full opportunity for public comment.

#### *Section 1410.42 Annual Rental Payments*

Over half of the 42 comments received under this section of the rule pertained specifically to rental payments. The interim rule provides that rental rates are based on relative soil productivity of the soil type for dryland cash rental rates for the county. Most respondents supported this policy—that CRP rental rates mirror the rates for comparable land in the immediate area and be based on the agricultural production value of the land. Concerning irrigated lands, a comment noted that continuous CRP should allow CCC to pay irrigated rates

in irrigated landscapes. Further, the comment noted that, environmentally, these irrigated areas have highly significant concentrated flows with increased soil erosion and degraded water quality. As a result of the comment, FSA is evaluating options to consider the impact of irrigated rental rates. No rule change is needed to make such an allowance.

A few comments recommended increasing incentive payments under CRP. All 42 respondents on this section requested additional incentives for CREP and continuous sign-up practices. The respondents felt that landowners need adequate funding to maintain and enhance their properties to meet CRP conservation plan goals and maximize environmental benefits. CCC feels that the payment of competitive, market-based rental rates is sufficient enticement for the enrollment of land, and the best method for ensuring that payments are distributed equitably. Further, the regulations allow for incentives, where appropriate, to meet program goals and objectives. Therefore, no rule change is needed.

With regard to contract payments, two comments from a commodity organization recommended that if CRP payments are reduced or delayed for more than 60 days, the producer should have the option to withdraw from the contract without penalty and program crop bases would be restored to their prior level. CRP regulations anticipate that contract payments will be made in a timely manner. CCC may pay interest if claims are overdue for a material portion of time. Contract release is too drastic and unwarranted. Accordingly, no change has been made in the regulations.

#### *Section 1410.50 Enhancement Programs*

Five comments were received regarding enhancement programs suggesting expanding CREP, continuous enrollment, associated practices, and incentives. However, the comments were not specific on recommended changes. The agency feels that program regulations already encourage participation and adequately address CREP and continuous enrollment.

#### *Section 1410.63 Permissive Uses*

There were over 200 comments focused on this section of the rule, making it the most commented-upon section. Comment categories included managed and emergency haying and grazing, the use of wind turbines, maintenance associated with haying and grazing, and the grazing of buffer strips. Emergency haying and grazing allows

producers to hay or graze CRP acreage during disaster-related emergency conditions. Managed haying and grazing is intended to have positive effects on the management of the cover consistent with CRP's conservation goals. Managed haying and grazing is not intended to maximize forage benefits. Concerning managed haying and grazing, a majority of comments were critical. Many felt that it is unfair for a farmer to receive CRP payments while being able to profit from grazing their cattle for free, or from selling the harvested hay. However, contrary to what the comments suggest, the statute and the regulation require reduction of CRP payments based on the acres used for haying and grazing. Thus, no change in the regulations was warranted.

Other respondents were concerned about the effects of haying and grazing, stating that the maximum one-in-three year haying and grazing frequency may have a negative impact on wildlife. A few respondents supported managed haying and grazing, and suggested that it strictly comply with the Upland Wildlife Habitat Management standard in the FOTG of NRCS.

The interim rule provisions on managed haying and grazing were developed after CCC reviewed scientific recommendations from both government and non-government experts on environmental and wildlife impacts. Also, in 2001, a panel of grassland ecologists developed a number of recommendations for CRP. The panel recommended that haying and grazing of CRP land be limited to that which is of ecological benefit and in accordance with a management plan suited to the site and vegetative cover. Managed haying and grazing is approved locally, and the FSA State committee, in consultation with the NRCS State technical committee, establishes beginning and ending primary nesting and brood rearing dates to ensure wildlife habitat is sufficiently protected. Since the interim rule was published, FSA delegated authority to its State committees to modify primary nesting season dates as recommended by NRCS State technical committees to ensure applicable nesting seasons reflect local needs of wildlife. As the regulations provide sufficient flexibility for the handling of these issues based on circumstances, no change to the regulations is necessary.

There were 26 comments about emergency haying and grazing. The majority of these comments offered specific recommendations how to reduce its impact to wildlife habitats. These recommendations included acreage caps, timing of harvesting, and

allowing only grazing. A few respondents suggested that FSA prohibit the sale of emergency haying/grazing privileges, while some respondents fully supported emergency haying and grazing as it is currently implemented. One respondent fully opposed using CRP land for emergency haying or grazing.

The requirements for emergency haying and grazing eligibility were enhanced and streamlined this year with the implementation of the interim rule. In periods of extreme emergency, the Secretary may make certain CRP lands eligible under the rule for emergency haying and grazing. Counties also may qualify under a "D3 Drought—Extreme" category utilizing the U.S. Drought Monitor to streamline the application process. The emergency haying and grazing provisions are promulgated as required by the statute, incorporating administrative flexibility where appropriate. Thus, no changes were made to the regulations as a result of these comments.

Eleven comments addressed maintenance thinning of CRP softwood plantations. All eleven felt that poor wildlife habitat quality is provided by CRP softwood that is not thinned and, therefore, thinning should be allowed with no reduction in annual rental payments. Tree thinning ensures the health of trees and is not intended to guarantee an income. Further, the law requires a payment reduction to the extent income results from CRP softwood. Because CRP contracts already require tree thinning, the comment was not adopted.

Two respondents felt that incidental grazing of grass buffer strips should be allowed only when located in green wheat fields or fields containing other similar forage. CCC already allows limited grazing of certain practices taking into consideration the affects on the practice, the environment, and wildlife when grazing is incidental to the gleaning of the crop residue in a field after crop harvest. Therefore, no changes were made in the final rule as a result.

Three respondents expressed concerns about detrimental effects on grassland birds and other wildlife from wind turbines on CRP lands. CCC considers environmental impacts of each site and prepares a site specific environmental assessment or environmental impact statement, as applicable, before approving the location of wind turbines. If a wind turbine will create material wildlife concerns, those concerns will be properly considered in determining whether to grant approval. Thus, the

respondent's concerns are addressed in each instance, and revision of the final rule is not necessary.

Three respondents believe that the 1-in-3 year managed haying and grazing rotation was inconsistent with wildlife habitat goals of the program. These respondents suggested that the interim rule will have severe negative impacts on grassland nesting birds and other wildlife within the Northern Great Plains region. They suggested more clearly defining the wildlife objectives of the program as a whole. Since these impacts and the compliance with wildlife protection requirements can be addressed in each contract based on local requirements, specification in the regulations of program wildlife objectives is not needed.

One comment suggested amending the rule to allow managed haying and grazing, including the harvest of biomass, without a reduction in annual payment in certain areas and allowing more frequent grazing of short grass prairie areas established in native short grass vegetation. CCC established criteria for frequency of haying or grazing based on scientific research to enhance vegetative cover and wildlife habitat benefits. The statute requires a reduction of annual rental payments commensurate with the economic value of the activity. Current rules are consistent with the statutory provision and no change in the regulations is warranted.

#### *Other Changes*

This rule amends the interim rule promulgating 7 CFR part 1410 (68 FR 24830, May 8, 2003) as discussed above with regard to those comments adopted. In addition, the interim rule did not address the crop insurance requirements in 7 CFR part 1405 as they apply to CRP contracts. This rule amends the interim rule to correct that oversight.

#### *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 prepared and is summarized following the discussion of other applicable laws and Executive Orders.

#### *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 law to publish a notice of proposed rulemaking for the subject matter of this rule. CCC is authorized by

section 2702 of the 2002 Act to issue a final rule.

#### *Environmental Evaluation*

The environmental impacts of this rule have been considered consistently 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. Because certain programs may significantly have impacts on the human environment, FSA completed a final Environmental Impact Statement (EIS) on May 8, 2003, which is on file and available to the public in the Administrative Record at the address specified in the ADDRESSES section. The EIS is also available electronically at: <http://www.fsa.usda.gov/dafp/cepd/epb/nea.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), Pub. L. 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 final 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 CRP are not 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 <http://www.sc.egov.usda.gov> for downloading and regulations are available on the Internet at <http://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.

#### **Summary of Cost-Benefit Assessment (CBA)**

##### *Increased Enrollment*

Enrolling an additional 2.8 million acres will provide environmental benefits, including establishment of 2.8 million acres of wildlife habitat improving recreational benefits through increased hunting and wildlife viewing opportunities. Soil erosion will be reduced an estimated 27 million tons per year, increasing soil productivity, improving surface water quality, and improving air quality.

Total CRP outlays are estimated to increase \$1.5 billion during fiscal years 2003 through 2012, while commodity program outlays are estimated to decline about \$1.7 billion over the same period, primarily due to a \$1.5 billion estimated counter-cyclical payment decline. The additional 2.8-million-acre enrollment is estimated to decrease combined CRP and commodity program outlays \$186 million during the 10-year period.

Idling an additional 2.8 million acres under CRP (less than 1 percent of typically planted acreage) will have minimal impacts on the farm sector. Net crop sector income is estimated to increase \$307 million per year (1 percent) during the 2003–2012 crop

years due to increased 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. Reduced plantings will cause estimated crop prices 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.

Average buyers' loss for domestic users of the major crops is estimated to increase \$326 million per year when the 2.8 million acres are enrolled. Including other estimated average annual economic indicator changes over the 2003–2012 time period provides estimated net economic benefits of \$11 million per year, before any consideration of the value to society of the environmental benefits. While comprehensive measures of the value of the environmental benefits obtained from enrolling environmentally sensitive acreage in CRP do not currently exist, the economic value of environmental benefits is expected to be substantial.

##### *Eligible Land Impacts*

Basic cropland eligibility options selected (and impacts):

- Consider cropland in summer fallow rotation as conserving use. (Adds 29 million acres.)

- Consider cropland devoted to alfalfa or other multi-year grasses and legumes as conserving use, but only if planted during 1996–2001. (Adds 31 million acres and excludes 90 million acres not planted during 1996–2001. Also excludes about 1.5 million acres previously eligible as land in long-term crop/hay rotations.)

- Consider land formerly enrolled in CRP under contracts that expired before 1999 and still in grass as conserving use. (Adds 5 million acres, and excludes a minimal amount of acreage in trees.)

- Make land used for perennial horticulture eligible, if devoted to certain continuous sign-up practices. (Adds about 240,000 acres.)

A total of 371 million cropland acres are estimated to meet basic crop eligibility requirements, about 8 million more than were eligible under previous criteria.

Significant resource-based eligibility options selected (and impacts):

- Include under highly erodible land criteria cropland in fields with weighted average Erodibility Index (EI)≥8, rather than previous policy that included cropland in fields classified as HEL (subject to conservation compliance requirements) and cropland with

weighted average EI≥8. (Reduces eligible land about 9 million acres.)

- Add about 40 counties to the prairie pothole national CPA. (Adds 3 million acres.)

- Increase the allowable State CPA percentage from 10 percent to 33 percent of cropland acreage per State. (Adds 36 million acres.)

About 270 million acres, or 73 percent, of cropland meeting basic eligibility requirements are estimated to meet one or more resource-based eligibility criteria. Eligible land includes 106 million acres of highly erodible cropland, 120 million acres in national conservation priority areas, and 87 million acres in State CPA's.

##### *Managed Haying and Grazing Impacts*

Allowing non-emergency managed haying and grazing, conducted in accordance with a conservation plan, 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. Thus, around 2 million to 3 million acres could be hayed or grazed in any year, improving wildlife habitat benefits on a total of about 7 million acres. CRP rental payments could be reduced \$20 million to \$25 million per year.

##### *Rulemaking Exemption*

Section 2702 of the 2002 Act exempts this rulemaking, the interim rule that proceeds this affirmation, and the administration of the program, from the application of the Paperwork Reduction Act, and the Statement of Policy of the Secretary of Agriculture published at 36 FR 13804 (July 24, 1971). That section of the 2002 Act also provided explicitly for allowing an interim rule to be made effective immediately without prior notice and comment. As this final rule merely affirms the existing interim rule, with slight amendments made for the better administration of the CRP non-entitlement program, it would be contrary to the public interest to delay the implementation of this rule. Accordingly, consistent with the terms of the 2002 Act and the public interest, this rule is effective upon publication.

##### **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, the interim rule revising 7 CFR part 1410 published at 68 FR

24830 on May 8, 2003, is adopted as final with the following changes:

#### **PART 1410—CONSERVATION RESERVE PROGRAM**

■ 1. The authority citation for part 1410 continues to read as follows:

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

■ 2. Amend § 1410.2(b) by revising the definitions of “Conserving use” and “Perennial crop” to read as follows:

##### **§ 1410.2 Definitions.**

\* \* \* \* \*

(b) \* \* \*

*Conserving use* means a use of land with any rotation requirements as may be specified by the Deputy Administrator: for alfalfa and other multi-year grasses and legumes planted during 1996 through 2001; as summer fallow during 1996 through 2001; and in which the land was previously enrolled in the program (for which the contract expired during the period 1996 through 2001) and where the grass cover required by the CRP contract continues to be maintained as though still enrolled. Where the land use for a year qualifies as a “conserving use” under this definition, then, the land for that year shall, for purposes of eligibility under § 1410.6(a)(1) be considered to have been planted to an “agricultural commodity.”

\* \* \* \* \*

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

\* \* \* \* \*

■ 3. Amend § 1410.6 by revising paragraph (a)(2)(ii) introductory text to read as follows:

##### **§ 1410.6 Eligible land.**

(a) \* \* \*

(2) \* \* \*

(ii) Is determined to be suitable for use as a riparian buffer or is made eligible in a CREP for similar water quality purposes as determined by the Deputy Administrator. 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 CCC, it:

\* \* \* \* \*

■ 4. Amend § 1410.52 by adding paragraph (d) to read as follows:

##### **§ 1410.52 Violations.**

\* \* \* \* \*

(d) Crop insurance purchase requirements in part 1405 of this chapter apply to contracts executed in accordance with this part.

■ 5. Amend § 1410.63 by revising paragraph (c) introductory text and (c)(1)(iii) to read as follows:

##### **§ 1410.63 Permissive uses.**

\* \* \* \* \*

(c) The following activities may be permitted on CRP enrolled land insofar as they are consistent with the soil, water, and wildlife conservation purposes of the program:

(1) \* \* \*

(iii) According to an approved CRP conservation plan in accordance with FOTG standards and ensuring that managed haying and grazing activities occur outside the official nesting and brood rearing season for those plans.

\* \* \* \* \*

Signed at Washington, DC, on May 11, 2004.

**James R. Little,**

*Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 04–10945 Filed 5–13–04; 8:45 am]

**BILLING CODE 3410–05–P**

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#### **FARM CREDIT ADMINISTRATION**

##### **12 CFR Parts 614 and 617**

**RIN 3052–AC04**

##### **Loan Policies and Operations; Borrower Rights; Effective Date**

**AGENCY:** Farm Credit Administration.

**ACTION:** Notice of effective date.

**SUMMARY:** The Farm Credit Administration (FCA) published a final rule under parts 614 and 617 on March 30, 2004 (69 FR 16455). This final rule clarifies when and how qualified lenders must disclose the effective interest rates and other loan information to borrowers; when and how the cost of Farm Credit System borrower stock must be disclosed to borrowers; and how loan origination charges and other loan information must be disclosed to borrowers. In accordance with 12 U.S.C. 2252, the effective date of the interim final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is May 10, 2004.

**DATES: Effective Date:** The regulation amending 12 CFR parts 614 and 617 published on March 30, 2004 (69 FR 16455) is effective May 10, 2004.

**FOR FURTHER INFORMATION CONTACT:** Tong-Ching Chang, Senior Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean,

VA 22102–5090, (703) 883–4498, TTY (703) 883–4434; or Howard Rubin, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–2020.

(12 U.S.C. 2252(a)(9) and (10))

Dated: May 11, 2004.

**Jeanette C. Brinkley,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. 04–11024 Filed 5–13–04; 8:45 am]

**BILLING CODE 6705–01–P**

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#### **FARM CREDIT ADMINISTRATION**

##### **12 CFR Parts 614, 620, and 630**

**RIN 3052–AC07**

##### **Loan Policies and Operations; Disclosure to Shareholders; Disclosure to Investors in Systemwide and Consolidated Bank Debt Obligations of the Farm Credit System; Effective Date**

**AGENCY:** Farm Credit Administration.

**ACTION:** Final rules; notice of effective date.

**SUMMARY:** The Farm Credit Administration (FCA) published a final rule under parts 614, 620, 630 on March 30, 2004 (69 FR 16460). This final rule amends our regulations governing the Farm Credit System’s (System) mission to provide sound and constructive credit and services to young, beginning, and small farmers and ranchers and producers or harvesters of aquatic products (YBS). Additionally, with this final rule, the agency amends the System’s disclosure to shareholders and investors to include reporting on its service to YBS farmers and ranchers. In accordance with 12 U.S.C. 2252, the effective date of the interim final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is May 10, 2004.

**DATES: Effective Date:** The regulation amending 12 CFR parts 614, 620, 630 published on March 30, 2004 (69 FR 16460) is effective May 10, 2004.

**FOR FURTHER INFORMATION CONTACT:** Robert E. Donnelly, Senior Accountant, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TTY (703) 883–4434; or Wendy R. Laguarda, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–2020.

(12 U.S.C. 2252(a)(9) and (10))