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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1410

RIN: 0560-AH80

Conservation Reserve Program, Re-Enrollment

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule; technical amendment.

SUMMARY: This rule makes a technical correction to the Commodity Credit Corporation (CCC) Conservation Reserve Program (CRP) regulations to clarify that land with use restrictions that prohibit the production of agricultural commodities, typically through an easement or other deed restrictions, is not eligible for re-enrollment in CRP. This is not a new policy and would not have affected any program determinations for recent CRP sign ups, had this change been specified in the regulations at the time. This amendment will improve the regulations by maintaining consistency with longstanding policy. This rule corrects a provision in the current regulations that allows re-enrollment in CRP of land with easements or other deed restrictions that restrict the production of agricultural commodities. A 2003 interim rule inadvertently added that provision through an incorrect cross-reference, but clearly stated in the preamble that the intent was to exclude land with such easements or deed restrictions from re-enrollment. The purpose of CRP is to cost-effectively assist producers in conserving and improving soil, water, wildlife, and other natural resources by converting environmentally-sensitive acreage from the production of agricultural commodities to a long-term vegetative cover.

DATES: Effective date: **[Insert date of publication in the FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Beverly J. Preston; telephone 202-720-9563. Persons with disabilities who require alternative means for communications (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720-2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Background

CRP was first authorized in the Food Security Act of 1985 (16 U.S.C. 3830–3835a, commonly known as the 1985 Farm Bill). This rule amends the CRP regulations in 7 CFR part 1410 to clarify that land with use restrictions that prohibit the production of agricultural commodities, typically through an easement or other deed restriction, is not eligible for re-enrollment in CRP.

The purpose of CRP is to cost-effectively assist producers in conserving and improving soil, water, wildlife, and other natural resources by converting environmentally-sensitive acreage generally devoted to the production of agricultural commodities to a long-term vegetative cover and to address issues raised by State, regional, and national conservation initiatives. Participants enroll land in CRP 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, tree, or other appropriate covers. The purpose and scope of CRP are not changing with this rule.

The regulations in 7 CFR 1410.6(c)(2) specifies that land is ineligible for enrollment into CRP if the use of the land is restricted through deed or other restrictions prior to enrollment in CRP prohibiting the production of agricultural commodities during

any part of the contract term. However, through an incorrect cross reference that is being removed with this rule, this section also provides an exception to the easement ineligibility if the land is re-enrolled in the CRP during the final year of an expiring CRP contract. As currently written, the regulation therefore allows for re-enrolling land into CRP even if there is an easement in place, or an easement has been filed that would begin as soon as the current CRP contract expires; even though such easement restricts the production of agricultural commodities.

It was never the intent or the policy of CCC to allow land with such crop use restrictions to be re-enrolled in CRP. That provision was inadvertently added in the 2003 interim rule implementing 2002 Farm Bill (the Farm Security and Rural Investment Act of 2002, Pub. L. 107-171) changes to CRP, which was published in the Federal Register on May 8, 2003 (68 FR 24830-24845). The preamble to the 2003 interim rule , states specifically “...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.”

Nearly all FSA and CCC programs have specific prohibitions on duplicate payments, meaning that beneficiaries may not receive payments from two different programs for the same land, crop, or loss. Allowing for re-enrollment in CRP where the land is already under an easement would be a type of duplicate payment, because landowners have already been compensated for the easement, usually by a State. CCC

has not and should not pay participants annual CRP rental payments on land where an easement already ensures that the conservation benefits established under the original CRP contract will continue long term or even permanently. As noted in the preamble to the final rule for CRP published in the Federal Register on May 14, 2004 (69 FR 26755-26763), no comments were received on the 2003 interim rule opposing the ineligibility provision for re-enrollment of land with easements, as specified in the preamble. CCC has not allowed such re-enrollment, as stated consistently in the handbooks for CRP. However, the correction in this rule is needed to make the regulations consistent with policy.

If re-enrollment of land with restrictive easements were allowed, the primary beneficiaries would be landowners whose land is enrolled at the State level in the Conservation Reserve Enhancement Program (CREP). Many States require long term or even permanent easements as a condition of enrollment in CREP, and compensate landowners for those easements. Since such land already has easements, re-enrolling that land in CRP would force CCC to pay annual rental payments in exchange for no increase in environmental benefits. If this correction is not made, and our existing policy cannot be enforced, about 400-500 contracts could be re-enrolled for an additional 10 to 15 years of rental payments, at a potential cost to the government of \$180-250 million total for no additional environmental benefits. Since CRP has an enrollment cap, and CREP re-enrollments would be non-competitive, those 400-500 contracts could potentially “crowd out” other applicants representing new, additional actual environmental benefits. Therefore, this correction is needed to ensure that the limited CRP funding goes to CRP contracts with specific environmental benefits.

Notice and Comment

This rule is technical in nature, not substantive, and a delay in implementing this rule would be contrary to the public interest. Therefore, this rule is effective on publication. Also, regulations for this program are exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553), as specified in section 2904 of the 2008 Farm Bill (Pub. L. 110-246, the Food, Conservation, and Energy Act of 2008), which allows that the regulations be promulgated and administered without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971, (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking.

Executive Order 12866 and 13563

Executive Order 12866, “Regulatory Planning and Review,” and Executive Order 13563, “Improving Regulation and Regulatory Review,” direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This technical correction, which is the result of a retrospective review of existing regulations, will improve the clarity of the regulation and harmonize it with longstanding USDA policy and existing handbooks.

This technical amendment did not require Office of Management and Budget (OMB) designation of the level of significance under Executive Order 12866, “Regulatory Planning and Review,” and therefore OMB has not reviewed this rule.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601-612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule is not subject to the Regulatory Flexibility Act because CCC is not required to publish a notice of proposed rulemaking for this rule.

Environmental Review

The environmental impacts of this rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321-4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500-1508), and FSA regulations for compliance with NEPA (7 CFR part 799). The technical correction identified in this final rule does not change the structure or goals of the program and can be considered simply administrative in nature. Therefore, FSA has determined that NEPA does not apply to this final rule and no environmental assessment or environmental impact statement will be prepared.

Executive Order 12372

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

Executive Order 12988

This rule has been reviewed under Executive Order 12988, “Civil Justice Reform.” The provisions of this rule will not have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with such provision or which otherwise impede their full implementation. The rule will not have retroactive effect. Before any judicial action may be brought regarding this rule, all administrative remedies must be exhausted.

Executive Order 13132

This rule has been reviewed under Executive Order 13132, “Federalism.” The policies contained in this rule would not have any substantial direct effect on States, the relationship between the Federal Government and the States, or the distribution of power and responsibilities among the various levels of government. Nor would this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Executive Order 13175

This rule has been reviewed for compliance with Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” Executive Order 13175 imposes requirements on the development of regulatory policies that have tribal implications or preempt tribal laws. The policies contained in this rule do not preempt Tribal law. USDA continues to consult with Tribal officials to have a meaningful consultation and collaboration on the development and strengthening of USDA regulations.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104-4) requires Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments or the private sector. Agencies generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of \$100 million or more in any 1 year for State, local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates, as defined under title II of the UMRA, for State, local, and Tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121, SBREFA) and FSA is not required to delay the effective date for 60 days from the date of publication to allow for Congressional review. Accordingly, this rule is effective on the date of publication in the Federal Register.

Federal Assistance Programs

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

Paperwork Reduction Act

The regulations in this rule are exempt from the requirements of the Paperwork Reduction Act (44 U.S.C. Chapter 35), as specified in section 2904 of the 2008 Farm Bill, which provides that these regulations be promulgated and the programs in Title II of the 2008 Farm Bill be administered without regard to the Paperwork Reduction Act.

E-Government Act Compliance

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

List of Subjects in 7 CFR Part 1410

Administrative practice and procedure, Agriculture, Environmental protection, Grant programs – Agriculture, Natural resources, Reporting and recordkeeping requirements, Soil conservation, Technical assistance, Water resources, Wildlife.

For the reasons explained above, CCC amends 7 CFR part 1410 as follows:

PART 1410—CONSERVATION RESERVE PROGRAM

1. The authority citation for 7 CFR part 1410 continues to read as follows:

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

§ 1410.6 [Amended]

2. Amend § 1410.6, paragraph (c)(2), by removing the words “and (3)”.

Signed on July 29, 2013.

Juan M. Garcia,
Executive Vice President,
Commodity Credit Corporation.

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