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DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

7 CFR Parts 610, 622, 624, 625, 652, and 662

Commodity Credit Corporation

7 CFR Parts 1455 and 1465

RIN 0578-AA60

Changes to Existing Conservation Program Regulations

[Docket No. NRCS-2014-0006]

AGENCY: Natural Resources Conservation Service (NRCS) and the Commodity Credit Corporation (CCC), United States Department of Agriculture (USDA).

ACTION: Final rule.

SUMMARY: The Agricultural Act of 2014 (the 2014 Act) made several nondiscretionary changes to NRCS conservation programs. These conservation programs have existing regulations that required adjustments. These adjustments include addressing the required review of operating procedures of the State Technical Committee, adding reference of the Regional Conservation Partnership Program (RCPP) to the Watershed Protection and Flood Prevention Act program regulations, adding reference of RCPP to the Healthy Forests Reserve Program (HFRP), expanding the definition of “acreage owned by Indian Tribes” under HFRP, revising and simplifying the Regional Equity provision, and adjusting the Agricultural Management Assistance (AMA) Program to correspond with changes to payment provisions under the

Environmental Quality Incentives Program (EQIP). Additionally, the Secretary of Agriculture delegated to NRCS administrative responsibility for implementing the Voluntary Public Access and Habitat Incentive Program (VPA-HIP), and internal NRCS administrative changes warrant updating the appropriate delegated official in the Technical Service Provider (TSP) provision. NRCS published an interim rule with a request for comments on August 1, 2014, to implement changes to these NRCS conservation program regulations that were either necessitated by enactment of the 2014 Act, or required to implement administrative streamlining improvements and clarifications. NRCS received six comments on the interim rule. In this document, NRCS issues a final rule to make permanent these changes and to incorporate two minor mandatory changes in two of the affected parts.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Leslie Deavers, NRCS Farm Bill Coordinator, USDA, NRCS, Post Office Box 2890, Washington, D.C. 20013-2890; telephone: (202) 720-4531; fax: (202) 720-2998; email: leslie.deavers@wdc.usda.gov, Attn: Farm Bill Program Inquiry.

Persons with disabilities who require alternate means for communication (Braille, large print, audio tape, etc.) should contact the USDA Technology and Accessible Resources Give Employment Today (TARGET) Center at: (202) 720-2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Regulatory Certifications

Executive Orders 12866 and 13563: The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866; therefore, OMB will not review this final rule.

Regulatory Flexibility Act: It has been determined that the Regulatory Flexibility Act is not applicable to this interim rule because NRCS 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.

Environmental Analysis: The 2014 Act made changes in statutory authority and administrative delegations that required conforming amendments to existing program regulations. This final rule confirms the changes made to these regulations by the interim rule. Such changes were mandatory; therefore, did not require analysis under the National Environmental Policy Act. In addition, a number of minor administrative improvements were made to the regulations as a result of continuing evaluations of NRCS program implementation efforts. Such administrative changes fell within a categorical exclusion for policy development, planning, and implementation that relate to routine administrative activities (7 CFR 1b.3(a)(1)).

Civil Rights Impact Analysis: NRCS has determined through a Civil Rights Impact Analysis that this final rule discloses no disproportionately adverse impacts for minorities, women, or persons with disabilities. This final rule presents no issues that our analysis identified as posing a risk of adverse impacts. Outreach and communication strategies are in place to ensure all producers will be provided the same information to allow them to make informed compliance

decisions regarding the use of their lands that will affect their participation in USDA programs. NRCS conservation programs apply to all persons equally, regardless of their race, color, national origin, gender, sex, or disability status; therefore, the conservation program rules portend no adverse civil rights implications for women, minorities, and persons with disabilities.

Paperwork Reduction Act: Section 1246 of the Food Security Act of 1985 (the 1985 Act), Pub. L. 99-198, states that implementation of programs authorized by Title XII of the 1985 Act be made without regard to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). NRCS is not reporting recordkeeping or estimated paperwork burden associated with this final rule for programs administered under Title XII of the 1985 Act. The non-Title XII programs, HFRP and the Emergency Watersheds Protection Program (EWPP), utilize forms that have previously been approved for use, and OMB assigned the control number 0578-0013. The changes made by this final rule do not affect the burden previously reported under 0578-0013.

Government Paperwork Elimination Act: NRCS is committed to compliance with the Government Paperwork Elimination Act and the Freedom to E-File Act, which require Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. To better accommodate public access, NRCS developed an online application and information system for public use.

Executive Order 13175: This final rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have been substantial direct effects on one or more Indian Tribes, on the relationship between the

Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. NRCS has assessed the impact of this final rule on Indian Tribes and determined that this rule does not have Tribal implications that require Tribal consultation under Executive Order 13175. The rule neither imposes substantial direct compliance costs on Tribal governments nor preempts Tribal law. The 2014 Act change addressed by this final rule that impact participation by Indian Tribes was limited to expanding land eligibility under HFRP to include trust lands. The agency has developed an outreach/collaboration plan that it has been implementing as it develops its Farm Bill policy. If a Tribe requests consultation, NRCS will work with the Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions, and modifications identified herein are not expressly mandated by Congress.

Unfunded Mandates Reform Act of 1995: Title II of the Unfunded Mandates Reform Act (UMRA) of 1995, 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 of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA requires NRCS to prepare a written statement, including a cost benefit assessment, for proposed and final rules with “Federal mandates” that may result in such expenditures 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. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132: NRCS considered this final rule in accordance with Executive Order 13132, issued August 4, 1999. NRCS determined that the final rule conforms with the federalism principles set out in this Executive Order, would not impose any compliance costs on the States, and would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. NRCS concludes that this final rule does not have federalism implications.

Federal Crop Insurance Reform and USDA Reorganization Act of 1994: Pursuant to section 304 of the Federal Crop Insurance Reform Act of 1994, (Pub. L. 103–354), USDA has estimated that this regulation will not have an annual impact on the economy of \$100 million in 1994 dollars; therefore, is not a major regulation. A risk analysis was not conducted.

Executive Order 13211: This rule is not a significant regulatory action subject to Executive Order 13211, Energy Effects.

Small Business Regulatory Enforcement Fairness Act (SBREFA): This rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act of 1996, (Pub. L. 104–121, SBREFA). Neither NRCS nor CCC is required to delay the effective date for 60 days from the date of publication to allow for congressional review. Accordingly, this rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Background: On August 1, 2014, NRCS published an interim final rule with request for comments in the Federal Register (79 FR 44635) that amended a number of agency regulations to implement mandatory changes made by the 2014 Act. The interim rule made the following changes to existing conservation program rules:

- NRCS amended 7 CFR 610.24 to update the list of Title XII programs to which the State Technical Committee Rule applies.
- NRCS amended HFRP regulation at 7 CFR 625.2 to adjust the regulatory definition of “acreage owned by Indian Tribes” to conform with the new statutory definition of the term in Section 502(e)(3) of the Healthy Forests Restoration Act, as amended by section 8203 of the 2014 Act.
- NRCS amended HFRP and the Watershed Operations regulation at 7 CFR part 622 to incorporate their status as programs used in the implementation of RCPP.
- NRCS updated subpart C of the TSP rule at 7 CFR part 652 to designate the Deputy Chief for Programs as the decertification official for TSPs.
- NRCS removed the regional equity rule, formerly at 7 CFR part 662, from the Code of Federal Regulations.
- NRCS amended the rule for VPA-HIP at 7 CFR part 1455 to reflect the transfer of the program’s administration from the Administrator of the Farm Service Agency (FSA) to the Chief of NRCS.
- NRCS amended the rule governing the AMA Program (7 CFR Part 1465) to maintain consistency with the EQIP program.

NRCS solicited comments on the interim final rule for 60 days ending September 30, 2014. Six comments were received on the rule. Overall, the commenters supported the changes made by the interim rule. This final rule makes only technical and clarifying changes to language adopted in the interim rule, and adds one additional mandatory change to reflect a change made by the 2014 Act to EWPP implementation of floodplain easements.

Summary of Comments: NRCS received two negative comments, two generally positive comments, and one comment related to the implementation of EQIP which did not pertain to any amendments made by this rule. A sixth comment received was unrelated to this or any other NRCS conservation program. The negative comments expressed opposition to the funding of VPA-HIP and HFRP. Two commenters were generally supportive of the interim rule, with one of the comments recommending that NRCS strengthen the importance of the State Technical Committees. NRCS has done so in the development of its regulations to implement the changes made by the 2014 Act. The EQIP comment related to non-lethal deterrents and strategies to reduce predator-livestock conflict and this comment will be considered with the comments submitted to the EQIP interim rule published December 12, 2014.

Additional Clarification Added to VPA-HIP (7CFR part 1455): VPA-HIP is authorized by section 1240R of the 1985 Act. VPA-HIP provides, within funding limits, grants to State and Tribal governments to encourage owners and operators of privately held farm, ranch, and forest land to voluntarily make that land available for access by the public for wildlife-dependent recreation, including hunting and fishing under programs administered by State and Tribal governments. VPA-HIP is not an entitlement program and no grant will be made unless the application is acceptable to CCC. The program was originally delegated to the Administrator of FSA to administer on behalf of CCC. The program is now delegated to the Chief of NRCS, and NRCS incorporated the necessary administrative changes in the interim rule. NRCS announced its Availability of Program Funding on May 1, 2014, to implement VPA-HIP in fiscal year 2014. During its first round of grant proposals, NRCS received requests for funding from Indian Tribes which required confirmation regarding whether Tribal lands would be considered private lands

for the purposes of VPA-HIP. This final rule clarifies that governmental and Tribal lands are considered private lands for the purposes of VPA-HIP when such lands are part of a private operation of a private individual or legal entity.

Discussion of EWPP (7 CFR part 624): NRCS purchases floodplain easements to restore, protect, maintain, and enhance the functions of the floodplain; conserve natural values including fish and wildlife habitat, water quality, flood water retention, ground water recharge, and open space; reduce long-term Federal disaster assistance; and safeguard lives and property from floods, drought, and the products of erosion. Section 382 of the Federal Agriculture Improvement and Reform Act of 1996 amended EWPP, 16 USC 2203, to authorize the purchase of floodplain easements (FPE) as an emergency measure on lands that qualify for EWPP assistance. EWPP FPEs are administered under 7 CFR part 624.

Prior to the 2014 Act, the EWPP-FPE statute did not address modification or termination of FPEs; therefore the regulations at 7 CFR part 624 specified that FPEs could not be modified or terminated. Section 2206 of the 2014 Act provided such authority, and NRCS is removing this prohibition from EWPP regulations.

List of Subjects

7 CFR Part 610

Soil conservation, State Technical Committees, technical assistance, and water resources.

7 CFR Part 622

Watershed projects, watershed protection, and flood prevention.

7 CFR Part 624

Disaster assistance, floodplain easement, flooding, imminent threat, natural disaster, and watershed impairment.

7 CFR Part 625

Administrative practice and procedure, agriculture, and soil conservation.

7 CFR Part 652

NRCS, soil conservation, and technical assistance.

7 CFR Part 662

Administrative practice and procedure, agriculture, and soil conservation.

7 CFR Part 1455

Agriculture, animals, environmental protection, fishing, forests and forest products, grant programs, hunting, Indians, Indians-land, natural resources, recreation and recreation areas, rural areas, State and local governments, and wildlife.

7 CFR Part 1465

Conservation contract, conservation plan, conservation practices, and soil and water conservation.

Accordingly, the interim rule amending 7 CFR parts 610, 622, 625, 652, 662, 1455, and 1465 which was published at 79 FR 44635 on August 1, 2014, is adopted as a final rule with the following changes:

PART 624—EMERGENCY WATERSHED PROTECTION

1. The authority citation for part 624 continues to read as follows:

AUTHORITY: Sec. 216, P.L. 81–516, 33 U.S.C. 701b–1; Sec. 403, P.L. 95–334, as amended, 16 U.S.C. 2203; 5 U.S.C. 301;

2. Amend §624.10 by revising paragraph (c) to read as follows:

§ 624.10 Floodplain easements.

* * * * *

(c) The Chief of NRCS may modify or terminate an easement if, pursuant to 16 U.S.C. 2203(b), the Chief determines the modification or termination is in the public interest and will address a compelling public need for which there is no practicable alternative.

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PART 1455—VOLUNTARY PUBLIC ACCESS AND HABITAT INCENTIVE PROGRAM

3. The authority citation for part 1455 continues to read as follows:

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

4. Section 1455.2 is amended in paragraph (b) by adding a definition for “legal entity” and revising the definition of “privately-held land” to read as follows:

§ 1455.2 Definitions.

* * * * *

Legal entity means any entity created under Federal or State law, excluding: (a) a local, State or Federal government or political subdivision or agency of such government; and (b) a Tribal government.

Privately-held land means farm, ranch, or forest land that is owned or operated by a person or legal entity.

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Signed this 1st day of April, 2015 in Washington, D.C.

Jason A. Weller,
Vice President, Commodity Credit Corporation,
Chief, Natural Resources Conservation Service.

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