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DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 718

Commodity Credit Corporation

7 CFR Part 1410

RIN 0560-AI30

Conservation Reserve Program

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

ACTION: Interim rule.

SUMMARY: This rule amends the Conservation Reserve Program (CRP) regulations to implement provisions of the Agricultural Act of 2014 (the 2014 Farm Bill). This rule specifies eligibility requirements for enrollment of grassland in CRP and adds references to veteran farmers and ranchers to the provisions for Transition Incentives Program contracts, among other changes. The provisions in this rule for eligible land primarily apply to new CRP offers and contracts. For existing contracts, this rule provides additional voluntary options for permissive uses, early terminations, conservation and land improvements, and incentive payments for tree thinning. This rule also makes conforming changes to provisions applicable to multiple Farm Service Agency (FSA) and Commodity Credit Corporation (CCC) programs, which include CRP, administered by

FSA, including acreage report requirements, compliance monitoring, and equitable relief provisions.

DATES: Effective Date: This rule is effective [**insert date of publication in the FEDERAL REGISTER**].

Comment Date: We will consider comments that we receive by [**insert date 60 days after publication in the FEDERAL REGISTER**].

ADDRESSES: We invite you to submit comments on this interim rule. In your comment, please specify RIN 0560-AI30 and include the volume, date, and page number of this issue of the Federal Register. You may submit comments by any of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- Mail, Hand Delivery, or Courier: Director, Conservation and Environmental Programs Division (CEPD), U.S. Department of Agriculture (USDA) FSA CEPD, Mail Stop 0513, Room 4709-S, 1400 Independence Ave, SW, Washington, DC 20250-0513.

All written comments will be available for inspection online at www.regulations.gov and at the mail address listed above between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays. A copy of this interim rule is available through the FSA home page at <http://www.fsa.usda.gov/>.

FOR FURTHER INFORMATION CONTACT: Beverly J. Preston, CRP Program Manager, telephone: (202) 720-9563. Persons with disabilities who require alternative

means for communication should contact the USDA Target Center at 202-720-2600 (voice).

SUPPLEMENTARY INFORMATION:

Overview of This Rule

This rule amends CRP regulations in 7 CFR part 1410 to implement changes required by the 2014 Farm Bill (Pub. L. 113-79) and makes additional discretionary changes that are needed to clarify eligibility requirements and terms. It also makes discretionary and technical changes to 7 CFR part 718 that are relevant to CRP implementation. This document first provides background information on CRP, then discusses the changes to the CRP regulations, followed by a discussion of the changes to the part 718 regulations.

CRP Background and CRP Signups

The purpose of CRP is to cost-effectively assist producers in conserving and improving soil, water, and wildlife, restoring wetlands, improving other natural resources, and addressing issues raised by State, regional, and national conservation initiatives by converting environmentally sensitive cropland and marginal pastureland from the production of agricultural commodities to a long-term vegetative cover, or to improve conditions of grassland. CRP is administered by FSA on behalf of CCC. Since its inception in 1985, CRP has proven to be one of the largest and most successful conservation programs in USDA history. In exchange for annual rental payments, participating farmers and ranchers agree to remove environmentally sensitive land from agricultural production and establish conservation covers comprised of grasses, legumes,

forbs, shrubs and tree species that will improve environmental health by preventing soil erosion, improving air and water quality, and enhancing wildlife habitat. In addition, participants with suitable land may restore wetlands and establish shallow water areas for wildlife. Enrollment of eligible grassland in CRP will result in adoption of sustainable grazing practices and preservation of wildlife habitat. Participants also receive cost-share payments and other one-time incentive payments for certain practices to establish, maintain, and manage the conservation covers throughout 10 to 15 year CRP contracts. A wide range of conservation practices may be enrolled under CRP, including but not limited to, introduced or native grasses and legumes, hardwood trees, wildlife habitat, grass waterways, filter strips, riparian buffers, wetlands, rare and declining habitat, upland bird habitat, longleaf pine, duck nesting habitat, and pollinator habitat.

There are three major types of CRP signups: general, continuous, and grassland. Each of the three types has specific enrollment provisions, as described below. The grassland type is a new type added by the 2014 Farm Bill. For all signups, potential participants must submit an offer for enrollment at the local FSA county office or USDA service center.

Enrollment through general signup is based on a competitive offer process during designated signup periods. The general signup occurs when the Secretary of Agriculture announces USDA will accept general signup offers for enrollment. Offers from potential program participants are ranked against each other at the national level. Ranking is based on the environmental benefits expected to result from the proposed conservation practices and expected costs. Each offer is assigned an Environmental Benefit Index (EBI) score depending on ranking factors designed to reflect the expected environmental benefits and

costs. The EBI ranking system is specified in detail in the CRP handbook. These EBI factors include wildlife habitat benefits, water quality benefits, farm benefits due to reduced erosion, air quality benefits, benefits that last beyond the contract period, per acre expected costs, and local preference factors for certain benefits. In a general signup, the offer process is competitive and not all offers will necessarily rank high enough to be selected for CRP.

For practices and land with especially high environmental value, enrollment through continuous signup is available year-round without ranking periods. The continuous signup is focused on environmentally sensitive land and offers are not ranked against each other. Land eligible for continuous signup includes, but is not limited to, agricultural land with a high erodibility index; land in riparian areas that border rivers, streams, and lakes; land suitable for wetland restoration; and certain land to be dedicated to other specialized conservation measures. Subject to the acreage caps allocated to States, all continuous signup offers that meet the eligibility requirements are accepted.

Enrollment through the new grassland signup authorized by the 2014 Farm Bill will be administered on a separate continuous signup basis, and offers will be evaluated periodically and ranked. For grassland signup, this rule specifies the applicable new categories of eligible land and new grassland contract provisions. Eligible grassland include land that contain forbs or shrubland (including improved rangeland and pastureland) for which grazing is the predominant use. Up to 2 million acres may be enrolled in CRP as grassland.

This rule does not change the basic administrative structure and nature of CRP.

Overview of Changes to CRP Regulations

The 2014 Farm Bill reduced the CRP acreage enrollment cap and made several changes to CRP. For example, it mandated that non-easement functions of the repealed Grassland Reserve Program be carried out under CRP, with enrollment of up to 2 million acres authorized. These enrollments count against the CRP acreage cap. In addition, the 2014 Farm Bill mandates changes to routine, prescribed, and emergency grazing, managed harvesting frequency, tree thinning payments, and other provisions.

This rule implements the changes to CRP required by the 2014 Farm Bill. These changes include revised permissive use provisions for emergency harvesting and grazing, and other commercial uses on CRP land. This rule also establishes a penalty-free early CRP contract termination opportunity in fiscal year (FY) 2015 for contracts that have been in effect for at least 5 years and meet certain environmental criteria. It specifies that CRP participants can make certain conservation and land improvements for economic use in the final year of the CRP contract that facilitate protection of enrolled land after contract expiration, and establishes a new type of incentive payment to encourage participants to perform tree thinning and related measures on CRP land. As discussed earlier, it also adds references to veteran farmers and ranchers to the Transition Incentives Program, and includes provisions to reflect the new eligibility requirements for grassland in CRP. This rule also includes the following discretionary provisions to clarify requirements where the 2014 Farm Bill did not define terms or otherwise provided FSA discretion in implementation:

- The “infeasible to farm” provision allows enrollment of the remainder of a field in which CRP practices other than buffers are enrolled on at least 75

percent of the acres in the field, if the remaining land is “infeasible to farm;”

- Grasslands are now eligible for CRP and FSA may enroll up to 2 million acres;
- Up to \$10 million in incentive payments may be made to encourage tree thinning and other measures that improve the environmental performance of CRP tree plantings;
- Land may be transferred from CRP to the Agricultural Conservation Easement Program (ACEP); and
- The amount of cropland (that is not in a National Conservation Priority Area) that can be in a State Conservation Priority Area (CPA) was reduced from 33 percent to 25 percent.

The changes to the CRP regulations are discussed in this document in the order that they appear in 7 CFR part 1410.

Many of the changes to CRP required by the 2014 Farm Bill have already been implemented through an extension of authorization published June 5, 2014 (79 FR 32435-32436). Specifically, the extension announced the continuation of continuous signup, 2014 Transition Incentives Program, and early contract termination opportunities in FY 2015. This rule implements the remaining provisions required by the 2014 Farm Bill, including the new grassland eligibility provisions and the revisions to permissive uses, as well as the discretionary changes.

Definitions

This rule makes the following changes to the definitions specified in § 1410.2:

The rule adds a new definition for the new ACEP authorized by the 2014 Farm Bill. The 2014 Farm Bill allows USDA to modify a CRP contract to allow a participant to transfer CRP land into ACEP.

The rule adds a new definition for “common grazing practices” that applies to the new grassland enrollments. For enrollments of eligible grassland, section 2004 of the 2014 Farm Bill allows the Secretary to permit common grazing practices, including maintenance and necessary cultural practices, on the enrolled land in a manner that is consistent with maintaining the viability of grassland, forb, and shrub species appropriate to that locality.

This rule modifies the definition of “conservation plan” to include provisions for grassland enrollments.

This rule clarifies that “Erodibility Index (EI)” means that FSA uses the higher of the erodibility from water or wind.

This rule adds definitions for “forb,” “grassland,” “improved rangeland or pastureland,” “pastureland,” “rangeland,” and “shrubland” because they are relevant for grassland enrollments.

This rule revises the definition of “infeasible to farm” to add discretion for the Deputy Administrator to determine that land is infeasible to farm for reasons in addition to the piece of land being too small or isolated to be economically viable.

This rule adds a new definition of “nesting season” to reflect the 2014 Farm Bill requirement that permitted activities on CRP land must consider certain categories of bird nesting seasons.

This rule adds a new definition of “veteran farmer or rancher” as specified in the 2014 Farm Bill.

This rule removes the following definitions that are no longer used in the CRP regulations: “cropped wetlands,” “farmed wetlands,” “Water Bank Program (WBP),” and “wetlands farmed under natural conditions.” This rule also removes definitions of “beginning farmer or rancher,” and “limited resource farmer or rancher” from 7 CFR part 1410, because those terms are defined in 7 CFR part 718, which is referenced in 7 CFR part 1410. It removes terms including “merchantable timber,” “present value,” and “private non-industrial forest land” that were only needed to implement the Emergency Forestry Conservation Reserve Program, which the 2014 Farm Bill repealed.

Maximum County Acreage

Section 1410.4, “Maximum County Acreage” specifies that acreage placed in CRP and the Wetlands Reserve Program (WRP) cannot exceed 25 percent of the total cropland in a county. This rule revises that section to specify that cropland enrolled under WRP or ACEP wetland reserve easements, as applicable, is included with CRP cropland as part of the maximum county acreage limits. These changes are required for consistency with the 2014 Farm Bill. This rule does not change the existing waiver provisions in this section that allow the 25 percent limit to be exceeded in some circumstances.

Eligible Persons

Section 1410.5 “Eligible Persons” is amended to add references to veteran farmers and ranchers that are required by the 2014 Farm Bill. This rule also removes a redundant provision from this section concerning ownership or operation of the land for at least 12 months prior to submitting an offer for CRP.

Eligible Land

This adds new provisions to § 1410.6 “Eligible Land” to reflect changes required by the 2014 Farm Bill. As provided for in the existing CRP regulations, eligible land for CRP includes cropland with a history of production of tillable crops or marginal pastureland. The purpose of these eligibility requirements, which are not changing with this rule, is to ensure CRP is used to convert environmentally sensitive land to a long-term environmentally beneficial cover. As part of an effort to consolidate the USDA conservation programs, the 2014 Farm Bill adds grassland as a category of eligible land for CRP, and ends authorization for the Grassland Reserve Program.

This rule amends the dates of the cropping history required for certain cropland to be eligible for CRP. Previously, eligible cropland must have been planted or considered planted for 4 of the 6 years during the period of 2002 through 2007. This rule changes the relevant cropping history period to 2008 through 2013.

This rule adds additional provisions regarding infeasible-to-farm land eligibility, as required by the 2014 Farm Bill. Specifically, it adds eligibility for land in a portion of a field not enrolled in CRP if more than 75 percent of the land in the field is enrolled as a

conservation practice other than a buffer or filterstrip practice, and the remainder of the field is determined to be infeasible to farm.

This rule removes provisions for eligible land concerning scour erosion, cropped wetland and associated acres, and land associated with non-cropped wetlands. These discretionary changes are needed for clarity and consistency with current policy. This rule also clarifies that land on which environmental measures are already required to be taken by State, local, or Tribal laws is ineligible for CRP.

Duration of Contracts

This rule amends § 1410.7, “Duration of Contracts,” to clarify that continuous and general signup contracts can be between 10 years and 15 years in length. The rule also specifies that grassland signup contracts will be 15 years in length. The additional provision for grassland contracts is required by the 2014 Farm Bill; the other changes are technical clarifications that do not change the existing eligible land or contract requirements.

The current policy on contract extensions is not changing with this rule. Contracts can be extended, but the total contract period including the extension(s) cannot exceed 15 years in length. For example, a 10 year contract can be extended for 1 to 5 years, but a contract currently in year 13 could only be extended for 1 or 2 years. In the case of a contract extension, existing contract terms are extended, except when new mandatory requirements apply, such as when AGI eligibility requirements for CRP are changed by the 2014 Farm Bill.

CPA

This rule modifies § 1410.8, “Conservation Priority Areas,” to reduce the total acreage within a State that can be approved for inclusion in a state CPA from 33 percent to 25 percent of the cropland not in a designated CRP national CPA. This discretionary change will help to ensure the most suitable, highest priority land is enrolled. The 2014 Farm Bill also removed some named specific CPAs, but because those CPAs were not named in the regulations, implementing that change does not require a change to the regulations.

Conversion to Trees

This rule removes § 1410.9, “Conversion to Trees,” because that section is obsolete. It only applied to CRP contracts that began before November 28, 1990.

Restoration of Wetlands and Farmable Wetlands Program

Section 1410.10, “Restoration of Wetlands,” is amended to include references to wetland reserve easements under ACEP. This rule modifies § 1410.11 “Farmable Wetlands Program” to specify that a constructed wetland that is developed to receive surface and subsurface flow from row crop agricultural production is eligible for enrollment. This rule also specifies that the total enrollment cap under farmable wetlands is reduced from 1 million acres to 750,000 acres. Both these changes are required by the 2014 Farm Bill.

Emergency Forestry Program

Section 2702 of the 2014 Farm Bill repeals authority for Emergency Forestry CRP enrollment; this rule removes § 1410.12, “Emergency Forestry Program,” to reflect this change. As noted earlier, the definitions used only in this section have also been removed from the Definitions section. The end of authorization for new Emergency Forestry contracts, and the removal of the regulations for Emergency Forestry enrollments, does not change existing Emergency Forestry contracts.

Grassland Enrollments

The 2014 Farm Bill terminates authority for new enrollments under the Grassland Reserve Program (7 CFR part 1415) but also provides new authority for enrollment of certain grassland into CRP. Previously, only cropland of various types and marginal pastureland was eligible for enrollment in CRP. This rule adds new section on grassland enrollments in § 1410.13, with conforming changes that add grassland provisions to § 1410.23, “Eligible Practices,” § 1410.30, “Signup and Offer Types,” § 1410.31, “Acceptability of Offers,” and § 1410.40, “Cost Share Payments.”

In general, expiring Grassland Reserve Program lands are authorized to be enrolled in CRP, as well as grassland that was not in the Grassland Reserve Program but meet the provisions of § 1410.6 for eligible grassland. Grassland previously enrolled in the Grassland Reserve Program will continue to be subject to 7 CFR part 1415 for existing contracts and easements that have not expired. The 2014 Farm Bill sets an acreage cap of 2 million acres on the new grassland type of enrollment.

CRP Conservation Plan

This rule modifies § 1410.22, “CRP Conservation Plan,” to add provisions and references for the new grassland contracts. It also contains other minor edits, including adding a reference to forest stewardship plans.

Acceptability of Offers

This rule amends § 1410.31, “Acceptability of Offers,” to establish new provisions for the grassland offer acceptance process. In ranking and evaluating grassland sign-up offers, FSA will consider various factors, including, but not limited to, whether the offer includes expiring CRP or Grassland Reserve Program land, row crop to grassland conversion, multi-species cover, livestock grazing operations, and State priority enrollment criteria and focus areas.

Contract Modifications

This rule adds references to veteran farmers to the provisions for Transition Incentives Program contracts, as required by the 2014 Farm Bill. The 2014 Farm Bill also adds discretion for FSA to modify or terminate contracts to allow transition of CRP lands into other Federal or State conservation programs, as is reflected in this rule. This rule specifies that CRP participants who terminate CRP contracts in order to participate in ACEP or other Federal or State easement programs are generally not required to refund CRP payments or interest, or pay liquidated damages to the CCC. However, participants will be required to repay CRP Signing Incentive Payments and Practice

Incentive Payments when enrolling CRP land in wetlands reserve easements under ACEP.

The 2014 Farm Bill allows contract modifications for resource conserving uses in the final year of the contract. This rule adds provisions that allow an owner or operator in the final year of the CRP contract to make land improvements for economic use, provided that those land improvements maintain protection of the land after expiration of the contract and are conducted in a manner consistent with an approved CRP conservation plan. Such land enrolled in resource conserving use will not be eligible to be re-enrolled in CRP for 5 years following expiration of the contract. The rental payment for that last year of the CRP contract during which resource conserving use land improvements are implemented will be reduced by an amount commensurate with the economic value derived from practice implementation.

Annual Rental and Incentive Payments

This rule amends the provisions in § 1410.42, “Annual Rental and Incentive Payments,” to reflect the incorporation of grassland signup and tree thinning incentives. The 2014 Farm Bill authorizes CCC to provide incentives for tree thinning to improve resource conditions, primarily wildlife habitat enhancement of CRP lands established to trees.

Grassland rental rates will be based on levels not to exceed 75 percent of the estimated grazing value of the land, as required by the 2014 Farm Bill. Tree thinning incentive payments to encourage landowners and operators to implement forest

management practices that improve resource condition or enhance wildlife habitat cannot exceed 150 percent of the total cost of the practice installation.

This rule also clarifies provisions for cropland soil rental rates to better reflect that these rates are based on the relative non-irrigated cropland productivity of soils within a county using soil productivity data and prevailing county average cash rental estimates for non-irrigated cropland. This rule also clarifies that marginal pastureland rental rates are based on estimates of the prevailing rental values of marginal pastureland in riparian areas. These clarifications are discretionary.

Section 1410.42 specifies a \$50,000 per fiscal year payment limit on CRP rental payments, which is not changing with this rule because the 2014 Farm Bill does not change the payment limits for CRP.

Average Adjusted Gross Income (AGI) Limitation

Section 1605 of the 2014 Farm Bill establishes income limitations that apply to 2015 and subsequent crop, program, or fiscal year benefits for programs in Title II of the 2014 Farm Bill, which includes CRP. FSA previously implemented these limitations in 7 CFR part 1400 through a final rule published on April 14, 2014 (79 FR 21086–21118). This rule makes a conforming change to § 1410.44 to reflect the new AGI limits. The 2014 Farm Bill reduces the average AGI limitation for CRP from \$1,000,000 to \$900,000.

Previously, there was a waiver to the AGI limit for conservation programs if at least 66.66 percent of the participant's income was from farming, or on a case-by-case basis for other reasons to protect environmentally sensitive land of special significance.

The AGI waivers for conservation practices are not reauthorized in the 2014 Farm Bill; therefore, this rule removes the waiver provisions in § 1410.44 to reflect this change.

Permissive Uses

CRP land uses are limited to the list of uses specified in § 1410.63, “Permissive Uses.” The intent is to ensure that CRP land is not used for activities that would tend to defeat the conservation purposes of CRP, while allowing limited activities that are consistent with CRP goals, such as grazing to control invasive species. Permissive uses must be consistent with the conservation of soil, water quality, and wildlife habitat, including habitat during the nesting season for certain categories of birds in the area. To achieve this goal, this rule adds and revises provisions for permissive uses as required by the 2014 Farm Bill. In general, these provisions include new restrictions and payment reductions related to harvesting, grazing, and other commercial land uses. There are also new grazing, haying, mowing, harvesting, and fire prevention permissive uses that apply only to the new grassland signup type.

Wind turbines are permitted on CRP land, provided that wind turbines are installed in numbers and locations as determined appropriate by CCC considering the location, size, and other physical characteristics of land and the extent to which the land contains listed threatened or endangered wildlife and wildlife habitat, and the purposes of CRP. Wind turbines are not a new permissive use, but it is slightly revised by the 2014 Farm Bill, which adds the provision about threatened or endangered wildlife and wildlife habitat.

This rule modifies the provisions for customary forestry maintenance activities to make an incentive payment to encourage proper thinning and other practices to improve the condition of resources, promote forest management, or enhance wildlife habitat on the land. These are consistent with the 2014 Farm Bill requirements.

No barrier fencing or boundary limitation can be established or maintained that prohibits wildlife access to or from the CRP acreage unless required by State law as part of any permissive use. This is a discretionary clarification that is consistent with 2014 Farm Bill requirements that permissive uses be consistent with the conservation of wildlife habitat.

This rule amends the provisions for managed harvesting and other commercial use including managed harvesting of biomass, to reflect the payment reduction of not less than 25 percent and the limitation that the activity occur at least every 5 years but not more than once every 3 years, as specified in the 2014 Farm Bill.

This rule modifies the provisions for routine grazing to be consistent with the 2014 Farm Bill restriction on routine grazing to not more than once every 2 years, with a payment reduction of not less 25 percent unless CRP participant is a beginning farmer or rancher.

The 2014 Farm Bill eliminates the payment reduction for emergency haying, emergency grazing, or other commercial use of the forage on the land in response to drought, flooding, or other emergency. This rule amends § 1410.63 to reflect this change.

Language is added to § 1410.63 to clarify that there is no payment reduction for harvesting, grazing, or other commercial use of the forage on the land in response to a

drought, flooding, or other emergency, when conducted consistent with an approved CRP conservation plan, irrespective of whether the harvested material is used or sold by the contract holder.

This rule specifies a permissive use for grazing of program acreage that has been established to vegetative buffers incidental to agricultural production adjacent to the buffers, provided the use does not destroy the permanent vegetative cover, in exchange for a 25 percent payment reduction for the land being grazed. This is a clarification of the existing “incidental grazing” use that was already permitted as a type of grazing use but has not previously been specified in the regulations as a separate permissive use. Incidental grazing, which requires the payment reduction, does not include prescribed grazing to control kudzu or other invasive species. Prescribed grazing to control invasive species also requires a payment reduction, except that a beginning farmer or rancher may conduct prescribed grazing without a payment reduction.

This rule specifies the permissive activities under the new grassland enrollment component of CRP, which include common grazing practices; haying, mowing, or harvesting outside of nesting season; wildfire considerations; grazing-related activities, such as fencing; and other activities as determined by the Deputy Administrator.

Transition Incentives Program

This rule adds the term “veteran” throughout § 1410.64, “Transition Incentives Program,” to reflect that eligibility under this program includes veteran farmers and ranchers in addition to beginning and socially disadvantaged farmers and ranchers. The definition of “veteran” as specified in the 2014 Farm Bill and in this rule specifies that to

be eligible for the CRP Transition Incentives Program, the veteran must have farmed not more than 10 years. Therefore, while the addition of the term “veteran” will improve our outreach efforts to veterans and makes it more clear that they are eligible for the Transition Incentives Program, the eligible veterans would already have been eligible as beginning farmers.

“Preparing to plant a crop” has been added as an appropriate conservation and land improvement practice during the last year of the CRP contract that is being transitioned to a beginning, veteran, or socially disadvantaged farmer or rancher under the Transition Incentives Program. This additional improvement practice is specified in the 2014 Farm Bill.

Miscellaneous Conforming and Editorial Changes in CRP Regulations

In addition to the changes required by the 2014 Farm Bill and the substantive discretionary changes discussed above, this rule makes a number of nonsubstantive changes to make the CRP regulations clear and consistent. For example, where appropriate, references to “CCC” have been replaced with “Deputy Administrator” to better reflect the office responsible for applicable determinations and decisions. “Shall” has been replaced with “will” or “must” for plain language and to add clarity to requirements. Obsolete provisions are removed in 7 CFR part 1410.

Provisions Applicable to Multiple Programs

This rule amends FSA regulations in 7 CFR part 718 “Provisions Applicable to Multiple Programs” that govern base acres and acreage reports for CRP and certain other

FSA commodity programs and CCC programs operated by FSA. The statutory authority for the regulations in 7 CFR part 718 come from the 2014 Farm Bill, the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill, Pub. L. 110-246) and the Farm Security and Rural Investment Act of 2002 (Pub. L. 107-171).

As discussed previously, the purpose of CRP is to cost-effectively assist producers in conserving and improving soil, water, wildlife, restoring wetlands, improving other natural resources and addressing issues raised by State, regional, and national conservation initiatives by converting environmentally sensitive cropland and marginal pasture land from the production of agricultural commodities to a long-term vegetative cover. Enrollment of eligible grassland in CRP will result in adoption of sustainable grazing practices and preservation of wildlife habitat. To be eligible for CRP, cropland must have a cropping history for 2008 through 2013, as specified in this rule. Many FSA programs, particularly the Agricultural Risk Coverage (ARC) and Price Loss Coverage (PLC) programs authorized by the 2014 Farm Bill, specify that eligible land includes land that has base acres, which are cropland acres with a cropping history for certain years dating back to the 1980s. When cropland is enrolled in CRP, the base acres on a farm that exceed the farm's remaining cropland that is not devoted to CRP must be reduced to reflect the CRP enrollment. In that case, the base acres are voluntarily reduced and the base acres reduced are protected ("put on hold") for that farm while the land is enrolled in CRP. To ensure that producers are able to transition land with base acres to and from CRP, and preserve eligibility of that land for other FSA programs after the CRP contract ends, it is necessary to clarify a number of terms in part 718 that are relevant to cropping histories, production records, and base acres for multiple programs.

In general, the amendments to part 718 in this rule are consistent with current agency practice and merely clarify the regulations without changing FSA policy or practice.

This rule revises the term “base acres” to remove obsolete references and replace them with references to the regulations for the new programs authorized by the 2014 Farm Bill. It adds definitions for “contiguous,” “contiguous county,” and “contiguous county office” for use in various programs authorized under the 2014 Farm Bill including the CRP, the Cotton Transition Assistance Program (CTAP), ARC and PLC, disaster assistance programs, and the Noninsured Crop Disaster Assistance Program (NAP). The addition of the definitions of “contiguous,” “contiguous county,” and “contiguous county office” are necessary to clarify the policy concerning changing a farm’s administrative county. The addition of the term “common land unit (CLU)” is needed because FSA now uses CLU numbers instead of field numbers for many production and acreage reports. The rule adds new definitions for “double cropping,” and “subsequent crop,” which are relevant to the cropping history requirements for multiple programs. The rule amends the definition of “entity” to be consistent with the definition in 7 CFR part 1400. This rule makes clarifying changes to the definition of “owner.” The intent of these amendments to the definitions is to have clear and consistent regulations and to make it clear to producers what they must do to preserve the eligibility of land for multiple programs, including CRP.

This rule removes obsolete provisions in § 718.3, “State Committee Responsibilities,” regarding county rates for measurement services. The State Committee does not set measurement service rates.

This rule amends § 718.9 regarding signature requirements to replace the reference to “husband” and “wife” with a reference to “spouse.” It also changes the signature authority provisions to clarify the validity of documents that were previously acted on and approved by a county office or county committee, as required by section 1617 of the 2008 Farm Bill. These provisions have already been implemented, but were not in the regulations.

This rule amends § 718.102 to clarify the programs for which participants must submit acreage reports. It amends § 718.103 to clarify the requirements for documenting prevented planting. These are not new requirements; this reflects a discretionary decision to include detailed requirements previously in the handbooks in the regulations. This is needed to ensure that producers correctly document prevented planting, which is relevant to cropping history for the purposes of program eligibility for CRP and other programs.

This rule amends § 718.106, “Non-compliance and Acreage Reports,” to remove references to good faith or willful falsification. This is a program integrity issue to clarify that false acreage reports may result in program ineligibility, independent of motivation for the false report.

This rule amends § 718.112, “Redetermination,” to be consistent with current policy on when producers must submit requests for redetermination of crop acreage, appraised yield, or farm stored production.

This rule amends § 718.201, “Farm Reconstitution,” to be consistent with current policy, and to include references to land eligible for new programs authorized by the 2014 Farm Bill. This rule makes similar changes to § 718.205, “Substantive Changes in Farming Operation, and Changes in Related Legal Entities,” and § 718.206,

“Determining Farms, Tracts, Allotments, Quotas, and Bases When Reconstitution is Made by Division.” As discussed earlier, these changes are relevant to preserving base acres for a given farm as land is transitioned into CRP and back into other FSA programs. This rule also amends § 718.206 to specify that, within 30 days after a prescribed form, letter, or contract providing base acres is issued, owners of the reconstituted farm may request a different designation of base acres, so long as all the owners agree in writing to the designation.

This rule amends § 718.301, “Applicability,” by adding a new paragraph that clarifies that relief provisions are not a means by which persons can obtain a review of a program’s regulations or the agency’s interpretations of its own regulations. This is a discretionary clarification to clarify program integrity provisions that is consistent with current policy. Similar clarifying amendments are made to other sections in subpart D, “Equitable Relief from Ineligibility.” This rule amends § 718.306 to clarify that if a determination was in any way based on erroneous, innocent, or purposeful misrepresentation; false statement; fraud; or willful misconduct by or on behalf of the participant, the determination is not final. Another amendment clarifies that FSA will correct errors and incorrect decisions.

Miscellaneous Conforming and Editorial Changes to Part 718 Related to CRP

In addition, this rule makes minor plain language changes, such as replacing “shall” with “will,” to several sections of part 718. This rule removes obsolete provisions related to CRP referring to actions taken prior to the 2008 Farm Bill. The definition of

“agricultural commodity” is removed because the term is not used in the subpart in which it was defined.

Notice and Comment

In general, the Administrative Procedure Act (5 U.S.C. 553) requires that a notice of proposed rulemaking be published in the Federal Register and interested persons be given an opportunity to participate in the rulemaking through submission of written data, views, or arguments with or without opportunity for oral presentation, except when the rule involves a matter relating to public property, loans, grants, benefits, or contracts. Section 2608 of the 2014 Farm Bill requires that the programs of Title II be implemented by interim rules effective on publication with an opportunity for notice and comment.

Executive Orders 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 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Office of Management and Budget (OMB) designated this interim rule as significant under Executive Order 12866, “Regulatory Planning and Review,” and

therefore, OMB has reviewed this rule. The costs and benefits of this proposed rule are summarized below. The full cost benefit analysis is available on regulations.gov.

Clarity of the Regulation

Executive Order 12866, as supplemented by Executive Order 13563, requires each agency to write all rules in plain language. In addition to your substantive comments on this interim rule, we invite your comments on how to make the rule easier to understand. For example:

- Are the requirements in the rule clearly stated? Are the scope and intent of the rule clear?
- Does the rule contain technical language or jargon that is not clear?
- Is the material logically organized?
- Would changing the grouping or order of sections or adding headings make the rule easier to understand?
- Could we improve clarity by adding tables, lists, or diagrams?
- Would more, but shorter, sections be better? Are there specific sections that are too long or confusing?
- What else could we do to make the rule easier to understand?

Cost Benefit Analysis

The mandatory and discretionary changes to CRP specified in this rule are expected to have a minimal cost impact for CRP as a whole, although individual producers could experience measurable increases or decreases in financial and

environmental benefits. Incentive payments for tree thinning, Transition Incentives Program payments, and new permissive uses specified in this rule are expected to increase costs to the government by \$67 million for FY 2014 through 2018. That includes \$10 million for tree thinning, \$28 million for Transition Incentives Program payments, and \$29 million for rental payments that are no longer reduced for emergency haying and grazing. Enrolling grasslands is expected to reduce costs by \$31 million during FY 2014 through 2018, resulting in an estimated net overall cost of \$36 million for FY 2014 through 2018, an average of \$7.3 million per year.

The acreage cap for CRP specified in the 2014 Farm Bill is expected to reduce overall payments to producers (and costs to the government) for CRP by \$616 million total between FY 2014 and FY 2018 (\$2.8 billion between FY 2014 and FY 2023). However, that cost reduction is not the result of the specific provisions in 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 whenever an agency is required by the Administrative Procedure Act or any other law to publish a proposed rule, 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 the Secretary of Agriculture and FSA are not required by any law to publish a proposed rule for this rulemaking initiative. CCC is required by section 2608 of the

2014 Farm Bill to issue an interim rule effective on publication with an opportunity for comment.

Environmental Evaluation

In accordance with the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), FSA prepared a Supplemental Programmatic Environmental Impact Statement (SPEIS) for the changes to CRP proposed as a result of the mandatory provisions of the 2014 Farm Bill. The CRP Final SPEIS was completed as required by NEPA, the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), and FSA’s NEPA regulations for compliance with NEPA (7 CFR part 799).

FSA provided notice of intent (NOI) to prepare the CRP SPEIS in the Federal Register on November 29, 2013 (78 FR 71561–71562), and requested public comment on the preliminary alternatives for analyzing changes to CRP that were proposed as a result of the mandatory provisions of the 2014 Farm Bill. The Draft SPEIS public comment period began with a Notice of Availability (NOA) published in the Federal Register on July 15, 2014 (79 FR 41247–41249), and public meetings were held in several locations across the country in July and August, 2014. The Final SPEIS public comment period began with a NOA published in the Federal Register on December 23, 2014 (79 FR 76952– 76955).

Many of the changes to CRP from the 2014 Farm Bill did not require analysis in the SPEIS because they were administrative in nature, clarified the mandatory provisions of the 2014 Farm Bill, would not result in major changes to the current administration of

CRP, and were addressed in previous NEPA documentation concerning CRP. Only those changes that did not meet these criteria were included in the SPEIS.

As part of this CRP rulemaking initiative, FSA prepared a Record of Decision, which identified the alternative selected for implementation and outlines the rationale, as well as a discussion of any final comments received for the SPEIS, and was published on [June 18, 2015](#) (80 FR 34883-86).

Executive Order 12372

Executive Order 12372, “Intergovernmental Review of Federal Programs,” requires consultation with State and local officials that would be directly affected by proposed Federal financial assistance. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance and direct Federal development. For reasons specified in the final rule related document regarding 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs and activities in this rule are excluded from the scope of Executive Order 12372.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This final rule is not retroactive and does not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. Before any judicial

action may be brought regarding provisions of this rule, the administrative appeal provisions of 7 CFR parts 11, 624, and 780 must be exhausted.

Executive Order 13132

This rule has been reviewed under Executive Order 13132, “Federalism.” The policies contained in this proposed rule would not have any substantial direct effect on 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, except as required by law. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Executive Order 13175

This 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 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.

FSA has assessed the impact of this rule on Indian tribes and determined that this rule would not, to our knowledge, have tribal implications that require tribal consultation under Executive Order 13175. If a Tribe requests consultation, FSA will work with the

USDA Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions, and modifications identified in this rule are not expressly mandated by the 2014 Farm Bill.

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 of State, local, and Tribal governments or the private sector. Agencies generally must prepare a written statement, including cost benefits 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 under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104-4) for State, local, or tribal governments, or the private sector. In addition, CCC is not required to publish a notice of proposed rulemaking for this rule. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Federal Domestic Assistance Program

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 2608 of the 2014 Farm Bill, which provides that these regulations be promulgated and the program 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

7 CFR Part 718

Acreage allotments, Drug traffic control, Loan programs-agriculture, Marketing quotas, Price support programs, Reporting and recordkeeping requirements.

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 and FSA amend 7 CFR parts 718 and 1410 as follows:

PART 718—PROVISIONS APPLICABLE TO MULTIPLE PROGRAMS

1. Revise the authority for part 718 to read as follows:

Authority: 7 U.S.C. 1501-1524, 1921-2008r, 7201-7334, 7901-8002 and 9011-9097, 15 U.S.C. 714b and c, and 16 U.S.C. 3801-3847.

2. Revise § 718.1(a) to read as follows:

§ 718.1 Applicability.

(a) This part is applicable to all programs specified in chapters VII and XIV of this title that are administered by the Farm Service Agency (FSA) and to any other programs that adopt this part by reference. This part governs how FSA administers marketing quotas, allotments, base acres, and acreage reports for those programs to which this part applies. The regulations to which this part applies are those that establish procedures for measuring allotments and program eligible acreage, for determining program compliance, farm reconstitutions, application of finality, and equitable relief from compliance or ineligibility.

* * * * *

3. Amend § 718.2 as follows:

- a. Revise the definitions for “Base acres”, “Entity”, and “Owner”; and
- b. Add, in alphabetical order, definitions for “Common land unit”, “Contiguous”, “Contiguous county”, “Contiguous county office”, “Double cropping”, “State committee”, and “Subsequent crop”;

c. In the definition of “Crop reporting date”, remove the words “date the” and add the words “date upon which the” in their place; and

d. In the definition of “Minor child”, add the words and punctuation “For the purpose of programs under chapters VII and XIV of this title,” before the word “State”.

The revisions and additions read as follows:

§ 718.2 Definitions.

* * * * *

Base acres means, with respect to a covered commodity on a farm, the number of acres in effect on September 30, 2013, as defined in the regulations in part 1412, subpart B, of this title that were in effect on that date, subject to any reallocation, adjustment, or reduction. The term “base acres” includes any generic base acres as specified in part 1412 planted to a covered commodity as specified in part 1412.

* * * * *

Common land unit means the smallest unit of land that has an identifiable border and all of the following in common:

- (1) Owner;
- (2) Management;
- (3) Cover; and
- (4) Where applicable, producer association.

* * * * *

Contiguous means sharing any part of a boundary but not overlapping.

Contiguous county means a county contiguous to the reference county or counties.

Contiguous county office means the FSA county office that is in a contiguous county.

* * * * *

Double cropping means, as determined by the Deputy Administrator on a regional basis, consecutive planting of two specific crops that have the capability to be planted and carried to maturity for the intended uses, as reported by the producer, on the same acreage within a 12-month period. To be considered double cropping, the planting of two specific crops must be in an area where such double cropping is considered normal, or could be considered normal, for all growers under normal growing conditions and growers are typically able to repeat the same cycle successfully in a subsequent 12-month period.

Entity means a corporation, joint stock company, association, limited partnership, limited liability partnership, limited liability company, irrevocable trust, estate, charitable organization, or other similar organization, including any such organization participating in the farming operation as a partner in a general partnership, a participant in a joint venture, or a participant in a similar organization.

* * * * *

Owner means one who has legal ownership of farmland, including:

(1) Any agency of the Federal Government; however, such agency is not eligible to receive any program payment;

(2) One who is buying farmland under a contract for deed; or

(3) One who has a life-estate in the property.

* * * * *

State committee means the FSA State committee.

* * * * *

Subsequent crop means a crop following an initial crop that is not in an approved double cropping combination.

* * * * *

§ 718.3 [Amended]

4. Amend § 718.3 as follows:

a. In paragraph (a)(2), add the word “or” at the end;

b. In paragraph (a)(3), remove the semicolon and add a period in its place;

c. Remove paragraphs (a)(4), (5), and (6); and

d. In paragraph (b), remove the references to “§ 718.108” and “§ 718.111” and

add references to “§ 718.109” and “§ 718.112”, respectively in their place.

5. Revise § 718.7 to read as follows:

§ 718.7 Furnishing maps.

(a) A reasonable number, as determined by FSA, of reproductions of photographs, mosaic maps, and other maps will be made available to the owner of a farm, an insurance company reinsured by the Federal Crop Insurance Corporation (FCIC), or a private party contractor performing official duties on behalf of FSA, CCC, and other USDA agencies.

(b) For all others, reproductions will be made available at the rate FSA determines will cover the cost of making such items available.

§ 718.8 [Amended]

6. Amend § 718.8(e) by removing the word “COC” and adding the words “county committee” in its place.

7. Amend § 718.9 as follows:

a. Revise paragraphs (a) and (b) introductory text; and

b. Add paragraph (f).

The revisions and addition read as follows:

§ 718.9 Signature requirements.

(a) When a program authorized by this chapter or chapter XIV of this title requires the signature of a producer, landowner, landlord, or tenant, then a spouse may sign all such FSA or CCC documents on behalf of the other spouse, except as otherwise specified in this section, unless such other spouse has provided written notification to FSA and CCC that such action is not authorized. The notification must be provided to FSA for each farm.

(b) A spouse may not sign a document on behalf of the other spouse with respect to:

* * * * *

(f) Documents that were previously acted on and approved by the FSA county office or county committee will not subsequently be determined inadequate or invalid because of the lack of signature authority of any person signing the document on behalf of the applicant or any other individual, entity, general partnership, or joint venture, unless the person signing the program document knowingly and willfully falsified the evidence of signature authority or a signature. However, FSA may require affirmation of the document by those parties deemed appropriate for an affirmation, as determined by

the Deputy Administrator. Nothing in this paragraph relieves participants of any other program requirements.

§ 718.101 [Amended]

8. Amend § 718.101(a)(1) by removing the reference to “§ 718.103” and adding a reference to “§ 718.104” in its place.

§ 718.102 [Amended]

9. Amend § 718.102 as follows:

a. In paragraph (a), remove the words “annually submit accurate information” and add the words “submit accurate information annually” in their place;

b. In paragraph (b)(1), remove the words “the programs governed by part 1412 of this title” and add the words “programs for which eligibility for benefits is tied to base acres” in their place;

c. In paragraph (b)(6), remove the word “intended”;

d. Revise paragraphs (b)(7) and (c); and

e. Add paragraph (d).

The revisions and addition read as follows:

§ 718.102 Acreage reports.

* * * * *

(b) * * *

(7) All producers reporting acreage as prevented planted acreage or failed acreage must provide documentation that meets the provisions of § 718.103 to the FSA county office where the farm is administered.

(c) The annual acreage reports required in paragraph (a) of this section must be filed with the county committee by the farm operator, farm owner, producer of the crop on the farm, or duly authorized representative by the final reporting date applicable to the crop as established by the Deputy Administrator.

(d) Participants in programs to which this part is applicable must report all crops, in all counties, in which they have an interest. This includes crops on cropland and noncropland, including native or improved grass that will be hayed or grazed.

10. Amend § 718.103 as follows:

a. Revise paragraphs (b) and (c);

b. Remove paragraphs (d) and (e);

c. Redesignate paragraphs (f) and (g) as paragraphs (d) and (e);

d. In newly redesignated paragraph (e), remove the words “shall apply” and add the word “applies” in their place;

e. Add paragraphs (f) and (g);

f. Remove paragraph (h);

g. Redesignate paragraphs (i) through (n) as paragraphs (h) through (m), respectively;

h. In newly redesignated paragraph (i), remove the words “the COC. The COC will” and add the words “the county committee. The county committee may” in their place; and

i. In newly redesignated paragraph (m)(2), remove the word “and” at the end of the sentence and add the word “or” in its place.

The revisions and additions read as follows:

§ 718.103 Prevented planted and failed acreage.

* * * * *

(b) FSA may approve acreage as “prevented planted acreage” if all other conditions for such approval are met and provided the conditions in paragraphs (b)(1) through (6) of this section are met.

(1) Except as specified in paragraph (b)(2) of this section, producers must report the acreage, on forms specified by FSA, within 15 calendar days after the final planting date determined for the crop by FSA.

(2) If the acreage is reported after the period identified in paragraph (b)(1) of this section, the application must be filed in time to permit:

(i) The county committee or its authorized representative to make a farm visit to verify eligible disaster conditions that prevented the specified acreage or crop from being planted; or

(ii) The county committee or its authorized representative the opportunity to determine, based on visual inspection, that the acreage or crop in question was affected by eligible disaster conditions such as damaging weather or other adverse natural occurrences that prevented the acreage or crop from being planted.

(3) A farm visit to inspect the acreage or crop is required for all late-filed acreage reports where prevented planting credit is sought. Under no circumstance may acreage reported after the 15-day period referenced in paragraph (b)(1) of this section be deemed acceptable unless the criteria in paragraph (b)(2) of this section are met. State and county committees do not have the authority to waive the field inspection and verification provisions for late-filed reports.

(4) All determinations made during field inspections must be documented on each late-filed acreage report, with results also recorded in county committee minutes to support the documentation.

(5) The acreage must have been prevented from being planted as the result of a natural disaster and not a management decision.

(6) The prevented planted acreage report was approved by the county committee. The county committee may disapprove prevented planted acreage credit if it is not satisfied with the documentation provided.

(c) To receive prevented planted credit for acreage, the producer must show to the satisfaction of FSA that the producer intended to plant the acreage. Documentation supporting such intent includes documents related to field preparation, seed purchase, and any other information that shows the acreage could and would have been planted and harvested absent the natural disaster or eligible cause of loss that prevented the planting.

* * * * *

(f) Acreage ineligible for prevented planting coverage includes, but is not limited to, acreage:

(1) With respect to which the planting history or conservation plans indicate it would remain fallow for crop rotation purposes;

(2) Used for conservation purposes or intended to be or considered to have been left unplanted under any program administered by USDA, including the Conservation Reserve and Wetland Reserve Programs;

(3) Not planted because of a management decision;

(4) Affected by the containment or release of water by any governmental, public, or private dam or reservoir project, if an easement exists on the acreage affected for the containment or release of water;

(5) Where any other person receives a prevented planted payment for any crop for the same crop year, unless the acreage meets all the requirements for double cropping under this part;

(6) Where pasture or other forage crop is in place on the acreage during the time that planting of the crop generally occurs in the area;

(7) Where another crop is planted (previous or subsequent) that does not meet the double cropping definition;

(8) Where any volunteer or cover crop is hayed, grazed, or otherwise harvested on the acreage for the same crop year;

(9) Where there is an inadequate supply of irrigation water beginning on the Federal crop insurance sale closing date for the previous crop year or the Noninsured Crop Disaster Assistance Program (NAP) application closing date for the crop as specified in part 1437 of this title through the final planting date of the current year;

(10) On which a failure or breakdown of irrigation equipment or facilities, unless the failure or breakdown is due to a natural disaster;

(11) That is under quarantine imposed by a county, State, or Federal government agency;

(12) That is affected by chemical or herbicide residue, unless the residue is due to a natural disaster;

(13) That is affected by drifting herbicide;

(14) On which a crop was produced, but the producer was unable to obtain a market for the crop;

(15) Involving a planned planting of a “value loss crop” as that term is defined for NAP as specified in part 1437 of this title, including, but not limited to, Christmas trees, aquaculture, or ornamental nursery, for which NAP assistance is provided under value loss procedure;

(16) For which the claim for prevented planted credit relates to trees or other perennials unless the producer can prove resources were available to plant, grow, and harvest the crop, as applicable;

(17) That is affected by wildlife damage;

(18) Upon which, the reduction in the water supply for irrigation is due to participation in an electricity buy-back program, or the sale of water under a water buy-back or legislative changes regarding water usage, or any other cause which is not a natural disaster; or

(19) That is devoted to non-cropland.

(g) CCC may allow exceptions to acreage ineligible for prevented planting coverage when surface water or ground water is reduced because of a natural disaster (as determined by CCC).

* * * * *

§ 718.104 [Amended]

11. Amend § 718.104 as follows:

a. In paragraph (a), introductory text, remove words “date, and be considered timely filed, if” and add the words “date and processed by FSA if” in their place;

b. In paragraph (a)(1), remove the words and punctuation “is in the field,” and add the words and punctuation “remains in the field, permitting FSA to verify and determine the acreage;” in their place;

c. In paragraph (a)(2), add the words “amount of” in front of the word “acreage”; and

d. In paragraph (b), remove the word “shall” and add the word “must” in its place.

§ 718.105 [Amended]

12. Amend § 718.105(c)(2) by removing the word “when” and adding the words “upon which” in its place.

13. Revise § 718.106 to read as follows:

§ 718.106 Non-compliance and false acreage reports.

(a) Participants who provide false or inaccurate acreage reports may be ineligible for some or all payments or benefits, subject to the requirements of § 718.102(b)(1) and (3).

(b) [Reserved]

14. Revise § 718.111 to read as follows:

§ 718.111 Notice of measured acreage.

(a) FSA will provide notice of measured acreage and mail it to the farm operator. This notice constitutes notice to all parties who have ownership, leasehold interest, or other interest in such farm.

(b) [Reserved]

15. Amend § 718.112 as follows:

a. Revise paragraph (a); and

b. In paragraph (b), introductory text, remove the words “The county committee shall” and add the words “FSA will” in their place.

The revision reads as follows:

§ 718.112 Redetermination.

(a) A redetermination of crop acreage, appraised yield, or farm-stored production for a farm may be initiated by the county committee, State committee, or Deputy Administrator at any time. Redetermination may be requested by a producer with an interest in the farm if the producer pays the cost of the redetermination. The request must be submitted to FSA within 5 calendar days after the initial appraisal of the yield of a crop, or before the farm-stored production is removed from storage. A redetermination will be undertaken in the manner prescribed by the Deputy Administrator. A redetermination will be used in lieu of any prior determination unless it is determined by the representative of the Deputy Administrator that there is good cause not to do so.

* * * * *

16. Revise the heading of subpart C to read as follows:

Subpart C – Reconstitution of Farms, Allotments, Quotas, and Base Acres

17. Revise § 718.201(a), (c) introductory text, and (c)(1) to read as follows:

§ 718.201 Farm constitution.

(a) In order to implement FSA programs and monitor compliance with regulations, FSA must have records on what land is being farmed by a particular producer. This is accomplished by a determination of what land or group of lands “constitute” an individual unit or farm. Land that was properly constituted under prior

regulations will remain so constituted until a reconstitution is required by paragraph (c) of this section. The constitution and identification of land as a “farm” for the first time and the subsequent reconstitution of a farm made thereafter will include all land operated by an individual entity or joint operation as a single farming unit except that it may not include:

(1) Land under separate ownership unless the owners agree in writing or have previously agreed in writing and the labor, equipment, accounting system, and management are operated in common by the operator, but separate from other tracts;

(2) Land under a lease agreement of less than 1 year duration;

(3) Federally owned land unless it is rangeland on which no crops are planted and on which there are no crop base acres established;

(4) State-owned wildlife lands unless the former owner has possession of the land under a leasing agreement;

(5) Land constituting a farm that is declared ineligible to be enrolled in a program under the regulations governing the program;

(6) For base acre crops, land located in counties that are not contiguous except where:

(i) Counties are divided by a river;

(ii) Counties do not share a common border because of a correction line adjustment; or

(iii) The land is within 20 miles, by road, of other land that will be a part of the farming unit;

(7) Land subject to either a default election or a valid election made under part 1412 of this title for each and all covered commodities constituted with land that has a different default election or valid election for each and all covered commodities, irrespective of whether or not any of the land has base acres; or

(8) Land subject to an election of individual coverage under the Agriculture Risk Coverage Program (ARC-IC) in any State constituted with any land in another State.

* * * * *

(c) A reconstitution of a farm either by division or by combination is required whenever:

(1) A change has occurred in the operation of the land since the last constitution or reconstitution and as a result of such change the farm does not meet the conditions for constitution of a farm as specified in paragraph (a) of this section, except that no reconstitution will be made if the county committee determines that the primary purpose of the change in operation is to establish eligibility to transfer allotments subject to sale or lease, or increase the amount of program benefits received;

* * * * *

18. Revise § 718.206 to read as follows:

§ 718.206 Determining farms, tracts, and base acres when reconstitution is made by division.

(a) The methods for dividing farms, tracts, and base acres are, in order of precedence: Estate, designation by landowner, cropland, and default. The proper method will be determined on a crop-by-crop basis.

(b) The estate method for reconstitution is the pro-rata distribution of base acres for a parent farm among the heirs in settling an estate. If the estate sells a tract of land before the farm is divided among the heirs, the base acres for that tract will be determined according to paragraphs (c) through (e) of this section.

(1) Base acres must be divided in accordance with a will, but only if the county committee determines that the terms of the will are such that a division can reasonably be made by the estate method.

(2) If there is no will or the county committee determines that the terms of a will are not clear as to the division of base acres, the base acres will be apportioned in the manner agreed to in writing by all interested heirs or devisees who acquire an interest in the property for which base acres have been established. An agreement by the administrator or executor will not be accepted in lieu of an agreement by the heirs or devisees.

(3) If base acres are not apportioned as specified in paragraph (b)(1) or (2) of this section, the base acres must be divided as specified in paragraph (d) or (e) of this section, as applicable.

(c) If the ownership of a tract of land is transferred from a parent farm, the transferring owner may request that the county committee divide the base acres, including historical acreage that has been double cropped, between the parent farm and the transferred tract, or between the various tracts if the entire farm is sold to two or more purchasers.

(1) If the county committee determines that base acres cannot be divided in the manner designated by the owner because the owner's designation does not meet the

requirements of paragraph (c)(2) of this section, FSA will notify the owner and permit the owner to revise the designation to meet the requirements. If the owner does not furnish a revised designation of base acres within a reasonable time after such notification, or if the revised designation does not meet the requirements, the county committee will divide the base acres in a pro-rata manner in accordance with paragraph (d) or (e) of this section.

(2) The landowner may designate a manner in which base acres are divided by filing a signed written memorandum of understanding of the designation of base acres with the county committee before the transfer of ownership of the land. Both the transferring owner and transferee must sign the written designation of base acres.

(i) Within 30 days after a prescribed form, letter, or notice of base acres is issued by FSA following the reconstitution of a farm but before any subsequent transfer of ownership of the land, all owners in existence at time of the reconstitution request may seek a different manner of base acre designation by agreeing in writing by executing a form CCC-517 or other designated form.

(ii) The landowner must designate the base acres that will be permanently reduced when the sum of the base acres exceeds the effective cropland plus double-cropped acres for the farm.

(iii) When the part of the farm from which the ownership is being transferred was owned for less than 3 years, the designation by landowner method of designating base acres cannot be used unless the county committee determines that the primary purpose of the ownership transfer was other than to retain or to sell base acres. In the absence of such a determination, and if the farm contains land that has been owned for less than 3 years, the part of the farm that has been owned for less than 3 years will be considered as

a separate farm and the base acres must be assigned to that farm in accordance with paragraph (d) or (e) of this section. Such apportionment will be made prior to any designation of base acres with respect to the part that has been owned for 3 years or more.

(3) The designation by landowner method may be applied, at the owner's request, to land owned by an Indian Tribal Council that is leased to two or more producers for the production of any crop of a commodity for which base acres have been established. If the land is leased to two or more producers, an Indian Tribal Council may request that the county committee divide the base acres between the applicable tracts in the manner designated by the Council. The use of this method is not subject to the requirements specified in paragraph (c)(2) of this section.

(d) The cropland method for reconstitution is the pro-rata distribution of base acres to the resulting tracts in the same proportion that each resulting tract bears to the cropland for the parent tract. This method of division will be used if paragraphs (b) and (c) of this section do not apply.

(e) The default method for reconstitution is the separation of tracts from a farm with each tract maintaining the base acres attributed to the tract when the reconstitution is initiated.

(f) Farm program payment yields calculated for the resulting farms of a division may be increased or decreased if the county committee determines the method used did not provide an equitable distribution considering available land, cultural operations, and changes in the type of farming conducted on the farm. Any increase in the farm program payment yield on a resulting farm will be offset by a corresponding decrease on another resulting farm of the division.

19. Revise § 718.207 to read as follows:

§ 718.207 Determining base acres when reconstitution is made by combination.

(a) When two or more farms or tracts are combined for a year, that year's base acres, with respect to the combined farm or tract, as required by applicable program regulations, will not be greater than the sum of the base acres for each of the farms or tracts comprising the combination, subject to the provisions of § 718.204.

(b) [Reserved]

20. Amend § 718.301 as follows:

a. In paragraph (a), add the punctuation and words “, as amended” at the end of the first sentence;

b. Remove paragraph (b);

c. Redesignate paragraph (c) as paragraph (b); and

d. Add paragraph (c).

The addition reads as follows:

§ 718.301 Applicability.

* * * * *

(c) The relief provisions of this part cannot be used to extend a benefit or assistance not otherwise available under law or not otherwise available to others who have satisfied or complied with every eligibility or compliance requirement of the provisions of law or regulations governing the program benefit or assistance.

§ 718.302 [Amended]

21. In § 718.302, remove the definition of “Agricultural commodity”.

22. Revise § 718.303 to read as follows:

§ 718.303 Reliance on incorrect actions or information.

(a) Notwithstanding any other law, if an action or inaction by a participant is based upon good faith reliance on the action or advice of an authorized representative of an FSA county or State committee, and that action or inaction results in the participant's noncompliance with the requirements of a covered program that is to the detriment of the participant, then that action or inaction still may be approved by the Deputy Administrator as meeting the requirements of the covered program, and benefits may be extended or payments made in as specified in § 718.305.

(b) This section applies only to a participant who:

(1) Relied in good faith upon the action of, or information provided by, an FSA county or State committee or an authorized representative of such committee regarding a covered program;

(2) Acted, or failed to act, as a result of the FSA action or information; and

(3) Was determined to be not in compliance with the requirements of that covered program.

(c) This section does not apply to cases where the participant had sufficient reason to know that the action or information upon which they relied was improper or erroneous or where the participant acted in reliance on their own misunderstanding or misinterpretation of program provisions, notices or information.

23. Revise § 718.304 to read as follows:

§ 718.304 Failure to fully comply.

(a) When the failure of a participant to fully comply with the terms and conditions of a covered program precludes the providing of payments or benefits, relief

may be authorized as specified in § 718.305 if the participant made a good faith effort to comply fully with the requirements of the covered program.

(b) This section only applies to participants who are determined by FSA to have made a good faith effort to comply fully with the terms and conditions of the covered program and have performed substantial actions required for program eligibility.

24. Amend § 718.306 as follows:

- a. Revise paragraphs (a) introductory text, (a)(2) and (4), and (b); and
- b. Add paragraph (c).

The revisions and addition read as follows:

§ 718.306 Finality.

(a) A determination by an FSA State or county committee (or employee of such committee) becomes final on an application for benefits and binding 90 days from the date the application for benefits has been filed, and supporting documentation required to be supplied by the producer as a condition for eligibility for the particular program has been filed, unless any of the following exceptions exist:

* * * * *

(2) The determination was in any way based on erroneous, innocent, or purposeful misrepresentation; false statement; fraud; or willful misconduct by or on behalf of the participant;

* * * * *

(4) The participant knew or had reason to know that the determination was erroneous.

(b) Should an erroneous determination become final under the provisions of this section, the erroneous decision will be corrected according to paragraph (c) of this section.

(1) If, as a result of the erroneous decision, payment was issued, no action will be taken by FSA, CCC, or a State or county committee to recover unearned payment amounts unless one or more of the exceptions in paragraph (a) of this section applies;

(2) If payment was not issued before the error was discovered, the payment will not be issued. FSA and CCC are under no obligation to issue payments or render decisions that are contrary to law or regulation.

(c) FSA and CCC will modify and correct determinations when errors are discovered. As specified in paragraph (b) of this section, FSA or CCC may be precluded from recovering unearned payments that issued as a result of the erroneous decision. FSA or CCC's inability to recover or demand refunds of unearned amounts as specified in paragraph (b) will only be effective through the year in which the error was found and communicated to the participant.

25. Amend § 718.307 as follows:

a. In paragraph (a), introductory text, remove the words "an SED" and add the words "an SED, after consultation with and approval from OGC but" in their place , and remove the reference to "§§ 718.303 and 718.304" and add a reference to "§§ 718.303 through 718.305" in its place;

b. In paragraph (a)(2), remove the word "person" and add the word "participant" in its place;

c. In paragraph (a)(3), remove the words "in that year";

d. In paragraph (a)(4), remove the words “the SED (or the SED’s predecessor)” and add the words “an SED” in their place;

e. Revise paragraph (d); and

f. In paragraph (e), remove the last sentence.

The revision reads as follows:

§ 718.307 Special relief approval authority for State Executive Directors.

* * * * *

(d) Relief may not be provided by the SED under this section until a written opinion or written acknowledgment is obtained from OGC that grounds exist for determination that requirements for granting relief under § 718.303 or § 718.304 have been met, that the form of relief is authorized under § 718.305, and that the granting of the relief is within the lawful authority of the SED.

* * * * *

PART 1410--CONSERVATION RESERVE PROGRAM

26. 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.

27. Revise § 1410.1(f) and (j) to read as follows:

§ 1410.1 Administration.

* * * * *

(f) Notwithstanding other provisions of this section, the suitability of land for permanent vegetative or water cover, factors for determining the likelihood of improved water quality, and adequacy of the planned practice to achieve desired objectives will be

determined by the Natural Resource Conservation Service (NRCS) or other sources approved by the Deputy Administrator, in accordance with the Field Office Technical Guide (FOTG) of NRCS or other guidelines deemed appropriate by NRCS. In no case will such determination compel the Deputy Administrator to execute a contract that the Deputy Administrator does not believe will serve the purposes of CRP established by this part. Any approved technical authority will use CRP guidelines established by the Deputy Administrator.

* * * * *

(j) Except as agreed by CCC and the participant together, the regulations in this part apply to all contracts approved after **[Insert date of publication in the FEDERAL REGISTER]**.

28. Amend § 1410.2 as follows:

a. In paragraphs (a) and (b), introductory text, remove the words “shall be” each time they appear and add the word “are” in their place,

b. Amend paragraph (b) as follows:

i. Add, in alphabetical order, definitions for “Agricultural Conservation Easement Program”, “Common grazing practices”, “Forb”, “Grassland”, “Improved rangeland or pastureland”, “Nesting season”, “Pastureland”, “Rangeland”, “Shrubland”, and “Veteran farm or rancher”;

ii. Revise the definitions for “Conservation plan”, “Conserving use”, “Considered planted”, “Erodibility Index”, “Highly Erodible Land”, “Infeasible to farm”, and “Local FSA Office”; and

iii. Remove the definitions of “Beginning farmer or rancher”, “Cropped wetlands”, “Farmed wetlands”, “Limited resource farmer or rancher”, “Merchantable timber”, “Present value”, “Private non-industrial forest land”, “Private non-industrial forest landowner”, “Water Bank Program (WBP)”, and “Wetlands farmed under natural conditions”.

The revisions and additions read as follows:

§ 1410.2 Definitions.

* * * * *

(b) * * *

Agricultural Conservation Easement Program means the program that provides for the establishment of wetland easements on land under subtitle H of Title XII of the Food Security Act of 1985, as amended by section 2301 of the Agricultural Act of 2014.

* * * * *

Common grazing practices means grazing practices, including those related to forage and seed production, common to the area of the subject ranching or farming operation. Included are routine management activities necessary to maintain the viability of forage or browse resources that are common to the locale of the subject ranching or farming operation.

* * * * *

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

or other comparable measures. For grassland signup enrollments where grazing is occurring or is likely to occur, the conservation plan will contain provisions for common grazing practices and related activities consistent with achieving CRP purposes and maintaining the health and viability of grassland resources.

* * * * *

Conserving use means a use of land that meets crop rotation requirements, as specified by the Deputy Administrator, for: Alfalfa, multi-year grasses, and legumes planted during 2008 through 2013; for summer fallow during 2008 through 2013; or for land on which the contract expired during the period 2008 through 2013 and on which the grass cover required by the CRP contract continues to be maintained as though still enrolled. Land that meets this definition of “conserving use” will be considered to have been planted to an agricultural commodity for the purposes of eligibility specified in § 1410.6(a)(1).

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

* * * * *

Erodibility index (EI), as prescribed by the Deputy Administrator, is an index used to determine the inherent erodibility from either from water or wind, but not both combined, of a soil in relation to the soil loss tolerance for that soil.

* * * * *

Forb means any herbaceous plant other than those in the grass family.

Grassland means land on which the vegetation is dominated by grasses, grass-like plants, shrubs, or forbs, including shrubland, land that contains forbs, pastureland, and rangeland, and improved pastureland and rangeland, as determined by the Deputy Administrator.

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

Improved rangeland or pastureland means grazing land permanently producing naturalized forage species that receives varying degrees of periodic cultural treatment to enhance forage quality and yields and is primarily consumed by livestock.

Infeasible to farm means an area of land that is too small or isolated to be economically farmed, or is otherwise suitable for such classification, as determined by the Deputy Administrator.

* * * * *

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

* * * * *

Nesting season means the nesting season for birds in the local area that are economically significant, in significant decline, or conserved in accordance with Federal or State law, as determined by the Deputy Administrator in consultation with the State technical committee established as specified in part 610 of this title.

* * * * *

Pastureland means grazing lands comprised of introduced or domesticated native forage species that are used primarily for the production of livestock. These lands

receive periodic renovation and cultural treatments, such as tillage, aeration, fertilization, mowing, and weed control, and may be irrigated. This term does not include lands that are in rotation with crops.

* * * * *

Rangeland means a land cover or use category with a climax or potential plant cover composed principally of native grasses, grass-like plants, forbs, or shrubs suitable for grazing and browsing, and introduced forage species that are managed like rangeland. Rangeland includes lands re-vegetated naturally or artificially when routine management of that vegetation is accomplished mainly through manipulation of grazing. This term includes areas where introduced hardy and persistent grasses are planted and such practices as deferred grazing, burning, chaining, and rotational grazing are used with little or no chemicals or fertilizer being applied. Grassland, savannas, many wetlands, some deserts, and tundra are considered to be rangeland. Certain communities of low forbs and shrubs, such as mesquite, chaparral, mountain shrub, and pinyon juniper are also included as rangeland.

* * * * *

Shrubland means land where the dominant plant species are shrubs, which are plants that are persistent, have woody stems, and a relatively low growth habit.

* * * * *

Veteran farmer or rancher means a farmer or rancher who has served in the Armed Forces, as defined in 38 U.S.C. 101(10), and who either:

- (1) Has not operated a farm or ranch; or
- (2) Has operated a farm or ranch for not more than 10 years.

* * * * *

29. Revise § 1410.4 to read as follows:

§ 1410.4 Maximum county acreage.

(a) Except as provided in paragraph (b) of this section and certain shelterbelts, windbreaks, and wet and saturated soils enrolled under ACEP, the maximum cropland acreage that may be placed in the CRP and the wetland reserve easements of WRP and ACEP, as appropriate, may not exceed 25 percent of the total cropland in the county. No more than 10 percent of the cropland in a county may be subject, in the aggregate, to a CRP or wetland reserve easement.

(b) The restrictions in paragraph (a) of this section may be waived by the Deputy Administrator as follows:

(1) If the Deputy Administrator determines that such action would not adversely affect the local economy of the county and that operators in the county are having difficulties complying with conservation plans implemented under part 12 of this title; or

(2) Cropland in a county enrolled under provisions as specified in § 1410.30 or § 1410.50 may be excluded from the restrictions in paragraph (a) of this section, as determined by the Deputy Administrator, provided that the county government concurs.

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

§ 1410.5 [Amended]

30. Amend § 1410.5 as follows:

- a. In paragraph (a)(2)(iii), remove the words “are such that”;
- b. Remove paragraph (b);

- c. Redesignate paragraph (c) as paragraph (b); and
- d. In newly redesignated paragraph (b), remove the words “beginning or socially disadvantaged” and add the words “beginning, socially disadvantaged, or veteran” in their place.

31. Amend § 1410.6 as follows:

- a. Revise paragraph (a)(1);
- b. In paragraph (a)(2)(i), remove the words “in a CREP for similar water quality purposes as determined by CCC” and add the words “under a Conservation Reserve Enhancement Program (CREP) agreement for similar water quality purposes as determined by the Deputy Administrator” in their place;
- c. Revise paragraph (a)(3);
- d. Add paragraph (a)(4);
- e. Remove paragraph (b)(2) and redesignate paragraphs (b)(3) through (10) as paragraphs (b)(2) through (9), respectively;
- f. Revise newly designated paragraphs (b)(2) and (3);
- g. In newly redesignated paragraph (b)(4), add the words “as determined by the Deputy Administrator” at the end;
- h. In newly designated paragraph (b)(5), remove the word “CCC” each times it appears and add the words “Deputy Administrator” in its place;
- i. Revise newly designated paragraph (b)(6);
- j. Remove paragraphs (b)(11) and (12) and redesignate paragraph (b)(13) as paragraph (b)(10);

k. In newly designated paragraph (b)(10), remove the period at the end of the paragraph and add the words and punctuation “; or” in its place;

l. Add paragraph (b)(11);

m. Revise paragraph (c); and

n. Add paragraph (d).

The revisions and additions read as follows:

§ 1410.6 Eligible land.

(a) * * *

(1) Cropland that is subject to a conservation plan and has been annually planted or considered planted, as defined in § 1410.2, to an agricultural commodity in 4 of the 6 crop years from 2008 through 2013, as determined by the Deputy Administrator, including field margins that are incidental to the planting of crops if:

(i) Including such field margins is determined appropriate by the Deputy Administrator; and

(ii) The field margins are physically and legally capable of being planted in a normal manner to an agricultural commodity, as determined by the Deputy Administrator; or

* * * * *

(3) Acreage enrolled in CRP during the final year of the CRP contract, provided the scheduled expiration date of the current CRP contract is before the effective date the new CRP contract, as determined by the CCC; or

(4) Grassland as specified in paragraph (c) of this section.

(b) * * *

(2) Be non-irrigated or irrigated cropland that would facilitate a net savings in groundwater or surface water of the agricultural operation of the producer, only as determined by, and only when specifically authorized by, the Deputy Administrator;

(3) Be land in a portion of a field not enrolled in CRP, if either:

(i) More than 50 percent of the remainder of the field is enrolled as a buffer or filterstrip practice; or

(ii) More than 75 percent of the field is enrolled as a conservation practice other than a buffer or filterstrip; and

(iii) With respect to both paragraphs (b)(3)(i) and (ii) of this section, the remainder portion of the field is determined to be infeasible to farm, as defined in § 1410.2, and enrolled at an annual payment rate not to exceed the maximum annual calculated soil rental rate, as determined by the Deputy Administrator;

* * * * *

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

* * * * *

(11) Land that meets other continuous signup land eligibility criteria, as established by the Deputy Administrator.

(c) For land to be eligible under a grassland signup as specified in § 1410.30, the land must, as established by the Deputy Administrator:

(1) Not be cropland or marginal pastureland at the time of enrollment as grassland. Land enrolled under an expiring CRP contract may be eligible to be re-enrolled as grassland during the final year of the CRP contract, provided the scheduled expiration date of the current CRP contract is the day before the effective date of the new CRP contract, and suitable grass, legume, forb or shrub covers predominate, and;

(2) Be needed and suitable for enrollment as grassland following a determination that such land:

(i) Contain forbs or shrubland, including improved rangeland and pastureland, for which grazing is the predominant use;

(ii) Is located in an area historically dominated by grassland;

(iii) Is able to provide habitat for animal and plant populations of significant ecological value if the land is retained in its current use or restored to a natural condition; and

(iv) Meets other grassland signup land eligibility criteria as may be established by the Deputy Administrator.

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

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

(2) Land on which the use of the land is either restricted through deed or other restriction prior to enrollment in CRP prohibiting the production of agricultural commodities, or requires any resource-conserving measures, during any part of the proposed contract term;

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

(4) Land for which Tribal, State, or other locals laws, ordinances, or other regulations require any resource conserving or environmental protection measures or practices and the owners or operators of such land have been notified in writing of such requirements; or

(5) Land that is required to be used, or otherwise dedicated to mitigate actions undertaken, or planned to be undertaken, on other land, or to mitigate other actions taken by landowners or operators, as determined by the Deputy Administrator.

32. Revise § 1410.7 to read as follows:

§ 1410.7 Duration of contracts.

(a) Contracts with land devoted to hardwood trees, shelterbelts, windbreaks, or wildlife corridors will be for a term of 10 years to 15 years, as requested by the applicant.

(b) Other general and continuous signup contracts under this part will be for a term of 10 to 15 years, as determined by the Deputy Administrator.

(c) Grassland signup contracts will be for a term of 15 years.

(d) All contracts will expire on September 30 of the final calendar year of the contract.

§ 1410.8 [Amended]

33. Amend § 1410.8 as follows:

a. In paragraph (b), remove the word “CCC” and add the words “Deputy Administrator” in its place and remove the number “33” and add the number “25” in its place;

b. In paragraph (d), introductory text, remove the word “shall” and add the word “will” in its place and add the words “before 5 years” at the end of the paragraph; and

c. In paragraph (d)(2), remove the word “By” and add the words “As determined appropriate by” in its place.

§ 1410.9 [Removed]

34. Remove § 1410.9.

35. Revise § 1410.10(a) to read as follows:

§ 1410.10 Restoration of wetlands.

(a) An owner or operator who entered into a CRP contract on land that is suitable for restoration to wetlands or that was restored to wetlands while under such contract, may, if approved by the Deputy Administrator, subject to any restrictions as may be imposed by law, apply to transfer such acres that are devoted to an approved cover from CRP to a wetland reserve easement under WRP or ACEP, as appropriate. Transferred acreage will be terminated from CRP effective the day a WRP or ACEP wetland reserve easement is filed. Participants will receive a prorated CRP annual payment for the part of the year the acreage was enrolled in CRP as specified in § 1410.42. Cost-share payments or applicable incentive payments need not be refunded unless specified by the Deputy Administrator.

* * * * *

36. Amend § 1410.11 as follows:

a. In paragraph (b)(2), remove the words “to receive flow from a row crop agricultural drainage system” and add the words “so as to receive surface and subsurface flow from row crop agricultural production” in their place; and

b. Revise paragraph (d) introductory text.

The revision reads as follows:

§ 1410.11 Farmable Wetlands Program.

* * * * *

(d) Total enrollment in CRP under this section may not exceed 750,000 acres. In addition, the maximum size of land enrolled under this section may not exceed, as determined by the Deputy Administrator:

* * * * *

§ 1410.12 [Removed]

37. Remove § 1410.12.

38. Add § 1410.13 to read as follows:

§ 1410.13 Grassland enrollments.

(a) Land may be enrolled in CRP under grassland signup as specified in §§ 1410.6, 1410.30, and 1410.31. Eligible grassland includes grassland that was previously enrolled in the Grassland Reserve Program, as specified in part 1415 of this chapter.

(b) Grassland enrollments will generally be administered under all the provisions of this part, except where specific provisions apply only to grassland enrollments.

(c) Grassland enrolled in CRP is eligible for the Transition Incentives Program as specified in § 1410.64.

(d) Grassland previously enrolled in rental contracts under terms of the Grassland Reserve Program specified in part 1415 of this chapter will continue to be subject to the provisions of those contracts.

39. Amend § 1410.22 as follows:

a. Revise paragraphs (a) and (b);

b. In paragraph (c), remove the word “shall” and add the words “or forest stewardship plan must” in its place; and

c. Revise paragraph (f).

The revisions read as follows:

§ 1410.22 CRP conservation plan.

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

(b) The practices and management activities included in the CRP conservation plan and agreed to by the participant must cost-effectively reduce erosion necessary to maintain the productive capability of the soil, improve water quality, protect wildlife or wetlands, protect a public well head, improve grassland, or achieve other environmental benefits as applicable. The producer must undertake management activities on the land as needed throughout the term of the CRP contract to implement the conservation plan.

* * * * *

(f) For general signup and continuous signup contracts except grasslands, mid-contract management must be conducted to implement management activities, such as disking and prescribed burning according to an approved conservation plan, as part of the CRP contractual obligation on all contracts entered into under general signup and continuous signup, as specified in § 1410.30.

§ 1410.23 [Amended]

40. Amend § 1410.23 as follows:

a. In paragraph (a)(1), remove the words “and permanent wildlife habitat” and add the words “permanent wildlife habitat, and grassland improvements” in their place;

b. In paragraph (a)(3), remove the words “the program” and add the word “CRP” in their place; and

c. In paragraph (b), remove the word “aquiculture” and add the word “aquaculture” in its place.

41. Revise § 1410.30 to read as follows:

§ 1410.30 Signup.

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

(b) Grassland signups will be conducted year-round with periodic ranking periods, as determined by the Deputy Administrator. The eligible offers that rank the highest according to the environmental benefits ranking plan established

under § 1410.31(e), as determined by the Deputy Administrator, will be accepted, provided sufficient acres and funds are available.

42. Amend § 1410.31 as follows:

a. In paragraphs (a), (b) introductory text, (b)(7), and (d) introductory text and (d)(3), remove the words “the program” each time they appear and add the word “CRP” in their place; and

b. Add paragraphs (e) and (f).

The additions read as follows:

§ 1410.31 Acceptability of offers.

* * * * *

(e) Grassland signup offers will be periodically batched, evaluated, and ranked on a competitive basis in which the offers selected will be those where the greatest environmental benefits relative to cost are generated, as determined by the Deputy Administrator, and further provided that:

(1) The offered land is eligible under §§ 1410.4 and 1410.6, as determined by the Deputy Administrator;

(2) The producer is eligible under § 1410.5;

(3) The producer accepts either the maximum payment rate the Deputy Administrator is willing to offer to enroll the acreage in CRP, or a lesser rate; and

(4) The offer ranks above the minimum ranking level applicable to each ranking period needed for offer acceptance, as determined by the Deputy Administrator.

(5) Notwithstanding the preceding, acceptance or rejection of any grassland signup offers will be in the sole discretion of the Deputy Administrator and offers may be

rejected for any reason as determined necessary and appropriate to accomplish the goals of CRP.

(f) In ranking and evaluating grassland signup offers, different factors, as determined by the Deputy Administrator, may be considered from time to time for priority purposes to accomplish the goals of CRP. Such factors may include, but are not limited to:

- (1) Existence of expiring CRP or Grassland Reserve Program land;
- (2) Existing grassland;
- (3) Multi-species cover existence and predominance of native species;
- (4) Livestock grazing operation;
- (5) State priority enrollment criteria (non-land based) and State Focus Area (land-based) determined in consultation with State Technical Committee;
- (6) Whether the applicant is an eligible beginning, veteran, or socially disadvantaged farmer or rancher; and
- (7) Other factors as determined by the Deputy Administrator.

43. Amend § 1410.32 by revising paragraphs (c)(2), (f)(7), (g), and (h) to read as follows:

§ 1410.32 CRP contracts.

* * * * *

(c) * * *

(2) An offer to enroll land in CRP will be irrevocable for such period as is determined and announced by the Deputy Administrator. The producer will be liable to CCC for liquidated damages if the applicant revokes an offer during the period in which

the offer is irrevocable, as determined by the Deputy Administrator. The Deputy Administrator may waive payment of such liquidated damages, if the Deputy Administrator determines that the assessment of such damages, in a particular case, is not in the best interest of CCC and CRP.

* * * * *

(f) * * *

(7) The Deputy Administrator determines that such a termination is needed in the public interest, or is otherwise necessary and appropriate to further the goals of CRP.

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

(h) During the final year of the CRP contract's term, the participants on a CRP contract will not be in violation of the terms of the contract if both the following are met:

(1) During the final year of the contract the land is enrolled in the Conservation Stewardship Program, and such enrollment is reported promptly to the Deputy Administrator; and

(2) The land management and conservation practice measures that are conducted under the Conservation Stewardship Program are not in violation of the approved CRP conservation plan and are otherwise consistent with this part, as determined by the Deputy Administrator.

44. Amend § 1410.33 as follows:

- a. In paragraph (a)(4), remove the words “beginning or socially disadvantaged” and add the words “beginning, socially disadvantaged, or veteran” in their place; and
- b. Add paragraphs (e) and (f).

The additions read as follows:

§ 1410.33 Contract modifications.

* * * * *

(e) CCC may terminate or modify a CRP contract when the land is transferred into WRP, ACEP, or other Federal or State programs, as determined by the Deputy Administrator.

(1) For contracts terminated or modified for enrollment in other Federal or State programs, participants will not be required to repay CRP payments or pay interest and liquidated damages to CCC, as otherwise required for contract violations under § 1410.52, unless determined otherwise by the Deputy Administrator, with the following exception:

(2) Participants will be required to repay CRP Signing Incentive Payments and Practice Incentive Payments if land containing a wetland reserve easement is enrolled in ACEP.

(f) During the final year of the CRP contract's term, CCC will allow an owner or operator to make conservation and land improvements (resource conserving uses) for economic use that facilitate maintaining protection of enrolled land after expiration of the contract, but only under the following conditions:

(1) All provisions are identified in an approved CRP conservation plan;

(2) Land improved in accordance with paragraph (f) of this section will not be eligible to be re-enrolled in CRP for 5 years after the date of the expiration or termination of the contract; and

(3) CCC will reduce the final annual rental payment otherwise payable under the contract by an amount commensurate with the economic value of the resource conserving use activity carried out.

§ 1410.40 [Amended]

45. Amend § 1410.40 as follows:

a. In paragraph (a), remove the word "shall" and add the word "will" in its place and remove the word "CCC" and add the words "the Deputy Administrator" in its place;

b. In paragraph (d)(1), remove the words "wellheads; and" and add the words "wellheads, grassland improvement, or other conservation measures, as determined by the Deputy Administrator; and" in their place; and

c. In paragraphs (e) and (f), remove the word "shall" each time it appears and add the word "will" in its place.

46. Amend § 1410.41 by revising paragraph (a) to read as follows:

§ 1410.41 Levels and rates for cost share payments.

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

* * * * *

47. Amend § 1410.42 as follows:

a. Revise paragraphs (b) and (f) introductory text;

b. In paragraphs (c) and (e), remove the word “shall” each time it appears and add the word “will” in its place; and

c. Add paragraph (h).

The revisions and addition read as follows:

§ 1410.42 Annual rental payments.

* * * * *

(b) Annual rental payments per acre include a payment based on a weighted average soil rental rate, marginal pastureland rental rate, or grassland rate, as appropriate, and an incentive payment as a portion of the annual payment for certain practices, as determined by the Deputy Administrator. In addition, a national maximum annual rental payment rate may also be established by the Deputy Administrator for certain categories of CRP offers and contracts.

* * * * *

(f) The Deputy Administrator will prepare a schedule for each county that shows the maximum soil rental rate CCC may pay which may be supplemented to reflect special contract requirements. As determined by the Deputy Administrator, such schedule will be calculated for cropland based on the relative productivity of soils within the county using NRCS data and local FSA average cash rental estimates. For marginal pastureland, rental rates will be based on estimates of the prevailing rental values of marginal pastureland in riparian areas. Grassland rental rates will be based on not more than 75 percent of the estimated grazing value of the land. The schedule will be available in the local FSA office and, as determined by the Deputy Administrator, will indicate, when appropriate, that:

* * * * *

(h) CCC may make tree thinning incentive payments to owners and operators of enrolled land in an amount sufficient to encourage proper tree thinning and other practices to improve the condition of resources, promote forest management, or enhance wildlife habitat on the land, as determined by the Deputy Administrator. Incentive payments for tree thinning and other tree stand practices will:

(1) Not exceed 150 percent of the total cost of the practice, as determined by the Deputy Administrator; and

(2) Only be available for practices outlined in the tree planting plan under the approved CRP conservation plan.

48. Revise § 1410.44 to read as follows:

§ 1410.44 Average adjusted gross income.

(a) Benefits under this part will not be available to persons or legal entities whose average adjusted gross income exceeds \$900,000 for the 3 taxable years preceding the most immediately preceding complete taxable year, or who otherwise do not meet the AGI requirements specified in part 1400 of this chapter.

(b) [Reserved]

49. Amend § 1410.52 as follows:

a. In paragraph (a)(2)(i), add a comma after the word “contract”, and remove the word “together”; and

b. Revise paragraph (c).

The revision reads as follows:

§ 1410.52 Violations

* * * * *

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

* * * * *

50. Revise § 1410.53 to read as follows:

§ 1410.53 Executed CRP contract not in conformity with the regulations.

(a) If, after a CRP contract is approved by CCC, it is discovered that such CRP contract is found to contain material errors of fact or is not in conformity with this part, these regulations will prevail, and the Deputy Administrator may, at his or her sole

discretion, terminate or modify the CRP contract, effective immediately or at a later date as the Deputy Administrator determines appropriate.

(b) [Reserved]

51. Amend § 1410.62 by revising paragraph (g) to read as follows:

§ 1410.62 Miscellaneous.

* * * * *

(g) As determined by the Deputy Administrator, incentives may be authorized to foster opportunities for Indian tribes and beginning, limited resource, socially disadvantaged, and veteran farmers and ranchers, and to enhance long-term environmental goals.

* * * * *

52. Amend § 1410.63 as follows:

a. In paragraph (b)(2), add the word “and” at the end;

b. In paragraph (b)(3), remove the words “plan; and” and add the word and punctuation “plan.” in their place;

c. Remove paragraph (b)(4);

d. Revise paragraph (c); and

e. Add paragraphs (d) and (e).

The revisions and additions read as follows:

§ 1410.63 Permissive uses.

* * * * *

(c) No barrier fencing or boundary limitations that prohibit wildlife access to or from the CRP acreage are allowed as part of any permissive use, unless required by State law.

(d) The following activities may be permitted, as determined by the Deputy Administrator, on CRP enrolled land insofar as they are consistent with the conservation purposes of CRP including timing, frequency, and duration as provided in an approved CRP conservation plan that identifies appropriate vegetative management requirements:

(1) Managed harvesting and other commercial uses, including managed harvesting of biomass, but only in exchange for a payment reduction of not less than 25 percent as determined by the Deputy Administrator, and only in accordance with vegetative management requirements, harvest period, and a harvest frequency developed in coordination with the State Technical committee and timing of harvesting activities outside the nesting season at least every 5 years, but not more than once every 3 years, and only as identified in an approved CRP conservation plan;

(2) Routine grazing in accordance with appropriate vegetative management requirements and stocking rates for the land, grazing frequency, and grazing periods outside the nesting season developed in coordination with the State Technical Committee, of not more than once every 2 years, and only as identified in an approved CRP conservation plan. Routine grazing will only be permitted in exchange for a payment reduction of not less than 25 percent, as determined by the Deputy Administrator, except

that a beginning farmer or rancher may conduct routine grazing without payment reduction;

(3) Prescribed grazing for the control of invasive species in accordance with appropriate vegetative management requirements and stocking rates for the land, grazing frequency, and grazing periods outside the nesting season, and only as identified in an approved CRP conservation plan. Prescribed grazing will only be permitted in exchange for a payment reduction of not less than 25 percent, as determined by the Deputy Administrator, except that a beginning farmer or rancher may conduct prescribed grazing by without payment reduction;

(4) Harvesting, grazing, or other commercial use of the forage on the land in response to a drought, flooding, or other emergency, consistent with an approved CRP conservation plan;

(5) Wind turbines on CRP land installed in numbers and locations as determined appropriate by the Deputy Administrator considering the location, size, and other physical characteristics of the land, the extent to which the land contains threatened or endangered wildlife and wildlife habitat, and the purposes of CRP, but only in exchange for a payment reduction as determined by the Deputy Administrator;

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

(7) Intermittent and seasonal use of vegetative buffer practices incidental to agricultural production on lands adjacent to the buffer such that the permitted use does not destroy the permanent vegetative cover, as determined by the Deputy Administrator,

only as identified in an approved CRP conservation plan, and in exchange for a payment reduction of not less than 25 percent;

(8) The sale of carbon, water quality, or environmental credits, as determined appropriate by CCC;

(9) When enrolled land is established to tree planting practices or otherwise converted to forestry uses, customary forestry activities are authorized such as, but not limited to, thinning and prescribed burning, in a manner consistent with the participant's conservation plan. Such activities must be designed to promote forest health, enhance wildlife habitat, and improve the general resource conditions of enrolled lands. An incentive payment is authorized as specified in § 1410.42(h).

(e) For land enrolled under a grassland signup type as authorized by § 1410.30(b) only, the following activities may also be permitted, as determined by the Deputy Administrator:

(1) Common grazing practices, including maintenance and necessary cultural practices, on the land in a manner that is consistent with maintaining the viability of grassland, forb, and shrub species appropriate to the locality;

(2) Haying, mowing, or harvesting for seed production subject to appropriate restrictions during the nesting season;

(3) Fire pre-suppression, fire-related rehabilitation, and construction of firebreaks;

(4) Grazing related activities, such as fencing and livestock watering facilities;
and

(5) Other activities as determined by the Deputy Administrator, when the manner, number, intensity, location, operation, and other features associated with the activity will not adversely affect the grassland resources or related conservation values protected under a grassland CRP contract.

53. Amend § 1410.64 as follows:

a. Revise paragraphs (a) introductory text, (a)(2), and (a)(6);

b. In paragraphs (a)(4), (a)(5), (b) introductory text and (b)(1), (c), (d), and (e), remove the words “beginning or” each time they appear and add the words “beginning, veteran, or” in their place;

a. Revise paragraph (f); and

c. Remove paragraph (g).

The revisions read as follows:

§ 1410.64 Transition Incentives Program.

(a) To be eligible for the Transition Incentives Program, the retired or retiring owner or operator must:

* * * * *

(2) Sell or lease (under a qualifying irrevocable lease of at least 5 years in length) expiring CRP land to a beginning, veteran, or socially disadvantaged farmer or rancher who will return some or all of the land to production using sustainable grazing or crop production methods;

* * * * *

(6) Allow the beginning, veteran, or socially disadvantaged farmer or rancher to install conservation practices and initiate land improvements, including preparing to plant a crop, that are consistent with the conservation plan during the last year of the contract.

* * * * *

(f) The eligible retired or retiring owner or operator and the eligible beginning, veteran, or socially disadvantaged farmer or rancher must agree to be jointly and severally responsible for complying with both the provisions of the Transition Incentives Program agreement and the provisions of this part, and must also agree to be jointly and severally responsible for any payment adjustments that may result from violations of the terms or conditions of the Transition Incentives Program agreement or this part.

§§ 1410.1, 1410.2, 1410.3, 1410.6, 1410.8, 1410.10, 1410.11, 1410.22, 1410.32, 1410.33, 1410.40, 1410.41, 1410.43, 1410.50, 1410.51, 1410.60, 1410.61, and 1410.62

[Amended]

54. In addition to the amendments set forth above, in 7 CFR part 1410, remove the word “CCC“ each time it appears and add the words “the Deputy Administrator” in its place, in the following places:

a. In § 1410.1(g), (h), and (i);

b. In § 1410.2, in the definitions of “Agricultural commodity”, “Commercial pond-raised aquaculture facility”, “Field”, “Field windbreak, shelterbelt, and/or living snowfence”, “Offer”, “Offeror”, “Operator”, “Perennial crop”, and “Technical assistance”;

c. In § 1410.3(b) and (d);

d. In § 1410.6(a)(2);

- e. In § 1410.8(a);
- f. In § 1410.10(b);
- g. In § 1410.11(b) introductory text, (b)(1), (e), and (g);
- h. In § 1410.22(e);
- i. In § 1410.32(b)(3), (d) introductory text, and (f)(2);
- j. In § 1410.33(d);
- k. In § 1410.40(b) and (g);
- l. In § 1410.41(b) and (c);
- m. In § 1410.43;
- n. In § 1410.50(a);
- o. In § 1410.51(a)(1) and (c);
- p. In § 1410.60(a);
- q. In § 1410.61; and
- r. In § 1410.62(h).

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