

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

#### Natural Resources Conservation Service

#### 7 CFR Part 1470

RIN 0578-AA21

#### Wildlife Habitat Incentives Program

**AGENCY:** Commodity Credit Corporation; Natural Resources Conservation Service, United States Department of Agriculture.

**ACTION:** Notice of proposed rulemaking with request for comments.

**SUMMARY:** The Federal Agriculture Improvement and Reform Act authorized the establishment of a Wildlife Habitat Incentives Program within NRCS. The Commodity Credit Corporation (CCC) and the Natural Resources Conservation Service (NRCS) are issuing a proposed rule for implementation of the Wildlife Habitat Incentives Program.

**DATES:** Comments must be received by January 27, 1997.

**ADDRESSES:** All comments concerning this proposed rule should be addressed to Warren M. Lee, Director, Watersheds and Wetlands Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, D.C. 20013-2890. Attention: WHIP. Fax: 202-690-1462. This rule may also be accessed, and comments submitted, via Internet. Users can access the NRCS Federal Register homepage and submit comments at <http://astro.itc.nrcs.usda.gov:6500>.

**FOR FURTHER INFORMATION CONTACT:** Jeanne Melanson, Program Manager, Watersheds and Wetlands Division, Natural Resources Conservation Service, (202) 720-3534.

#### SUPPLEMENTARY INFORMATION:

##### Background

The desirability of an area for habitat depends upon the wildlife species

involved. Even so, wildlife habitats of all types have become degraded as a result of development pressures. As development encroaches and replaces the existing habitat, the wildlife dependent upon that habitat is also replaced. A number of habitat types that existed at the time of European settlement (including many of our native grasslands, savannas, barrens, and certain types of forestlands) have almost disappeared from the landscape.

Often, the loss of a habitat means the ir retrievable loss of the species dependent upon that habitat. Of all North American birds, those occupying grasslands throughout the Great Plains are experiencing the steepest, most consistent, and most widespread declines. Approximately 83 percent of these species show decreasing population trends from 1963 to 1993. In the West, intensification of cultivated cropland, especially in irrigated areas, has contributed to a 68 percent decrease in the harvest of ring-necked pheasants. Other habitats such as wetlands, riparian forests, and rivers and streams have suffered a serious decline in quality and or quality. These changes also impact wildlife populations.

#### Executive Order 12866

The Office of Management and Budget (OMB) determined that this proposed rule is significant and was reviewed by the Office of Management and Budget under Executive Order 12866. Pursuant to § 6(a)(3) of Executive Order 12866, CCC and NRCS conducted a benefit-cost assessment of the potential impacts associated with this proposed rule. CCC and NRCS concluded from the benefit-cost assessment that the overall impacts of WHIP will be beneficial. CCC and NRCS determined that the development of partnerships to provide expert technical assistance will ensure customers are afforded the best opportunity for success. In this manner, CCC and NRCS believe that WHIP will provide for wildlife habitat, help improve the quality of life for participants, and have a neutral to positive impact on local economies. Copies of the benefit-cost assessment are available upon request from Jeanne Melanson, Program Manager, Watersheds and Wetlands Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, D.C. 20013-2890.

#### Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because neither the CCC or NRCS are required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

#### Environmental Evaluation

It has been determined through an environmental review that the issuance of this proposed rule will not have a significant impact upon the human environment. Copies of the environmental assessment may be obtained from Jeanne Melanson, Program Manager, Watersheds and Wetlands Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, D.C. 20013-2890.

#### Executive Order 12372

This program/activity is not subject to the provisions of Executive Order 12372 because it involves direct payments to individuals and not to State and local officials. See notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

#### Federal Domestic Assistance Program

The title and number of the Federal Domestic Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Wildlife Habitat Incentives Program—10.914.

#### Paperwork Reduction Act

This proposed rule sets forth procedures for implementing WHIP. CCC needs certain information from potential applicants, in order to carry out the requirements of the program. CCC submitted the information collection requirements in this proposed rule to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* CCC prepared an Information Collection Request (ICR) document; the public may obtain a copy of this request from Jeanne Melanson, Program Manager, Natural Resources Conservation Service, P.O. Box 2890, Washington, D.C. 20013-2890.

*Title:* Environmental Quality Incentives Program, Wildlife Habitat Improvement Program, and Farmland Protection Program.

*OMB Control Number:* 0560-0174.  
*Expiration Date of Approval:* 3 Years from OMB Approval.

*Type of Request:* Revision.

*Abstract:* The Federal Agriculture Improvement and Reform Act of 1996, Pub. L. 104-127, authorized the implementation of the Wildlife Habitat Incentives Program. This rule sets forth the procedures for producers to apply and participate in the program. Pursuant to § 1470.5, producers may file an application for participation at a USDA service center. NRCS will collect information from a participant on the resource problems to be addressed, evaluate the information, and, working with the participant, develop a wildlife habitat development plan that describes the needed practices or land management changes. This plan becomes a part of the WHIP contract, and CCC will make payments to participants as the participants carry out the provisions of the contract. CCC submitted to OMB proposed forms that CCC will use for the application, the contract, and for the NRCS collection of information related to resource needs.

*Estimate of Burden:* CCC estimates the public reporting for this information collection associated with WHIP forms is an average of 90 minutes per applicant.

*Respondents:* Persons who wish to participate in WHIP.

*Estimated Number of Respondents:* 5,000.

*Estimated Number of Responses per Respondent:* 6.

*Estimated Total Annual Burden on Respondents:* 7,900 hours.

Additionally, CCC shall utilize information supplied by local work groups to designate particular geographic areas as priority areas for program funding under WHIP. Staff from State and local governments shall comprise part of these local work groups, and thus information collected from these groups is governed under the Paperwork Reduction Act.

For the local work groups, the annualized cost to WHIP respondents is \$1,680,000. CCC based this figure on 120,000 burden hours times an average wage of \$14.00 an hour (wages for State and local agency staff average approximately \$14 an hour).

There also exists a burden associated with development of conservation plans and follow-up verification of the conservation practices adopted pursuant to the WHIP wildlife habitat development plan. For the collection of information resulting from the development of conservation plans and subsequent verification of practices, the annualized cost to respondents is

\$480,000. This figure is based on 40,000 burden hours times the wage of \$12.00 an hour.

CCC requests comments regarding: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

USDA will accept comments on this information collection at: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, and to Jeanne Melanson, Program Manager, Natural Resources Conservation Service, P.O. Box 2890, Washington, D.C. 20013-2890. USDA will incorporate all comments as part of the public record.

The Paperwork Reduction Act requires OMB to make a decision concerning the collection(s) of information contained in this proposed rule between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations.

#### Executive Order 12778

This proposed rule has been reviewed in accordance with Executive Order 12778. The provisions of this proposed rule are not retroactive. Furthermore, the provisions of this proposed rule preempt State and local laws to the extent such laws are inconsistent with this proposed rule. Before an action may be brought in a Federal court of competent jurisdiction, the administrative appeal rights afforded persons at 7 CFR part 614 or 780, as appropriate, must be exhausted.

#### Unfunded Mandates Reform Act of 1995

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, Pub. L. 104-4, the affects of this rulemaking action on State, local, and tribal governments, and the public have been assessed. This action does not compel

the expenditure of \$100 million or more by any State, local or tribal governments, or anyone in the private sector, and therefore a statement under section 202 of the Unfunded Mandates Reform Act of 1995 is not required.

#### Discussion of the Program

The Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act), Pub. L. 104-127, provides the authority for several conservation programs. Section 387 of the 1996 Act authorizes the establishment of a Wildlife Habitat Incentives Program (WHIP) specifically under the supervision of the NRCS. The primary purpose of WHIP is to help landowners "develop upland wildlife, wetland wildlife, threatened and endangered species, fish, and other types of wildlife habitat."

Section 387 of the 1996 Act provides that funds from CCC that are available for implementing the Conservation Reserve Program, 16 U.S.C. 3831-3836, will be used to implement WHIP. The Chief, NRCS, is a Vice-President of the CCC and WHIP will be under the general supervision and direction of the Vice President of CCC who is the Chief of NRCS. Through WHIP, CCC provides cost-share assistance to those landowners who wish to integrate wildlife considerations into the overall management of their operations or who simply desire to "do more for wildlife." NRCS, using CCC funds, will implement WHIP in harmony with other programs to achieve more comprehensive advancement of wildlife objectives.

WHIP offers an opportunity to encourage development of improved wildlife habitat on eligible lands. As participants make decisions about the wildlife habitat development plan for their particular land, they will gain a greater awareness about the diversity of wildlife needs and how wildlife management can fit into their farming or ranching activities. NRCS believes that the efforts made by participants in this program will serve as a catalyst for improving wildlife conditions throughout the Nation.

#### Public Listening Forums

In April 1996, USDA held nine forums to provide opportunities for public comment in advance of this rulemaking action. These forums were held at Sacramento, California; Longmont, Colorado; Columbus, Georgia; Springfield, Illinois; Wyomissing, Pennsylvania; Sioux Falls, South Dakota; Abilene, Texas; Spokane, Washington; and Washington, D.C. More than 850 people, including 206 speakers, attended these forums. In addition, USDA accepted written

comments. USDA considered the public comments provided at these forums in the preparation of this proposed rule. The documents relating to these forums are available for public inspection at Room 6029 South Building, USDA, 14th and Independence Ave. SW, Washington, D.C.

All the commenters who addressed WHIP expressed support for the program and the increased role wildlife objectives have in the Conservation Title programs.

Several commenters suggested that WHIP funds should fill gaps and target practices with respect to other programs authorized by Title III of the 1996 Act that may not otherwise receive funding. NRCS will coordinate the implementation of WHIP with the other program efforts to avoid program duplication. In particular, § 1470.4(c) provides that CCC may not share the cost of practices on land where other programs have sufficiently met wildlife objectives. However, it is anticipated that there will be significant opportunities to further wildlife objectives through collaborative efforts with other public and private organizations. Other provisions in the rule encourage program innovation to achieve broader wildlife benefits through cooperative agreements and related mechanisms for coordinating resources.

USDA received five comments related to the types of practices that should or should not be eligible for cost-share funds. Section 1470.7 describes the types of practices that will be eligible.

USDA received three comments expressing a desire that WHIP funds be allocated evenly between the States and three other comments suggesting a more focused targeting of program funds. Section 1470.6 provides that funds will be targeted according to NRCS State, regional, and national priorities.

Eleven commenters expressed support for the continuing close relationship between NRCS and conservation districts in the development of conservation plans. Section 1470.8 provides that wildlife habitat development plans will be developed by NRCS or other public or private natural resource professional, and approved by the conservation district. Additional provisions of the regulation authorize conservation districts to be involved in the modification or termination of plans.

#### Summary of Provisions

The following is a summary of the WHIP provisions in this proposed rule:

*Section 1470.1* describes the purpose of the Wildlife Habitat Incentives

Program and where the program may be offered. Through WHIP, NRCS will provide participants with the technical expertise to establish realistic wildlife goals for their land and CCC will provide cost-share assistance to help establish practices. Section 387 of the 1996 Act provides that 50 million dollars is available through 2002 for program implementation. Within the limits of that amount, CCC will fund projects in those areas where it is determined that the greatest benefit can be achieved.

*Section 1470.2* provides that WHIP will be administered under the supervision of the Chief, NRCS as Vice President of CCC. As provided by section 387 of the 1996 Act, the program will be developed in consultation with the State Technical Committees. The NRCS State Conservationist, with advice from the State Technical Committee, will develop and submit to the Chief a plan for implementing and administering the WHIP program in each State, i.e. a NRCS State plan. The NRCS State plan will include the NRCS State objectives, NRCS State wildlife priorities, partnership involvement, the application ranking process and criteria, and other provisions necessary to assure successful implementation of the program. The Chief will allocate WHIP funds to the NRCS State level based on these NRCS State plans.

*Section 1470.3* defines the terms that are used in this proposed rule.

*Section 1470.4* describes the general program requirements. Under WHIP, CCC will enter into cost-share contracts, for a minimum duration of 10 years, with persons who want to implement practices that improve habitat conditions for wildlife. According to Department wildlife biologists, there often exists a time lag between when a practice is installed and the wildlife benefits are realized. Therefore, a participant will receive cost-share assistance upon completion of the installation of the practice but must maintain the practice for the duration of the contract period. CCC requests comments from the public related to the proposed duration of the contract.

To participate in WHIP, a person must either own the land on which the practices will be implemented or have control and possession of the land for the duration of the contract. The land cannot be owned by a Federal agency or have on-site or off-site conditions that could undermine the successful establishment of habitat development practices.

*Section 1470.5* provides that a person who wants to receive cost-share assistance must submit an application to

a CCC representative. If an applicant is eligible, a CCC representative will visit the site and gather information relevant to the eligibility of the land, the objectives of the applicant, the habitat needs, and other information necessary to evaluate the relative merits of the project.

*Section 1470.6* describes the national criteria that the NRCS State plan must incorporate into its ranking scheme. The NRCS will give priority to projects on private lands or eligible Tribal lands. NRCS may consider projects on State or local public land only if a priority project on private lands contains a public land component or the project otherwise merits special consideration. In general, NRCS will not implement WHIP on State forest-, park-, or gamelands because NRCS assumes that the State has already assumed responsibility for implementing wildlife habitat development practices on such land.

The NRCS State plan may also include additional criteria relevant to the particular habitat concerns of State or regional importance. Funds will not be allocated evenly to all States. The Chief may focus program funds to particular habitat needs of target species based upon the NRCS State plan or national goals and priorities.

*Section 1470.7* includes the provisions related to cost-share assistance. The NRCS State Conservationist, in consultation with the State Technical Committee, will develop from the NRCS field office technical guides a list of practices eligible for WHIP cost-share assistance. Any practice in the field office technical guide that provides positive benefits to wildlife habitat may be eligible for cost-share funds. Cost-share assistance will be used to implement the practices contained in the conservation plan prepared to obtain the desired habitat response. CCC will not contribute more than 75 percent towards the cost of installing or implementing a practice. If a practice fails for reasons beyond a participant's control such as drought or flood, cost-share assistance may be available (at the sole discretion of CCC) for the re-establishment of the necessary practices.

*Section 1470.8* addresses the necessary elements of a cost-share contract, including the incorporation of a Wildlife Habitat Development Plan (WHDP). The participant develops the WHDP with the NRCS (or public or private natural resource professional) and the conservation district. The WHDP provides the participants with a record of the decisions made regarding the implementation of practices, the

associated costs, and a schedule of installation, operation, and maintenance of the practice. The WHDP forms the basis of the contract for cost-share assistance.

Section 1470.9 allows for the modification of a contract or a WHDP as long as the modification meets program objectives.

Section 1470.10 provides that a contract will need to be modified or terminated if the participant transfers an interest in the land under contract or otherwise loses control of the subject land.

Section 1470.11 allows for a contract to be terminated voluntarily for reasons of undue economic hardship, an inability to comply with the terms of the contract as a result of conditions beyond a participant's control, or the NRCS State Conservationist determines that termination would be in the public interest.

Section 1470.12 provides that a participant may be given at least 30 days to correct a violation of a cost-share contract before CCC will seek remedies for breach of the contract.

Section 1470.13 addresses actions that CCC will consider as a scheme or device to defeat the purposes of the program.

Section 1470.14 are provisions related to the assignment of payments and payments that are not subject to claims of creditors.

Section 1470.15 provides that a person may obtain a review of an adverse agency decision by utilizing the appeal provisions found at 7 CFR part 614 or 780, as appropriate.

#### List of Subjects in 7 CFR Part 1470

Administrative practices and procedures, Conservation, Habitat, Wildlife.

Accordingly, it is proposed that Title 7, Chapter XIV, of the Code of Federal Regulations be amended by adding a new part 1470 to read as follows:

### **PART 1470—WILDLIFE HABITAT INCENTIVES PROGRAM**

#### **Sec.**

- 1470.1 Applicability.
- 1470.2 Administration.
- 1470.3 Definitions.
- 1470.4 Program requirements.
- 1470.5 Application procedures.
- 1470.6 Establishing priority for enrollment in WHIP.
- 1470.7 Cost-share payments.
- 1470.8 The wildlife habitat development plan (WHDP)
- 1470.9 Modifications.
- 1470.10 Transfer of interest in a contract.
- 1470.11 Termination of contracts.
- 1470.12 Violations and remedies.
- 1470.13 Misrepresentation and scheme or device.

1470.14 Offsets and assignments.

1470.15 Appeals.

Authority: 15 U.S.C. 714b and 714c; 16 U.S.C. 590a *et seq.*, 3836a.

#### **§ 1470.1 Applicability.**

(a) The purpose of the WHIP is to help participants develop habitat for upland wildlife, wetland wildlife, threatened and endangered species, fish, and other types of wildlife.

(b) The regulations in this part set forth the requirements for the Wildlife Habitat Incentives Program (WHIP).

(c) The Chief, NRCS may implement WHIP in any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, and the Commonwealth of the Northern Mariana Islands.

#### **§ 1470.2 Administration.**

(a) The regulations in this part will be administered under the general supervision and direction of the Chief, NRCS as Vice President of CCC and as Chief of NRCS. In the field, the regulations in this part will be administered by NRCS.

(b) The State Conservationist will consult with the State Technical Committee in the implementation of the program and in establishing program policies for the NRCS in the applicable State. The State Conservationist has the authority to accept or reject the State Technical Committee recommendation; however, the State Conservationist will give strong consideration to the State Technical Committee's recommendation.

(c) CCC may enter into cooperative agreements with Federal agencies, State and local agencies, conservation districts, local watershed groups, and with private entities to assist with program implementation, including contract execution, assistance, planning, and monitoring responsibilities.

(d) CCC may allocate funds for such purposes related to wildlife priority areas; special pilot programs for wildlife habitat development, targeted species or targeted species habitat problems; cooperative agreements with other Federal, State, or local agencies, conservation districts, local watershed groups, or private entities for program implementation; coordination of enrollment of contracts; or for other goals consistent with the program provided for in this part.

(e) No delegation herein shall preclude the Vice President of CCC who is the Chief of NRCS, or a designee, from determining any question arising under this part or from reversing or modifying any determination made under this part.

#### **§ 1470.3 Definitions.**

*Chief* means the Chief of the Natural Resources Conservation Service or the person delegated authority to act for the Chief.

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

*Contract* means the document that specifies the obligations and the rights of any person who has been accepted for participation in the program.

*Cost-share payment* means the payments under this part to develop wildlife habitat.

*Habitat development* means the physical actions or practices undertaken to establish, improve, protect, enhance, or restore the present conditions of the land for the specific purpose of improving conditions for wildlife.

*Participant* means an applicant who is a party to a WHIP contract.

*Person* means an individual, partnership, association, corporation, cooperative, estate, trust, joint venture, joint operation, or other business enterprise or other legal entity and, whenever applicable, a State, a political subdivision of a State, or any agency thereof.

*Practice* means a specified treatment, such as a structural or land management measure, which is planned and applied according to NRCS standards and specifications.

*State Conservationist* means the NRCS employee authorized to direct and supervise NRCS activities in a State, the Caribbean Area, or the Pacific Basin Area.

*State Technical Committee* means a committee established by the Secretary of the United States Department of Agriculture in a State pursuant to 16 U.S.C. 3861.

*WHDP* means the Wildlife Habitat Development Plan.

*WHIP* means the Wildlife Habitat Incentives Program.

*Wildlife* means birds, fishes, reptiles, invertebrates, and mammals, and all other classes of wild animals and all types of aquatic and land vegetation upon which wildlife is dependent.

#### **§ 1470.4 Program requirements.**

(a) Under WHIP, CCC will enter into wildlife habitat development cost-share contracts, for a minimum of 10 years

duration, with persons who voluntarily seek to cooperate in the development of wildlife habitat. To participate in WHIP, a person must agree to implement a Wildlife Habitat Development Plan (WHDP). As specified in § 1470.7, CCC will provide cost-share assistance for the implementation of the habitat development practices.

(b) To participate in WHIP, a person must:

(1) Own or have legal control and possession of the land for which enrollment is sought; and

(2) Agree to provide such information to the NRCS as the agency deems necessary to assist in the determination of the merits of a proposed project.

(c) *Ineligible land.* CCC shall not provide cost-share assistance with respect to practices on land:

(1) Enrolled in a program where wildlife habitat objectives have been sufficiently achieved through other forms of assistance or without assistance, as determined by NRCS.

(2) With on-site or off-site conditions which NRCS determines would undermine the benefits of the habitat development or otherwise reduce its value;

(3) NRCS determines that the wildlife habitat development benefits attainable are of lesser value than would occur on other lands; or

(4) Owned by the United States.

#### § 1470.5 Application procedures.

(a) To apply for WHIP cost-share assistance, a person must submit an application for participation in the WHIP at a USDA service center or to an authorized CCC representative.

(b) By filing an application for participation, a person consents to allowing CCC and NRCS representatives entering upon the land for purposes of assessing the wildlife habitat development potential, and for other activities such as the development of the WHDP that are necessary or desirable for program participation.

#### § 1470.6 Establishing priority for enrollment in WHIP.

(a) In response to national and regional needs, the Chief may limit program implementation in any given year to specific geographic areas or to address specific habitat development needs of targets species of special concern.

(b) The State Conservationist, in consultation with the State Technical Committee, may limit implementation of WHIP to address unique species, habitats, or special geographic areas of the State. Subsequent contract offers that would complement previous

contracts due to geographic proximity of the lands involved or other relationships may, at any time, receive priority consideration for participation.

(c) NRCS will evaluate the applications and make enrollment decisions based on the relative:

(1) Contribution to resolving an identified habitat problem of national, regional, or state importance;

(2) Significance of the habitat development in response to any established species or habitat priority;

(3) Relationship to any established wildlife or conservation priority areas;

(4) Duration of benefits to be obtained from the habitat development practices;

(5) Self-sustaining nature of the habitat development practices;

(6) Availability of other partnership matching funds or reduced funding request by the person applying for participation; and

(7) Estimated costs of wildlife habitat development activities.

(d) The State Conservationist, in consultation with the State Technical Committee, may determine that an application which meets the eligibility requirements under § 1470.4 should not be enrolled because such application is not:

(1) Valuable to wildlife habitat improvement;

(2) Technically feasible;

(3) Cost-effective;

(4) On private or Tribal land; or

(5) Sufficiently cost-effective relative to other applications, given available funds.

#### § 1470.7 Cost-share payments.

(a) CCC may share the cost with a participant for implementing the practices as provided in the WHDP. CCC shall offer to pay no more than 75 percent of such costs.

(b) Cost-share payments may be made only upon a determination by the NRCS that an eligible practice or an identifiable unit of the practice has been established in compliance with appropriate standards and specifications. Identified practices may be implemented by the participant, or other designee.

(c) Cost-share payments may be made for the establishment and installation of additional eligible practices, or the maintenance or replacement of an eligible practice, but only if NRCS determines the practice is needed to meet the objectives of the program, and the failure of the original practice was due to reasons beyond the control of the participant.

(d) A participant may seek additional assistance from other public or private organizations as long as the activities

funded are in compliance with this part. However, in the event that the total amount of assistance or payments that the participant would otherwise receive from all sources would exceed 100 percent of the cost of the practice, the participant shall be ineligible for further payments and shall refund that amount received under this part which is equal to such excess over 100 percent.

#### § 1470.8 The wildlife habitat development plan (WHDP).

(a) The participant develops a WHDP with the assistance of NRCS or other public or private natural resource professionals, and the WHDP is approved by the local conservation district. A WHDP encompasses the parcel of land that has the wildlife habitat conditions that are of concern to the participant.

(b) The WHDP forms the basis for the contract and is incorporated therein. The WHDP includes a schedule for installation of the wildlife habitat development practices and related requirements to maintain the habitat for the life of the contract.

(c) A WHIP contract shall:

(1) Incorporate all portions of a WHDP;

(2) Include all provisions as required by law or statute;

(3) Specify the requirements for operation and maintenance of applied wildlife habitat development practices;

(4) Include any participant reporting and recordkeeping requirements to determine compliance with the contract and program;

(5) Be signed by the participant, and by the owner if the participant is not the owner of the land subject to the contract; and

(6) Any other provision determined necessary or appropriate by the CCC representative.

#### § 1470.9 Modifications.

(a) Upon request of the participant, NRCS, with the concurrence of the conservation district, may approve modifications to a WHDP.

(b) Upon request of the participant, CCC may approve modifications to a contract.

(c) Any modifications made under this section must meet WHIP program objectives, and must be in compliance with this part.

#### § 1470.10 Transfer of interest in a contract.

(a) If the ownership or operation of the land under contract changes in such a manner that the contract no longer contains the necessary signatures of persons required to sign the contract, CCC shall modify the contract to reflect

the new interested persons and new divisions of payments. CCC shall make eligible cost-share payments upon presentation of an assignment of rights or other evidence that title had passed.

(b) If such persons are not willing to become parties to the modified contract or for any other reason a modified contract is not executed, CCC shall terminate the contract and may require that all cost-share payments may be forfeited, refunded, or both.

(c) The signatories to the contract prior to the change of ownership or operation shall be jointly and severally responsible for refunding the cost-share payments pursuant to paragraph (b).

(d) With respect to any and all payments owed to participants, CCC shall bear no responsibility for any full payments or partial distributions of funds between the original party and that party's successor. In the event of a dispute or claim on the distribution of cost-share payments, CCC may withhold payments without the accrual of interest pending a settlement or adjudication on the rights to the funds.

#### **§ 1470.11 Termination of contracts.**

(a) The State Conservationist may, by mutual agreement with the parties to the contract, consent to the termination of the contract where:

(1) The parties to the contract are unable to comply with the terms of the contract as the result of conditions beyond their control;

(2) Compliance with the terms of the contract would work a severe hardship on the parties to the contract; or

(3) Termination of the contract would, as determined by the State Conservationist, be in the public interest.

(b) If a contract is terminated in accordance with the provisions of this section, the State Conservationist may allow the participants to retain any cost-share payments received under the contract.

#### **§ 1470.12 Violations and remedies.**

In the event of a violation of a contract or any associated WHDP, CCC may give the parties to the contract reasonable notice and an opportunity to voluntarily correct the violation within 30 days of the date of the notice, or such additional time as CCC may allow.

#### **§ 1470.13 Misrepresentation and scheme or device.**

(a) A person who is determined to have erroneously represented any fact affecting a program determination made in accordance with this part shall not be entitled to contract payments and must refund all payments, plus interest

determined in accordance with this part.

(b) A person who is determined to have knowingly:

(1) Adopted any scheme or device that tends to defeat the purpose of the program;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a program determination shall refund to CCC all payments, plus interest determined in accordance with part 1403 of this chapter received by such person with respect to all contracts. The person's interest in all contracts shall be terminated.

#### **§ 1470.14 Offsets and assignments.**

(a) Except as provided in paragraph (b) of this section, any payment or portion thereof to any person shall be made without regard to questions of title under State law and without regard to any claim or lien against the land, or proceeds thereof, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholdings found at part 1403 of this chapter shall be applicable to contract payments.

(b) Any person entitled to any payment may assign any payments in accordance with regulations governing assignment of payment found at part 1404 of this chapter.

#### **§ 1470.15 Appeals.**

(a) Any person may obtain reconsideration and review of determinations affecting participation in this program in accordance with part 614 or 780 of this title, as appropriate.

(b) Before a person may seek judicial review of any action taken under this part, the person must exhaust all administrative appeal procedures set forth in paragraph (a) of this section.

Signed at Washington, D.C. on November 6, 1996.

Pearlie Reed,

*Acting Chief, Natural Resources Conservation Service, Acting Vice President, Commodity Credit Corporation.*

[FR Doc. 96-31676 Filed 12-12-96; 8:45 am]

BILLING CODE 3410-16-P

### **Food Safety and Inspection Service**

#### **9 CFR Parts 317 and 381**

[Docket No. 96-022P]

RIN 0583-AC15

#### **Nutrition Labeling; Reference Daily Intakes**

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is proposing to establish Reference Daily Intakes (RDI's) for vitamin K, selenium, manganese, chromium, molybdenum, and chloride for use in calculating the "percent daily values" of these nutrients per serving of a meat or poultry product. Percent daily values are presented in the "Nutrition Facts" boxes on meat, poultry, and other food product labels. FSIS is also proposing to modify the units of measure of the RDI's for calcium, folate, biotin, and phosphorous. The proposed actions would help provide consumers with accurate, informative labeling on meat and poultry products that conforms with the labeling on other foods.

**DATES:** Comments must be received on or before February 11, 1997.

**ADDRESSES:** Submit an original and two copies of comments to: FSIS Docket Clerk, Docket #96-022P, Room 3806, 1400 Independence Avenue, SW, Washington, DC 20250-3700. Reference material cited in this document and any comments received will be available for public inspection in the FSIS Docket Room from 8:30 a.m. to 1 p.m. and from 2 p.m. to 4:30 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Charles R. Edwards, Director, Facilities, Equipment, Labeling & Compounds Review Division, Office of Policy, Program Development, and Evaluation, (202) 418-8900.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The meat and poultry inspection regulations at 9 CFR part 317, subpart B, and 381, subpart Y, establish, among other things, the voluntary nutrition labeling requirements for raw, single-ingredient, meat and poultry products and the mandatory nutrition labeling requirements for all other meat and poultry products. The FSIS nutrition labeling regulations parallel, to the extent possible, those administered by the Food and Drug Administration (FDA), because FSIS and FDA agree that conveying nutrition information to consumers in a clear, uniform way for all types of foods helps them in making informed dietary choices. FSIS's nutrition labeling regulations list the same reference values for vitamins, minerals, and other nutrients as do FDA's regulations.

FDA amended its nutrition labeling regulations on December 28, 1995, with a final rule (60 FR 67164, "Food Labeling: Reference Daily Intakes")